

# **PENDING RULES**

## **COMMITTEE RULES**

### **REVIEW BOOK**

**Submitted for Review Before**  
**Senate State Affairs Committee**  
**65th Idaho Legislature**  
**Second Regular Session – 2020**



*Prepared by:*

*Office of the Administrative Rules Coordinator  
Division of Financial Management*

*January 2020*

**SENATE STATE AFFAIRS COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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## IDAPA 04 – OFFICE OF THE ATTORNEY GENERAL

DOCKET NO. 04-0000-1900

### NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-4903(11), 39-8405(5), 48-604(2), 67-5206(2), 67-5206(3), and 67-5206(4), 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 04, rules of the Office of the Attorney General:

#### **IDAPA 04**

- 04.02.01, *Idaho Rules of Consumer Protection*
- 04.11.01, *Idaho Rules of Administrative Procedure of the Attorney General*
- 04.12.01, *Rules of Administrative Procedure for Consideration of Cooperative Agreements Filed By Health Care Providers*
- 04.20.01, *Rules Implementing the Idaho Tobacco Master Settlement Agreement Complementary Act*

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, **Vol. 19-6SE, pages 546-637**. The Office of the Attorney General has adopted these rules as pending rules. The changes made to these pending rules from the proposed rules text consist of non-substantive changes to limit redundancies, remove outdated language, and otherwise streamline these rules.

**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:

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Brett DeLange, Chief, Consumer Protection Division, Office of the Attorney General. Mr. DeLange can be reached at (208) 334-4114 or at [brett.delange@ag.idaho.gov](mailto:brett.delange@ag.idaho.gov).

Dated this 31st day of October, 2019.

Brett T. DeLange, Division Chief  
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**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 39-4903(11) 39-8405(5), 48-604(2), 67-506(2), 67-5206(3), 67-5206(4) Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 04, rules of the Office of the Attorney General:

**IDAPA 04**

- 04.02.01, *Idaho Rules of Consumer Protection*
- 04.11.01, *Idaho Rules of Administrative Procedure of the Attorney General*
- 04.12.01, *Rules of Administrative Procedure for Consideration of Cooperative Agreements Filed By Health Care Providers*
- 04.20.01, *Rules Implementing the Idaho Tobacco Master Settlement Agreement Complementary Act*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found (and the Attorney General concurs) that temporary adoption of the rules set forth above is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

These rules govern important matters related to Idaho's marketplace, public health, the State's financial well-being, administrative procedures for considering cooperative health care agreements and administrative procedural processes.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously

promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Brett DeLange, Chief, Consumer Protection Division, Office of the Attorney General. Mr. DeLange can be reached at (208) 334-4114 or [brett.delange@ag.idaho.gov](mailto:brett.delange@ag.idaho.gov).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 04-0000-1900**

## IDAPA 04 – OFFICE OF THE ATTORNEY GENERAL

### 04.02.01 – IDAHO RULES OF CONSUMER PROTECTION, OFFICE OF THE ATTORNEY GENERAL

#### Subchapter A – General Provisions (Rules 0 - 19)

##### **000. LEGAL AUTHORITY (RULE 0).**

This chapter is adopted under the legal authority of Title 67, Chapter 52, Idaho Code, and pursuant to Section 48-604(2), Idaho Code. (7-1-93)

##### **001. TITLE AND SCOPE (RULE 1).**

**01. Title.** These rules are titled “Idaho Rules of Consumer Protection, Office of the Attorney General,” IDAPA 04, Title 02, Chapter 01. (7-1-93)

**02. Scope.** These rules are intended to protect persons in the state of Idaho against unfair, false, deceptive, misleading or unconscionable acts or practices by defining with reasonable specificity some of the acts and practices that violate the Act. Further, they are intended to provide reasonable guidance to persons doing business in the State of Idaho. (7-1-93)

##### **002. WRITTEN INTERPRETATIONS--AGENCY GUIDELINES (RULE 2).**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements that pertain to the interpretation of the rules of this chapter, or to the compliance with the rules of this chapter. The document is available for public inspection and copying at cost at the Office of the Attorney General, Consumer Protection Unit. (7-1-93)

##### **003. RULES OF CONSTRUCTION (RULE 3).**

Without limiting the scope of any section of the Act, or any other rule or law, these rules shall be liberally construed and applied to promote the general purposes and policies of the Act. (7-1-93)

##### **004. NON-INCLUSIVE (RULE 4).**

These rules are not intended to cover all trade practices that violate the provisions of the Act. Many areas of illegal practice in trade and commerce are not specifically encompassed by these rules, but are still actionable under the Act. (7-1-93)

##### **005. CUMULATIVE (RULE 5).**

These rules are intended to be cumulative in effect and supplementary to each other. If acts or practices are governed by more than one (1) rule, compliance with one (1) rule does not excuse violations of another applicable rule. (7-1-93)

##### **006. NON-EXCLUSIVE (RULE 6).**

These rules are in addition to, and do not affect, any other rights or obligations that may exist by statute or judicial decision. (7-1-93)

##### **007. EXCEPTIONS TO THESE RULES (RULE 7).**

These rules are subject to the same exceptions as set forth in Section 48-605, Idaho Code. (7-1-93)

##### **008. REGULATED PERSONS (RULE 8).**

Enforcement activities taken pursuant to these rules shall not be commenced against persons licensed and regulated by any state regulatory board within the Department of Self-Governing Agencies or the United States Government when the actions or transactions are regulated by such regulatory board unless the Attorney General has first referred the matter in writing to the appropriate regulatory board. If at any time following the expiration of thirty (30) days from the time of forwarding the matter to the regulatory board the Attorney General is not satisfied with the progress or decision of the regulatory board, he may proceed to the extent of his jurisdiction under the Act. The 30-day provision will be abated to the extent that the regulatory board was given an express opportunity to review the matter prior to the time when the Attorney General began to consider the matter. The thirty (30) day provision may be waived in whole or in part if the Attorney General deems that the public interest requires prompt attention by the Attorney General. (7-1-93)

##### **009. KNOWLEDGE (RULE 9).**

These rules are not violated unless a person knows, or in exercise of due care should know, that he has in the past engaged in or is engaging in conduct specified or prohibited by the Act, or these rules. (7-1-93)

**010. -- 019. (RESERVED)**

**Subchapter B -- Definitions**  
**(Rules 20 - 29)**

**020. DEFINITIONS (RULE 20).**

The definitions set forth in Section 48-602, Idaho Code, apply with full force and effect to all provisions and sections of these rules, including rules hereafter amended or supplemented. Terms not defined in these rules or in Section 48-602, Idaho Code, shall be construed in accordance with definitions promulgated by the Federal Trade Commission. Terms not so defined shall be construed in accordance with general principles of Idaho law. As used in this chapter: (7-1-93)

**01. Act.** The Idaho Consumer Protection Act, Title 48, Chapter 6, Idaho Code. (7-1-93)

**02. Actions or Transactions Permitted Under Laws Administered by a Regulatory Body or Officer.** Specific acts, practices, or transactions authorized by a regulatory body or officer pursuant to a contract, rule, or regulation, or other properly issued order, directive, or resolution. (1-21-92)

**03. Advertisement** (including words of similar meaning or import). Any oral, written, graphic, or pictorial representation, statement, or public notice, however made or utilized, including, without limitation, by publication, dissemination, solicitation or circulation, in the course of trade and commerce. A person's name under which trade or commerce is conducted shall be construed as advertising if an assumed name is used, and if the name has the capacity, tendency, or effect of misleading or deceiving consumers acting reasonably under the circumstances. (1-21-92)

**04. Appropriate Trade Premises.** Premises at which either the owner or seller normally carries on a business, or where goods are normally offered or exposed for sale in the course of a business carried on at those premises. (1-21-92)

**05. Ascertainable Loss.** Any deprivation, detriment, or injury, or any decrease in amount, magnitude, or degree that is capable of being discovered, observed, or established. It is not necessary for a private plaintiff to prove actual damages of a specific dollar amount to prove ascertainable loss, but only that the item was different from that for which the private plaintiff bargained, or that the private plaintiff suffered some like loss. (7-1-93)

**06. Bait and Switch.** Advertising goods or services with the intent not to sell them but to lure the consumer to the seller's place of business and then switch the consumer from buying the advertised goods or services to other or different goods or services on a basis more advantageous to the seller. (1-21-92)

**07. Bona Fide Gift.** Any goods or services in which a statement is provided to the gift recipient at or prior to the time of delivery or performance, which clearly and conspicuously informs the recipient that the goods or services may be retained, used, discarded, rejected, or otherwise disposed of without any obligation to the person providing, sending, or performing the goods or services. (1-21-92)

**08. Business Arrangement.** Any understanding, procedure, course of dealing, or arrangement, formal or informal, between a consumer and a seller or a creditor and a seller, in connection with the sale of goods or services to consumers or the financing thereof. (1-21-92)

**09. Business Day.** Any calendar day, except Saturday, Sunday, or the following legal holidays: New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, and Christmas Day. (7-1-93)

**10. Buy-Down Rate.** A financing rate which, as a result of a seller's advance payment of finance charges to a third party, is below the prevailing market financing rate. (1-21-92)



- 11. Clear and Conspicuous Disclosure.** A statement, representation, or term which is disclosed in a manner that is: (1-21-92)
- a.** Reasonably close to any statement, representation or term it clarifies, modifies, explains, or to which it otherwise relates; (1-21-92)
  - b.** Reasonably noticeable; (1-21-92)
  - c.** Reasonably understandable by the persons to whom it is directed; and (1-21-92)
  - d.** Not contradictory to any terms it purports to clarify, modify, or explain. (1-21-92)
- 12. Consideration.** A right, interest, profit, or benefit accruing to a party, or some forbearance, detriment, loss, or responsibility given, suffered, or undertaken by the other. (1-21-92)
- 13. Consumer.** A person who purchases, leases, or rents, or is solicited to purchase, lease, rent or otherwise give consideration for any goods or services. (1-21-92)
- 14. Consumer Credit Contract.** Any instrument which evidences or embodies a debt arising from a purchase money loan transaction or a financed sale. (1-21-92)
- 15. Credit Card Issuer.** A person who extends to card holders the right to use a credit card in connection with purchases of goods or services. (1-21-92)
- 16. Creditor.** A person who, in the ordinary course of business, lends purchase money or finances the sale of goods or services to consumers on a deferred payment basis; provided, such person is not acting, for the purposes of a particular transaction, in the capacity of a credit card issuer. (1-21-92)
- 17. Dealer.** A seller of motor vehicles. (1-21-92)
- 18. Dealer Documentation Service Fee** (including words of similar meaning or import, such as, but without limitation, “dealer’s doc” fee, “administration” fee, “documentation and handling” fee and “D and H” fee). A fee charged by the dealer for services actually rendered to, for, or on behalf of the consumer in preparing, handling and processing documents pertaining to the motor vehicle and the closing of the transaction. (1-21-92)
- 19. Demonstrator Vehicle.** A motor vehicle of the current or previous two (2) model years which has not been rented, leased, sold, titled or registered to a member of the public prior to the appearance of the advertisement, and which has been used by the dealer or dealership personnel for demonstration purposes. (1-21-92)
- 20. Disseminate.** To publish, advertise, broadcast, deliver, circulate, mail, display, post, or otherwise distribute to a consumer. “Dissemination date” means the first date an advertisement is disseminated. (1-21-92)
- 21. Documentary Material.** The original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, audio and/or visual recording, mechanical, photographic, or electronic transcription, or other tangible document or recording. (1-21-92)
- 22. Door-to-Door Sale.** A sale, lease, or rental of goods or services primarily for personal, family, or household purposes, with a purchase price of twenty-five dollars (\$25) or more, whether under single or multiple contracts, in which the seller or his representative personally solicits the sale, including solicitations made in response to or following an invitation by the consumer, and the consumer’s agreement or offer to purchase is made at a place other than the appropriate trade premises of the seller. The term “door-to-door sale” does not include a transaction: (7-1-93)
- a.** Made pursuant to prior negotiations in the course of a visit by the consumer to the seller’s retail business establishment, such establishment having a fixed permanent location where the goods or services being purchased are offered for sale on a continuing basis; (1-21-92)

**b.** In which the consumer has initiated the contact and the goods or services are needed to meet a bona fide immediate personal emergency of the consumer, and the consumer furnishes the seller with a separate dated and signed personal statement in the consumer's handwriting describing the situation requiring immediate remedy and expressly acknowledging and waiving the right to cancel the sale within three (3) business days; (1-21-92)

**c.** Conducted and consummated entirely by mail or telephone, in compliance with all provisions of the Act, and any other federal or state of Idaho statute, regulation, or rule governing mail or telephone solicitations, and without any other contact between the consumer and the seller prior to delivery of the goods or performance of the services; or (7-1-93)

**d.** In which the consumer has initiated the contact and specifically requested the seller to visit his home for the purpose of repairing or performing maintenance upon the consumer's personal property; provided, however, that if in the course of such a visit, the seller sells the consumer the right to receive additional services or goods other than replacement parts necessarily used in performing the maintenance or in making the repairs, the sale of those additional goods or services does not fall within this exclusion; or (1-21-92)

**e.** Pertaining to the sale or rental of real property, to the sale of insurance or to the sale of securities or commodities by a broker registered with the Idaho Department of Finance. (1-21-92)

**23. Examination.** Examination of documentary material includes the inspection, study, or copying of any such material, and the taking of testimony under oath or acknowledgment with respect to any such documentary material or copy thereof. (1-21-92)

**24. Executive or Official Vehicle.** A motor vehicle which has been driven exclusively by executives of the motor vehicle's manufacturer or by an executive of any authorized dealership selling the same make of motor vehicle. (1-21-92)

**25. Exempt Loan Broker.** Any person: (7-1-93)

**a.** Doing business under any law of the State of Idaho or of the United States relating to banks, credit unions, trust companies, savings and loan associations, insurers, pension trusts, real estate investment trust and other financial institutions, or under the uniform consumer credit code; (7-1-93)

**b.** Engaged exclusively in the business of marketing agricultural, horticultural, viticultural, dairy, livestock, poultry, or bee products on a cooperative nonprofit basis in loaning or advancing money to the members thereof or in connection with any such business; (7-1-93)

**c.** Securing money or credit from any federal intermediate credit bank organized and existing pursuant to the provisions of any act of Congress entitled "Agricultural Credits Act of 1923," in loaning or advancing money or credit so secured; (7-1-93)

**d.** Who is a Federal Housing Administration approved mortgagee; or (7-1-93)

**e.** Who is licensed under the Idaho Securities Act if the loan is made in accordance with applicable provisions of the Idaho Securities Act, the Securities Act of 1933, the Securities Exchange Act of 1934, and Regulation T promulgated by the Federal Reserve Board (12 C.F.R. Section 220). (7-1-93)

**26. Financed Sale (Including Financing a Sale).** Extending credit to a consumer in connection with a consumer credit sale within the meaning of the Idaho Credit Code. (1-21-92)

**27. Free (Including Words of Similar Meaning or Import).** Without charge or cost, monetary or otherwise, to the recipient, and includes terms of essentially identical import, such as "give away" or "complimentary." (1-21-92)

**28. Going-Out-of-Business Sale.** A sale advertised in such a manner as to reasonably cause a consumer to believe that the seller is in the process of concluding its affairs and discontinuing operation. Any sale using any of the following words or words of similar import are deemed to be a going-out-of-business sale unless

each advertisement discloses it is not a going-out-of-business sale in a clear and conspicuous manner: “adjuster’s,” “adjustment,” “assignee’s,” “bankrupt,” “benefit of administrators,” “benefit of creditors,” “benefit of trustees,” “building coming down,” “closing,” “creditor’s,” “insolvent,” “end,” “executor’s,” “final days,” “forced out of business,” “last days,” “lease expires,” “liquidation,” “loss of lease,” “mortgage sale,” “receiver’s,” “quitting business,” “selling to the bare walls,” or “trustee’s.” (1-21-92)

**29. Goods.** Any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value wherever situate, including certificates or coupons exchangeable for such goods. (1-21-92)

**30. Information Provider.** Any person that controls the content of a pay-per-telephone-call service. Any telephone corporation that provides basic local exchange service or message telecommunication service, as defined by Section 62-603, Idaho Code, which transmits pay-per-telephone-call service but does not control the content of the information transmitted is not within this definition. (7-1-93)

**31. Leased Vehicle** (including words of similar meaning or import). A motor vehicle that has been driven for a specific period of time pursuant to a lessor-lessee agreement. (7-1-93)

**32. Loan Broker.** Any person, except an exempt loan broker, who offers for compensation to arrange for a loan or other extension of credit. (7-1-93)

**33. Motor Vehicle** (including words of similar meaning or import). A motor vehicle as defined in the Idaho Motor Vehicles Act (Idaho Code Section 49-101 et seq.) (1-21-92)

**34. Negative Option Notice Requirements.** Negative option notice requirements means: (7-1-93)

**a.** A notice received by a consumer, at least thirty (30) but not more than forty-five (45) days, in advance of the effective date of the delivery or provision of goods or services, clearly and conspicuously: (1-21-92)

i. Describing the specific goods or services to be delivered or provided; (1-21-92)

ii. Stating the price of the goods or services delivered or provided; (1-21-92)

iii. Informing the consumer that the goods or services will be delivered or provided unless the consumer informs the seller that the goods or services are not wanted; and (7-1-93)

iv. Informing the consumer of at least two (2) methods, at least one (1) of which is expense-free to the consumer, by which the consumer can inform the seller of his desire not to receive the goods or services; (1-21-92)

**b.** A statement on the first bill containing a charge for the goods or services, or a separate notice enclosed with the bill, which clearly and conspicuously advises the consumer of the inclusion of the new charge on the bill for the new goods or services, of the consumer’s right to cancel those goods or services within ten (10) days of the receipt of the bill at no cost to the consumer for the period during which those goods or services were provided prior to effective cancellation, and the process by which the consumer may cancel the goods or services; and (1-21-92)

**c.** In no event shall the consumer be required to cancel the new goods or services governed by this definition to avoid a charge prior to ten (10) days after the consumer’s receipt of the first bill containing the charge for the new goods or services. For purposes of cancellation by mail, a cancellation shall be effective upon the date of mailing the cancellation notice. (1-21-92)

**35. New Motor Vehicle** (including words of similar meaning or import). A motor vehicle that has not had its equitable or legal title transferred by a manufacturer, distributor, or dealer to a consumer (except a franchised distributor or franchised new motor vehicle dealer) or which has not been previously rented or leased to a person for any period of time. (7-1-93)

**36. Offer.** Any solicitation, invitation, or proposal by a seller to a consumer through which a seller,

either directly or indirectly, attempts or intends to sell, rent, or lease goods or services or to induce a consumer to purchase, rent, or lease goods or services. This definition is not intended to create a contract, where none would otherwise exist under Idaho law, though it is noted that the Act and these rules impose duties and provide for remedies for violations thereof even in the absence of a binding contract. (7-1-93)

**37. Pay-per-Telephone-Call Services.** Any telecommunications service which permits simultaneous calling by a number of callers to a single telephone number and for which the calling party is assessed, by virtue of completing the call, a charge that is not dependent on the existence of a presubscription relationship and for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call. (7-1-93)

**38. Person.** Natural persons, corporations, both foreign and domestic, companies, business entities, trusts, partnerships, both limited and general, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although not a legal entity, or any agent, assign, heir, employee, representative, or servant thereof. (1-21-92)

**39. Purchase Money Loan.** A cash advance that is received by a consumer in return for a credit service charge within the meaning of the Idaho Credit Code, which is applied, in whole or substantial part, to a purchase of goods or services from a seller who refers consumers to the creditor or is affiliated with the creditor by common control, contract, or business arrangement. (7-1-93)

**40. Purchase Price.** The total price paid or to be paid for the goods or services, including all interest and service charges. (1-21-92)

**41. Pyramid or Chain Distribution Scheme.** Any plan or operation whereby a person gives consideration for the opportunity to receive consideration to be derived primarily from any person's introduction of other persons into participation in the plan or operation rather than from the sale of goods or services by the person or other persons introduced into the plan or operation. For the purposes of this definition, the term "consideration" does not include: (1-21-92)

**a.** The not-for-profit sale of demonstration equipment and materials for use in making sales and which are not for resale; and (1-21-92)

**b.** Time or effort spent in selling or recruiting activities. (1-21-92)

**42. Regulatory Body or Officer.** Any person or governmental entity with authority to act pursuant to State of Idaho or federal statute. (1-21-92)

**43. Seller.** Any person engaged in trade and commerce, the agent, representative, or employee of such person, or any person acting in concert with such person. (1-21-92)

**44. Send.** To deliver, mail, provide, or cause to be mailed, delivered, or provided. (1-21-92)

**45. Services.** Work, labor, or any other act or practice provided or performed by a seller to or on behalf of a consumer. (1-21-92)

**46. Subject to Financing Contract.** An agreement whereby a consumer's obligation to purchase goods or services from a seller is contingent upon the obtaining of financing by, or on behalf of, a consumer. (1-21-92)

**47. Trade and Commerce.** Advertising, offering for sale, selling, leasing, renting, collecting debts arising out of the sale or lease of goods or services, or distributing goods or services, at any point in the marketing chain, either to or from locations within the State of Idaho, directly or indirectly affecting the people of this State. (7-1-93)

**48. Trade Area.** The geographic area where a seller is located and where the seller's advertisements are disseminated. (1-21-92)

**49. Unordered Goods or Services.** Goods or services which are sent or provided without the prior expressed request or consent from the person receiving the goods or services. Unordered goods or services do not include: (7-1-93)

**a.** Goods sent or services performed by mistake; (1-21-92)

**b.** Bona fide gifts; (1-21-92)

**c.** Additions to existing goods or services or levels of goods or services, already provided to consumers for which there is no separate and specific charge for such additions; (1-21-92)

**d.** The restructuring of existing goods or services or levels of goods or services already provided, pursuant to negative option notice requirements, where the restructuring does not result in a substantial change in goods or services; or (1-21-92)

**e.** Goods or services sent pursuant to an agreement which is in compliance with the Federal Trade Commission Rule on Use of Negative Option Plans by Sellers in Commerce (16 C.F.R. Section 425). (1-21-92)

**50. Used Motor Vehicle** (including words of similar meaning or import). Previously rented motor vehicles, executive or official motor vehicles, leased motor vehicles, and all other motor vehicles that are not new motor vehicles. (7-1-93)

**51. Verifiable Retail Value.** A price at which a seller can demonstrate that a substantial number of goods or services have been sold at retail by a person other than the seller. If substantiation described in this section is not available to a seller, the verifiable retail value shall be no more than one and one-half (1.5) times the amount the seller paid for the goods or services. (7-1-93)

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

**Subchapter C -- False, Misleading Conduct in General**  
**(Rules 30 - 39)**

**030. GENERAL RULE (RULE 30).**

It is an unfair and deceptive act or practice for a seller to make any claim or representation concerning goods or services which directly, or by implication, has the capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances. An omission of a material or relevant fact shall be treated with the same effect as a false, misleading, or deceptive claim or representation, when such omission, on the basis of what has been stated or implied, would have the capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances. With reference to goods or services, this prohibition includes, but is not limited to, factors relating to the cost, construction, durability, reliability, manner or time of performance, safety, strength, condition, life expectancy, ease of operation, problems associated with repair or maintenance, availability, or the benefit to be derived from the use of the goods or services. (1-21-92)

**031. SUBSTANTIATION (RULE 31).**

The responsibility for truthful advertising which does not have the capacity, tendency, or effect of deceiving or misleading consumers acting reasonably under the circumstances rests with the seller. Sellers must be able to substantiate all claims or offers made before such claims or offers are advertised. Sellers must maintain sufficient records to substantiate all representations made in their advertisements. (1-21-92)

**032. CONTRADICTORY REPRESENTATIONS (RULE 32).**

It is an unfair and deceptive act or practice for a seller to make any claim or representation that is inconsistent with or contradictory to any written claim, representation, or provision which is contained in any contract, document, or instrument evidencing a transaction. (1-21-92)

**033. VIOLATIONS OF OTHER LAWS AND COURT ORDERS (RULE 33).**

It is an unfair and deceptive act or practice for any seller to engage in trade or commerce if in so doing the seller or

the seller's goods or services fail to comply with: (1-21-92)

**01. Federal and State Laws.** Any Federal Trade Commission rule or regulation, the disclosure requirements of either the federal Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. Section 226) or the federal Truth in Lending Act (15 U.S.C. Section 1667 et seq.) and Regulation M promulgated by the Board of Governors of the Federal Reserve Board (12 C.F.R. Section 213), or any State of Idaho statute or rule that identifies conduct in trade and commerce as unfair or deceptive or a violation of the Act. (7-1-93)

**02. Federal Trade Commission Consent Decree.** Any Federal Trade Commission Consent Decree in which the seller is a party to the decree. (1-21-92)

**03. Judicial Order.** Any judgment, injunction, order, or other relief obtained by the Federal Trade Commission in any action brought in a United States District Court in which the seller is a party or otherwise subject to the court's decrees and orders. (1-21-92)

**034. OFFICIAL, GOVERNMENTAL, OR OTHER MISLEADING ENVELOPES OR OFFERS (RULE 34).**

It is an unfair and deceptive act or practice for any seller to use any printing styles, graphics, layouts, text, colors, or formats on envelopes or on the offer which implies, creates an appearance, or would lead a reasonable person to believe that the offer originates from or is issued by or on behalf of a government or public agency, public utility, public organization, insurance company, credit reporting agency, bill collecting company or a law firm, unless the same is true. (1-21-92)

**035. INVOICES AND BILLS (RULE 35).**

It is an unfair and deceptive act or practice for a seller to advertise by use of any written or documentary material that has the tendency, capacity, or effect of misleading a consumer, acting reasonably under the circumstances, that the advertisement is an invoice or bill. (7-1-93)

**036. MAILBOX ADDRESSES (RULE 36).**

It is an unfair and deceptive act or practice for a seller to refer to a U.S. Post Office box number or a private mail service box number in trade and commerce as a "suite," "department," "office," "apartment," or any other term or abbreviation that has the tendency, capacity, or effect of misleading a consumer, acting reasonably under the circumstances, to believe that the reference pertains to anything other than a box number at a U.S. Post Office or at a private mailbox service. (7-1-93)

**037. -- 039. (RESERVED)**

**Subchapter D -- Disclosure of Conditions in Offer**  
**(Rules 40 - 49)**

**040. GENERAL RULE (RULE 40).**

It is an unfair and deceptive act or practice for a seller to offer goods or services with material contingencies, conditions, or qualifications attendant to the offer unless such contingencies, conditions, or qualifications are clearly and conspicuously disclosed in connection with the initial offer. (1-21-92)

**041. SUBSEQUENT DISCLOSURE (RULE 41).**

Subsequent disclosure to the consumer of such material contingencies, conditions, or qualifications attendant to an initial offer, even if prior to consummation of the transaction relating to the offer, is not a defense to the requirements of CPR 40. (1-21-92)

**042. -- 049. (RESERVED)**

**Subchapter E -- Bait and Switch Sales**  
**(Rules 50 -- 59)**

**050. GENERAL RULE (RULE 50).**

It is an unfair and deceptive act or practice for a seller to engage in bait-and-switch sales tactics. (1-21-92)

**051. INITIAL OFFER (RULE 51).**

It is an unfair and deceptive act or practice for a seller to create a false impression of the grade, quality, quantity, make, value, age, size, color, usability, availability, or origin of the goods or services offered, or which may otherwise misrepresent the goods or services in such a manner that later, on disclosure of the true facts, there is a likelihood that the consumer may be switched from the advertised goods or services to other goods or services. Even though the true facts are subsequently made known to the consumer, subchapter E is violated if the first contact or interview is secured by a bait-and-switch offer. (7-1-93)

**052. DISCOURAGEMENT OF PURCHASE OF ADVERTISED MERCHANDISE (RULE 52).**

It is an unfair and deceptive act or practice for a seller to discourage the purchase of the advertised goods or services as part of a bait-and-switch scheme to sell other goods or services. For example, among acts or practices which will be considered in determining if an advertisement is a bona fide offer are: (1-21-92)

**01. Refusal to Show.** The refusal to reasonably show, demonstrate, or sell the goods or services advertised or otherwise offered in accordance with the terms of the initial offer. (1-21-92)

**02. Disparagement.** The disparagement by acts or words of the advertised goods or services or disparagement with respect to the guarantee, credit terms, availability of service, repairs, or parts, or in any other respect, in connection with the advertised goods or services. (1-21-92)

**03. Availability.** The failure to have available at all outlets listed in the advertisement a sufficient quantity of the advertised goods or services to meet reasonably expected public demand, as defined in CPR 103, unless the advertisement clearly and conspicuously discloses that the supply of a particular good is limited and/or the goods or services are available only at designated outlets, or unless the advertisement discloses that a particular good is to be closed out or offered for a limited time. Issuing of "rain checks" of goods or offering comparable or better goods at the sale price will be considered a mitigating circumstance, unless there is a pattern of inadequate inventory or the inadequate inventory was intentional. (7-1-93)

**04. Refusal to Take Orders.** The refusal to take orders for the advertised goods or services to be delivered within a reasonable period of time. (1-21-92)

**05. Showing Impractical Goods or Services.** The showing or demonstrating of goods or services which are defective, unusable, or impractical for the purpose represented or implied in the advertisement. (1-21-92)

**06. Compensation Plans.** The use of a sales plan or method of compensation for salesmen which is designed to prevent or discourage them from selling the advertised goods or services. This does not prohibit compensating salesmen by use of a commission. (1-21-92)

**053. SWITCH AFTER SALE (RULE 53).**

In the event of a sale of the advertised goods or services, it is an unfair and deceptive act or practice for a seller to attempt to "unsell" the advertised goods or services with the intent and purpose of selling other goods or services in their stead, except when the parties are bargaining for a bona fide trade-in. (1-21-92)

**054. PATTERN OF CONDUCT (RULE 54).**

The fact that a seller occasionally sells the advertised goods or services at the advertised price shall not constitute a defense to a charge that the seller has engaged in bait-and-switch tactics. (1-21-92)

**055. LEADER ITEMS (RULE 55).**

Nothing in subchapter E shall prevent a seller from advertising goods and services with the hope that consumers will buy goods or services in addition to those advertised. (7-1-93)

**056. -- 059. (RESERVED)**

**Subchapter F -- Deceptive, Comparative, Reference, and Wholesale Pricing**

(Rules 60 -- 69)

**060. DECEPTIVE PRICING -- GENERAL RULE (RULE 60).**

It is an unfair and deceptive act or practice for a seller to represent or imply that: (1-21-92)

**01. Misrepresentations.** Goods or services may be purchased for a specified price, if such is not the case. (1-1-79)

**02. Reduced Price.** Goods or services are being offered for sale at a reduced price, if such is not the case. For example, a firm publishes a catalog or brochure entitled "pre-Christmas sale." Some of the items in the catalog are being offered at a reduced price, but others are not. On the non-sale (discounted) items, the advertisement should disclose that the item is being offered at the everyday price or the sales items should be clearly identified as such. If none of the advertised items are being offered at a reduced price, then it is inappropriate to use a term such as "sale." (1-1-79)

**03. Hidden Costs.** A stated price is for complete or functional goods or services, if, in fact, there are additional hidden costs which must be expended in order to make the goods or services complete or functional. (1-1-79)

**04. Services.** A stated price of goods or services includes certain services, such as delivery, installation, service or adjustments, or includes parts or accessories, if such is not the case. (1-1-79)

**05. Specific Goods or Services.** A stated price applies to all sizes or types of goods or services, if the stated price is in fact applicable only to certain sizes or types of goods or services. (1-21-92)

**06. Inventory.** A stated price reduction applies to an entire inventory or grouping of goods when it only applies to isolated items within the inventory or grouping. (1-1-79)

**061. COMPARATIVE PRICING -- GENERAL RULE (RULE 61).**

It is an unfair and deceptive act or practice for a seller to represent by any means which has the capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances as to the value of the past, present, common, or usual price of goods or services, or as to any reduction in the price of goods or services, or any savings relating to the cost or price of the goods or services. (1-21-92)

**01. Savings or Value Claims.** Savings or value claims utilized in connection with terms such as "originally," "formerly," "regularly," "usually," "list price," "compare at," or other like terms, expressions or representations must be based on facts provable by the seller: (1-1-79)

**a.** By the seller's own records; or (1-21-92)

**b.** By reasonably substantial competitive sales in the trade area where such claims or representations are made, under circumstances and conditions represented or implied by the claims or representations. (1-21-92)

**02. Comparison Claims.** The use of such terms as "reduced," "sale," "special price," "originally," "formerly," "slashed," etc. are deemed to be comparisons between the seller's present prices and his bona fide, regular prices. Terms such as "list price," "compare at," "comparable value," "suggested price," etc. are deemed to be comparisons between the seller's present prices and the prevailing competitors' prices. Terms such as "discount," "usually," "regularly," etc., which have a vague meaning are presumed to be a comparison between the seller's present prices and his bona fide, regular prices, unless the seller states otherwise in his advertising or sales promotion. (1-21-92)

**062. COMPARISONS OF SELLER'S PRESENT PRICES TO SELLER'S FORMER PRICES (RULE 62).**

It is an unfair and deceptive act or practice for a seller to: (1-21-92)

**01. Fictitious Prices.** Offer goods or services by representations comparing present prices to former prices of the seller, if the seller establishes a fictitious or inflated former price for a short period of time and for the purpose of subsequently offering a reduction. For example, a seller usually sells a certain pen for a regular price of



seven dollars and fifty cents (\$7.50), but he raises the price of the pen to an inflated price of ten dollars (\$10) for a short period of time. He then “cuts” the price to its usual level of seven dollars and fifty cents (\$7.50), and advertises: “Terrific Bargain: Were \$10.00, Now Only \$7.50”; or (1-1-79)

**02. Bona Fide Regular Price.** Offer goods or services by representations comparing present prices to former prices of the seller, if the former price was merely an asking price and was not the bona fide, regular price at which such goods or services were openly, actively, and actually offered for sale or sold. (7-1-93)

**063. COMPETITOR RETAIL PRICE COMPARISONS (RULE 63).**

It is an unfair and deceptive act or practice for a seller to offer goods or services by representations comparing the prices of the seller’s goods or services to the prices of identical goods or services of competitors, unless the seller can substantiate that the represented prices of the competitor’s goods or services are in fact the actual prices charged by the competitor in the same trade area, at the same point in time or on the date(s) clearly and conspicuously disclosed in the advertisement. If a price is stated without clear and conspicuous disclosure of a date on which it was in effect, it shall be presumed to be the current price. (7-1-93)

**064. COMPARABLE PRICE COMPARISONS (RULE 64).**

It is an unfair and deceptive act or practice for a seller to offer goods or services by representations comparing the prices of the seller’s goods or services to the prices of comparable, but not identical, goods or services of a competitor’s, unless the seller can substantiate that the goods or services compared are substantially similar in grade and quality and the represented prices of the competitor’s goods or services are in fact the actual prices charged by the competitor in the same trade area, at the same point in time or on the date(s) clearly and conspicuously disclosed in the advertisement. If a price is stated without clear and conspicuous disclosure of a date on which it was in effect, it shall be presumed to be the current price. (7-1-93)

**065. REFERENCE RETAIL PRICING PRACTICES (RULE 65).**

It is an unfair and deceptive act or practice for a seller to offer goods or services by representations comparing present prices to “manufacturer’s suggested prices,” or similar language establishing or implying base reference price comparisons, unless such reference price represents, in fact, a good faith, honest estimate of the regular price at which a substantial number of sales of the goods or services are made by comparable sellers in the same trade area or unless federal or state law permits or requires the disclosure of the price suggested by the manufacturer. CPR 65 applies with the same force and effect regardless of whether the advertiser is a national or regional manufacturer or supplier, a mail-order or catalog seller, or a local retailer, and regardless of whether the prices, establishing a basis for comparison, are advertised or pre-ticketed. (7-1-93)

**066. WHOLESALE, FACTORY DIRECT, OR SIMILAR CLAIMS (RULE 66).**

It is an unfair and deceptive act or practice for a seller to: (1-21-92)

**01. Factory.** Describe itself or its goods by using the terms “factory direct,” “factory to you,” “direct from maker,” “factory outlet,” or words of similar meaning in its advertisements unless the seller’s goods are actually manufactured by the seller or in factories owned or controlled by the seller. (1-21-92)

**02. Wholesaler.** Describe itself by using the terms “wholesaler,” “wholesale outlet,” “distributor,” or words of similar meaning in its advertisements unless the seller actually owns and operates or directly and absolutely controls a wholesale or distribution facility which primarily sells goods to retailers for resale. A seller to which this provision applies may in addition be subject to CPR 66.03 and CPR 66.04 below. (1-21-92)

**03. Cost.** Use in connection with the advertising or sale of any goods or services, the terms “cost,” “invoice price,” “factory invoice,” “factory billing,” or terms of similar meaning or import or other representations that a good or service will be sold at, above, or below the seller’s actual cost unless such is true. (7-1-93)

**04. Wholesale Prices.** State or imply that any goods or services are being offered at “wholesale” prices or to use a term of similar meaning unless the prices are in fact at or below the current prices which most retailers in the trade area usually and customarily pay when they buy such goods or services for resale. (1-21-92)

**067. LIMITED OFFERS (RULE 67).**

It is an unfair and deceptive act or practice to offer goods or services by representations that the offer is “limited”

unless the offer is in fact limited in duration or scope, or that the offer is an advance sale or introductory offer, and the seller in good faith expects to increase the price at a later date. (7-1-93)

**068. SUBSTANTIATION (RULE 68).**

A seller shall keep records or other documentary proof for a period of two (2) years which establish and substantiate the price claims and comparisons made. Failure to do so shall create a rebuttable presumption that the seller lacked a reasonable basis for the claims and comparisons made. (1-21-92)

**069. (RESERVED)**

**Subchapter G -- Use of the Word "Free" and Similar Representations**  
**(Rules 70 -- 79)**

**070. GENERAL RULE (RULE 70).**

It is an unfair and deceptive act or practice for a seller to: (1-21-92)

**01. Free No Cost Offers.** Offer any goods or services as free, by use of the word "free" or other term of similar import, unless receipt of the free goods or services by a consumer is without added cost to the consumer; provided, however, that the consumer may be required to pay necessary delivery charges to the United States Post Office or a regulated public carrier if such fact is clearly and conspicuously disclosed in the offer and provided that the consumer may be required to purchase goods at their regular price as a precondition of entitlement to the free goods if such fact is readily apparent to a consumer acting reasonably under the circumstances or is clearly and conspicuously disclosed in the offer. (1-21-92)

**02. Free With Cost Offers.** Offer any goods or services as "free," "2 for 1," "1-cent Sale," or other term of similar import, if the seller increases the price of the base goods or services above their regular price or if the seller reduces the quality, quantity or size of the base goods or services. (1-17-92)

**071. TIE-IN SALES (RULE 71).**

It is an unfair and deceptive act or practice for a seller to offer any goods or services as free, by use of the word "free" or other term of similar import, if the seller fails to clearly and conspicuously disclose at the outset all terms, conditions, and obligations upon which receipt and retention of the free items are contingent. (1-21-92)

**072. CONDITIONAL OFFERS (RULE 72).**

It is an unfair and deceptive act or practice for a seller to offer any goods or services as free, by use of the word "free" or other term of similar import, when the consumer is obligated to perform conditions which are not readily apparent to a consumer acting reasonably under the circumstances or are not clearly and conspicuously disclosed. (1-21-92)

**073. USE OF SIMILAR TERMS (RULE 73).**

It is an unfair and deceptive act or practice for a seller to meet the provisions of subchapter G by substitution of such similar words and terms as "gift," "given without charge," "at no cost," "complimentary," "bonus," or other words or terms which tend to convey the impression to the consuming public that goods or services are free. (7-1-93)

**074. ASTERISKS (RULE 74).**

For purposes of this rule, disclosure of the terms of the offer set forth in a footnote of an advertisement to which reference is made by an asterisk or other symbol placed next to the offer, does not constitute a clear and conspicuous disclosure at the outset. (1-21-92)

**075. DELIVERY CHARGES (RULE 75).**

In all instances in which delivery charges, which include all shipping and handling charges, exceed ten dollars, pursuant to an offer subject to subchapter G, the total amount of such charges shall be clearly and conspicuously disclosed in the offer. Negative option membership plans operated in compliance with the Federal Trade Commission Rule on Use of Negative Option Plans by Sellers in Commerce (16 C.F.R. Section 425) are exempt from the provisions of CPR 75. (7-1-93)

**076. -- 079. (RESERVED)**

**Subchapter H -- Promotional Games and Advertising and Deceptive Use of Gifts**  
**(Rules 80 -- 89)**

**080. NO PURCHASE REQUIRED FOR CHANCE PROMOTIONS (RULE 80).**

It is an unfair and deceptive act or practice for a seller to offer, initiate, promote, or solicit participation in any kind of game of chance, contest, sweepstakes, or promotion in which goods or services are distributed by random or chance selection that requires any kind of entry fee, service charge, purchase, payments to information providers, or other obligation in order to enter or participate in the promotion or receive any of the offered awards, prizes, or gifts. Those persons authorized by Title 67, Chapter 77, Idaho Code, to conduct bingo and raffle games for charitable purposes, if conducted in conformity with Title 67, Chapter 77, Idaho Code, and negative option membership plans operated in compliance with the Federal Trade Commission Rule on Use of Negative Option Plans by Sellers in Commerce (16 C.F.R. Section 425) are exempt from CPR 80. (7-1-93)

**081. DISCLOSURE REQUIREMENTS IN GIFT PROMOTIONS (RULE 81).**

It is an unfair and deceptive act or practice for a seller to offer, in writing, any goods or services, without obligation, as an inducement to a consumer to attend an in-person sales presentation or contact the seller by telephone or by mail, but only if the seller follows up the consumer's mail contact with a telephone contact, unless the offer clearly and conspicuously discloses in writing all of the following: (7-1-93)

**01. Name and Address.** The name and street address of the seller of the goods or services which are the subject of the sales presentation or contact with the seller. If the offer is made by an independent contractor of the seller, or is made under a name other than the true name of the seller, the name of the seller shall be more prominently and conspicuously displayed than the name of the independent contractor or other name. (1-21-92)

**02. Purpose of Contact.** The purpose of the requested sales presentation or contact with the seller, which shall include a general description of the goods or services that are the subject of the sales presentation and a clear statement, if applicable, that there will be a sales presentation and the approximate duration of the sales presentation. (7-1-93)

**03. Odds.** If the consumer is not assured of receiving any particular good or service, a statement of the odds of receiving each good or service offered. The odds "100,000" or "1:100,000." The odds shall be printed in a type size that is at least equal to that used for the standard text on the front (or first) page of the offer. (7-1-93)

**04. Conditions.** All restrictions, qualifications, and other conditions that must be satisfied before the consumer is entitled to receive the good or service, including but not limited to: (7-1-93)

**a.** Any deadline by which the consumer must attend the sales presentation or contact the seller in order to receive the good or service; and (7-1-93)

**b.** Any other conditions, such as a minimum age qualification, a financial qualification, or a requirement that if the consumer is married both husband and wife must be present in order to receive the good or service. Any financial qualifications shall be stated with specificity sufficient to enable the person to reasonably determine his or her eligibility; (7-1-93)

**05. Verifiable Retail Value.** The verifiable retail value of each good or service the consumer has been offered, awarded, or may be awarded. (7-1-93)

**06. No Purchase Necessary.** That no purchase is necessary in order to receive the goods or services that have been offered to the consumer as an inducement to attend the in-person sales presentation or contact the seller by telephone or by mail, but only if the seller follows up the consumer's mail contact with a telephone contact. (7-1-93)

**07. Other Requirements.** All other rules, terms and conditions of the offer, plan, or program. (1-21-92)

**082. MISLEADING OFFERS (RULE 82).**

It is an unfair and deceptive act or practice for any seller making an offer subject to Subchapter H to: (7-1-93)

- 01. Misrepresent Goods or Services.** Misrepresent the size, availability, quantity, identity, value, or qualities of any good or service. (7-1-93)
- 02. Misrepresent Odds.** Misrepresent in any manner the odds of receiving any particular good or service. (7-1-93)
- 03. Specially Selected.** Represent directly or by implication that the number of participants has been significantly limited or that any consumer has been specially selected to receive a particular good or service unless that is the fact. (7-1-93)
- 04. Labeling Offers.** Label any offer a notice of termination or notice of cancellation. (7-1-93)
- 05. Misrepresent Offer.** Misrepresent, in any manner, the offer, plan, program, or the affiliation, connection, association, or contractual relationship between the person making the offer and the owner, if they are not the same. (1-21-92)
- 06. Tendency to Mislead.** Use publications, literature, or any written or verbal promotion that has the capacity, tendency, or effect of misleading or deceiving a consumer acting reasonably under the circumstances. (7-1-93)
- 07. Fail to Deliver.** Fail to deliver the good or service to the consumer, at no expense to him or her, within ten (10) business days of the date of the initial contact by the seller to the consumer. Negative option membership plans operated in compliance with the Federal Trade Commission Rule on Use of Negative Option Plans by Sellers in Commerce (16 C.F.R. Section 425) are exempt from CPR 82.07. (7-1-93)

**083. -- 089. (RESERVED)**

**Subchapter I -- Going-Out-Of-Business Sales**  
**(Rules 90 -- 99)**

**090. GENERAL RULE (RULE 90).**

It is an unfair and deceptive act or practice for a seller to advertise a going-out-of-business sale, unless the circumstances are in fact true and the going-out-of-business sale prices for goods or services are in fact lower than the regular prices of such goods or services. (1-21-92)

**091. INFLATING INVENTORY (RULE 91).**

No goods may be ordered for, or in anticipation of, a going-out-of-business sale, except in accordance with sound commercial practices. For example, it would be considered commercially sound to order a dryer that matches an existing washing machine. For purposes of subchapter I, all goods ordered within thirty (30) days prior to the beginning of a going-out-of-business sale shall create a rebuttable presumption that such goods were ordered in anticipation of a going-out-of-business sale. (7-1-93)

**092. -- 099. (RESERVED)**

**Subchapter J -- Insufficient Supply/Limitation on Quantity**  
**(Rules 100 - 109)**

**100. GENERAL RULE (RULE 100).**

It is an unfair and deceptive act or practice for a seller to advertise goods or services with intent not to have sufficient quantity of the goods, or sufficient facilities to render the services, to satisfy reasonably expected public demand unless the quantity is clearly and conspicuously advertised as limited. (1-21-92)

**101. RAIN CHECKS (RULE 101).**

If the seller issues rain checks for goods for which the advertisement does not clearly and conspicuously disclose that quantities are limited, such "rain checks" will be considered a mitigating circumstance, unless there is a pattern of

inadequate inventory, or the inadequate inventory was intentional. (1-21-92)

**102. SUBSTITUTE GOODS (RULE 102).**

If the seller offers comparable or better goods at the sale price, such practice will be considered a mitigating circumstance, unless there is a pattern of inadequate inventory, or the inadequate inventory was intentional. (1-21-92)

**103. DETERMINATION OF REASONABLY EXPECTED PUBLIC DEMAND (RULE 103).**

Reasonably expected public demand shall be construed with respect to the following factors: (1-21-92)

**01. Records of Past Sales.** The record of past sales by a seller. (1-21-92)

**02. Price Reduction.** The amount of price reduction, if any, and quality of goods or services offered. (1-21-92)

**03. Advertising Scope.** The extent of advertising engaged in regarding the sale of goods or services and duration of the sale as advertised. (1-21-92)

**104. -- 109. (RESERVED)**

**Subchapter K -- Disclosure of Prior Use**  
**(Rules 110 - 119)**

**110. GENERAL RULE (RULE 110).**

It is an unfair and deceptive act or practice for a seller to represent, directly or indirectly, that goods are new or unused, or that any part of a good is new or unused, if such is not in fact true, or to misrepresent the extent of previous use of goods. (1-21-92)

**111. DISCLOSURE REQUIRED (RULE 111).**

It is an unfair and deceptive act or practice for a seller to advertise, offer for sale, or sell any goods, as new goods, which are used, or contain used parts, are rebuilt, remanufactured, reconditioned, or contain rebuilt, remanufactured, or reconditioned parts, if such is not in fact true, unless clear and conspicuous disclosure of such characteristics or attributes is made to the consumer prior to the sale. There is a rebuttable presumption that a seller offers or advertises goods as new goods, unless clear and conspicuous disclosure to the contrary is provided. (1-21-92)

**112. ACCEPTABLE DISCLOSURES (RULE 112).**

The disclosure that goods have been used or contains used parts as required by CPR 111, may be made by use of a word or words such as, but not limited to, "used," "second hand," "demonstrator," "repossessed," "repaired," "remanufactured," "reconditioned," or "rebuilt," etc., whichever is applicable to the product involved. (7-1-93)

**113. RETURNED GOODS (RULE 113).**

Goods are not considered used if a prior consumer was given a full refund or exchange for the goods, in the normal course of business, and if the goods are not known to presently or formerly have defects. (1-1-79)

**114. -- 119. (RESERVED)**

**Subchapter L -- Estimates**  
**(Rules 120 - 129)**

**120. GENERAL RULE (RULE 120).**

It is an unfair and deceptive act or practice in connection with the furnishing of any repairs or improvements to goods, and in any rendering of services, for a seller to unreasonably understate or misstate the estimated price, whether such estimate be oral or written, or whether such estimate be formal or indirect; provided, however, that nothing herein shall be construed to require that an estimate actually be furnished. (1-21-92)

**121. UNFORESEEABLE CONDITIONS (RULE 121).**

If an estimate is given, it is an unfair and deceptive act or practice for a seller to fail to obtain oral or written

authorization in advance of performing additional and related, unforeseen, but necessary, repairs or improvements or services if such repairs, improvements, or services would unreasonably increase the originally estimated price. (1-21-92)

**122. EXPRESS LIMITED AUTHORIZATION (RULE 122).**

When a person expressly limits the authorized price of any repairs, improvements, or services, it is an unfair and deceptive act or practice for a seller to exceed such authorization without first obtaining the express oral or written consent of such person. (1-21-92)

**123. -- 129. (RESERVED)**

**Subchapter M -- Repairs and Improvements**  
**(Rules 130 - 139)**

**130. GENERAL RULE (RULE 130).**

It is an unfair and deceptive act or practice for a seller to: (1-21-92)

**01. Necessity of Repairs.** Represent that repairs or improvements are necessary when such is not the fact or perform and charge for unnecessary repairs. (1-21-92)

**02. Completion of Repairs.** Represent that repairs or improvements have been made when such is not the fact. (1-1-79)

**03. Misrepresent Danger.** Represent that the goods being inspected or diagnosed are in a dangerous condition or that the person's continued use of the goods may be harmful when such is not the fact. (1-1-79)

**04. Liens.** Wrongfully permit, by action or inaction, any mechanic's or materialmen's lien, or any other lien, to be filed or perfected against goods being repaired or improved, or wrongfully retain possession of the subject goods, when the owner or consumer has tendered payment in full or has tendered payment in accordance with the contract authorizing the repair or improvement. (1-21-92)

**05. Model Jobs.** In the case of any improvement to real property, represent falsely that the improvement is to serve as a "model" or "advertising job" or similarly mislead the consumer that a price reduction or other compensation will be received by reason of such real property improvement. (1-21-92)

**131. ITEMIZED BILLING (RULE 131).**

Unless there is an express contract setting forth a lump-sum basis for compensation, it is an unfair and deceptive act or practice for a seller to fail to provide, upon specific request, one itemized billing, statement, or copy of a work order, which includes: (1-21-92)

**01. Labor Charges.** Labor charges, designating the number of hours and the rate per hour; or designating the flat rate labor charge or job rate if such repairs or improvements are customarily done and billed on a flat rate labor charge or job rate price basis; or, when a minimum charge is imposed, designating that fact. (1-21-92)

**02. Parts and Materials.** Parts and materials, designating each item that is separately included in calculating the total billing, and designating whether such parts or materials are used or rebuilt. (1-21-92)

**03. Other Charges.** Miscellaneous charges, designating the reason for the charge and the basis for calculation of the charge. (1-1-79)

**04. Unit Pricing.** Alternatively, where the agreement sets forth a price per unit, then the number of units being billed at that price. For example, a contract provides for carpeting and installation at ten dollars (\$10) per yard. The itemized billing would state "92 yards carpeting at \$10 per yard equals \$920." (1-1-79)

**132. OLD OR REPLACED PARTS (RULE 132).**

It is an unfair and deceptive act or practice for a seller to: (1-21-92)

**01. Inspection.** Fail, upon request, to return or allow inspection of old or replaced parts upon completion of repairs or improvements. (1-1-79)

**02. Retaining Old Parts.** Retain old or replaced parts for reuse or resale, after request has been made for their return, unless such retention is made known to the consumer prior to performing any repairs or improvements, or unless the seller is able to demonstrate that he had made a bona fide price reduction for the newly installed parts in consideration for keeping the old or replaced parts, or unless the replacement was made under a warranty. (1-1-79)

**133. -- 139. (RESERVED)**

**Subchapter N -- Time of Delivery or Performance Including Mail Order Sales**  
**(Rules 140 -- 149)**

**140. GENERAL RULE (RULE 140).**

In connection with any sale, except mail order sales, it is an unfair and deceptive act or practice for a seller to: (1-21-92)

**01. Promising Delivery.** Offer or promise prompt delivery or performance unless, at the time of the offer or promise, the seller has taken reasonable action to ensure such prompt delivery or performance. (1-1-79)

**02. Failure to Deliver.** Fail to deliver goods or perform services, which have been ordered in person or otherwise, within a reasonable time following a specified delivery or performance date or within a reasonable time following the receipt of payment, unless the seller can show circumstances beyond his control and not within his knowledge at the time the order was accepted which prevented the seller from meeting the specified delivery date, and unless the seller can further show that he has given timely notice to the consumer of any such delay. (1-21-92)

**141. MAIL ORDER SALES (RULE 141).**

In connection with any mail order sale, pursuant to CPR 33, it is an unfair and deceptive act or practice for a seller to fail to comply with the provisions of the Federal Trade Commission Rule on Mail Order Merchandise (16 C.F.R. 435). (7-1-93)

**142. -- 149. (RESERVED)**

**Subchapter O -- Lay-Away Plans**  
**(Rules 150 - 159)**

**150. GENERAL RULE (RULE 150).**

It is an unfair and deceptive act or practice for a seller, in conjunction with a lay-away transaction, to: (1-21-92)

**01. Misrepresent Lay-Away Policies.** Misrepresent, in any way, the seller's policy with reference to a lay-away plan. (1-21-92)

**02. Failure to Lay Aside Goods.** Fail to actually lay aside the specific goods chosen by the consumer or exact duplicates, unless a clear and conspicuous disclosure to the contrary is made to the consumer. (1-21-92)

**03. Lay-Away Time Periods.** Fail to clearly and conspicuously disclose to the consumer that the specified goods or exact duplicates will be set aside only for a certain period of time, if such is the case. (1-21-92)

**04. Duplicates.** Deliver to the consumer after payments are completed, goods that are not identical or exact duplicates to those specified, unless informed, mutual consent has been obtained. (7-1-93)

**05. Increase Price.** Increase the price of the goods laid away after the original agreement has been made. (1-21-92)

**06. Failure to Deliver.** Fail to deliver to the consumer, upon request, at any time payment is made, a

receipt showing the amount of that payment and the date thereof and, upon request, an itemized statement showing the amount previously paid and the amount still owing. (1-21-92)

**151. REFUNDS OF LAY-AWAY PAYMENTS (RULE 151).**

It is an unfair and deceptive act or practice for a seller to fail to clearly and conspicuously disclose, or to misrepresent in any manner: (1-21-92)

**01. Possible Default or Cancellation.** The seller's policy with reference to the consumer's possible default or cancellation. (1-21-92)

**02. Refund Policy.** The seller's policy with respect to refund of payments made prior to the consumer's default or cancellation. (1-21-92)

**152. FORFEITURE AND DEFAULT (RULE 152).**

If there is a penalty, charge or forfeiture for cancellation or default, written disclosure must be clearly and conspicuously furnished on the initial lay-away receipt and clearly and conspicuously posted at the lay-away desk. (1-21-92)

**153. -- 159. (RESERVED)**

**Subchapter P -- Unfair Solicitation Practices at Other Than Trade Premises**  
**(Rules 160 - 169)**

**160. DISCLOSURE REQUIREMENTS (RULE 160).**

It is an unfair and deceptive act or practice for a seller to solicit a sale or order for sale of goods or services at other than appropriate trade premises, in person or by means of telephone, without clearly, affirmatively, and expressly revealing at the time the seller initially contacts the consumer, and before making any other statement, except a greeting, or asking the consumer any other questions, that the purpose of the contact is to effect a sale, by doing all of the following: (1-21-92)

**01. Solicitor's Identity.** Stating the identity of the person making the solicitation. (1-1-79)

**02. Trade Name of Seller.** Stating the trade name of the seller represented by the person making the solicitation. (1-21-92)

**03. Types of Goods or Services Offered.** Stating the kind of goods or services being offered for sale. (1-21-92)

**04. In-Person Contact.** In the case of an "in person" contact, the seller making the solicitation shall, in addition to orally revealing the above information, show or display identification which states: (1-21-92)

**a.** The identity of the person making the solicitation; (1-1-79)

**b.** The trade name of the seller represented by the person making the solicitation; and (1-21-92)

**c.** The address of the place of business of one of such persons so identified. (1-1-79)

**161. GENERAL RULE (RULE 161).**

It is an unfair and deceptive act or practice for a seller, in soliciting a sale or order for the sale of goods or services, either in person or by telephone, at other than appropriate trade premises, to: (1-21-92)

**01. Misleading Plan.** Use any plan, scheme, or ruse which misrepresents his true identity or purpose. (1-21-92)

**02. Representations with Capacity to Mislead.** Use any representations which have the capacity, tendency, or effect of misleading or deceiving a consumer acting reasonably under the circumstances in order to induce a sale, rental, lease, or order for the sale, rental, or lease of goods or services. (1-21-92)



**03. Leaving Premises.** Fail to promptly leave the premises at which a sales solicitation or presentation is made when the consumer has indicated he does not wish to buy, lease, rent, or order the offered goods or services, or has requested that the person leave the premises. (1-21-92)

**162. PROHIBITED PRACTICES (RULE 162).**

It is an unfair and deceptive act or practice for a seller: (7-1-93)

**01. Misrepresentations About How or Why Consumer Selected.** In soliciting a sale or order for the sale of goods or services, either in person or by telephone, at other than appropriate trade premises, to: (7-1-93)

**a.** Represent that the seller making the solicitation is making an offer to specially selected persons or that the consumer has been specifically selected, unless the selection process is designed to reach a particular type or types of persons; or (7-1-93)

**b.** Represent that the seller making the solicitation is conducting a survey, test, or research project, or is engaged in a contest or other venture to win a cash award, scholarship, vacation, or similar prize, if in fact the principal purpose or objective is to make a sale of goods or services or to obtain information to help identify sales prospects. (1-21-92)

**02. Misleading Practices.** In soliciting a sale or order for the sale of goods or services, either in person or by telephone, at other than appropriate trade premises, to misrepresent, directly or by implication: (7-1-93)

**a.** The identity of the seller, the person on whose behalf the seller is making solicitations, the seller's affiliation or association with other firms, businesses, or governmental entities, or the identity of the goods or services he offers to sell. For example, the X City Fire Department is putting on a fireman's ball. It hires a professional solicitor who is getting a percentage of the proceeds. The solicitor and his employees and agents should identify themselves on the telephone as follows: "I am Pat Telemarketer of XYZ Productions and I am calling for the X City Fire Department." (1-21-92)

**b.** The reasons for, existence of, or amounts of price reductions; (1-1-79)

**c.** The length of any sales presentation; (1-21-92)

**d.** The delivery or performance date; or (1-21-92)

**e.** The nature or purpose of any documents the consumer is requested or required to execute in connection with the purchase or lease of any goods or services. (1-21-92)

**163. MAIL ORDER AND CATALOG SALES (RULE 163).**

It is an unfair and deceptive act or practice for a seller engaged in trade and commerce at other than appropriate trade premises, to fail to disclose the legal name under which business is done and the complete street address from which business is actually conducted in all advertising and promotional materials, including order blanks and forms. (1-21-92)

**164. APPLICATION OF OTHER RULES (RULE 164).**

Pursuant to CPR 5, subchapter P is not intended to contain the only rules governing solicitations or transactions occurring at other than appropriate trade premises. (7-1-93)

**165. -- 169. (RESERVED)**

**Subchapter Q -- Cooling-Off Period for Door-to-Door Sales**  
**(Rules 170 -- 179)**

**170. GENERAL RULE (RULE 170).**

In connection with any door-to-door sale, it is an unfair and deceptive act or practice for a seller to: (1-21-92)

**01. Written Disclosures.** Fail to furnish the consumer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g., Spanish, as that principally used in the oral sales presentation and which shows the date of the transaction and contains the name and street address of the seller, and the following statement in ten (10) point type in immediate proximity to the space reserved in the contract for the signature of the consumer or on the front page of the receipt if a contract is not used: **YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.** (1-21-92)

**02. Notice of Cancellation.** Fail to furnish each consumer, at the time he signs the door-to-door sales contract or otherwise agrees to buy goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION," which shall be attached to the contract or receipt and easily detachable, and contain in ten (10) point bold face type the following statement in the same language, e.g., Spanish, as that used in the contract:

NOTICE OF CANCELLATION  
enter date of transaction

Date

**YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.**

**IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE, AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED.**

**IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE, IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOOD DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK.**

**IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT.**

**TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE, OR SEND A TELEGRAM, TO (address of seller's place of business) NOT LATER THAN MIDNIGHT OF (Date).** (1-21-92)

**03. Completed Notice of Cancellation.** Fail, before furnishing copies of the "Notice of Cancellation" to the consumer, to complete both copies by entering the name of the seller, the address of the seller's place of business, the date of the transaction, and the date, not earlier than the third business day following the date of the transaction, by which the consumer may give notice of cancellation. (1-21-92)

**04. Purported Waivers.** Include in any door-to-door contract or receipt any confession of judgment or any waiver of any of the rights to which the consumer is entitled under subchapter Q, including, specifically, his right to cancel the sale in accordance with the provisions of subchapter Q. (7-1-93)

**05. Oral Notice of Cancellation.** Fail to inform each consumer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel. (1-21-92)

- 06. Misrepresent Right to Cancel.** Misrepresent in any manner the consumer's right to cancel. (1-21-92)
- 07. Failure to Honor Notice of Cancellation.** Fail or refuse to honor any valid notice of cancellation by a consumer and within ten (10) business days after the receipt of such notice, to: (1-21-92)
- a.** Refund all payments made under the contract or sale; (1-1-79)
  - b.** Return any goods or property traded in, in substantially as good condition as when received by the seller; and (1-21-92)
  - c.** Cancel and return any negotiable instrument executed by the consumer in connection with the contract or sale and take any action necessary or appropriate to promptly terminate any security interest created in the transaction. (1-21-92)
- 08. Transferring Evidences of Indebtedness.** Negotiate, transfer, sell, or assign any note or other evidence of indebtedness to a finance company or other third party prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased. (1-21-92)
- 09. Transferring Traded Goods.** Transfer, sell, or assign any goods traded in prior to midnight of the fifth business day following the day the contract was signed or the goods or services were purchased. (1-21-92)
- 10. Failure to Notify Concerning Return of Goods.** Fail, within ten (10) business days of receipt of the consumer's notice of cancellation, to notify the consumer whether the seller intends to take possession of or abandon any goods previously shipped or delivered to the consumer under the cancelled contract. (1-21-92)

**171. -- 189. (RESERVED)**

**Subchapter S -- Pyramid and Chain Distribution Schemes**  
**(Rules 190 - 199)**

**190. GENERAL RULE (RULE 190).**

It is an unfair and deceptive act or practice for a seller to promote, offer, advertise, or grant participation in a pyramid or chain distribution scheme. (1-21-92)

**191. PURPORTED LIMITATIONS (RULE 191).**

A limitation as to the number of persons who may participate, or the presence of additional conditions affecting eligibility, or the fact that, in addition to the right to receive consideration for participation in the marketing plan, a person introduced into the plan actually receives something of value, does not, in and of itself, change the character of the marketing plan as a chain or pyramid distribution scheme. (1-21-92)

**192. FACTORS (RULE 192).**

In determining whether a promotion is a pyramid or chain distribution scheme, the following factors, among others, may be considered: (1-21-92)

**01. Amount of Fees.** Whether a substantial fee is required for entry and continued participation in the promotion. Requirement of a substantial fee suggests that the promotion is an unlawful pyramid or chain distribution scheme. (1-21-92)

**02. Refund Policies.** Whether the purchase of nonrefundable goods is required for entry and continued participation in the promotion or whether a consumer's right to a refund is subject to significant restrictions. Requirement of such purchase or purchases or significant restrictions placed on a consumer's right to obtain a refund suggests that the promotion is an unlawful pyramid or chain distribution scheme. (7-1-93)

**03. Plan's Primary Focus.** Whether the primary focus of the promotion is the opportunity for financial gain through the recruitment of more participants, not the sale of goods or services. Marketing programs based

primarily upon the recruitment of other participants suggest that the promotion is an unlawful pyramid or chain distribution scheme. (1-21-92)

**04. Price of Goods.** Whether the goods, if any, for which the promotion allegedly exists to distribute, are inflated in price. An inflated price for the goods suggests that the promotion is an unlawful pyramid or chain distribution scheme. (1-21-92)

**193. -- 199. (RESERVED)**

**Subchapter T -- Loan Broker Fees**  
**(Rules 200 - 209)**

**200. GENERAL RULE (RULE 200).**  
It is an unfair and deceptive act or practice for a loan broker to: (7-1-93)

**01. Prohibited Practices.** Directly or indirectly receive any fee, interest, or other charge of any nature, including, but not limited to, payments to information providers, from a consumer until a loan or extension of credit is made to the consumer or a written commitment to loan or extend credit is delivered to the consumer by an exempt loan broker. (7-1-93)

**02. Qualifying for a Loan.** Advertise that all or most consumers or that consumers with bad credit or no credit histories will qualify for a loan. (7-1-93)

**03. Conditions of Loan.** Advertise loan brokering services without clearly and conspicuously disclosing any material restrictions regarding obtaining a loan, the cost of the service, and the maximum period of time the loan broker will take to arrange or make the loan to the consumer. (7-1-93)

**04. Written Disclosure.** Fail to provide the consumer a written contract with the following information contained therein: (7-1-93)

**a.** The name, street address, and telephone number of the loan broker; (7-1-93)

**b.** The maximum period of time the loan broker will take to arrange or make the loan to the consumer; and (7-1-93)

**c.** The following statement in at least ten point, bold face type in immediate proximity to the space reserved in the contract for the signature of the consumer:

YOU THE CONSUMER ARE UNDER NO OBLIGATION TO PAY ANY FEE OR CHARGE OF ANY NATURE UNLESS AND UNTIL YOU RECEIVE THE MONEY FROM THE LOAN APPLIED FOR OR A WRITTEN COMMITMENT TO LOAN OR EXTEND CREDIT FROM A QUALIFIED LENDING INSTITUTION AS DEFINED BY IDAHO CONSUMER PROTECTION RULE 20.25, CODIFIED AT IDAPA 04.02.01.020.25. (7-1-93)

**201. EXCEPTIONS (RULE 201).**  
CPR 200 does not apply to fees and charges authorized by the laws of the state of Idaho or the laws of the United States if the maximum charge and the manner of collecting the charge are set out in the law or in the rule or regulation adopted under law. (7-1-93)

**202. -- 209. (RESERVED)**

**Subchapter U -- Preservation of Consumers' Claims and Defenses (Holder in Due Course)**  
**(Rules 210 - 219)**

**210. GENERAL RULE (RULE 210).**  
It is an unfair and deceptive act or practice for a seller, directly or indirectly, to: (1-21-92)

**01. Accept Contract Without Written Notice.** Take or receive a consumer credit contract which fails to contain the following statement in at least ten (10) point, bold face type:

**NOTICE**

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (1-21-92)

**02. Accept Monies Without Written Notice.** Accept, as full or partial payment for such sale or lease, the proceeds of any purchase money loan, unless any consumer credit contract made in connection with such purchase money loan contains the following statement in at least ten point, bold face type:

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER. (1-21-92)

**211. -- 219. (RESERVED)**

**Subchapter V -- Unordered Goods or Services**  
**(Rules 220 - 229)**

**220. GENERAL RULE (RULE 220).** It is an unfair and deceptive act or practice for a seller to: (1-21-92)

**01. Send or Provide Unordered Goods or Services.** Send or provide to a consumer unordered goods or services. (7-1-93)

**02. Bills.** Send any bill to a consumer for unordered goods or services. (1-21-92)

**03. Delay or Disrupt Goods or Services.** Interrupt, delay, terminate, cancel, or deny delivery of or other provision of goods or services to a consumer because the consumer has not paid for or returned the unordered goods or services. (1-21-92)

**04. Requiring Consumer Consent.** Require a consumer to consent or authorize the receipt of or provision for unordered goods or services as a condition of doing business with the person. (1-21-92)

**221. -- 229. (RESERVED)**

**Subchapter W -- Automobile Advertising and Sales**  
**(Rules 230 - 239)**

**230. OBJECTIVE (RULE 230).** It is the objective of subchapter W to implement the intent of the legislature as declared in Section 48-601, Idaho Code, by furthering truthful and accurate advertising and sales practices for the benefit of the citizens and motor vehicle dealers of this state by providing for motor vehicle advertising and sales rules applicable to motor vehicle dealers. (7-1-93)

**231. APPLICATION OF OTHER RULES (RULE 231).** Pursuant to CPR 5, subchapter W is not intended to contain the only rules governing automobile advertising and sales practices. (7-1-93)

**232. GENERAL ADVERTISING PRACTICES (RULE 232).**

The following are unfair and deceptive advertising practices: (7-1-93)

**01. Clear and Conspicuous Disclosure of Material Terms.** The advertising of any motor vehicle for sale, lease, rent without clearly and conspicuously disclosing all material terms and conditions relating to the offer. Material terms include those without which the advertisement would have the capacity, tendency, or effect of misleading or deceiving consumers acting reasonably under the circumstances. (7-1-93)

**02. Footnotes and Asterisks.** Use of one (1) or more disclosures by footnote or asterisk which alone or in combination confuse, contradict, materially modify, or unreasonably limit a principal message of the advertisement. (1-21-92)

**03. Print Size.** Use of any print in type size so small as to be not readily noticeable. An advertisement is misleading if important disclosures made therein are relegated to small print and inconspicuously buried at the bottom of the page. (1-21-92)

**04. Photographs and Illustrations.** Use of inaccurate photographs or illustrations when describing specific automobiles. For example, advertising a fully-loaded car when the ad actually refers to a minimally-equipped automobile in text. (1-21-92)

**05. Color Contrasts.** Use of color contrasts which render the text confusing or difficult to read. (1-21-92)

**06. Abbreviations.** Advertising with abbreviations which are not commonly understood by the general public (e.g., abbreviations commonly understood--AC, AM/FM, AUTO, AIR, 2DR, CYL Dealer's Doc Fee, MSRP, and OAC) unless approved by federal or state law (e.g., terms allowed by the federal Truth in Lending Act, 15 U.S.C. Section 1601 et seq., such as "APR"). (7-1-93)

**233. PRICE ADVERTISING (RULE 233).**

It is an unfair and deceptive act or practice for a dealer to: (7-1-93)

**01. Advertised Price.** Advertise the price of a motor vehicle without including in the advertised price all costs to the consumer at the time of sale, or which are necessary or usual prior to delivery of such vehicle to the consumer, including without limitation, any costs of freight, delivery, dealer preparation, and any other charges of any nature; provided, however, the following may be excluded from the advertised price of the motor vehicle: (7-1-93)

**a.** Taxes, license, and title fees; and (1-21-92)

**b.** A dealer documentation service fee, as defined herein, so long as the advertisement clearly and conspicuously discloses, in close proximity to the advertised price, the amount of such fee and that the fee is a dealer imposed fee; i.e. PRICE DOES NOT INCLUDE \$ \_\_\_\_\_ (insert actual amount charged for dealer documentation service fee) DEALER DOC FEE. (1-21-92)

**02. Advertising Limitations.** Fail to clearly and conspicuously disclose in an advertisement any material limitations including, but not limited to: (7-1-93)

**a.** The number of motor vehicles in stock subject to the offer if the number is not likely to meet reasonably expected public demand; (1-21-92)

**b.** The period of time during which the offer is in effect, if the offer is subject to a time limitation of fourteen (14) days or less or when an offer is within fourteen (14) days of its close; and (7-1-93)

**c.** Any other applicable restrictions to which the advertised price may be subject. (1-21-92)

**03. Low Prices.** Use the term "low prices" or words of similar meaning or import in the advertisement, unless the prices offered are lower than those usually offered by the dealer or other dealers in the same trade area.

(7-1-93)

**04. Lowest Prices, Guaranteed Lowest Prices.** Advertise that motor vehicles cost less in a particular community or geographic area or use the terms “lowest prices,” “guaranteed lowest prices,” “prices lower than anyone else,” “nobody can beat our prices,” or words of similar meaning or import in the advertisement, unless the dealer, or dealer association in the case of cooperative dealer advertising, systematically monitors and continues to monitor competitive prices in the trade area and can substantiate such claims. (7-1-93)

**05. Price Matching.** Use terms “meet your best offer,” or “we won’t be undersold,” or terms of similar meaning or import which suggest that a dealer will beat or match a competitor’s price unless: (7-1-93)

**a.** The advertisement clearly and conspicuously discloses the dealer’s price matching policy and any limitations; and (1-21-92)

**b.** Such policy does not require the presentation of any evidence which places an unreasonable burden on the consumer. (1-21-92)

**06. Dealer’s Cost.** Except as required in CPR 233.07.a., advertise a motor vehicle using any reference to the term “dealer’s cost,” or that a motor vehicle is available for purchase at, above or below “cost.” (7-1-93)

**07. Invoice Pricing.** Advertise that a motor vehicle is available for purchase at an amount below, at, or above “factory invoice,” “factory billing,” “manufacturer’s invoice,” or terms of similar meaning or import, unless: (7-1-93)

**a.** The advertisement uses the terms “factory invoice,” “manufacturer’s invoice,” or other terms that clearly convey that the invoice referred to is the factory or manufacturer’s invoice; (1-21-92)

**b.** The advertised reference to factory or manufacturer’s invoice price shall be the final price listed on the factory or manufacturer’s invoice; (1-21-92)

**c.** The following disclosure is clearly and conspicuously disclosed in the advertisement: “FACTORY INVOICE MAY NOT REFLECT DEALER’S ACTUAL COST”; and (1-21-92)

**d.** The original factory or manufacturer’s invoice, or a true and correct copy thereof, shall be readily available at the place of business for inspection by prospective customers. (1-21-92)

**08. Vehicle Availability.** Subject to CPR 233.01 and CPR 233.02, fail to allow consumers to purchase all motor vehicles described by the advertisement at the advertised price. If some motor vehicles in stock may not be purchased at the advertised prices, the advertisement shall clearly and conspicuously disclose that the advertised price applies only to a specified number of motor vehicles. Vehicle identification numbers for any motor vehicle advertised for sale by a dealer shall be readily available at the dealer’s place of business for inspection by customers. (7-1-93)

**09. Buy-Down Rate.** Advertise the sale of any motor vehicle at a “buy-down” rate, as that term is defined herein, without clearly and conspicuously disclosing in the advertisement the following: “BELOW MARKET RATE MAY AFFECT PURCHASE PRICE OF CAR.” (7-1-93)

**10. Hidden Finance Charges.** Fail to include hidden finance charges (i.e. the difference, if any, between the cash and credit price of a “buy-down” motor vehicle) in the Truth in Lending calculation and disclosure requirements. (7-1-93)

**234. OTHER ADVERTISING PRACTICES (RULE 234).** It is an unfair and deceptive act or practice for a dealer to: (7-1-93)

**01. Demonstrator Vehicles.** Advertise any demonstrator vehicle without clearly and conspicuously disclosing: (7-1-93)

**a.** The year, make, and model of the motor vehicle; and (1-21-92)

- b.** That the motor vehicle is a “demonstrator” or has been previously driven. (1-21-92)
- 02. Executive or Official Vehicles.** Advertise any executive or official vehicle: (7-1-93)
- a.** Without clearly and conspicuously disclosing the year, make, and model of the motor vehicle; (1-21-92)
- b.** Without clearly and conspicuously disclosing that the motor vehicle is an executive or official vehicle and has been previously driven, using the words “Pre-Driven,” or “Previously Driven,” or words of similar meaning; (1-21-92)
- c.** Without displaying the Used Car Buyers Guide on the motor vehicle as required by the Federal Trade Commission Rule on Used Motor Vehicles (16 C.F.R. 455); or (1-21-92)
- d.** By using any word or phrase which would lead a reasonable consumer to believe that the advertised motor vehicle is a new motor vehicle. (1-21-92)
- 03. Leased Vehicles.** Advertise any leased vehicle: (7-1-93)
- a.** Without clearly and conspicuously disclosing the year, make, and model of the motor vehicle; (1-21-92)
- b.** Without clearly and conspicuously disclosing that the motor vehicle is a leased vehicle; (1-21-92)
- c.** Without displaying the Used Car Buyers Guide on the motor vehicle as required by the Federal Trade Commission Rule on Used Motor Vehicles (16 C.F.R. 455); or (1-21-92)
- d.** By using any word or phrase which would lead a reasonable consumer to believe that the advertised motor vehicle is a new motor vehicle. (1-21-92)
- 04. Other Used Motor Vehicles.** Advertise any other used motor vehicle: (7-1-93)
- a.** Without clearly and conspicuously disclosing the year, make, and model of the motor vehicle; (1-21-92)
- b.** Without displaying the Used Car Buyers Guide on the motor vehicle as required by the Federal Trade Commission Rule on Used Motor Vehicles (16 C.F.R. 455); or (1-21-92)
- c.** By using any word or phrase which would lead a reasonable consumer to believe that the advertised motor vehicle is a new motor vehicle. (1-21-92)
- 05. Dealer Rebates.** Advertise that a consumer will receive a payment of money, or that a payment will be made to a third person on the consumer’s behalf, in conjunction with the purchase or lease of a motor vehicle, unless the payment is being offered by the manufacturer of the motor vehicle. A dealer may also advertise any manufacturer’s rebate for which the manufacturer requires any financial participation by the dealer so long as the dealer clearly and conspicuously discloses in the advertisement the following disclosure: “DEALER PARTICIPATION IN THE REBATE PROGRAM MAY INCREASE VEHICLE PRICE BEFORE REBATE.” (7-1-93)
- 06. Trade-In Allowances.** Advertise or offer a specific trade-in allowance (i.e., “\$2500 minimum trade-in”), including, without limitation, that the trade-in will be valued at a specific amount or guaranteed minimum amount if: (7-1-93)
- a.** The price of the motor vehicle offered for sale is increased because of the amount of the allowance; (1-21-92)
- or



**b.** The offer fails to disclose that it is conditioned upon the purchase of additional options or services, if such is the case. (1-21-92)

**07. Trade-In Policies.** Advertise or offer a range of amounts for trade-ins (e.g., “up to \$1,000” or “as much as \$1,000”), unless the advertisement clearly and conspicuously discloses the criteria the dealer will use to determine the amount to be paid for a particular trade-in. Such criteria might include age, condition, or mileage of the motor vehicle. (7-1-93)

**08. No Money Down.** Advertise using the phrase “no down payment,” “no money down,” or words of similar meaning, unless, subject to the consumer’s credit approval, the dealer is willing to sell the advertised motor vehicle to a consumer without the requirement of a trade-in or prior payment of any kind. (7-1-93)

**09. Dealer’s Size.** Use statements as to the dealer’s size, inventory, or sales volume to represent or imply that the dealer can and does sell automobiles at a lower price, as a result of such size, inventory, or volume, than do other dealers, unless such is the fact. (7-1-93)

**10. Factory Outlet.** Advertise using the terms “Factory Outlet,” “Authorized Distribution Center,” or similar special affiliation, connection or relationship with the manufacturer that is greater or more direct than that of any other dealer, when, in fact, no such affiliation, connection, or relationship exists. (7-1-93)

**11. Contract Add-Ons.** Negotiate the terms of a sale and thereafter add the cost of items to the contract, including, without limitation, extended warranties, credit life, dealer preparation, or undercoating, to the contract without previously disclosing this to the consumer and without first obtaining the consumer’s consent. (7-1-93)

**235. CREDIT SALES ADVERTISING (RULE 235).**  
It is an unfair and deceptive act or practice for a dealer to: (7-1-93)

**01. Disclosure Requirements.** Fail to clearly and conspicuously disclose in connection therewith that the advertised credit terms are available “On Approved Credit,” or the abbreviation, “OAC.” In advertising credit terms, a dealer shall also comply with either CPR 235.01.a. or CPR 235.01.b. below: (7-1-93)

**a.** Credit terms advertised by a dealer shall be calculated on the basis of the total retail price of the advertised motor vehicle (which, for purposes of calculating credit terms must include any applicable dealer documentation service fee, as defined herein) plus taxes, license, and title fees, from which may be subtracted out only the amount of the advertised down payment; or (1-21-92)

**b.** The credit terms advertised by a dealer may be calculated exclusive of taxes, license, and title fees and the dealer’s documentation service fee so long as the following statement (or a statement of similar meaning) is clearly and conspicuously disclosed in connection with the credit sale advertisement: “DOES NOT INCLUDE TAXES, TITLE, LICENSE FEES OR \$ \_\_\_\_\_ DEALER DOC FEE” (insert actual amount charged for dealer documentation service fee). (1-21-92)

**02. Advertised Terms Unavailable.** Advertise credit terms that are not actually available. (7-1-93)

**03. Advertised Finance Rates.** Advertise a finance rate (A.P.R.) without disclosing, if such is the fact, the following: (7-1-93)

**a.** That such rate is limited to certain models; (1-21-92)

**b.** That to take advantage of such a reduced rate, a consumer must purchase additional options or services; (1-21-92)

**c.** That taking advantage of the rate will increase the final price of the vehicle or options or services purchased; (1-21-92)

**d.** That the offer expires after a limited time period; or (1-21-92)

e. Any other conditions, qualifications, or limitations which materially affect the availability of such rate. (1-21-92)

**04. Truth in Lending Disclosures.** Fail to comply with the disclosure requirements of the federal Truth in Lending Act (15 U.S.C. Section 1601 et seq.) and Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. Section 226). Truth in Lending disclosures must be clear and conspicuous. (7-1-93)

**236. TRUTH IN LEASING ADVERTISING (RULE 236).**

It is an unfair and deceptive act or practice for a dealer to fail to comply with the disclosure requirements of the consumer leasing portions of the federal Truth in Lending Act (15 U.S.C. Section 1667 et seq.) and Regulation M promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. Section 213). Truth in Leasing disclosures must be clear and conspicuous. (7-1-93)

**237. MOTOR VEHICLE SUBJECT-TO-FINANCING CONTRACTS (RULE 237).**

**01. Required Contract Disclosure.** Unless specifically exempted in CPR 237.06, every subject-to-financing contract for the purchase of a motor vehicle in Idaho shall include the following disclosure in ten (10) point bold face type or a size at least three (3) points larger than the smallest type appearing in the contract or form:

YOU AND THE DEALER HAVE AGREED THAT THE MOTOR VEHICLE WILL BE DELIVERED TO YOU PRIOR TO THE PURCHASE. IF FINANCING CANNOT BE ARRANGED ON THE TERMS AND WITHIN THE TIME PERIOD AGREED UPON IN THE MOTOR VEHICLE PURCHASE CONTRACT, THE CONTRACT IS NULL AND VOID. (7-1-93)

**02. Other Contractual Provisions.** Nothing in CPR 237 is intended to prevent language from being included in a motor vehicle purchase contract specifying the responsibilities of the parties thereto in the event the contract becomes null and void pursuant to CPR 237. (7-1-93)

**03. Trade-In Motor Vehicles.** If a motor vehicle purchase contract has become null and void pursuant to CPR 237, the dealer must return the consumer's trade-in vehicle, if any, together with its title, if previously provided to the dealer, upon the consumer's return of the motor vehicle to the dealer. If the trade-in vehicle is not available, the dealer shall give the consumer the trade-in allowance within one business day. (7-1-93)

**04. Subsequent Agreement.** Nothing in CPR 237 is intended to prevent the parties to a motor vehicle purchase agreement from entering into a subsequent agreement for the purchase of the motor vehicle on different terms and conditions. (7-1-93)

**05. Consumer's Copy.** A copy of the disclosure specified in CPR 237.01 must be given to the consumer at the time the contract is signed. (7-1-93)

**06. Exceptions.** CPR 237 does not apply to sales transactions in which a dealer purchases a motor vehicle for resale. (7-1-93)

**238. -- 999. (RESERVED)**

**04.11.01 – IDAHO RULES OF ADMINISTRATIVE PROCEDURE OF THE ATTORNEY GENERAL**

**Subchapter A – General Provisions  
(Rules 0 through 99)**

**000. LEGAL AUTHORITY (RULE 0).**

This chapter is adopted under the legal authority of Sections 67-5206(2), 67-5206(3) and 67-5206(4), Idaho Code. (3-24-93)

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** This chapter is titled “Idaho Rules of Administrative Procedure of the Attorney General.” (3-24-93)

**02. Scope.** Every state agency that conducts rulemaking or hears contested cases must adopt individual rules of procedure as required by this chapter. Further every state agency will be considered to have adopted the procedural rules of this chapter unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. (3-24-93)

**002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).**

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 in the adoption of these rules are available from the Office of the Attorney General, Statehouse, Boise, Idaho 83720. (3-24-93)

**003. ADMINISTRATIVE APPEAL (RULE 3).**

There is no provision for administrative appeals before the Attorney General under this chapter. This chapter governs administrative appeals before and within agencies that do not by rule opt out of some or all of this chapter. (3-24-93)

**004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).**

All rules required to be adopted by this chapter are public records. (3-24-93)

**005. DEFINITIONS (RULE 5).**

As used in this chapter: (3-24-93)

**01. Administrative Code.** The Idaho Administrative Code established in Chapter 52, Title 67, Idaho Code. (3-24-93)

**02. Agency.** Each state board, commission, department or officer authorized by law to make rules or to determine contested cases, but does not include the legislative or judicial branches, executive officers listed in Section 1, article IV, of the constitution of the state of Idaho in the exercise of powers derived directly and exclusively from the constitution, the state militia or the state board of correction. (3-24-93)

**03. Agency Action.** Agency action means: (3-24-93)

**a.** The whole or part of a rule or order; (3-24-93)

**b.** The failure to issue a rule or order; or (3-24-93)

**c.** An agency's performance of, or failure to perform, any duty placed on it by law. (3-24-93)

**04. Agency Head.** An individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. (3-24-93)

**05. Bulletin.** The Idaho Administrative Bulletin established in Chapter 52, Title 67, Idaho Code. (3-24-93)

**06. Contested Case.** A proceeding which results in the issuance of an order. (3-24-93)

**07. Coordinator.** The administrative rules coordinator prescribed in Section 67-5202, Idaho Code. (3-24-93)

- 08. Document.** Any proclamation, executive order, notice, rule or statement of policy of an agency. (3-24-93)
- 09. Final Rule.** A rule that has been adopted by an agency under the regular rulemaking process and that is in effect. (7-1-97)
- 10. License.** The whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes. (3-24-93)
- 11. Official Text.** The text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and which is the only legally enforceable text of such document. (4-7-11)
- 12. Order.** An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (3-24-93)
- 13. Party.** Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (3-24-93)
- 14. Pending Rule.** A rule that has been adopted by an agency under the regular rulemaking process (i.e., proposal of rule in Bulletin, opportunity for written comment or oral presentation, and adoption of rule in Bulletin) and remains subject to legislative review. (7-1-97)
- 15. Person.** Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. (3-24-93)
- 16. Provision of Law.** The whole or a part of the state or federal constitution, or of any state or federal:
- a.** Statute; or (3-24-93)
  - b.** Rule or decision of the court. (3-24-93)
- 17. Proposed Rule.** A rule published in the bulletin as provided in Section 67-5221, Idaho Code. (7-1-97)
- 18. Publish.** To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. (3-24-93)
- 19. Rule.** The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Chapter 52, Title 67, Idaho Code, and that implements, interprets, or prescribes:
- a.** Law or policy, or (3-24-93)
  - b.** The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include: (3-24-93)
    - i.** Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; (3-24-93)
    - ii.** Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; (3-24-93)
    - iii.** Intra-agency memoranda; or (3-24-93)
    - iv.** Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule. (3-24-93)

- 20. Rulemaking.** The process for formulation, adoption, amendment or repeal of a rule. (3-24-93)
- 21. Service or Serving.** The agency's or a party's delivery or distribution of official documents in a legally sufficient manner in a contested case proceeding to the parties to that proceeding and, if applicable, to any other persons required by statute, rule, order or notice to receive official documents. (4-7-11)
- 22. Submitted for Review.** A rule that has been provided to the legislature for review at a regular or special legislative session as provided in Section 67-5291, Idaho Code. (7-1-97)
- 23. Temporary Rule.** A rule authorized by the governor to become effective before it has been submitted to the legislature for review and which expires by its own terms or by operation of law no later than the conclusion of the next succeeding regular legislative session unless extended or replaced by a final rule as provided in Section 67-5226, Idaho Code. (7-1-97)

**006. FILING OF DOCUMENTS -- NUMBER OF COPIES (RULE 6).**

Each agency must individually adopt a rule of procedure that lists the officer or officers with whom all documents in rulemakings or contested cases must be filed. This rule may require all filings to be made with one (1) officer, for example the agency director or the agency secretary, or may generally provide that all documents in a given rulemaking or contested case will be filed with an officer designated for the specific rulemaking or contested case. The rule must state whether copies in addition to the original must be filed with the agency. (3-24-93)

**007. -- 049. (RESERVED)**

**050. PROCEEDINGS GOVERNED (RULE 50).**

Rules 100 through 799 govern procedure before agencies in contested cases, unless otherwise provided by rule, notice or order of the agency. Rules 800 through 860 govern procedure before agencies in rulemaking, unless otherwise provided by rule or notice of the agency. Every state agency that hears contested cases (except the Industrial Commission and the Public Utilities Commission) must use the procedures for contested cases adopted in these rules unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. Every state agency that conducts rulemaking must use the procedures for rulemaking adopted in this chapter unless the state agency by rule affirmatively declines to adopt this chapter, in whole or in part. (3-24-93)

**051. REFERENCE TO AGENCY (RULE 51).**

Reference to the agency in these rules includes the agency director, board or commission, agency secretary, hearing officer appointed by the agency, or presiding officer, as context requires. Reference to the agency head means to the agency director, board or commission, as context requires, or such other officer designated by the agency head to review recommended or preliminary orders. (3-24-93)

**052. LIBERAL CONSTRUCTION (RULE 52).**

The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. Unless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. (3-24-93)

**053. COMMUNICATIONS WITH AGENCY (RULE 53).**

All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the officer designated by the agency. Unless otherwise provided by statute, rule, order or notice, documents are considered filed when received by the officer designated to receive them, not when mailed or otherwise transmitted. (3-24-93)

**054. IDENTIFICATION OF COMMUNICATIONS (RULE 54).**

Parties' communications addressing or pertaining to a given proceeding should be written under that proceeding's case caption and case number. General communications by other persons should refer to case captions, case numbers, permit or license numbers, or the like, if this information is known. (3-24-93)

**055. SERVICE BY AGENCY (RULE 55).**

**01. Personal Service and Service by Mail.** Unless otherwise provided by statute or these rules or the agency's rules, the officer designated by the agency to serve rules, notices, summonses, complaints, or orders issued by the agency may serve these documents by regular mail, or by certified mail, return receipt requested, to a party's last known mailing address or by personal service. (4-7-11)

**02. Electronic Service.** If a party has appeared in a contested case or has not yet appeared but has consented or agreed in writing to service by facsimile transmission (FAX) or e-mail as an alternative to personal service or service by mail, and if authorized by statute, agency rule, notice or order, the officer designated to serve notices and orders in a contested case may serve those notices and orders by FAX or by e-mail in lieu of service by mail or personal service. (4-7-11)

**03. When Service Complete.** Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail or the Statehouse mail, if the party is a State employee or State agency, or when there is an electronic verification that a facsimile transmission or an e-mail has been sent. (4-7-11)

**04. Persons Served.** The officer designated by the agency to serve documents in a proceeding must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. (4-7-11)

**05. Proof of Service.** Every notice and order that the agency serves in a contested case must be accompanied by a proof of service stating the service date, each party or other person who was served, and the method of service. The agency may use a proof of service similar to those used by parties. See Rule 303. (4-7-11)

**056. COMPUTATION OF TIME (RULE 56).**

Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count, but the last day of the period so computed is included in the count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not a Saturday, Sunday or a legal holiday. (3-24-93)

**057. FEES AND REMITTANCES (RULE 57).**

Fees and remittances to the agency must be paid by money order, bank draft or check payable to agency. Remittances in currency or coin are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. (3-24-93)

**058. -- 099. (RESERVED)**

**SUBCHAPTER B -- CONTESTED CASES**

**Rules 100 through 800 -- Contested Cases**

**Rules 101 through 400 -- Definitions and General Provisions**

**Rules 101 through 150 -- Informal and Formal Proceedings**

**100. INFORMAL PROCEEDINGS DEFINED (RULE 100).**

Informal proceedings are proceedings in contested cases authorized by statute, rule or order of the agency to be conducted using informal procedures, i.e., procedures without a record to be preserved for later agency or judicial review, without the necessity of representation according to Rule 202, without formal designation of parties, without the necessity of hearing examiners or other presiding officers, or without other formal procedures required by these rules for formal proceedings. Unless prohibited by statute, an agency may provide that informal proceedings may precede formal proceedings in the consideration of a rulemaking or a contested case. (3-24-93)

**101. INFORMAL PROCEDURE (RULE 101).**

Statute authorizes and these rules encourage the use informal proceedings to settle or determine contested cases. Unless prohibited by statute, the agency may provide for the use of informal procedure at any stage of a contested case. Informal procedure may include individual contacts by or with the agency staff asking for information, advice or assistance from the agency staff, or proposing informal resolution of formal disputes under the law administered

by the agency. Informal procedures may be conducted in writing, by telephone or television, or in person. (3-24-93)

**102. FURTHER PROCEEDINGS (RULE 102).**

If statute provides that informal procedures shall be followed with no opportunity for further formal administrative review, then no opportunity for later formal administrative proceedings must be offered following informal proceedings. Otherwise, except as provided in Rule 103, any person participating in an informal proceeding must be given an opportunity for a later formal administrative proceeding before the agency, at which time the parties may fully develop the record before the agency. (3-24-93)

**103. INFORMAL PROCEEDINGS DO NOT EXHAUST ADMINISTRATIVE REMEDIES (RULE 103).**

Unless all parties agree to the contrary in writing, informal proceedings do not substitute for formal proceedings and do not exhaust administrative remedies, and informal proceeding are conducted without prejudice to the right of the parties to present the matter formally to the agency. Settlement offers made in the course of informal proceedings are confidential and shall not be included in the agency record of a later formal proceeding. (3-24-93)

**104. FORMAL PROCEEDINGS (RULE 104).**

Formal proceedings, which are governed by rules of procedure other than Rules 100 through 103, must be initiated by a document (generally a notice, order or complaint if initiated by the agency) or another pleading listed in Rules 210 through 280 if initiated by another person. Formal proceedings may be initiated by a document from the agency informing the party(ies) that the agency has reached an informal determination that will become final in the absence of further action by the person to whom the correspondence is addressed, provided that the document complies with the requirements of Rules 210 through 280. Formal proceedings can be initiated by the same document that initiates informal proceedings. (3-24-93)

**105. -- 149. (RESERVED)**

**150. PARTIES TO CONTESTED CASES LISTED (RULE 150).**

Parties to contested cases before the agency are called applicants or claimants or appellants, petitioners, complainants, respondents, protestants, or intervenors. On reconsideration or appeal within the agency parties are called by their original titles listed in the previous sentence. (3-24-93)

**151. APPLICANTS/CLAIMANTS/APPELLANTS (RULE 151).**

Persons who seek any right, license, award or authority from the agency are called "applicants" or "claimants" or "appellants." (3-24-93)

**152. PETITIONERS (RULE 152).**

Persons not applicants who seek to modify, amend or stay existing orders or rules of the agency, to clarify their rights or obligations under law administered by the agency, to ask the agency to initiate a contested case (other than an application or complaint), or to otherwise take action that will result in the issuance of an order or rule, are called "petitioners." (3-24-93)

**153. COMPLAINANTS (RULE 153).**

Persons who charge other person(s) with any act or omission are called "complainants." In any proceeding in which the agency itself charges a person with an act or omission, the agency is called "complainant." (3-24-93)

**154. RESPONDENTS (RULE 154).**

Persons against whom complaints are filed or about whom investigations are initiated are called "respondents." (3-24-93)

**155. PROTESTANTS (RULE 155).**

Persons who oppose an application or claim or appeal and who have a statutory right to contest the right, license, award or authority sought by an applicant or claimant or appellant are called "protestants." (3-24-93)

**156. INTERVENORS (RULE 156).**

Persons, not applicants or claimants or appellants, complainants, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354 are called "intervenors." (3-24-93)

**157. RIGHTS OF PARTIES AND OF AGENCY STAFF (RULE 157).**

Subject to Rules 558, 560, and 600, all parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (3-24-93)

**158. PERSONS DEFINED -- PERSONS NOT PARTIES -- INTERESTED PERSONS (RULE 158).**

The term "person" includes natural persons, partnerships, corporations, associations, municipalities, government entities and subdivisions, and any other entity authorized by law to participate in the administrative proceeding. Persons other than the persons named in Rules 151 through 156 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. In kinds of proceedings in which persons other than the applicant or claimant or appellant, petitioner, complainant, or respondent would be expected to have an interest, persons may request the agency in writing that they be notified when proceedings of that kind are initiated. These persons are called "Interested Persons." Interested persons may become protestants, intervenors or public witnesses. The agency must serve notice of such proceedings on all interested persons. (3-24-93)

**159. -- 199. (RESERVED)**

**Rules 200 through 209**  
**Representatives of Parties**

**200. INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES (RULE 200).**

The initial pleading of each party at the formal stage of a contested case (be it an application or claim or appeal, petition, complaint, protest, motion, or answer) must name the party's representative(s) for service and state the representative's(s') address(es) for purposes of receipt of all official documents. Unless authorized by order of the agency, no more than two (2) representatives for service of documents may be listed in an initial pleading. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party's representative, the first person signing the pleading will be considered the party's representative. (3-24-93)

**201. TAKING OF APPEARANCES -- PARTICIPATION BY AGENCY STAFF (RULE 201).**

The presiding officer at a formal hearing or prehearing conference will take appearances to identify the representatives of all parties or other persons. In all proceedings in which the agency staff will participate, or any report or recommendation of the agency staff (other than a recommended order or preliminary order prepared by a hearing officer) will be considered or used in reaching a decision, at the timely request of any party the agency staff must appear at any hearing and be available for cross-examination and participate in the hearing in the same manner as a party. (3-24-93)

**202. REPRESENTATION OF PARTIES AT HEARING (RULE 202).**

**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: (3-24-93)

**a.** Natural Person. A natural person may represent himself or herself or be represented by a duly authorized employee, attorney, family member or next friend. (3-24-93)

**b.** A partnership may be represented by a partner, duly authorized employee, or attorney. (3-24-93)

**c.** A corporation may be represented by an officer, duly authorized employee, or attorney. (3-24-93)

**d.** A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. (3-24-93)

**e.** A state, federal or tribal governmental entity or agency may be represented by an officer, duly authorized employee, or attorney. (3-24-93)

**02. 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. (3-24-93)

**203. SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS (RULE 203).**

From the time a party files its initial pleading in a contested case, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties' representatives designated pursuant to Rule 200, unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The presiding officer may order parties to serve past or future documents filed in the case upon persons not parties to the proceedings before the agency. (3-24-93)

**204. WITHDRAWAL OF PARTIES (RULE 204).**

Any party may withdraw from a proceeding in writing or at hearing. (3-24-93)

**205. SUBSTITUTION OF REPRESENTATIVE -- WITHDRAWAL OF REPRESENTATIVE (RULE 205).**

A party's representative may be changed and a new representative may be substituted by notice to the agency and to all other parties so long as the proceedings are not unreasonably delayed. The presiding officer at hearing may permit substitution of representatives at hearing in the presiding officer's discretion. Persons representing a party who wish to withdraw their representation of a party in a proceeding before the agency must immediately file in writing a notice of withdrawal of representation and serve that notice on the party represented and all other parties. (3-24-93)

**206. CONDUCT REQUIRED (RULE 206).**

Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. (3-24-93)

**207. -- 209. (RESERVED)**

**Rules 210 through 299**  
**Pleadings -- In General**

**210. PLEADINGS LISTED -- MISCELLANEOUS (RULE 210).**

Pleadings in contested cases are called applications or claims or appeals, petitions, complaints, protests, motions, answers, and consent agreements. Affidavits or declarations under penalty of perjury may be filed in support of any pleading. A party's initial pleading in any proceeding must comply with Rule 200, but the presiding officer may allow documents filed during informal stages of the proceeding to be considered a party's initial pleading without the requirement of resubmission to comply with this rule. All pleadings filed during the formal stage of a proceeding must be filed in accordance with Rules 300 through 303. A party may adopt or join any other party's pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1) pleading. (3-24-93)

**211. -- 219. (RESERVED)**

**220. APPLICATIONS/CLAIMS/APPEALS -- DEFINED -- FORM AND CONTENTS (RULE 220).**

**01. Applications/Claims/Appeals Defined.** All pleadings requesting a right, license, award or authority from the agency are called "applications" or "claims" or "appeals." (3-24-93)

**02. Form and Content.** Applications or claims or appeals should: (3-24-93)

**a.** Fully state the facts upon which they are based; (3-24-93)

**b.** Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based; and (3-24-93)

**c.** State the right, license, award, or authority sought. (3-24-93)

**221. -- 229. (RESERVED)**

**230. PETITIONS -- DEFINED -- FORM AND CONTENTS (RULE 230).**

- 01. Petitions Defined.** All pleadings requesting the following are called “petitions.” (3-24-93)
- a.** Modification, amendment or stay of existing orders or rules; (3-24-93)
  - b.** Clarification, declaration or construction of the law administered by the agency or of a party’s rights or obligations under law administered by the agency; (3-24-93)
  - c.** The initiation of a contested case not an application, claim or complaint or otherwise taking action that will lead to the issuance of an order or a rule; (3-24-93)
  - d.** Reconsideration; or (3-24-93)
  - e.** Intervention. (3-24-93)
- 02. Form and Contents.** Petitions should: (3-24-93)
- a.** Fully state the facts upon which they are based; (3-24-93)
  - b.** Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; (3-24-93)
  - c.** State the relief desired; and (3-24-93)
  - d.** State the name of the person petitioned against (the respondent), if any. (3-24-93)

**231. -- 239. (RESERVED)**

**240. COMPLAINTS -- DEFINED -- FORM AND CONTENTS (RULE 240).**

- 01. Complaints Defined.** All pleadings charging other person(s) with acts or omissions under law administered by the agency are called “complaints.” (3-24-93)
- 02. Form and Contents.** Complaints must: (3-24-93)
- a.** Be in writing; (3-24-93)
  - b.** Fully state the acts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions and the dates when they occurred; (3-24-93)
  - c.** Refer to statutes, rules, orders or other controlling law involved; (3-24-93)
  - d.** State the relief desired; (3-24-93)
  - e.** State the name of the person complained against (the respondent). (3-24-93)

**241. -- 249. (RESERVED)**

**250. PROTESTS -- DEFINED -- FORM AND CONTENTS (RULE 250).**

- 01. Protests Defined.** All pleadings opposing an application or claim or appeal as a matter of right are called “protests.” (3-24-93)
- 02. Form and Contents.** Protests should: (3-24-93)

- a. Fully state the facts upon which they are based, including the protestant's claim of right to oppose the application or claim; (3-24-93)
- b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and (3-24-93)
- c. State any proposed limitation (or the denial) of any right, license, award or authority sought in the application. (3-24-93)

**251. -- 259. (RESERVED)**

**260. MOTIONS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 260).**

**01. Motions Defined.** All other pleadings requesting the agency to take any other action in a contested case, except consent agreements or pleadings specifically answering other pleadings, are called "motions." (3-24-93)

**02. Form and Contents.** Motions should: (3-24-93)

- a. Fully state the facts upon they are based; (3-24-93)
- b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and (3-24-93)
- c. State the relief sought. (3-24-93)

**03. Oral Argument -- Time for Filing.** If the moving party desires oral argument or hearing on the motion, it must state so in the motion. Any motion to dismiss, strike or limit an application or claim or appeal, complaint, petition, or protest must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within fourteen (14) days after service of the answer. Other motions may be filed at any time upon compliance with Rule 565. (3-24-93)

**261. -- 269. (RESERVED)**

**270. ANSWERS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 270).**

All pleadings responding to the allegations or requests of applications or claims or appeals, complaints, petitions, protests, or motions are called "answers." (3-24-93)

**01. Answers to Pleadings Other Than Motions.** Answers to applications, claims, or appeals, complaints, petitions, or protests must be filed and served on all parties of record within twenty-one (21) days after service of the pleading being answered, unless order or notice modifies the time within which answer may be made, or a motion to dismiss is made within twenty-one (21) days. When an answer is not timely filed under this rule, the presiding officer may issue a notice of default against the respondent pursuant to Rule 700. Answers to applications or claims or appeals, complaints, petitions, or protests must admit or deny each material allegation of the application or claim or appeal, complaint, petition or protest. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. (3-24-93)

**02. Answers to Motions.** Answers to motions may be filed by persons or parties who are the object of a motion or by parties opposing a motion. The person or party answering the motion must do so with all deliberate and reasonable speed. In no event is a party entitled to more than fourteen (14) days to answer a motion or to move for additional time to answer. The presiding officer may act upon a prehearing motion under Rule 565. (3-24-93)

**271. -- 279. (RESERVED)**

**280. CONSENT AGREEMENTS -- DEFINED: FORM AND CONTENTS (RULE 280).**

**01. Consent Agreements Defined.** Agreements between the agency or agency staff and another person(s) in which one (1) or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of law, are called “consent agreements.” Consent agreements are intended to require compliance with existing law. (3-24-93)

**02. Requirements.** Consent agreements must: (3-24-93)

**a.** Recite the parties to the agreement; and (3-24-93)

**b.** Fully state the conduct proscribed or prescribed by the consent agreement. (3-24-93)

**03. Additional.** In addition, consent agreements may: (3-24-93)

**a.** Recite the consequences of failure to abide by the consent agreement; (3-24-93)

**b.** Provide for payment of civil or administrative penalties authorized by law; (3-24-93)

**c.** Provide for loss of rights, licenses, awards or authority; (3-24-93)

**d.** Provide for other consequences as agreed to by the parties; and (3-24-93)

**e.** Provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. (3-24-93)

**281. -- 299. (RESERVED)**

**300. FILING DOCUMENTS WITH THE AGENCY -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX) (RULE 300).**

An original and necessary copies (if any are required by the agency) of all documents intended to be part of an agency record must be filed with the officer designated by the agency to receive filing in the case. Pleadings and other documents not exceeding ten (10) pages in length requiring urgent or immediate action may be filed by facsimile transmission (FAX) if the agency’s individual rule of practice lists a FAX number for that agency. Whenever any document is filed by FAX, if possible, originals must be delivered by overnight mail the next working day. (3-24-93)

**301. FORM OF PLEADINGS (RULE 301).**

**01. Form.** All pleadings, except those filed on agency forms, submitted by a party and intended to be part of an agency record must: (3-24-93)

**a.** Be submitted on white eight and one-half inch (8 1/2”) by eleven inch (11”) paper copied on one (1) side only; (3-24-93)

**b.** State the case caption, case number and title of the document; (3-24-93)

**c.** Include on the upper left corner of the first page the name(s), mailing and street address(es), and telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; and (3-24-93)

**d.** Have at least one inch (1”) left and top margins. (3-24-93)

**02. Example.** Documents complying with this rule will be in the following form:

Name of Representative  
Mailing Address of Representative  
Street Address of Representative (if different)  
Telephone Number of Representative  
FAX Number of Representative (if there is one)  
Attorney/Representative for (Name of Party)

BEFORE THE AGENCY

(Title of Proceeding)

CASE NO.

(TITLE OF DOCUMENT)

(3-24-93)

**302. SERVICE ON PARTIES AND OTHER PERSONS (RULE 302).**

All documents intended to be part of the agency record for decision must be served upon the representatives of each party of record concurrently with the original filing with the officer designated by the agency to receive filings in the case. When a document has been filed by FAX, it must be served upon all other parties with FAX facilities by FAX and upon the remaining parties by overnight mail, hand delivery, or the next best available service if these services are not available. The presiding officer may direct that some or all of these documents be served on interested or affected persons who are not parties. (3-24-93)

**303. PROOF OF SERVICE (RULE 303).**

Every document that a party or interested persons files with and intends to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have this day \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_, served the foregoing (name(s) of document(s)) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names and addresses)). (by facsimile transmission to: (list names and FAX numbers)) (by e-mail to: (list names and e-mail addresses)).

(Signature)

(4-7-11)

**304. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 304).**

Defective, insufficient or late pleadings may be returned or dismissed.

(3-24-93)

**305. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS (RULE 305).**

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing. (3-24-93)

**306. -- 349. (RESERVED)**

**Rules 350 through 399**  
**Intervention -- Public Witnesses**

**350. ORDER GRANTING INTERVENTION NECESSARY (RULE 350).**

Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party. (3-24-93)

**351. FORM AND CONTENTS OF PETITIONS TO INTERVENE (RULE 351).**

Petitions to intervene must comply with Rules 200, 300, and 301. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. (3-24-93)

**352. TIMELY FILING OF PETITIONS TO INTERVENE (RULE 352).**

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. (3-24-93)

**353. GRANTING PETITIONS TO INTERVENE (RULE 353).**

If a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding. (3-24-93)

**354. ORDERS GRANTING INTERVENTION -- OPPOSITION (RULE 354).**

No order granting a petition to intervene will be acted upon fewer than seven (7) days after its filing, except in a hearing in which any party may be heard. Any party opposing a petition to intervene by motion must file the motion within seven (7) days after receipt of the petition to intervene and serve the motion upon all parties of record and upon the person petitioning to intervene. (3-24-93)

**355. PUBLIC WITNESSES (RULE 355).**

Persons not parties and not called by a party who testify at hearing are called "public witnesses." Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 558 and 560, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits introduced at hearing, except that public witnesses offering expert opinions at hearing or detailed analyses or detailed exhibits must comply with Rule 530 with regard to filing and service of testimony and exhibits to the same extent as expert witnesses of parties. (3-24-93)

**356. -- 399. (RESERVED)**

**Rules 400 through 499**  
**Declaratory Rulings and Orders --**  
**Hearing Officers -- Presiding Officers**

**Rules 400 through 409**  
**Declaratory Rulings**

**400. FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS (RULE 400).**

Any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the agency must substantially comply with this rule. (3-24-93)

- 01. Form.** The petition shall: (3-24-93)
  - a.** Identify the petitioner and state the petitioner's interest in the matter; (3-24-93)
  - b.** State the declaratory ruling that the petitioner seeks; and (3-24-93)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. (3-24-93)

**02. Legal Assertions.** Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-24-93)

**401. NOTICE OF PETITION FOR DECLARATORY RULING (RULE 401).**

Notice of petition for declaratory ruling may be issued in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition. (3-24-93)

**402. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER (RULE 402).**

**01. Final Agency Action.** The agency's decision on a petition for declaratory ruling on the applicability of any statute, rule or order administered by the agency is a final agency action decided by order. (3-24-93)

**02. Content.** The order issuing the declaratory ruling shall contain or must be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-24-93)

a. This is a final agency action issuing a declaratory ruling. (3-24-93)

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this declaratory ruling may appeal to district court by filing a petition in the District Court in the county in which: (3-24-93)

i. A hearing was held; (3-24-93)

ii. The declaratory ruling was issued; (3-24-93)

iii. The party appealing resides, or operates its principal place of business in Idaho; or (7-1-97)

iv. The real property or personal property that was the subject of the declaratory ruling is located. (3-24-93)

c. This appeal must be filed within twenty-eight (28) days of the service date of this declaratory ruling. See Section 67-5273, Idaho Code. (3-24-93)

**403. -- 409. (RESERVED)**

**Rules 410 through 499**  
**Hearing Officers -- Presiding Officers**

**410. APPOINTMENT OF HEARING OFFICERS (RULE 410).**

A hearing officer is a person other than the agency head appointed to hear contested cases on behalf of the agency. Unless otherwise provided by statute or rule, hearing officers may be employees of the agency or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. The appointment of a hearing officer is a public record available for inspection, examination and copying. (3-24-93)

**411. HEARING OFFICERS CONTRASTED WITH AGENCY HEAD (RULE 411).**

Agency heads are not hearing officers, even if they are presiding at contested cases. The term "hearing officer" as used in these rules refers only to officers subordinate to the agency head. (3-24-93)

**412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 412).**

Pursuant to Section 67-5252, Idaho Code, any party shall have a right to one (1) disqualification without cause of any person serving or designated to serve as a presiding officer and any party shall have a right to move to disqualify a

hearing officer for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency hearing the contested case, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified. Any party may, within fourteen (14) days, petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or promptly upon discovering facts establishing grounds for disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting the designation by a presiding officer. A hearing officer whose disqualification is requested shall determine in writing whether to grant the petition for disqualification, stating facts and reasons for the hearing officer's determination. Disqualification of agency heads, if allowed, will be pursuant to Sections 59-704 and 67-5252(4), Idaho Code. (3-24-93)

**413. SCOPE OF AUTHORITY OF HEARING OFFICERS (RULE 413).**

The scope of hearing officers' authority may be restricted in the appointment by the agency. (3-24-93)

**01. Scope of Authority.** Unless the agency otherwise provides hearing, officers have the standard scope of authority, which is: (3-24-93)

**a.** Authority to schedule cases assigned to the hearing officer, including authority to issue notices of prehearing conference and of hearing, as appropriate; (3-24-93)

**b.** Authority to schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; (3-24-93)

**c.** Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, and otherwise oversee the orderly presentations of the parties at hearing; and (3-24-93)

**d.** Authority to issue a written decision of the hearing officer, including a narrative of the proceedings before the hearing officer and findings of fact, conclusions of law, and recommended or preliminary orders by the hearing officer. (3-24-93)

**02. Limitation.** The hearing officer's scope of authority may be limited from the standard scope, either in general, or for a specific proceeding. For example, the hearing officer's authority could be limited to scope Rule 413.01.c. (giving the officer authority only to conduct hearing), with the agency retaining all other authority. Hearing officers may be given authority with regard to the agency's rules as provided in Rule 416. (3-24-93)

**414. PRESIDING OFFICER(S) (RULE 414).**

One (1) or more members of the agency board, the agency director, or duly appointed hearing officers may preside at hearing as authorized by statute or rule. When more than one officer sits at hearing, they may all jointly be presiding officers or may designate one of them to be the presiding officer. (3-24-93)

**415. CHALLENGES TO STATUTES (RULE 415).**

A hearing officer in a contested case has no authority to declare a statute unconstitutional. However, when a court of competent jurisdiction whose decisions are binding precedent in the state of Idaho has declared a statute unconstitutional, or when a federal authority has preempted a state statute or rule, and the hearing officer finds that the same state statute or rule or a substantively identical state statute or rule that would otherwise apply has been challenged in the proceeding before the hearing officer, then the hearing officer shall apply the precedent of the court or the preemptive action of the federal authority to the proceeding before the hearing officer and decide the proceeding before the hearing officer in accordance with the precedent of the court or the preemptive action of the federal authority. (3-24-93)

**416. REVIEW OF RULES (RULE 416).**

When an order is issued by the agency head in a contested case, the order may consider and decide whether a rule of that agency is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure. The agency head may delegate to a hearing officer the authority to recommend a decision on issues of whether a rule is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure or may retain all such authority itself. (3-24-93)



**417. EX PARTE COMMUNICATIONS (RULE 417).**

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. However, when a presiding officer becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and distribute a copy of it to all parties of record or order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications.

(3-24-93)

**418. -- 419. (RESERVED)**

**420. CONTRAST BETWEEN AGENCY'S PROSECUTORIAL/INVESTIGATIVE AND ADJUDICATORY FUNCTIONS (RULE 420).**

When statute assigns to an agency both (1) the authority to initiate complaints or to investigate complaints made by the public, and (2) the authority to decide the merits of complaints, the agency is required to perform two distinct functions: prosecutorial/investigative and adjudicatory. In light of these dual functions, Rules 420 through 429 set forth procedures to be followed by the agency head, agency attorneys, agency staff and hearing officers in processing these complaints or responding to citizen inquiries. As used in Rules 420 through 429, the term agency head means the officer or officers who exercise the agency's ultimate adjudicatory authority and includes individual members of a multimember board or commission comprising the agency head when a multimember board of commission exercises ultimate adjudicatory authority. These rules do not apply to elected constitutional officers in the exercise of their constitutional duties, either individually or in constitutional boards or commissions.

(1-1-95)

**01. Prosecutorial/Investigative Function.** The prosecutorial/investigative function (including issuing a complaint) can be performed exclusively by agency attorneys and agency staff. When required or allowed by statute, the agency head may participate in or supervise investigations preceding the issuance of a complaint and may supervise the agency attorneys and agency staff conducting the prosecution of the complaint issued by the agency head, but the agency head (or members of the agency head) shall not participate in the prosecution of a formal contested case hearing for a complaint issued by the agency unless the agency head or that member does not participate in the adjudicatory function. The investigative function includes gathering of evidence outside of formal contested case proceedings. The prosecutorial function includes presentation of allegations or evidence to the agency head for determination whether a complaint will be issued, the issuance of a complaint when complaints are issued without the involvement of an agency adjudicator, and presentation of evidence or argument and briefing on the record in a formal contested case proceeding.

(1-1-95)

**02. Adjudicatory Function.** The adjudicatory function is performed by the agency head or the agency head's designee and/or hearing officers. The adjudicatory function includes: deciding whether to issue a complaint upon the basis of allegations before the agency when the decision to issue the complaint is made by an agency head acting in an adjudicatory capacity, i.e., when presented by agency staff in a formal setting with the question whether a complaint shall be issued; deciding whether to accept a consent order or other settlement of a complaint when the decision to accept a consent order or other settlement is made by an agency head acting in an adjudicatory capacity; and deciding the merits of a complaint following presentation of evidence in formal contested case proceedings. The adjudicatory function also includes agency attorneys' advice to the agency head or hearing officer in the performance of any adjudicatory functions.

(1-1-95)

**421. PUBLIC INQUIRIES ABOUT OR RECOMMENDATIONS FOR AGENCY ISSUANCE OF A COMPLAINT (RULE 421).**

This rule sets forth procedures to be followed by the agency head, agency attorneys, agency staff and hearing officers upon receipt of a public inquiry whether, or public recommendation that, the agency issue a complaint.

(1-1-95)

**01. The Agency Head.** When the public contacts the agency head to inquire whether a complaint should be issued by the agency or to recommend that a complaint be issued, the agency head may: explain the agency's procedures; explain the agency's jurisdiction or authority (including the statutes or rules administered by the

agency); and direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a complaint before the agency. When the agency head issues complaints, the agency head may discuss whether given allegations would, in the agency head's opinion, warrant the issuance of a complaint or warrant direction to staff to pursue further investigation. No statement of the agency head in response to a public inquiry constitutes a finding of fact or other decision on the underlying matter. (1-1-95)

**02. The Agency Attorney.** When the public contacts an agency attorney to inquire whether a complaint should be issued by the agency or to recommend that a complaint be issued, the agency attorney may: explain the agency's procedures; explain the agency's jurisdiction or authority (including an explanation of the statutes or rules administered by the agency); and direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a complaint before the agency. An agency attorney assigned to a prosecutorial/investigative role may discuss whether given allegations would, in the attorney's opinion, warrant the issuance of a complaint or warrant direction to staff to pursue further investigation. The agency is not bound by the attorney's advice or recommendations, and the attorney should notify the public that the agency is not obligated to follow the attorney's advice or recommendations. (1-1-95)

**03. The Agency Staff.** When the public contacts the agency staff to inquire whether a complaint should be issued or to recommend that a complaint be issued, a member of the agency staff authorized to respond to public inquiries about complaints may: explain the agency's procedures; explain the agency's jurisdiction or authority (including an explanation of the statutes or rules administered by the agency); direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a complaint before the agency; and express an opinion whether given allegations would, in the agency staff's opinion, warrant the issuance of a complaint or warrant agency staff's further investigation. The agency is not bound by the agency staff's advice or recommendations, and the agency staff should notify the public that the agency is not obligated to follow the agency staff's advice or recommendations. (1-1-95)

**04. Hearing Officers.** When the public contacts a hearing officer to inquire whether a complaint should be issued by the agency or to recommend that a complaint be issued, the hearing officer should not discuss the matter, but should refer the member of the public to other agency personnel. (1-1-95)

**422. CONSIDERATION OF CONSENT AGREEMENT OR OTHER SETTLEMENTS BEFORE COMPLAINT ISSUED (RULE 422).**

This rule sets forth procedures to be followed when a consent agreement, stipulated settlement, or other settlement is negotiated before a complaint is filed. (1-1-95)

**01. Negotiations.** As authorized by the agency, an attorney assigned to a prosecutorial/investigative role or members of the agency staff may negotiate consent agreements or other settlements with any person who might later be the subject of a complaint. When the agency head issues complaints, the agency head may participate in the negotiations. Otherwise, no member of the agency head, no attorney assigned to advise or assist the agency head in its adjudicatory function, and no hearing officer may participate in these negotiations, but the agency head may have rules or guidelines for issuance of consent agreements or other general policy statements available to guide individual negotiations. (1-1-95)

**02. Presentation of Consent Agreement to Agency Head.** When the consent agreement provides, or the persons signing the consent agreement contemplate, that the consent agreement must be presented to the agency head for approval, the consent agreement may be presented to the agency head by representatives of any party, unless the agreement provides to the contrary. Any consent agreement presented to the agency head must be served on all parties and on the agency staff. (1-1-95)

**03. Agency Head Consideration of Consent Agreement.** A consent agreement that is presented to the agency head for approval, disapproval or modification must be reviewed under this rule. The agency head may accept or reject the consent agreement, indicate how the consent agreement must be modified to be acceptable, or inform the parties what further information is required for the agency head's consideration of the consent agreement. When a consent agreement is rejected, no matter recited in the rejected consent agreement may be used as an admission against a party in any later proceeding before the agency, and any such matter must be proven by evidence independent of the consent agreement. (1-1-95)

**423. PROCEDURES AFTER ISSUANCE OF A COMPLAINT AND BEFORE THE AGENCY HEAD'S CONSIDERATION OF THE COMPLAINT (RULE 423).**

This rule sets forth procedures to be followed by the agency head, agency attorneys, agency staff and hearing officers after a complaint is issued, while investigation or discovery is underway, while a hearing is conducted, and before the recommended order or preliminary order of the hearing officer is submitted to the agency head (if a hearing officer hears the complaint and issues a recommended or preliminary order). (1-1-95)

**01. The Agency Head. (1-1-95)**

**a.** Prohibited Contacts--allowable Managerial Reporting. Unless authorized or required by statute, the agency head shall not discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint. The agency head may request periodic progress reporting on staff preparation from an executive director or other staff member in charge. For example, the agency head may ask whether the agency staff will be prepared to present its case by a given date. As required to perform statutory supervisory duties, the agency head may approve or disapprove expenditures associated with the prosecution, authorize retention of experts or outside counsel for the prosecution, address policy issues that may affect the prosecution, and otherwise discharge the agency head's statutory management and supervisory duties. (1-1-95)

**b.** Allowed Contacts. The agency head may discuss the substance of the complaint with agency attorneys and agency staff who are not involved in the prosecution or investigation of the complaint. When one or more members of the agency head sits with a hearing officer to hear the contested case, any member of the agency head not participating in the prosecution and not supervising prosecutorial/investigative personnel may discuss the substance of the complaint with the hearing officer. (1-1-95)

**02. The Agency Attorney. (1-1-95)**

**a.** Prosecutorial/Investigative Attorneys. Except as authorized by Subsection 423.01.a. of this rule, no agency attorney involved in the investigation or prosecution of a complaint shall discuss the substance of the complaint ex parte with the agency head, a hearing officer assigned to hear the complaint, or with any agency attorney assigned to advise or assist the agency head or to advise or assist a hearing officer assigned to hear the complaint; provided, that when a hearing officer has made a bench ruling and has on the record directed the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the bench ruling, or when a hearing officer has by written document served on all parties ordered the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the written document, the agency attorney may contact the hearing officer in connection with the preparation of the written document to be submitted to the hearing officer. (1-1-95)

**b.** Advisory Attorneys. Except as authorized by Subsection 423.01.a. of this rule, no agency attorney assigned to advise or assist the agency head or hearing officer shall discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint. An agency attorney assigned to advise or assist the agency head or hearing officer may discuss the substance of the complaint with the hearing officer or agency head. (1-1-95)

**03. The Agency Staff. (1-1-95)**

**a.** Prosecutorial/Investigative Staff. Except as authorized by Subsection 423.01.a. of this rule, no member of the agency staff involved in the investigation or prosecution of the complaint shall discuss the substance of the complaint ex parte with the agency head, a hearing officer assigned to hear the complaint, or with any agency attorney assigned to advise or assist the agency head or to advise or assist a hearing officer assigned to hear the complaint, except as provided in Subsection 423.04.b. of this rule and in Subsections 425.01 and 425.03. (1-1-95)

**b.** Advisory Staff. Except as authorized by Subsection 423.01.a. of this rule, no agency staff assigned to advise or assist the agency head or hearing officer shall discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint. Agency staff assigned to advise or assist the agency head or hearing officer may discuss the substance of the complaint with the hearing officer or agency head. (1-1-95)

**04. Hearing Officers.** Hearing officers may discuss the substance of the complaint with attorneys of the agency assigned to advise or assist the hearing officer and with other hearing officers. Hearing officers may discuss the substance of the complaint with the agency head as authorized by Subsection 423.01.b of this rule. No hearing officer shall discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint; except: (1-1-95)

**a.** Bench Rulings, etc. When a hearing officer has made a bench ruling and has on the record directed the attorney for a party or the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the bench ruling, or when a hearing officer has by written document served on all parties directed the attorney for a party or the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the written document, the hearing officer may contact the attorney for the party or the agency attorney in connection with the preparation of the written document to be submitted to the hearing officer. (1-1-95)

**b.** Technical Calculations. If the consideration of the complaint requires technical calculations, etc., that can most efficiently be performed by a person who participated in the investigation or hearing, the hearing officer may direct that person to perform the calculations, etc., for the hearing officer's use in the recommended order or preliminary order. (1-1-95)

**424. HEARING OFFICERS (RULE 424).**

No hearing officer may discuss the substance of a complaint ex parte with any agency attorney or agency staff involved in the investigation or prosecution of the complaint, with any representative of any party, or with any member of the public at large at any stage of the agency's consideration of the complaint or pending judicial review of the agency's decision in the complaint, except as allowed in Subsections 423.02.a. and 423.04. A hearing officer may consult with any other hearing officer. A hearing officer may consult with the agency head as authorized by Subsections 423.01.b. and 425.01. A hearing officer may consult with an agency attorney assigned to advise or assist the hearing officer. The agency may appoint as a hearing officer the agency attorney who will advise or assist the agency head in consideration of the complaint, but this agency attorney cannot participate in the prosecution of the complaint or have ex parte contact with any party to the complaint or the agency's prosecutorial/investigative staff. (1-1-95)

**425. AGENCY HEAD'S CONSIDERATION OF RECOMMENDED OR PRELIMINARY ORDER (RULE 425).**

This rule sets forth procedures to be followed by the agency head, agency attorneys, agency staff, and hearing officers after the hearing officer's recommended order or preliminary order has been placed before the agency head for review. (1-1-95)

**01. The Agency Head.** In considering the hearing officer's recommended order or preliminary order, the agency head may consult with an agency attorney assigned to advise or assist the agency head and with agency staff who did not participate in the investigation or prosecution of the complaint. As allowed in Subsection 423.01.b. when one (1) or more members of the agency head and the hearing officer hear the complaint, the agency head may consult with the hearing officer who heard the complaint and prepared the recommended order or preliminary order or with other hearing officers. The agency head shall not discuss the substance of the complaint ex parte with any representative of any party or with agency attorneys or agency staff involved in the prosecution or investigation of the complaint; except: (1-1-95)

**a.** Bench Rulings, etc. When the agency head has made a bench ruling and has on the record directed the attorney for a party or the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the bench ruling, or when the agency head has by written document served on all parties directed the attorney for a party or the agency attorney to prepare findings of fact and other reasoning supporting the decision in conformance with the written document, the agency head may contact the attorney for the party or the agency attorney in connection with the preparation of the written document to be submitted to the agency head. (1-1-95)

**b.** Technical Calculations. If the consideration of the complaint requires technical calculations, etc., that can most efficiently be performed by a person who participated in the investigation or hearing, the agency head

may direct that person to perform the calculations, etc., for the agency head's use in the final order. (1-1-95)

**02. The Agency Attorney.** (1-1-95)

**a.** Prosecutorial/Investigative Attorneys. No agency attorney involved in the investigation or prosecution of a complaint shall consult with the agency head considering the hearing officer's recommended order or preliminary order, except as provided in Subsections 423.01 and 423.02.a. An agency attorney who was involved in the investigation or prosecution of the complaint may attend public meetings of the agency head that consider complaints and may respond to questions from the agency head so long as the meetings have been noticed to all parties and all parties have the same opportunity to respond to questions from the agency head as the agency's prosecutorial/investigative attorneys. (1-1-95)

**b.** Advisory Attorneys. An agency attorney assigned to advise or assist the agency head in consideration of the complaint may consult with the agency head in preparation for or while the agency head is considering the hearing officer's recommended order or preliminary order or draft final order when one or more members of the agency head heard the case with the hearing officer. (1-1-95)

**03. The Agency Staff.** (1-1-95)

**a.** Prosecutorial/Investigative Staff. No member of the agency staff involved in the investigation or prosecution of the complaint shall consult with the agency head in its consideration of the recommended order or preliminary order, but a member of the agency staff who participated in the investigation or prosecution of the complaint may provide technical computations, etc., at the direction of the agency head as provided in Subsection 425.01 of this rule. (1-1-95)

**b.** Advisory Staff. Any member of the agency staff assigned to advise or assist the agency head may consult with the agency head at the agency head's direction. (1-1-95)

**04. Hearing Officers.** No hearing officer shall consult with any person other than the agency head or attorneys assigned to advise or assist the agency head during the agency head's consideration of the hearing officer's recommended order or preliminary order. A hearing officer may consult with a member of the agency head or the entire agency head or attorneys assigned to advise or assist the agency head only as allowed by Subsections 423.01.b. and 423.04 and Subsection 425.01.a. of this rule when one (1) or more members of the agency head and the hearing officer heard the complaint. (1-1-95)

**426. -- 499. (RESERVED)**

**Rules 500 through 699**  
**Post-Pleading Procedure**

**Rules 500 through 509**  
**Alternative Dispute Resolution (ADR)**

**500. ALTERNATIVE RESOLUTION OF CONTESTED CASES (RULE 500).**

The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, factfinding, minitrials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. An agency may use ADR for the resolution of issues in controversy in a contested case if the agency finds that such a proceeding is appropriate. An agency may find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. (3-24-93)

**501. NEUTRALS (RULE 501).**

When ADR is used for all or a portion of a contested case, the agency may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the agency or of another state agency or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. (3-24-93)

**502. CONFIDENTIALITY RULE 502).**

Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or the communication is required by court order, statute or agency rule to be made public. (3-24-93)

**503. -- 509. (RESERVED)**

**Rules 510 through 519**  
**Prehearing Conferences**

**510. PURPOSES OF PREHEARING CONFERENCES (RULE 510).**

The presiding officer may by order or notice issued to all parties and to all interested persons as defined in Section 158 convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery when discovery is authorized before the agency, arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. (7-1-97)

**511. NOTICE OF PREHEARING CONFERENCE (RULE 511).**

Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference must contain the same information as notices of hearing with regard to an agency's obligations under the American with Disabilities Act (See Rule 551). (3-24-93)

**512. RECORD OF CONFERENCE (RULE 512).**

Prehearing conferences may be held formally (on the record) or informally (off the record) before or in the absence of a presiding officer, according to order or notice. Agreements by the parties to the conference may be put on the record during formal conferences or may be reduced to writing and filed with the agency after formal or informal conferences. (3-24-93)

**513. ORDERS RESULTING FROM PREHEARING CONFERENCE (RULE 513).**

The presiding officer may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a prehearing conference. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. (3-24-93)

**514. FACTS DISCLOSED NOT PART OF THE RECORD (RULE 514).**

Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in prehearing conferences in a contested case are not part of the record. (3-24-93)

**515. -- 519. (RESERVED)**

**Rules 520 through 549**  
**Discovery-Related Prehearing Procedures**

**520. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 520).**

**01. Kinds of Discovery.** The kinds of discovery recognized by these rules in contested cases are:

- (7-1-97)
- a. Depositions; (3-24-93)
  - b. Production requests or written interrogatories; (3-24-93)
  - c. Requests for admission; (3-24-93)
  - d. Subpoenas; and (3-24-93)
  - e. Statutory inspection, examination (including physical or mental examination), investigation, etc. (3-24-93)

**02. Rules of Civil Procedure.** Unless otherwise provided by statute, rule, order or notice, when discovery is authorized before the agency, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). (7-1-97)

**521. WHEN DISCOVERY AUTHORIZED (RULE 521).**

Parties may agree between or among themselves to provide for discovery without reference to an agency's statutes, rules of procedure, or orders. Otherwise no party before the agency is entitled to engage in discovery unless discovery is authorized before the agency, the party moves to compel discovery, and the agency issues an order directing that the discovery be answered. The presiding officer shall provide a schedule for discovery in the order compelling discovery, but the order compelling and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. The agency or agency staff may conduct statutory inspection, examination, investigation, etc., at any time without filing a motion to compel discovery. (7-1-97)

**522. RIGHTS TO DISCOVERY RECIPROCAL (RULE 522).**

All parties to a proceeding have a right of discovery of all other parties to a proceeding as allowed by Rule 521 and the agency's authorizing statutes and rules. Rules 523 through 525, 527 and 528 set forth the scope of various forms of discovery when those forms of discovery are authorized before the agency, but do not create an independent right of discovery. The presiding officer may by order authorize or compel necessary discovery authorized by statute or rule. (7-1-97)

**523. DEPOSITIONS (RULE 523).**

Depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. (3-24-93)

**524. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 524).**

Production requests or written interrogatories and requests for admission may be submitted in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. (3-24-93)

**525. SUBPOENAS (RULE 525).**

The agency may issue subpoenas as authorized by statute, upon a party's motion or upon its own initiative. The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms. (3-24-93)

**526. STATUTORY INSPECTION, EXAMINATION, INVESTIGATION, ETC. -- CONTRASTED WITH OTHER DISCOVERY (RULE 526).**

This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, examination (including mental or physical examination), investigation, etc. This statutory right of an agency is independent of and cumulative to any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, examination, investigation, etc., may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights of deposition, production request or written interrogatory, request for admission, and

subpoena, can be used by parties only in connection with formal proceedings before the agency. (3-24-93)

**527. ANSWERS TO PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND TO REQUESTS FOR ADMISSION (RULE 527).**

Answers to production requests or written interrogatories and to requests for admission shall be filed or served as provided by the order compelling discovery. Answers must conform to the requirements of the Idaho Rules of Civil Procedure. The order compelling discovery may provide that voluminous answers to requests need not be served so long as they are made available for inspection and copying under reasonable terms. (3-24-93)

**528. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS (RULE 528).**

Notices of deposition, cover letters stating that production requests, written interrogatories or requests for admission have been served, cover letters stating answers to production requests, written interrogatories, or requests for admission have been served or are available for inspection under Rule 527, and objections to discovery must be filed and served as provided in the order compelling discovery. (3-24-93)

**529. EXHIBIT NUMBERS (RULE 529).**

The agency assigns exhibit numbers to each party. (3-24-93)

**530. PREPARED TESTIMONY AND EXHIBITS (RULE 530).**

Order, notice or rule may require a party or parties to file before hearing and to serve on all other parties prepared expert testimony and exhibits to be presented at hearing. Assigned exhibits numbers should be used in all prepared testimony. (3-24-93)

**531. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 531).**

The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery. (3-24-93)

**532. PROTECTIVE ORDERS (RULE 532).**

As authorized by statute or rule, the agency may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. (3-24-93)

**533. -- 549. (RESERVED)**

**Rules 550 through 599**  
**Hearings -- Miscellaneous Procedure**

**550. NOTICE OF HEARING (RULE 550).**

Notice of the place, date and hour of hearing will be served on all parties at least fourteen (14) days before the time set for hearing, unless the agency finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must comply with the requirements of Rule 551. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number or docket number, the names of the presiding officers who will hear the case, the name, address and telephone number of the person to whom inquires about scheduling, hearing facilities, etc., should be directed, and the names of persons with whom the documents, pleadings, etc., in the case should be filed if the presiding officer is not the person who should receive those documents. If no document previously issued by the agency has listed the legal authority of the agency to conduct the hearing, the notice of hearing must do so. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy of the rules of procedure. (3-24-93)

**551. FACILITIES AT OR FOR HEARING AND ADA REQUIREMENTS (RULE 551).**

All hearings must be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act, and all notices of hearing must inform the parties that the hearing will be conducted in facilities meeting the accessibility requirements of the Americans with Disabilities Act. All notices of hearing must inform the parties and other persons notified that if they require assistance of the kind that the agency is required to provide under the Americans with Disabilities Act (e.g., sign language interpreters, Braille copies of documents) in order to participate in or understand the hearing, the agency will supply that assistance upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the hearing that the request must be



made. (3-24-93)

**552. HOW HEARINGS HELD (RULE 552).**

Hearings may be held in person or by telephone or television or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. (3-24-93)

**553. CONDUCT AT HEARINGS (RULE 553).**

All persons attending a hearing must conduct themselves in a respectful manner. Smoking is not permitted at hearings. (3-24-93)

**554. CONFERENCE AT HEARING (RULE 554).**

In any proceeding the presiding officer may convene the parties before hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer shall state the results of the conference on the record. (3-24-93)

**555. PRELIMINARY PROCEDURE AT HEARING (RULE 555).**

Before taking evidence the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements as necessary or appropriate to explain a party's presentation. (3-24-93)

**556. CONSOLIDATION OF PROCEEDINGS (RULE 556).**

The agency may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings the presiding officer determines the order of the proceeding. (3-24-93)

**557. STIPULATIONS (RULE 557).**

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented at hearing or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The agency is not bound to adopt a stipulation of the parties, but may do so. If the agency rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. (3-24-93)

**558. ORDER OF PROCEDURE (RULE 558).**

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. (3-24-93)

**559. TESTIMONY UNDER OATH (RULE 559).**

All testimony presented in formal hearings will be given under oath. Before testifying each witness must swear or affirm that the testimony the witness will give before the agency is the truth, the whole truth, and nothing but the truth. (3-24-93)

**560. PARTIES AND PERSONS WITH SIMILAR INTERESTS (RULE 560).**

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. (3-24-93)

**561. CONTINUANCE OF HEARING (RULE 561).**

The presiding officer may continue proceedings for further hearing. (3-24-93)

**562. RULINGS AT HEARINGS (RULE 562).**

The presiding officer rules on motions and objections presented at hearing. When the presiding officer is a hearing officer, the presiding officer's rulings may be reviewed by the agency head in determining the matter on its merits and the presiding officer may refer or defer rulings to the agency head for determination. (3-24-93)

**563. ORAL ARGUMENT (RULE 563).**

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. (3-24-93)

**564. BRIEFS -- MEMORANDA -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE PRESIDING OFFICER (RULE 564).**

In any contested case, any party may ask to file briefs, memoranda, proposed orders of the parties, or statements of position, and the presiding officer may request briefs, proposed orders of the parties, or statements of position. The presiding officer may issue a proposed order of the officer and ask the parties for comment upon the officer's proposed order. (3-24-93)

**565. PROCEDURE ON PREHEARING MOTIONS (RULE 565).**

The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. If oral argument or hearing on a motion is requested and denied, the presiding officer must state the grounds for denying the request. Unless otherwise provided by the presiding officer, when a motion has been filed, all parties seeking similar substantive or procedural relief must join in the motion or file a similar motion within seven (7) days after receiving the original motion. The party(ies) answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the last motion or joinder pursuant to the requirements of the previous sentence in which to respond. (3-24-93)

**566. JOINT HEARINGS (RULE 566).**

The agency may hold joint hearings with federal agencies, with agencies of other states, and with other agencies of the state of Idaho. When joint hearings are held, the agencies may agree among themselves which agency's rules of practice and procedure will govern. (3-24-93)

**567. -- 599. (RESERVED)**

**Rules 600 through 609**  
**Evidence in Contested Cases**

**600. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 600).**

Evidence should be taken by the agency to assist the parties' development of the record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence. (3-24-93)

**601. DOCUMENTARY EVIDENCE (RULE 601).**

Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original if available. (3-24-93)

**602. OFFICIAL NOTICE -- AGENCY STAFF MEMORANDA (RULE 602).**

Official notice may be taken of any facts that could be judicially noticed in the courts of Idaho and of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified of the specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. Notice that official notice will be taken should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material officially noticed. Parties must be given an opportunity to contest and rebut the facts or material officially noticed. When the presiding officer proposes to notice agency staff memoranda or agency staff reports, responsible staff employees or agents shall be made available for cross-examination if any party timely requests their availability. (3-24-93)

**603. DEPOSITIONS (RULE 603).**

Depositions may be offered into evidence. (3-24-93)

**604. OBJECTIONS -- OFFERS OF PROOF (RULE 604).**

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection, or, if the presiding officer is a hearing officer, the presiding officer may receive the evidence subject to later ruling by the agency head or refer the matter to the agency head. (3-24-93)

**605. PREPARED TESTIMONY (RULE 605).**

The presiding officer may order a witness's prepared testimony previously distributed to all parties to be included in the record of hearing as if read. Admissibility of prepared testimony is subject to Rule 600. (3-24-93)

**606. EXHIBITS (RULE 606).**

Exhibit numbers may be assigned to the parties before hearing. Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. Neither motion pictures, slides, opaque projections, videotapes, audiotapes nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without advance approval of the presiding officer. (3-24-93)

**607. -- 609. (RESERVED)**

**Rules 610 through 649**  
**Settlements**

**610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS (RULE 610).**

Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record. (3-24-93)

**611. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS (RULE 611).**

Through notice or order or on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. (3-24-93)

**612. CONSIDERATION OF SETTLEMENTS (RULE 612).**

Settlements must be reviewed under this rule. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the presiding officer may summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the agency's charge under the law. (3-24-93)

**613. BURDENS OF PROOF (RULE 613).**

Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. (3-24-93)

**614. SETTLEMENT NOT BINDING (RULE 614).**

The presiding officer is not bound by settlement agreements that are not unanimously accepted by all parties or that

have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. (3-24-93)

**615. -- 649. (RESERVED)**

**Rules 650 through 699**  
**Records for Decisions**

**650. RECORD FOR DECISION (RULE 650).**

**01. Requirement.** The agency shall maintain an official record for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case. (3-24-93)

**02. Contents.** The record for a contested case shall include: (3-24-93)

**a.** All notices of proceedings; (3-24-93)

**b.** All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; (3-24-93)

**c.** All intermediate or interlocutory rulings of hearing officers or the agency head; (3-24-93)

**d.** All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); (3-24-93)

**e.** All offers of proof, however made; (3-24-93)

**f.** All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; (3-24-93)

**g.** All evidentiary rulings on testimony, exhibits, or offers of proof; (3-24-93)

**h.** All staff memoranda or data submitted in connection with the consideration of the proceeding; (3-24-93)

**i.** A statement of matters officially noticed; and (3-24-93)

**j.** All recommended orders, preliminary orders, final orders, and orders on reconsideration. (3-24-93)

**651. RECORDING OR REPORTING OF HEARINGS (RULE 651).**

All hearings shall be recorded on audiotape or videotape or may be taken by a qualified court reporter at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. (7-1-97)

**652. -- 699. (RESERVED)**

**Rules 700 through 799**  
**Agency Orders and Review of Agency Orders**

**Rules 700 through 710**  
**Defaults**

**700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR (RULE 700).**

If an applicant or claimant or appellant, petitioner, complainant, or moving party fails to appear at the time and place set for hearing on an application or claim or appeal, petition, complaint, or motion, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim or appeal, petition, complaint, or motion. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the applicant or claimant or appellant, petitioner, complainant or moving party to appear at the time and place set for hearing. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. (3-24-93)

**701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER (RULE 701).**

Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered. (3-24-93)

**702. ISSUANCE OF DEFAULT ORDER (RULE 702).**

The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. If authorized by statute or rule, costs may be assessed against a defaulting party. (3-24-93)

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

**Rules 710 through 789**  
**Interlocutory, Recommended, Preliminary and**  
**Final Orders -- Review or Stay of Orders**

**710. INTERLOCUTORY ORDERS (RULE 710).**

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration or appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the officer issuing the order pursuant to Rules 711, 760, and 770. (3-24-93)

**711. REVIEW OF INTERLOCUTORY ORDERS (RULE 711).**

Any party or person affected by an interlocutory order may petition the officer issuing the order to review the interlocutory order. The officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the officer's own motion, but will not on the officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. (3-24-93)

**712. -- 719. (RESERVED)**

**720. RECOMMENDED ORDERS (RULE 720).**

**01. Definition.** Recommended orders are orders issued by a person other than the agency head that will become a final order of the agency only after review of the agency head (or the agency head's designee) pursuant to Section 67-5244, Idaho Code. (3-24-93)

**02. Content.** Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-24-93)

**a.** This is a recommended order of the hearing officer. It will not become final without action of the agency head. Any party may file a petition for reconsideration of this recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (3-24-93)

**b.** Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding. (3-24-93)

**c.** Written briefs in support of or taking exceptions to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have twenty-one (21) days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee of the agency head) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-24-93)

**721. -- 729. (RESERVED)**

**730. PRELIMINARY ORDERS (RULE 730).**

**01. Definition.** Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head (or the agency head's designee) pursuant to Section 67-5245, Idaho Code. (3-24-93)

**02. Content.** Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-24-93)

**a.** This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the agency. Any party may file a motion for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (3-24-93)

**b.** Within fourteen (14) days after (a) the service date of this preliminary order, (b) the service date of the denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this preliminary order will become a final order of the agency. (3-24-93)

**c.** If any party appeals or takes exceptions to this preliminary order, opposing parties shall have twenty-one (21) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head (or designee). The agency head (or designee) may review the preliminary order on its own motion. (3-24-93)

**d.** If the agency head (or designee) grants a petition to review the preliminary order, the agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (3-24-93)

**e.** Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

(3-24-93)

i. A hearing was held, (3-24-93)

ii. The final agency action was taken, (3-24-93)

iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or (7-1-97)

iv. The real property or personal property that was the subject of the agency action is located. (3-24-93)

**f.** This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (3-24-93)

**731. -- 739. (RESERVED)**

**740. FINAL ORDERS (RULE 740).**

**01. Definition.** Final orders are preliminary orders that have become final under Rule 730 pursuant to Section 67-5245, Idaho Code, or orders issued by the agency head pursuant to Section 67-5246, Idaho Code. Emergency orders issued under Section 67-5247, Idaho Code, shall be designated as final orders if the agency will not issue further orders or conduct further proceedings in the matter. (3-24-93)

**02. Content.** Every final order issued by the agency head must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (3-24-93)

**a.** This is a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code. (3-24-93)

**b.** Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (3-24-93)

i. A hearing was held, (3-24-93)

ii. The final agency action was taken, (3-24-93)

iii. The party seeking review of the order resides, or operates its principal place of business in Idaho, or (7-1-97)

iv. The real property or personal property that was the subject of the agency action is located. (3-24-93)

**c.** An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (3-24-93)

**741. ORDERS REGARDING COSTS AND/OR FEES (RULE 741).**

**01. Scope of Rule.** This rule provides procedures for considering requests for costs and/or fees (including attorneys' fees) when an agency has authority to award costs and/or fees under other provisions of law. This rule is not a source of authority for awarding costs and/or fees. (4-7-11)

**02. Time for Filing for Costs and/or Fees Awarded in Final Order or Preliminary Order.** Unless otherwise provided by statute or rule of the agency: (4-7-11)

**a.** Minimum time for filing. When a final order or a preliminary order of the agency awards costs and/or fees to a party or to the agency itself, the agency must allow no fewer than fourteen (14) days from the service date of the final order or the preliminary order for the party to whom costs and/or fees were awarded or for the agency to file necessary papers (e.g., a memorandum of costs, affidavits, exhibits, etc.) quantifying and otherwise supporting costs or fees, or both, that will be claimed or a motion to extend the time to file for costs and fees. (4-7-11)

**b.** Longer time allowed. The final order or preliminary order of the agency may extend the time to file papers for costs and/or fees beyond fourteen (14) days after the service date of the final order or preliminary order. (4-7-11)

**c.** When time not set forth. If statute, rules of the agency, and the final order or preliminary order of the agency are silent on the time for filing for costs and/or fees the deadline for filing for costs and/or fees and/or for moving for an extension of the time to file for costs and fees is fourteen (14) days from the service date of the final order or preliminary order. (4-7-11)

**d.** Untimely filing. The agency may exercise its discretion to consider and grant an untimely filing for costs and/or fees for good cause shown. (4-7-11)

**e.** Contents of filing. No particular form for filing for costs and fees is required, but in the absence of a statute or rule providing for standard costs and/or fees the papers supporting a claim for costs and/or fees should ordinarily contain an affidavit or declaration under oath detailing the costs and/or fees claimed. (4-7-11)

**f.** Supplemental filings. Paragraphs 741.02.a. through 741.02.e. of this rule do not prohibit a party or the agency from supplementing a filing for costs and/or fees. (4-7-11)

**03. Time for Petitioning for Costs and/or Fees When Costs and/or Fees Not Awarded in Final Order or Preliminary Order.** Unless otherwise provided by statute: (4-7-11)

**a.** Petition for reconsideration. When a final order or preliminary order of the agency does not award costs or fees to a party, and a party contends that the party is entitled to an award of costs and/or fees the party must file a petition for reconsideration addressing costs and/or fees within fourteen (14) days of the service date of the final order or preliminary order if the party wishes the agency to award costs and/or fees. (4-7-11)

**b.** Combination with other issues. The petition for reconsideration on costs and/or fees may be combined with a petition for reconsideration on other issues. (4-7-11)

**c.** Quantification not necessary. The petition for reconsideration can confine itself to the legal issue of entitlement to costs and/or fees and need not quantify the party's claimed costs and/or fees. However, the petition can be accompanied by papers quantifying the claimed costs and/or fees. (4-7-11)

**d.** Legal authority. Every petition for reconsideration filed under Subsection 741.03 should cite the source of the agency's legal authority to award costs and/or fees. The agency may (but need not) deny a petition that omits a citation to legal authority to award costs and/or fees. (4-7-11)

**04. Oppositions.** Unless otherwise provided by statute or rule of the agency, or extended by notice or order of the agency, oppositions to requests for costs and/or fees filed under Subsections 741.02 or 741.03 of this rule or motions to extend the time to oppose requests for costs and/or fees filed under Subsections 741.02 or 741.03 of this rule must be filed and served within fourteen (14) days of the service date of the petition to be timely. The agency may exercise its discretion to consider and grant an untimely opposition for good cause shown. (4-7-11)



**05. Orders Granting or Denying Costs and/or Fees.** Every agency order granting or denying a request for costs and/or fees must cite the statutes or rules under which it is deciding the request for costs and/or fees. (4-7-11)

**742. -- 749. (RESERVED)**

**750. ORDER NOT DESIGNATED (RULE 750).**

If an order is not designated as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate. (3-24-93)

**751. -- 759. (RESERVED)**

**760. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION (RULE 760).**

A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order and issuing a substitute recommended or preliminary order. The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it. (3-24-93)

**761. -- 769. (RESERVED)**

**770. CLARIFICATION OF ORDERS (RULE 770).**

Any party or person affected by an order may petition to clarify any order, whether interlocutory, recommended, preliminary or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal the order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration. (3-24-93)

**771. -- 779. (RESERVED)**

**780. STAY OF ORDERS (RULE 780).**

Any party or person affected by an order may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion. (3-24-93)

**781. -- 789. (RESERVED)**

**Rules 790 through 799**  
**Appeal to District Court**

**790. PERSONS WHO MAY APPEAL (RULE 790).**

Pursuant to Section 67-5270, Idaho Code, any party aggrieved by a final order of an agency in a contested case may appeal to district court. Pursuant to Section 67-5271, Idaho Code, a person is not entitled to judicial review of an agency action in district court until that person has exhausted all administrative remedies available with the agency, but a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable in district court if review of the final agency action would not provide an adequate remedy. (3-24-93)

**791. NOTICE OF APPEAL (RULE 791).**

The notice of appeal must be filed with the agency and with the district court and served on all parties. (3-24-93)

**01. Filing.** Pursuant to Section 67-5272, Idaho Code, appeals may be filed in the District Court of the county in which: (3-24-93)

- a. The hearing was held, (3-24-93)
  - b. The final agency action was taken, (3-24-93)
  - c. The party seeking review of the agency action resides, or operates its principal place of business in Idaho, or (7-1-97)
  - d. The real property or personal property that was the subject of the agency is located. (3-24-93)
- 02. Time.** Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final order in a contested case must be filed within twenty-eight (28) days: (3-24-93)
- a. Of the service date of the final order, (3-24-93)
  - b. Of the denial of the petition for reconsideration, or (3-24-93)
  - c. The failure within twenty-one (21) days to grant or deny the petition for reconsideration. (3-24-93)
- 792. -- 799. (RESERVED)**

**SUBCHAPTER C -- RULEMAKING**

**Rules 800 through 860**

**Rulemaking**

**Rules 800 through 809**

**Introduction**

**800. FORMAL AND INFORMAL RULEMAKING (RULE 800).**

Formal rulemaking refers only to rulemaking procedures associated with formal notice of proposed rulemaking, receipt of and consideration of written or oral comment on the record in response to notice of proposed rulemaking, and adoption of rules. Informal rulemaking refers to informal procedures for development of, comment upon, or review of rules for later formal consideration. No rule may come into effect solely as a result of informal rulemaking. Agreements coming from informal rulemaking must be finalized by formal rulemaking. (3-24-93)

**801. -- 809. (RESERVED)**

**Rules 810 through 819**

**Informal, Negotiated Rulemaking**

**810. LEGISLATIVE PREFERENCE FOR NEGOTIATED RULEMAKING PROCEDURES (RULE 810).**

This rule addresses informal, negotiated rulemaking as described by Section 67-5220, Idaho Code. The agency, when feasible, shall proceed by informal, negotiated rulemaking in order to improve the substance of proposed rules by drawing upon shared information, expertise and technical abilities possessed by the affected persons; to arrive at a consensus on the content of the rule; to expedite formal rulemaking; and to lessen the likelihood that affected persons will resist enforcement or challenge the rules in court. (3-24-93)

**811. PUBLICATION IN IDAHO ADMINISTRATIVE BULLETIN (RULE 811).**

If the agency determines that informal, negotiated rulemaking is feasible, it shall publish in the Idaho Administrative Bulletin a notice of intent to promulgate a rule. If the agency determines that informal, negotiated rulemaking is not feasible, it shall explain in its notice of intent to promulgate rules why informal rulemaking is not feasible and shall proceed to formal rulemaking as provided in this chapter. Reasons why the agency may find that informal, negotiated

rulemaking is not feasible include, but are not limited to, the need for temporary rulemaking, the simple nature of the proposed rule change, the lack of identifiable representatives of affected interests, or determination that affected interests are not likely to reach a consensus on a proposed rule. The determination of the agency whether to use informal, negotiated rulemaking is not reviewable. (3-24-93)

**812. CONTENTS OF NOTICE OF INTENT TO PROMULGATE RULES (RULE 812).**

The notice of intent to promulgate rules shall announce that the agency intends to proceed by way of informal, negotiated rulemaking to develop a proposed rule and shall include: (3-24-93)

**01. Subject Matter.** A brief, nontechnical statement of the subject matter to be addressed in the proposed rulemaking. (3-24-93)

**02. Authority.** The statutory authority for the rulemaking. (3-24-93)

**03. Obtain Copy.** An explanation how to obtain a preliminary draft of the proposed rules, if one is available. (3-24-93)

**04. Issues.** The principal issues involved and the interests which are likely to be significantly affected by the rule. (3-24-93)

**05. Agency Contacts.** The person(s) designated to represent the agency. (3-24-93)

**06. Method of Participation.** An explanation how a person may participate in the informal, negotiated rulemaking. (3-24-93)

**07. Schedule.** A proposed schedule for written comments or for a public meeting of interested persons, and a target date, if one exists, to complete negotiation and to publish a proposed rule for notice and comment. (3-24-93)

**813. PUBLIC MEETINGS (RULE 813).**

The agency may convene public meetings of interested persons to consider the matter proposed by the agency and to attempt to reach a consensus concerning a proposed rule with respect to the matter and any other matter the parties determine is relevant to the proposed rule. Person(s) representing the agency may participate in the deliberations. (3-24-93)

**814. REPORTS TO THE AGENCY (RULE 814).**

If the parties reach a consensus on a proposed rule, they shall transmit to the agency a report stating their consensus and, if appropriate, a draft of a proposed rule incorporating that consensus. If the parties are unable to reach a consensus on particular issues, they may transmit to the agency a report specifying those areas on which they reached consensus and those on which they did not, together with arguments for and against positions advocated by various participants. The participants or any individual participant may also include in a report any information, recommendations, or materials considered appropriate. (3-24-93)

**815. AGENCY CONSIDERATION OF REPORT (RULE 815).**

The agency may accept in whole or in part or reject the consensus reached by the parties in publishing a proposed rule for notice and comment. (3-24-93)

**816. -- 819. (RESERVED)**

**Rules 820 through 829**  
**Petition to Initiate Rulemaking**

**820. FORM AND CONTENTS OF PETITION TO INITIATE RULEMAKING (RULE 820).**

This rule addresses petitions to initiate rulemaking as described by Section 67-5230, Idaho Code. (3-24-93)

**01. Requirement.** Any person petitioning for initiation of rulemaking must substantially comply with

this rule. (3-24-93)

**02. Form and Contents.** The petition must be filed with the agency and shall: (3-24-93)

**a.** Identify the petitioner and state the petitioner's interest(s) in the matter; (3-24-93)

**b.** Describe the nature of the rule or amendment to the rule urged to be promulgated and the petitioner's suggested rule or amendment; and (3-24-93)

**c.** Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the proposed rulemaking. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-24-93)

**821. AGENCY RESPONSE TO PETITION (RULE 821).**

**01. Action of Agency.** Within twenty-eight (28) days after the agency has received a petition to initiate rulemaking, the agency shall initiate rulemaking proceedings in accordance with Sections 67-5220 through 67-5225, Idaho Code, or deny the petition in writing, stating its reasons for the denial, unless the rulemaking authority is in a multi-member agency board or commission whose members are not full-time officers or employees of the state, in which case the multi-member board or commission shall have until the first regularly scheduled meeting of the multi-member board or commission that takes place seven (7) or more days after submission of the petition to initiate rulemaking proceedings in accordance with Sections 67-5220 through 67-5225, Idaho Code, or deny the petition in writing, stating its reasons for the denial. (7-1-97)

**02. Denial.** If the petition is denied, the written denial shall state: (3-24-93)

**a.** The agency has denied your petition to initiate rulemaking. This denial is a final agency action within the meaning of Section 67-5230, Idaho Code. (3-24-93)

**b.** Pursuant to Section 67-5270, Idaho Code, any person aggrieved by this final agency action may seek review of the denial to initiate rulemaking by filing a petition in the District Court of the county in which: (3-24-93)

**i.** The hearing was held, (3-24-93)

**ii.** This final agency action was taken, (3-24-93)

**iii.** The party seeking review resides, or operates its principal place of business in Idaho, or (7-1-97)

**iv.** The real property or personal property that was the subject of the denial of the petition for rulemaking is located. (3-24-93)

**c.** This appeal must be filed within twenty-eight (28) days of the service date of this denial of the petition to initiate rulemaking. See Section 67-5273, Idaho Code. (3-24-93)

**822. NOTICE OF INTENT TO INITIATE RULEMAKING CONSTITUTES ACTION ON PETITION (RULE 822).**

The agency may initiate rulemaking proceedings in response to a petition to initiate rulemaking by issuing a notice of intent to promulgate rules in the Idaho Administrative Bulletin on the subject matter of the petition if it wishes to obtain further comment whether a rule should be proposed or what rule should be proposed. Issuance of a notice of intent to promulgate rules satisfies an agency's obligations to take action on the petition and is not a denial of a petition to initiate rulemaking. (3-24-93)

**823. -- 829. (RESERVED)**

**Rules 830 through 839**  
**Procedure on Rulemaking for Proposed and Pending Rules**

**830. REQUIREMENTS FOR NOTICE OF PROPOSED RULEMAKING (RULE 830).**

**01. Content of Notice of Proposed Rulemaking.** Every notice of proposed rulemaking filed with the Coordinator for publication in the Bulletin shall include: (4-7-11)

**a.** A statement of the specific statutory authority authorizing the rulemaking, including a citation to the specific section of Idaho Code that has occasioned the rulemaking or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; (4-7-11)

**b.** A statement in nontechnical language of the substance of the proposed rules, including a specific description of any fee or charge being imposed or increased; (4-7-11)

**c.** A statement whether the agency intends to conduct oral presentations concerning the proposed rules, and, if not, what persons must do in order to request an oral presentation. If the agency intends to take oral testimony on the proposed rule, the location, date and time of any public hearing must be included; (4-7-11)

**d.** A specific description, if applicable, of any negative fiscal effect on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year in which the pending rule will become effective; (4-7-11)

**e.** The mailing address to which written comments and requests for public hearings concerning the proposed rules must be mailed. If the agency accepts comments and requests by facsimile transmission (FAX) or by e-mail, the FAX number or e-mail address, or both, at which comments may be delivered must be provided; (4-7-11)

**f.** The name and telephone number of an agency contact to whom technical questions about the proposed rules may be referred; (4-7-11)

**g.** The deadline date for the submission of written comment on the proposed rules and for submitting requests for an opportunity for an oral presentation concerning the proposed rules; (4-7-11)

**h.** A statement whether negotiated rulemaking has been conducted, and if not, why not; and (4-7-11)

**i.** The text of the proposed rules in legislative format. (4-7-11)

**02. Filing a Proposed Rulemaking for Publication in the Bulletin.** (4-7-11)

**a.** In all cases. The agency must file the information required in Subsection 830.01 of this rule with the Coordinator for publication in the Bulletin. The Coordinator is responsible for transmitting all required rulemaking documents to the Director of Legislative Services for analysis. (4-7-11)

**b.** When fees are imposed or increased. In addition, if a fee or charge is imposed or increased through the proposed rulemaking, the agency must prepare and file with the Coordinator a statement of economic impact. This cost/benefit analysis must reasonably estimate the agency's costs to implement the rule and reasonably estimate the costs that would be borne by citizens, the private sector, or both, if the fees or charges being proposed are imposed by the rule. The cost/benefit analysis is not part of the proposed rulemaking notice and is not published in the Bulletin; it is a separate document that is submitted as part of the proposed rulemaking filing. (4-7-11)

**03. Incorporation by Reference.** If an agency proposes to incorporate by reference into its rules any codes, standards or rules authorized by subsection 67-5229(1), Idaho Code, for incorporation by reference, the agency's notice of proposed rulemaking must also include the following information required by subsection 67-5229(2), Idaho Code: (4-7-11)

**a.** Required information. A brief synopsis explaining why the incorporation is needed. (4-7-11)

**b.** Electronic link or other access. A statement that notes where an electronic copy can be obtained or

that provides an electronic link to the incorporated materials. If an electronic link is provided, at a minimum the link must be posted on the agency's website or included in the rule that is published in the Administrative Code on the Coordinator's website. If the incorporated material is copyrighted or otherwise unavailable, the rule must note where a copy of the incorporated materials may be viewed or purchased. (4-7-11)

**c.** Identification of version or edition incorporated. The agency must provide all of the information required by Subsection 67-5229(2), Idaho Code, regarding identifying with specificity the version or edition of the code, standard or rule that is incorporated by reference, including, but not limited to, the date the document was published, approved or adopted, or became effective. (4-7-11)

**d.** Example incorporations. The following are examples of the kind of specificity required by this Section and by Subsection 67-5229(2), Idaho Code: (4-7-11)

**i.** 2009 Edition of the International Building Code, published by the International Code Council, available online at <http://www.constructionbook.com/2009-international-building-code/>; (4-7-11)

**ii** 2009 International Fire Code, published by International Code Council. Copies of the 2009 edition of the International Fire Code are available for public inspection at the office of the State Fire Marshal. Copies of the 2009 International Fire Code are available for purchase from the International Code Council, Northwest Resource Center, PO Box 8004, Bellevue, WA 98004. (4-7-11)

**iii.** Code of Federal Regulations, Title 40, Part 35 Environmental Protection Agency's Regulations for State and Local Assistance under the Clean Water Act, Subpart A (July 1, 2009), available online at <http://frwebgate.access.gpo.gov/cgi-bin/get-cfr.cgi?TITLE=40&PART=35&SUBPART=A&TYPE=PDF&YEAR=2009>; and (4-7-11)

**iv.** Federal Regulations adopted by the Drug Enforcement Agency, Department of Justice, published in the Federal Register; Amendments to Code of Federal Regulations, 21 CFR Part 1300, section 1300.01, Definitions of Schedule III Controlled Substances, 74 Federal Register No. 232, page 63609 (December 4, 2009), available online at [http://www.nigc.gov/LinkClick.aspx?fileticket=\\_YB0eC63Jh4%3D&tabid=57&mid=345](http://www.nigc.gov/LinkClick.aspx?fileticket=_YB0eC63Jh4%3D&tabid=57&mid=345). (4-7-11)

**831. INFORMAL PHASES OF FORMAL RULEMAKING (RULE 831).**

In addition to the formal phases of rulemaking proceedings, the agency may schedule meetings after the formal proposal of rules to explain the operation of the rules proposed. (3-24-93)

**832. COMMENTS ON PROPOSED RULES (RULE 832).**

Deadlines for comment upon proposed rules or amendments to proposed rules will be set forth in the Idaho Administrative Bulletin. Comments should be made to the officers listed in the notices of proposed rulemaking published in the Idaho Administrative Bulletin. Further information concerning individual rulemaking should be directed to the contact person listed for that rulemaking in the Idaho Administrative Bulletin. (3-24-93)

**833. PETITIONS FOR ORAL PRESENTATION (RULE 833).**

**01. Requirement.** Any person petitioning for an opportunity for an oral presentation in a substantive rulemaking must substantially comply with this rule. (3-24-93)

**02. Content.** The petition shall: (3-24-93)

**a.** Identify the petitioner and state the petitioner's interests in the matter, (3-24-93)

**b.** Describe the nature of the opposition to or support of the rule or amendment to the rule proposed to be promulgated by the agency, and (3-24-93)

**c.** Indicate alternative proposals of the petitioner and any statute, order, rule or other controlling law or factual allegations upon which the petitioner relies to support the request for the opportunity to provide an oral presentation. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (3-24-93)

**03. Oral Presentation.** Within fourteen (14) days after receiving a petition for an oral presentation, the agency shall schedule the oral presentation or deny it. The agency shall provide an opportunity for oral presentation if requested by twenty-five (25) persons, a political subdivision, or another agency, but no oral presentation need be provided when the agency has no discretion as the substantive content of a proposed rule because the proposed rule is intended solely to comply with a controlling judicial decision or court order, or with the provisions of a statute or federal rule that has been amended since the adoption of the agency rule. If oral presentation is granted, notice of the oral presentation shall be published in the Idaho Administrative Bulletin. If oral presentation is denied, the denial shall state the grounds for denial. (3-24-93)

**834. THE RULEMAKING RECORD (RULE 834).**

The agency shall maintain a record of each rulemaking proceeding. (3-24-93)

**01. Contents.** The record for a rulemaking proceeding shall include: (3-24-93)

**a.** Copies of all publications in the Idaho Administrative Bulletin relating to that rulemaking proceeding; (3-24-93)

**b.** All written petitions, submissions, and comments received by the agency, and the agency's responses to those petitions, submissions and comments; (3-24-93)

**c.** All written materials considered by the agency in connection with formulating the proposal or adoption of the rule; (3-24-93)

**d.** A record of any oral presentations, any transcriptions of oral presentations, and any memoranda summarizing the contents of such presentations; and (3-24-93)

**e.** Any other materials or documents prepared in conjunction with the rulemaking, including any summaries prepared for the agency in considering the rulemaking. (3-24-93)

**02. Recording or Reporting.** All oral presentations shall be recorded on audiotape or videotape or may be taken by a qualified court reporter at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Persons may have a transcript of an oral presentation prepared at their own expense. (7-1-97)

**835. ADOPTION AND PUBLICATION OF PENDING RULES FOLLOWING COMMENT OR ORAL PRESENTATION (RULE 835).**

**01. Adoption.** After the expiration of the written comment period for rulemaking and following any oral presentation on the rulemaking, but no sooner than seven (7) days after the expiration of the comment period, the agency shall consider fully all issues presented by the written and oral submissions respecting the proposed rule before adopting a pending rule. (7-1-97)

**02. Publication.** Upon the agency's adoption of a pending rule, the agency shall publish the text of the pending rule in the bulletin, except that with the permission of the coordinator, the agency need not publish the full text of the pending rule if no significant changes have been made from the text of the proposed rule as published in the bulletin, but the notice of adoption of the pending rule must cite the volume of the bulletin where the text is available and must note all changes that have been made. In addition, the agency must publish in the bulletin a concise explanatory statement containing: (7-1-97)

**a.** The reasons for adopting the pending rule; (7-1-97)

**b.** 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 any changes; (7-1-97)

**c.** The date on which the pending rule will become final and effective pursuant to Section 67-5224(5), Idaho Code; (7-1-97)

**d.** A statement that the pending rule may be rejected, amended or modified by concurrent resolution of the Legislature; (7-1-97)

**e.** An identification of any portion of the pending rule imposing or increasing a fee or charge and stating that this portion of the pending rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature; and (7-1-97)

**f.** A statement how to obtain a copy of the agency's written review of and written responses to the written and oral submissions respecting the proposed rule. (7-1-97)

**03. Rule Imposing or Increasing Fees.** When any pending rule imposes a new fee or charge or increases an existing fee or charge, the agency shall provide the coordinator with a description of that portion of the rule imposing a new fee or charge or increasing an existing fee or charge, along with a citation of the specific statute authorizing the imposition or increase of the fee or charge. (7-1-97)

**836. FINAL RULES (RULE 836).**

Pending rules may become final rules, or may be rejected, amended or modified by concurrent resolution of the Legislature, as provided in Section 67-5224, Idaho Code. (7-1-97)

**837. -- 839. (RESERVED)**

**840. PROCEDURE FOR ADOPTION OF TEMPORARY RULES (RULE 840).**

**01. Gubernatorial Finding.** The agency may adopt temporary rules upon the Governor's finding that protection of the public health, safety, or welfare, compliance with deadlines in amendments to governing law or federal programs, or conferring a benefit requires a rule to become effective before it has been submitted to the Legislature for review. No temporary rule imposing a fee or charge may become effective before it has been approved, amended or modified by concurrent resolution of the Legislature unless the Governor finds that the fee or charge is necessary to avoid immediate danger that justifies the imposition of the fee or charge. (7-1-97)

**02. Effective Date.** Temporary rules take effect according to the effective date specified in the rules. Temporary rules may be immediately effective. (7-1-97)

**03. Expiration.** In no case may a temporary rule remain in effect beyond the conclusion of the next succeeding regular session of the Legislature unless the rule is approved, amended or modified by concurrent resolution, in which case the rule may remain in effect until the time specified in the resolution or until the rule has been replaced by a final rule that has become effective pursuant to Section 67-5224(5), Idaho Code. (7-1-97)

**04. Notice and Publication.** Agencies shall give such notice as is practicable in connection with adoption of a temporary rule. Temporary rules will be published in the first available issue of the Idaho Administrative Bulletin. (7-1-97)

**05. Associated Proposed Rule.** Concurrently with promulgation of a temporary rule, or as soon as reasonably possible thereafter, an agency must begin rulemaking procedures by issuing a proposed rule on the same subject matter as the temporary rule, unless the temporary rule will expire by its own terms or by operation of law before a proposed rule could become final. (7-1-97)

**841. -- 849. (RESERVED)**

**850. CORRECTION OF TYPOGRAPHICAL, TRANSCRIPTION OR CLERICAL ERRORS IN PENDING RULES (RULE 850).**

The agency may amend pending rules to correct typographical errors, transcription errors, or clerical errors, in the manner approved by the Administrative Rules Coordinator. These amendments will be incorporated into the pending rule upon their publication in the Idaho Administrative Bulletin. (7-1-97)

**851. -- 859. (RESERVED)**



**860. PERSONS WHO MAY SEEK JUDICIAL REVIEW (RULE 860).**

Pursuant to Section 67-5270, Idaho Code, any person aggrieved by an agency rule (either temporary or final) may seek judicial review in district court. (3-24-93)

**01. Filing.** The petition for judicial review must be filed with the agency and with the district court and served on all parties. Pursuant to Section 67-5272, Idaho Code, petitions for review may be filed in the District Court of the county in which: (3-24-93)

- a.** The hearing was held; (3-24-93)
- b.** The final agency action was taken; (3-24-93)
- c.** The party seeking review of the agency action resides, or operates its principal place of business in Idaho; or (7-1-97)
- d.** The real property or personal property that was the subject of the agency is located. (3-24-93)

**02. Time.** Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final rule (except for a challenge to procedures used in promulgating the rule) may be filed at any time. (3-24-93)

**861. -- 999. (RESERVED)**

**04.12.01 – RULES OF ADMINISTRATIVE PROCEDURE FOR CONSIDERATION OF  
COOPERATIVE AGREEMENTS FILED BY HEALTH CARE PROVIDERS**

**Subchapter A -- General Provisions  
(Rules 0 through 99)**

**000. LEGAL AUTHORITY (RULE 0).**

This chapter is adopted under the legal authority of Chapter 49, Title 39, Idaho Code. (1-1-95)

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** This chapter is titled “Rules of Administrative Procedure for Consideration of Cooperative Agreements Filed by Health Care Providers.” (1-1-95)

**02. Scope.** Every application for a certificate of public advantage for a cooperative agreement by or among health care providers and any petition for review of or complaint for revocation of an existing certificate of public advantage must follow the procedures in these rules. (1-1-95)

**002. WRITTEN INTERPRETATIONS -- ATTORNEY GENERAL GUIDELINES (RULE 2).**

Written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rule-making that originally proposed the rules and review of comments submitted in the rule-making in the adoption of these rules are published in the Idaho Administrative Bulletin. Any memorandum of understanding or letters explaining the Attorney General's policies concerning administration of certificates of public advantage for the approval of cooperative agreements of health care providers will be maintained for public inspection. (1-1-95)

**003. ADMINISTRATIVE REVIEW (RULE 3).**

Petitions for the Attorney General's discretionary administrative review of hearing officer's preliminary orders under this chapter may be taken as set forth in rule 730. (1-1-95)

**004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).**

All filings submitted according to the procedures of this chapter are public records. Any memorandum of understanding or letter explaining the Attorney General's policies concerning administration of certificates of public advantage for the approval of cooperative agreements of health care providers are public records be available for inspection. (1-1-95)

**005. DEFINITIONS (RULE 5).**

As used in this chapter: (1-1-95)

**01. Cooperative Agreement.** Cooperative agreement means a written agreement between two (2) or more health care providers for the sharing, allocation or referral of patients, or the sharing or allocation of personnel, instructional programs, support services and facilities, medical, diagnostic, therapeutic or procedures or other services customarily offered by health care providers. (1-1-95)

**02. Certificate of Public Advantage.** Certificate of public advantage means a document issued by the Attorney General to parties to a cooperative agreement, verifying that the Attorney General declares that the purposes and objectives of the cooperative agreement meet the standards for such agreements set forth by statute. (1-1-95)

**03. Health Care Provider.** Health care provider means any person or health care facility licensed, registered, certified, permitted or otherwise officially recognized by the state to provide health care services in Idaho; or in the case of a freestanding outpatient facility, one for which a facility fee is charged for health care services performed within. (1-1-95)

**04. Health Care Services.** Health care services include, but are not limited to, services provided by: (1-1-95)

**a.** Acute, subacute and intermediate care facilities; (1-1-95)

**b.** Dentists, denturists, orthodontists and their assistants; (1-1-95)

**c.** Doctors, physicians, surgeons and their assistants; (1-1-95)

- d. Hospitals and medical centers; (1-1-95)
- e. Home health services and outpatient clinics; (1-1-95)
- f. Laboratories and laboratory technicians; (1-1-95)
- g. Nurses; (1-1-95)
- h. Nursing homes; (1-1-95)
- i. Oculists, opticians, optometrists, ophthalmologists and their assistants; (1-1-95)
- j. Podiatrists and their assistants; (1-1-95)
- k. Psychiatrists, psychologists, and psychotherapists and their assistants; (1-1-95)
- l. Pharmacies and pharmacists; and (1-1-95)
- m. Rehabilitation services (including chiropractic, physical and occupational therapies). (1-1-95)

**006. FILING OF DOCUMENTS -- NUMBER OF COPIES (RULE 6).**

Except as otherwise provided by this rule, notification of intent to file an initial application under this chapter or initial applications themselves must be filed with the receptionist in the Attorney General's office in Room 210 of the Statehouse. However, once a hearing officer has been appointed by the Attorney General to hear a contested case proceeding in an application under this chapter, the hearing officer may provide by notice or order for filings to made at a different address. (1-1-95)

**007. ATTORNEY GENERAL'S RULES OF ADMINISTRATIVE PROCEDURE SUPERSEDED FOR CONTESTED CASES (RULE 7).**

Except as otherwise provided, these rules supersede the Attorney General's Rules of Administrative Procedure for contested cases, IDAPA 04.11.01.100 through 04.11.01.799, for the administration of Chapter 49, Title 39, Idaho Code, because the Attorney General finds that consideration of cooperative agreements of health care providers under Chapter 49, Title 39, Idaho Code, requires specialized rules of procedure with requirements in addition to those found in the Attorney General Rules of Administrative Procedure. These rules adopt the Attorney Generals Rules of Administrative Procedure IDAPA 04.11.01.800 through 04.11.01.860 for rulemaking under Chapter 49, Title 39, Idaho Code. (1-1-95)

**008. -- 049. (RESERVED)**

**050. PROCEEDINGS GOVERNED (RULE 50).**

Rules 100 through 799 govern procedure before the Attorney General in contested cases on applications for the issuance of a certificate of public advantage for a cooperative agreement among or between health care providers and on petitions for review of or for complaints in revocation of an existing certificate of public advantage. (1-1-95)

**051. (RESERVED)**

**052. ADOPTION BY REFERENCE OF RULES ADDRESSING CONSTRUCTION OF THESE RULES, COMMUNICATIONS TO THE OFFICE, SERVICE BY THE OFFICE AND COMPUTATION OF TIME (RULE 52).**

Rules 552 through 566 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.552 through 04.11.01.556, addressing construction of these rules, communications to the office, service by the office, and computation of time, are hereby adopted by reference. (1-1-95)

**053. -- 099. (RESERVED)**

**Subchapter B -- Contested Cases**

**Rules 100 through 999**

**Part 1 -- Rules 100 through 399 -- Definitions and General Provisions**

**a. Rules 100 through 149 -- Informal and Formal Proceedings**

**100. ADOPTION BY REFERENCE OF RULES ADDRESSING INFORMAL PROCEEDINGS (RULE 100).**

Rules 100 and 102 through 104 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.100 and 04.11.01.102 through 04.11.01.104, addressing informal proceedings, are hereby adopted by reference. (1-1-95)

**101. INFORMAL PROCEDURE (RULE 101).**

Statute authorizes and these rules encourage the use informal proceedings to expedite or simplify formal contested cases. Informal procedure may include individual contacts by or with the Attorney General's investigative/prosecutorial staff asking for information, advice or assistance from the investigative/prosecutorial staff, or proposing a resolution of the application to the investigative/prosecutorial staff. Informal procedures may be conducted in writing, by telephone or television, or in person. All informal proceedings involving the Attorney General's investigative/prosecutorial staff shall be open to the public. (1-1-95)

**102. -- 109. (RESERVED)**

**110. NOTICE OF INTENT TO FILE APPLICATION (RULE 110).**

The Attorney General encourages all applicants for a certificate of public advantage to initiate an informal proceeding before the beginning of a formal proceeding by filing a notice of intent to file application four (4) to eight (8) weeks before the formal filing of an application for a certificate of public advantage. The notice of the intent to file application is a public document that will be the subject of press releases or other attempts to inform the public of the proposed application. The notice of intent must list the parties that will file an application for a certificate of public advantage and generally describe the nature of the cooperative agreement that will be the subject of the application to follow. (1-1-95)

**111. PROCEDURE UPON RECEIPT OF NOTICE OF INTENT TO FILE APPLICATION (RULE 111).**

Within one (1) week of the receipt of a notice of intent to file application, the Office of the Attorney General will appoint a hearing officer for the formal proceeding to follow and will assign staff to an investigative role for informal discussion with the prospective applicants concerning the application and the investigative/prosecutorial staff's position on the application. The purposes of these discussions between investigative/prosecutorial staff and the potential applicant, which will be open to interested members of the public, will be to gain understanding of the application to follow, to simplify or clarify issues that will be the subject of the application to follow, and to generally improve the presentations of all parties in the contested case hearing that will follow. Neither the prosecutorial investigative staff nor the applicant shall have any ex parte conduct with the hearing officer on any matter of substance concerning the pending application. (1-1-95)

**112. -- 149. (RESERVED)**

**b. Rules 150 through 199 - Parties -- Other Persons**

**150. PARTIES TO CONTESTED CASES LISTED (RULE 150).**

Parties to contested cases under Title 39, Chapter 49, are called applicants, petitioners, complainants, respondents, or intervenors. On reconsideration or discretionary review by the Attorney General parties are called by their original titles listed in the previous sentence. (1-1-95)

**151. APPLICANTS (RULE 151).**

Persons who seek a certificate of public advantage from the Attorney General are called "applicants." (1-1-95)

**152. PETITIONERS (RULE 152).**

Persons not applicants who seek to modify, amend or stay existing certificates of public advantage, to clarify their rights or obligations under existing certificates of public advantage, or to otherwise take action that will result in the

issuance of an order or rule, are called “petitioners.” (1-1-95)

**153. COMPLAINANTS (RULE 153).**

Persons who charge other person(s) with any act or omission with regard to certificates of public advantage are called “complainants.” In any proceeding in which the Attorney General’s investigative/prosecutorial staff itself charges a person with an act or omission or seeks revocation of a certification, the Attorney General’s investigative/prosecutorial staff is called “complainant.” (1-1-95)

**154. RESPONDENTS (RULE 154).**

Persons against whom complaints are filed or about whom investigations are initiated are called “respondents.” (1-1-95)

**155. INTERVENORS (RULE 155).**

Persons, not applicants, complainants, or respondents to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354, are called “intervenors.” (1-1-95)

**156. INVESTIGATIVE/PROSECUTORIAL STAFF (RULE 156).**

The Attorney General may designate an investigative/prosecutorial staff that may appear, without intervention, in all proceedings under these rules. The investigative/prosecutorial staff has all rights to participate as a party in proceedings under these rules. (1-1-95)

**157. RIGHTS OF PARTIES AND OF ATTORNEY GENERAL INVESTIGATIVE/PROSECUTORIAL STAFF (RULE 157).**

Subject to Rules 558, 560, and 600, all parties and the Attorney General’s investigative/prosecutorial staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (1-1-95)

**158. PERSONS DEFINED -- PERSONS NOT PARTIES -- INTERESTED PERSONS (RULE 158).**

The term “person” includes natural persons, partnerships, corporations, associations, municipalities, government entities and subdivisions, and any other entity authorized by law to participate in an administrative proceeding. Persons other than the persons named in Rules 151 through 155 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. Persons may request the Attorney General in writing that they be notified when proceedings of a given kind are initiated. These persons are called “Interested Persons.” Interested persons may become intervenors or public witnesses. The Attorney General will serve notice of such proceedings on all interested persons. (1-1-95)

**159. -- 199. (RESERVED)**

**c. Rules 200 through 209 - Representatives of Parties**

**200. ADOPTION BY REFERENCE OF RULES ADDRESSING REPRESENTATIVES OF PARTIES (RULE 200).**

Rules 200 through 207 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.200 through 04.11.01.207, addressing representation of parties, are hereby adopted by reference. (1-1-95)

**201. -- 209. (RESERVED)**

**d. Rules 210 through 299 - Pleadings -- In General**

**210. PLEADINGS LISTED -- MISCELLANEOUS (RULE 210).**

Pleadings in contested cases are called applications, petitions, complaints, motions, answers, and consent agreements. Affidavits or declarations under penalty of perjury may be filed in support of any pleading. A party’s initial pleading in any proceeding must comply with Rule 200. All pleadings filed during the formal stage of a proceeding must be filed in accordance with Rules 300 through 301. A party may adopt or join any other party’s pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1)

pleading. (1-1-95)

**211. -- 219. (RESERVED)**

**220. APPLICATIONS -- DEFINED -- FORM AND CONTENTS (RULE 220).**

**01. Applications Defined.** All pleadings requesting a certificate of public advantage are called “applications.” (1-1-95)

**02. Form and Contents.** Applications for a certificate of public advantage must contain the information required in Subsections 220.03 through 220.08. (1-1-95)

**03. Listing of Parties.** The application must list by name, business address, and business telephone all health care providers party to the cooperative agreement. (1-1-95)

**a.** If the health care provider is a corporation, the application must list the corporation’s principal executive officer or such other officer as the corporation may designate as contact for the corporation, the primary business address of the corporation, the primary Idaho business address if the primary business address is not in Idaho, the primary business telephone number for the corporation, and the primary Idaho business telephone if the primary business telephone is not in Idaho. (1-1-95)

**b.** If the health care provider is a partnership, the application must list the partnership name and each partner’s name, the primary business address of the partnership, the primary Idaho business address if the primary business address is not in Idaho, the primary business telephone number for the partnership, and the primary Idaho business telephone if the primary business telephone is not in Idaho. (1-1-95)

**c.** If the health care provider is an individual or an association of individuals, the application must list the association’s name (if there is one) and each individual’s name, the primary business address of the association and each individual, the primary Idaho business address if the primary business address is not in Idaho, the primary business telephone number for the association and each individual, and the primary Idaho business telephone if the primary business telephone is not in Idaho or give a specific description of the individuals involved, e.g., all doctors in ( ) County referring patients to ( ) Hospital under the terms of the agreement attached as exhibit 1 to the application. (1-1-95)

**04. Description of Agreement.** The application must include an executed written copy of the cooperative agreement and describe the nature and scope of the cooperation in the agreement and any consideration passing to any party under the agreement. (1-1-95)

**05. Listing of Benefits.** The application shall state whether one (1) or more of the following benefits will result from the issuance of a certificate of public advantage for the cooperative agreement and shall list any other additional benefits that the applicants wish to be taken into account in the consideration of the application. (1-1-95)

**a.** The quality of health care provided to consumers will be enhanced; (1-1-95)

**b.** A hospital, if any, and other health care facilities that customarily serve the communities in the area likely to be affected by the cooperative agreement will be preserved; (1-1-95)

**c.** Services provided by the parties to cooperative agreement will gain cost efficiency; (1-1-95)

**d.** The utilization of health care resources and equipment in the area likely affected by the cooperative agreement will improve; or (1-1-95)

**e.** Duplication of health care resources in the area likely affected by the cooperative agreement will be avoided. (1-1-95)

**06. Supporting Analyses.** The application shall be accompanied by the prepared testimony of witnesses to be called at hearing by the applicants and additional reports, studies, etc., that the witnesses would

introduce at hearing as exhibits supporting the application. The prepared testimony and exhibits shall address each of the potential benefits listed in Subsection 220.05 that are claimed by the applicants and any additional benefits that the applicants wish to be taken into consideration. (1-1-95)

**07. Statement Concerning Discovery.** The application shall state whether the applicant consents to discovery under these rules. (1-1-95)

**08. Statement Concerning Fund for Expert Witnesses.** The application shall state whether the applicant consents to provide a fund for the investigative/prosecutorial staff of the Office of the Attorney General to hire experts to evaluate the application. If the applicant so consents, it shall specify the amount of the fund available or that the applicant would propose to negotiate the amount with the investigative/prosecutorial staff of the Office of the Attorney General. (1-1-95)

**09. Defective or Insufficient Applications.** If an application does not contain all of the information required by this rule, it is defective or insufficient. (1-1-95)

**221. -- 229. (RESERVED)**

**230. ADOPTION BY REFERENCE OF RULES ADDRESSING PETITIONS, COMPLAINTS, MOTIONS, ANSWERS AND CONSENT AGREEMENTS (RULE 230).** Rules 230, 240, 260, 270 AND 280 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.230, 04.11.01.240, 04.11.01.260, 04.11.01.270, and 04.11.01.280, addressing petitions, complaints, motions, answers, and consent agreements are hereby adopted by reference. (1-1-95)

**231. -- 299. (RESERVED)**

**e. Rules 300 through 349 -- Filing, Service, Amendment and Withdrawal of Documents**

**300. FILING DOCUMENTS -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX) (RULE 300).**

An original and two (2) copies of all documents intended to be part of the record of a contested case must be filed with the Office of the Attorney General or such other person as designated by the hearing officer. The original shall be for the hearing officer and the two copies for the Attorney General's investigative/prosecutorial staff. Pleadings and other documents not exceeding ten (10) pages in length requiring urgent or immediate action may be filed by facsimile transmission (FAX). Whenever any document is filed by FAX, if possible, originals must be delivered by overnight mail the next working day. (1-1-95)

**301. ADOPTION BY REFERENCE OF RULES ADDRESSING SERVICE OF PLEADINGS AND OTHER RULES ON PLEADINGS (RULE 301).**

Rules 301 through 305 of the Attorney General's Idaho Rules of Administrative Procedure, IDAPA 04.11.01.301 through 04.11.01.305, addressing pleadings, hereby adopted by reference. (1-1-95)

**302. -- 349. (RESERVED)**

**f. Rules 350 through 399 - Intervention -- Public Witnesses**

**350. ADOPTION BY REFERENCE OF RULES ADDRESSING INTERVENTION AND PUBLIC WITNESSES (RULE 350).**

Rules 350 through 355 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.350 through 04.11.01.355, addressing intervention and public witnesses, are hereby adopted by reference. (1-1-95)

**351. -- 399. (RESERVED)**

**Part 2. Rules 400 through 499 -- Declaratory Rulings and Orders -- Hearing Officers --**

**Presiding Officers -- Dual Investigatory and Adjudicatory Functions**

**a. Rules 400 through 409 -- Declaratory Rulings**

**400. ADOPTION BY REFERENCE OF RULES ADDRESSING DECLARATORY RULINGS (RULE 400).**

Rules 400 through 402 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.400 through 04.11.01.402, addressing declaratory orders, are hereby adopted by reference. (1-1-95)

**401. -- 409. (RESERVED)**

**b. Rules 410 through 419 -- Hearing Officers -- Presiding Officers**

**410. APPOINTMENT OF HEARING OFFICERS (RULE 410).**

A hearing officer is a person other than the Attorney General appointed to hear contested cases on behalf of the Attorney General. Hearing officers may be deputy attorneys general, other employees of the Attorney General or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues of health care providers’ cooperative agreements. The appointment of a hearing officer is a public record available for inspection, examination and copying. (1-1-95)

**411. HEARING OFFICERS CONTRASTED WITH ATTORNEY GENERAL (RULE 411).**

The Attorney General is not a hearing officer, even if the Attorney General presides at a contested case. The term “hearing officer” as used in these rules refers only to presiding officers other than the Attorney General. (1-1-95)

**412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 412).**

Pursuant to Section 67-5252, Idaho Code, there are two (2) rules for disqualification of hearing officers. (1-1-95)

**01. Disqualification in Applications for Certificate.** Section 39-4303(3) requires applications for a certificate of public advantage to be heard within sixty (60) days. Accordingly, under Section 67-5252, Idaho Code, no party to the contested case can disqualify a hearing officer except for cause. (1-1-95)

**02. Disqualification in Other Contested Cases.** In other contested cases, any party shall have a right to one (1) disqualification without cause of any person serving or designated to serve as a hearing officer. Any party shall have a right to move to disqualify a hearing officer for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the Attorney General, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified. (1-1-95)

**03. Motion for Disqualification.** Any party may, within fourteen (14) days, petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or promptly upon discovering facts establishing grounds for disqualification, whichever is later. A hearing officer whose disqualification is requested shall determine in writing whether to grant the motion for disqualification, stating facts and reasons for the hearing officer’s determination. Disqualification of the Attorney General is not allowed. See Sections 59-704 and 67-5252(4), Idaho Code. (1-1-95)

**413. ADOPTION BY REFERENCE OF RULES ADDRESSING HEARING OFFICERS AND PRESIDING OFFICERS (RULE 413).**

Rules 413 through 417 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.413 through 04.11.01.417.17, addressing hearing officers and presiding officers, are hereby adopted by reference. (1-1-95)

**414.-- 419. (RESERVED)**

**c. Rules 420 through 429 -- Responsibility for Investigative/Prosecutorial and Adjudicatory**



**Functions upon Consideration of Contested Cases**

**420. CONTRAST BETWEEN OFFICE OF ATTORNEY GENERAL'S INVESTIGATIVE/ PROSECUTORIAL AND ADJUDICATORY FUNCTIONS (RULE 420).**

Rules 420 through 429 set forth procedures to be followed by the Office of the Attorney General in processing applications for a certificate of public advantage and in conducting proceedings to revoke certificates of public advantage. (1-1-95)

**01. Investigative/Prosecutorial Function.** The investigative/prosecutorial function is performed by deputy attorneys general and other personnel or consultants assigned to review applications for a certificate of public advantage or to prosecute proposed revocations of certificates of public advantage. The investigative/prosecutorial function includes gathering of evidence concerning an application or potential revocation outside of formal contested case proceedings, presentation of allegations or evidence for determination whether a complaint to revoke a certificate will be issued, and presentation of evidence in a formal contested case proceeding. (1-1-95)

**02. Adjudicatory Function.** The adjudicatory function is performed by a hearing officer appointed by the Attorney General or by the Attorney General upon review of the hearing officer's preliminary order. The adjudicatory function includes deciding whether to issue a complaint for revocation of a certificate upon the basis of allegations before the Office of the Attorney General, deciding whether to accept a consent order or other settlement of a complaint, and deciding the merits of an application or a complaint following presentation of evidence in formal contested case proceedings. A deputy attorney general may be assigned to be a hearing officer. (1-1-95)

**421. PUBLIC INQUIRIES ABOUT OR RECOMMENDATIONS FOR COMPLAINT (RULE 421).**

This rule sets forth procedures to be followed by the Office of the Attorney General upon receipt of an inquiry whether or how an application for a certificate should be made or whether a complaint to revoke a certificate should be issued. (1-1-95)

**01. The Attorney General.** When the public contacts the Attorney General, the Attorney General may: explain the office's procedures; explain the office's jurisdiction or authority (including the statutes or rules administered by the Attorney General); and direct the public to appropriate staff personnel who can provide assistance or who can advise them how to pursue a formal proceeding before the Attorney General. No statement of the Attorney General in response to a public inquiry constitutes a finding of fact, conclusion of law or other decision on the underlying matter. (1-1-95)

**02. Deputy Attorneys General.** When the public contacts a deputy attorney general (other than a deputy attorney general assigned to be a hearing officer) to inquire whether or how an application for a certificate should be made or a complaint to revoke a certificate should be issued, the deputy attorney general may: explain the procedures to be followed; explain the Attorney General's jurisdiction or authority (including an explanation of the statutes or rules administered by the Attorney General); and direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a formal proceeding before the Attorney General. A deputy attorney general assigned to an investigative/prosecutorial role may discuss whether given allegations would, in the deputy's opinion, warrant the issuance of a certificate or a complaint to revoke a certificate or warrant direction to staff to pursue further investigation. Neither a hearing officer nor the Attorney General is bound by the deputy's advice or recommendations, and the deputy should notify the public that neither a hearing officer nor the Attorney General is obligated to follow the deputy's advice or recommendations. (1-1-95)

**03. Other Staff.** When the public contacts other staff in the Office of the Attorney General to inquire whether or how an application for a certificate should be made or a complaint to revoke a certificate should be issued, a staff member authorized to respond may: explain the Attorney General's procedures; explain the Attorney General's jurisdiction or authority (including an explanation of the statutes or rules administered by the Attorney General); direct the public to appropriate staff personnel who can provide investigatory assistance or who can advise them how to pursue a complaint before the Attorney General; and express an opinion whether given allegations would, in the staff's opinion, warrant the issuance of a complaint or warrant staff's further investigation. Neither the hearing officer nor the Attorney General is bound by the staff's advice or recommendations, and the staff should notify the public that neither the hearing officer nor the Attorney General is obligated to follow the staff's advice or recommendations. (1-1-95)

**04. Hearing Officers.** When the public contacts a hearing officer to inquire whether or how an application for a certificate should be made or a complaint to revoke a certificate should be issued, the hearing officer should not discuss the matter, but should refer the member of the public to other personnel. (1-1-95)

**422. CONSIDERATION OF CONSENT AGREEMENT OR OTHER SETTLEMENTS (RULE 422).** This rule sets forth procedures to be followed by the Office of the Attorney General when a consent agreement, stipulated settlement, or other settlement is negotiated before an application for a certificate of public advantage or an complaint for revocation of a certificate is filed. (1-1-95)

**01. Negotiations.** A deputy attorney general assigned to an investigative/prosecutorial role and other staff may negotiate consent agreements or other settlements. Neither the Attorney General nor a hearing officer may participate in these negotiations, but the Attorney General may have rules or guidelines for issuance of consent agreements or other general policy statements available to guide individual negotiations. (1-1-95)

**02. Presentation of Consent Agreement.** Consent agreements must be presented to the Office of the Attorney General for approval. The consent agreement may be presented to the Office of the Attorney General by representatives of any party, unless the agreement provides to the contrary. (1-1-95)

**03. Consideration of Consent Agreement.** A consent agreement that is presented to the Office of the Attorney General must be reviewed under this rule. A hearing officer will be assigned to review the consent agreement. The hearing officer may accept or reject the consent agreement, indicate how the consent agreement must be modified to be acceptable, or inform the parties what further information is required for consideration of the consent agreement. When a consent agreement is rejected, no matter recited in the rejected consent agreement may be used as an admission against a party in any later proceeding before the Attorney General, and any such matter must be proven by evidence independent of the consent agreement. Any acceptance or rejection of the consent agreement shall be done by preliminary order, which may be reviewed by the Attorney General as any other preliminary order. (1-1-95)

**423. PROCEDURES AFTER INITIATION OF FORMAL CASE (RULE 423).** This rule sets forth procedures to be followed by the Office of the Attorney General after a formal case is initiated, while investigation or discovery is underway, while a hearing is conducted, and before the preliminary order of the hearing officer is reviewed by the Attorney General (if a hearing officer's preliminary order is reviewed). (1-1-95)

**01. The Attorney General.** (1-1-95)

**a. Prohibited Contacts--Allowable Managerial Reporting.** The Attorney General shall not discuss the substance of the contested case ex parte with any representative of any party or with deputy attorneys general or other staff involved in the investigation or prosecution of the case. The Attorney General may request periodic progress reporting on staff preparation. For example, the Attorney General may ask whether the staff will be prepared to present its case by a given date, but cannot inquire about the substance of the staff's case. (1-1-95)

**b. Allowed Discussions.** The Attorney General may discuss the substance of the contested case with deputy attorneys general and staff who are not involved in the investigation or prosecution of the contested case. The Attorney General may discuss the substance of the contested case with the hearing officer assigned to the case. (1-1-95)

**02. Deputy Attorneys General.** (1-1-95)

**a. Investigative/Prosecutorial Attorneys.** No deputy attorney general involved in the investigation or prosecution of a contested case shall discuss the substance of the contested case ex parte with the Attorney General, a hearing officer assigned to hear the contested case, or with any deputy attorney general assigned to advise or assist the Attorney General or hearing officer assigned to hear the contested case. (1-1-95)

**b. Advisory Attorneys.** No deputy attorney general assigned to advise or assist the Attorney General or hearing officer shall discuss the substance of the contested case ex parte with any representative of any party or with deputy attorneys general or staff involved in the investigation or prosecution of the contested case. A deputy

attorney general assigned to advise or assist the Attorney General or hearing officer may discuss the substance of the contested case with the hearing officer or Attorney General. (1-1-95)

**03. Other Staff.** (1-1-95)

**a.** Investigative/Prosecutorial Staff. No staff involved in the investigation or prosecution of the contested case shall discuss the substance of the contested case ex parte with the Attorney General, a hearing officer assigned to hear the contested case, or with any deputy attorney general assigned to advise or assist the Attorney General or hearing officer assigned to hear the contested case. (1-1-95)

**b.** Advisory Staff. No staff assigned to advise or assist the Attorney General or hearing officer shall discuss the substance of the contested case ex parte with any representative of any party or with deputy attorneys general or staff involved in the investigation or prosecution of the contested case. Staff assigned to advise or assist the Attorney General or hearing officer may discuss the substance of the contested case with the hearing officer or Attorney General. (1-1-95)

**04. Hearing Officers.** No hearing officer shall discuss the substance of the contested case ex parte with any representative of any party or with deputy attorneys general or staff involved in the investigation or prosecution of the contested case. Hearing officers may discuss the substance of the contested case with deputy attorneys general assigned to advise or assist the hearing officer. Hearing officers may discuss the substance of the contested case with the Attorney General. (1-1-95)

**424. HEARING OFFICERS (RULE 424).**

No hearing officer may discuss the substance of a contested case ex parte with any deputy attorney general or staff involved in the investigation or prosecution of the contested case at any stage of the consideration of the contested case or pending judicial review of the decision in the contested case. A hearing officer may consult with any other hearing officer and with the Attorney General. A hearing officer may consult with a deputy attorney general assigned to advise or assist the hearing officer. The Attorney General may appoint as a hearing officer a deputy attorney general who will advise or assist the Attorney General in consideration of the contested case. (1-1-95)

**425. ATTORNEY GENERAL'S CONSIDERATION OF PRELIMINARY ORDER (RULE 425).**

This rule sets forth procedures to be followed by the Attorney General, deputy attorneys general, staff, and hearing officers if the Attorney General has accepted the hearing officer's preliminary order for discretionary review. (1-1-95)

**01. The Attorney General.** In considering the hearing officer's preliminary order, the Attorney General may consult with deputy attorneys general assigned to advise or assist the Attorney General and with staff that did not participate in the investigation or prosecution of the contested case. The Attorney General may consult with the hearing officer that heard the contested case and prepared the preliminary order or other hearing officers. (1-1-95)

**02. Deputy Attorneys General.** (1-1-95)

**a.** Investigative/Prosecutorial Attorneys. No deputy attorney general involved in the investigation or prosecution of a contested case shall consult with the Attorney General considering the hearing officer's preliminary order. (1-1-95)

**b.** Advisory Attorneys. A deputy attorney general assigned to advise or assist the Attorney General in consideration of the contested case may consult with the Attorney General in preparation for or while the Attorney General is considering the hearing officer's preliminary order. (1-1-95)

**03. Other Staff.** (1-1-95)

**a.** Investigative/Prosecutorial Staff. No staff involved in the investigation or prosecution of the contested case shall consult with the Attorney General in the Attorney's General consideration of the preliminary order. (1-1-95)

**b.** Advisory Staff. Any staff assigned to advise or assist the Attorney General may consult with the Attorney General at the Attorney General's direction. (1-1-95)

**04. Hearing Officers.** No hearing officer shall consult with any person other than the Attorney General or another deputy assigned to advise the Attorney General during the Attorney General's consideration of the hearing officer's preliminary order. (1-1-95)

**426. -- 499. (RESERVED)**

**Part 3. Rules 500 through 699 -- Post-Pleading Procedure**

**a. Rules 500 through 509 -- Alternative Dispute Resolution (ADR)**

**500. ADOPTION BY REFERENCE OF RULES ADDRESSING ALTERNATIVE DISPUTE RESOLUTION (ADR) (RULE 500).**

Rules 500 through 502 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.500 through 04.11.01.502, addressing alternative dispute resolution (ADR), are hereby adopted by reference. (1-1-95)

**501. -- 509. (RESERVED)**

**b. Rules 510 through 519 -- Prehearing Conferences**

**510. ADOPTION OF REFERENCE OF RULES ADDRESSING PREHEARING CONFERENCES (RULE 510).**

Rules 510 through 514 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.510 through 04.11.01.514, addressing prehearing conferences, are hereby adopted by reference. (1-1-95)

**511. -- 519. (RESERVED)**

**c. Rules 520 through 539 -- Discovery -- Related Prehearing Procedures**

**520. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 520).**

**01. Kinds of Discovery.** The kinds of discovery recognized by these rules in contested cases are: (1-1-95)

**a.** Depositions; (1-1-95)

**b.** Production requests or written interrogatories; and (1-1-95)

**c.** Requests for admission. (1-1-95)

**02. Scope of Discovery.** Unless otherwise provided by statute, rule, order or notice, the scope of discovery is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). (1-1-95)

**521. WHEN DISCOVERY AUTHORIZED (RULE 521).**

Parties may agree between or among themselves to provide for discovery. If the applicant for a certificate of public advantage consents to being subject to discovery, the hearing officer may issue an order scheduling discovery based upon that consent. Any party that propounds discovery to the applicant has by operation of this rule also consented to discovery of its case according to the terms of the hearing officer's order compelling discovery or subsequent orders addressing discovery. (1-1-95)

**522. RIGHTS TO DISCOVERY RECIPROCAL (RULE 522).**

All parties have a right of discovery of all other parties according to Rule 521. (1-1-95)

**523. DEPOSITIONS (RULE 523).**

Whenever the parties involved have agreed to or have consented to discovery according to these rules, depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, rule or order. (1-1-95)

**524. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 524).**

Whenever the parties involved have agreed to or consented to discovery according to these rules, production requests or written interrogatories and requests for admission may be submitted in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, rule or order. (1-1-95)

**525. ANSWERS TO DISCOVERY IN PUBLIC FILES (RULE 525).**

Answers to discovery in the possession of the Office of the Attorney General are in the public domain. Answers are subject to inspection, examination and copying under the public records law, Sections 9-337 through 9-348, Idaho Code. (1-1-95)

**526. (RESERVED)**

**527. ADOPTION BY REFERENCE OF RULES RELATING TO ANSWERS TO PRODUCTION REQUESTS, FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS, EXHIBIT NUMBERS, AND PREPARED TESTIMONY AND EXHIBITS (RULE 527).**

Rules 527 through 530 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.527 through 04.11.01.530, addressing answers to production requests, filing and service of discovery-related documents, exhibit numbers, and prepared testimony and exhibits, are hereby adopted by reference. (1-1-95)

**528. -- 530. (RESERVED)**

**531. SANCTIONS FOR FAILURE TO OBEY ORDER SCHEDULING DISCOVERY (RULE 531).**

The hearing officer may impose all sanctions recognized by statute or rule for failure to comply with an order scheduling discovery. In particular, whether or not the applicant has consented to discovery, the hearing officer may find that the applicant has not met its burden of persuasion of the benefits of the cooperative agreement if the applicant will not comply with reasonable requests for discovery on material relevant to its application. (1-1-95)

**532. -- 539. (RESERVED)**

**d. Rules 540 Through 549 -- Particular Rules for Issuance  
or Revocation of a Certificate of Public Advantage**

**540. TIMETABLE FOR PROCESSING APPLICATION FOR CERTIFICATE OF PUBLIC ADVANTAGE (RULE 540).**

Section 39-4903(3), Idaho Code, provides that the Attorney General must grant or deny an application for a certificate of public advantage within sixty (60) days of the date of the filing of the application. The Attorney General interprets this timetable as establishing an applicant's right to receive a decision on the merits within sixty (60) days, not as divesting the Attorney General of jurisdiction to make a decision more than sixty (60) days after filing the application. Furthermore, the Attorney General interprets the applicant's right to a decision in sixty (60) days as a right that an applicant may waive in writing. (1-1-95)

**541. APPLICANTS' BURDENS OF PROOF (RULE 541).**

**01. Burden of Introduction of Evidence on Benefits.** Applicants for a certificate of public advantage bear the burden of introduction of evidence that their cooperative agreement provides one (1) or more of the following benefits: (1-1-95)

- a. The quality of health care provided to consumers in the state will be enhanced. (1-1-95)
- b. A hospital, if any, and other health care facilities that customarily serve the communities in the area

likely affected by the cooperative agreement will be preserved. (1-1-95)

- c. Services provided by the parties to the cooperative agreement will gain cost efficiency. (1-1-95)
- d. The utilization of health care resources and equipment in the area likely affected by the cooperative agreement will improve. (1-1-95)
- e. Duplication of health care resources in the area likely affected by the cooperative agreement will be avoided. (1-1-95)

**02. Burden of Persuasion That Benefits Outweigh Disadvantages.** Applicants for a certificate of public advantage bear the burden of persuasion by clear and convincing evidence that their agreement produces one (1) or more of the benefits listed in Subsection 541.01 and that these benefits outweigh any disadvantages attributable to a reduction in competition that may result from the agreement, including, but not limited to the following: (1-1-95)

- a. The likely adverse impact, if any, on the ability of health maintenance organizations, preferred provider plans, hospital provider organizations, persons performing utilization review, or other health care payers to negotiate optimal payment and service arrangements with hospitals and other health care providers. (1-1-95)
- b. Whether any reduction in competition among physicians, allied health professionals or other health care providers is likely to result directly or indirectly from the cooperative agreement. (1-1-95)
- c. Whether any arrangements that are less restrictive to competition could likely achieve substantially the same benefits or a more favorable balance of benefits over disadvantages than that likely to be achieved from reducing competition. (1-1-95)

**03. Relevance of Providing Supporting Information.** In assessing whether the applicant has met its burden of persuasion by clear and convincing evidence that benefits of the cooperative agreement outweigh the disadvantages, the finder of fact may take into account whether the applicant supplied at hearing relevant information available to the applicant. (1-1-95)

**542. APPOINTMENT OF HEARING OFFICER (RULE 542).**

The demands on the time of the Attorney General will not ordinarily allow the Attorney General to hear an application. Accordingly, within seven days after the Office of the Attorney General receives either a notice of intent to file an application for a certificate of public advantage or receives an application for a certificate of public advantage, whichever comes first, the Attorney General will appoint a hearing officer to hear the case. The hearing officer will be authorized to issue a preliminary order (i.e., an order that will become final in the absence of review by the Attorney General). The hearing officer will issue a preliminary order rather than a recommended order (an order that becomes final only after review by the Attorney General) because there is not time for a hearing officer to hear a case and issue a recommended order and for the Attorney General to review a recommended order in sixty (60) days. (1-1-95)

**543. ATTORNEY GENERAL'S REVIEW OF PRELIMINARY ORDER DISCRETIONARY (RULE 543).**

The Attorney General's review of a preliminary order is discretionary. The Attorney General will not review a preliminary order without the applicant's written waiver of the sixty (60) day limit for deciding an application. (1-1-95)

**544. ORDER GRANTING AN APPLICATION FOR A CERTIFICATE -- ISSUANCE OF CERTIFICATE (RULE 544).**

**01. Contents of Order.** An order granting an application for a certificate of public advantage must recite the parties to the cooperative agreement, attach the cooperative agreement approved by order the as an exhibit, find that the benefits of the cooperative agreement outweigh any disadvantages attributable to a reduction in competition that may result from the cooperative agreement, and state whether periodic written updates of the progress of the approved cooperative agreement will be required. (1-1-95)

**02. Frequency of Periodic Updates.** If the order requires periodic written updates, the order may require periodic reports at intervals no more frequently than ninety (90) days. (1-1-95)

**03. Issuance of Certificate.** The Attorney General will issue a certificate of public advantage when a preliminary order of the hearing officer granting an application for a certificate becomes final, if the preliminary order is not reviewed, or concurrently with a final order of the Attorney General granting a certificate, if the Attorney General reviews a preliminary order of the hearing officer and issues a final order granting a certificate. (1-1-95)

**545. EFFECT OF ISSUANCE OF CERTIFICATE (RULE 545).**

If a certificate of public advantage is issued, participants in the approved cooperative agreement are immune from civil enforcement and criminal prosecution for actions that might otherwise violate antitrust law of the state of Idaho taken in furtherance of the cooperative agreement. Nothing in the approval limits the authority of the Attorney General to initiate civil enforcement or criminal prosecution if health care providers have exceeded the scope of the cooperative agreement approved. (1-1-95)

**546. RECOMMENDATION FOR REVOCATION OF CERTIFICATE -- REVIEW BY ATTORNEY GENERAL (RULE 546).**

**01. Staff and Other Recommendations.** If the investigative/prosecutorial staff of the Attorney General recommends to the Attorney General in writing that a certificate of public advantage be revoked, revoked in part or otherwise modified because the benefits resulting from or likely to result from a cooperative agreement under a certificate of public advantage no longer outweigh any disadvantage attributable to any actual or potential reduction in competition resulting from the cooperative agreement, the staff shall serve a copy of the recommendation upon the parties to the agreement and upon their counsel of record for the application, if there was one. If the Office of the Attorney General receives such a recommendation in writing from the public, the Office of the Attorney General shall serve a copy of the recommendation upon the parties to the agreement and upon their counsel of record, if there was one. (1-1-95)

**02. The Attorney General's Response.** The Attorney General shall consider the recommendation to revoke, revoke in part or modify the certificate of public advantage and find whether the recommendation is substantial enough to warrant the initiation of a complaint to formally investigate. The Attorney General's finding that the recommendations warrant further investigation by the initiation of a complaint does not constitute a finding or conclusion on any underlying matter. (1-1-95)

**547. PROCEDURE WHEN COMPLAINT ISSUED (RULE 547).**

If the Attorney General accepts a recommendation to initiate a formal investigation by complaint, pursuant to Section 39-4903(12), Idaho Code, the order initiating the complaint shall revoke, revoke in part or modify the certificate of public advantage and inform the parties to the cooperative agreement that they have ten (10) days to contest the revocation, revocation in part or modification of the certificate. An order of revocation, revocation in part or modification of the certificate shall not become effective until ten (10) days have elapsed and the parties to the certificate have not contested the order. If the parties contest the order of revocation, revocation in part or modification, that order shall then be ineffective. (1-1-95)

**548. PROCEDURE WHEN REVOCATION CONTESTED (RULE 548).**

If a proposed revocation, revocation in part or modification of a certificate of public advantage is contested, the Attorney General shall appoint a hearing officer to hear the complaint as a contested case. The hearing officer shall issue a preliminary order deciding all issues raised by the complaint following a hearing on the merits or a settlement. (1-1-95)

**549. TERMINATION OF COOPERATIVE AGREEMENT (RULE 549).**

If a party to a cooperative agreement terminates its participation in the cooperative agreement, the party shall file a notice of termination with the Office of the Attorney General within thirty (30) days after the termination takes effect. If all parties to the cooperative agreement terminate their participation in the agreement, the Attorney General shall revoke the certificate of public advantage for the agreement. (1-1-95)

**e. Rules 550 through 599 -- Hearings -- Miscellaneous Procedure**

**550. ADOPTION BY REFERENCE OF RULES ADDRESSING HEARINGS AND MISCELLANEOUS PROCEDURE (RULE 550).**

Rules 550 through 566 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.550 through 04.11.01.566, addressing hearings and miscellaneous procedure, are hereby adopted by reference. (1-1-95)

**551. -- 599. (RESERVED)**

**f. Rules 600 Through 609 -- Evidence in Contested Cases**

**600. ADOPTION BY REFERENCE OF RULES ADDRESSING EVIDENCE (RULE 600).**

Rules 600 through 606 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.600 through 04.11.01.606, addressing evidence, are hereby adopted by reference. (1-1-95)

**601. -- 609. (RESERVED)**

**g. Rules 610 through 649 -- Settlements**

**610. ADOPTION BY REFERENCE OF RULES ADDRESSING SETTLEMENTS (RULE 610).**

Rules 610 through 614 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.610 through 04.11.01.614, addressing settlements, are hereby adopted by reference. (1-1-95)

**611. -- 649. (RESERVED)**

**h. Rules 650 through 699 -- Records for Decisions**

**650. ADOPTION BY REFERENCE OF RULES ADDRESSING RECORDS FOR DECISION (RULE 650).**

Rules 650 and 651 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.650 through 04.11.01.651, addressing records for decision, are hereby adopted by reference. (1-1-95)

**651. -- 699. (RESERVED)**

**Part 4. -- Rules 700 through 999 -- Preliminary Orders and Review of Preliminary Orders**

**a. Rules 700 through 709 -- Defaults**

**700. ADOPTION BY REFERENCE OF RULES ADDRESSING DEFAULTS (RULE 700).**

Rules 700 through 702 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.700 through 04.11.01.702, addressing defaults, are hereby adopted by reference. (1-1-95)

**701. -- 709. (RESERVED)**

**b. Rules 710 through 780**

**Interlocutory, Preliminary and Final Orders -- Review or Stay of Orders**

**710. ADOPTION BY REFERENCE OF RULES ADDRESSING INTERLOCUTORY, PRELIMINARY AND FINAL ORDERS AND REVIEW OR STAY OF ORDERS (RULE 710).**

Rules 710, 711, 730, 740, 750, 760, 770, and 780 of the Attorney General’s Rules of Administrative Procedure, IDAPA 04.11.01.710, 04.11.01.711, 04.11.01.730, 04.11.01.740, 04.11.01.750, 04.11.01.760, 04.11.01.770 and



04.11.017.880, addressing interlocutory, preliminary and final orders and review or stay of orders, are hereby adopted by reference. (1-1-95)

**711. -- 789. (RESERVED)**

**c. Rules 790 through 999 -- Appeal to District Court**

**790. ADOPTION BY REFERENCE OF RULES ADDRESSING APPEAL TO DISTRICT COURT (RULE 790).**

Rules 790 and 791 of the Attorney General's Rules of Administrative Procedure, IDAPA 04.11.01.790 and 04.11.01.791, addressing appeal to district court, are hereby adopted by reference. (1-1-95)

**791. -- 999. (RESERVED)**

**04.20.01 – RULES IMPLEMENTING THE IDAHO TOBACCO MASTER  
SETTLEMENT AGREEMENT COMPLEMENTARY ACT**

**Subchapter A -- General Provisions and Definitions  
(Rules 0 through 99)**

**000. LEGAL AUTHORITY (RULE 0).**

This chapter is adopted under the legal authority of Title 39, Chapter 84, Idaho Code. (3-20-04)

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** This chapter is titled “Rules Implementing the Idaho Tobacco Master Settlement Agreement Complementary Act.” (3-20-04)

**02. Scope.** These rules govern compliance with, and seek to implement, Idaho’s Tobacco Master Settlement Agreement Complementary Act and also pertain to the sale, stamping and reporting of cigarettes in Idaho. (3-20-04)

**002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).**

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 in the adoption of these rules are published in the Idaho Administrative Bulletin. Any memorandum of understanding or letters explaining the Attorney General’s policies concerning administration of these rules will be maintained for public inspection. (3-20-04)

**003. PUBLIC RECORDS ACT COMPLIANCE (RULE 3).**

All filings submitted according to the procedures of this chapter are public records. Any memorandum of understanding or letter explaining the Attorney General’s policies concerning administration of these rules are public records available for inspection. (3-20-04)

**004. ADMINISTRATIVE APPEALS (RULE 4).**

Except as provided by CAR 200 and Section 39-8407(1), Idaho Code, there is no provision for administrative appeals. (3-20-04)

**005. DEFINITIONS (RULE 5).**

In addition to those terms set forth in Section 39-7802, Idaho Code, which apply with full force and effect to all provisions and sections of these rules, including rules hereafter amended or supplemented, as used in this chapter:

( )

**01. Brand Family.** Brand family means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors including, but not limited to, “menthol,” “lights,” “kings,” and “100s,” and includes any brand name (alone or in conjunction with any other word) trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes. (3-20-04)

**02. Directory.** Directory means the Directory of Compliant Tobacco Product Manufacturers and Brands, as provided for by Section 39-8403(2), Idaho Code. (3-20-04)

**03. Nonparticipating Manufacturer.** Nonparticipating manufacturer means any tobacco product manufacturer that is not a participating manufacturer. (3-20-04)

**04. Participating Manufacturer.** Participating manufacturer has the same meaning as that term is defined in section II(jj) of the master settlement agreement and all amendments thereto. (3-20-04)

**05. Qualified Escrow Fund.** Qualified escrow fund has the same meaning as that term is defined in Section 39-7802(f), Idaho Code. (3-20-04)

**06. Stamping Agent.** Stamping agent means a person that is authorized or required to affix tax stamps to packages or other containers of cigarettes under Title 63, Chapter 25, Idaho Code. (3-20-04)

006. -- 099. (RESERVED)

**Subchapter B -- Quarterly Certifications and Escrow Deposits**  
**(Rules 100 through 199)**

**100. QUARTERLY CERTIFICATIONS AND ESCROW DEPOSITS (RULE 100).**

To promote compliance with Section 39-7803(b), Idaho Code, the Attorney General may require nonparticipating manufacturers quarterly to certify their compliance with the Idaho tobacco master settlement agreement act. The Attorney General may also require nonparticipating manufacturers to make the escrow payments required by Section 39-7803(b), Idaho Code, in quarterly installments during the year in which the sales covered by such payments are made. This rule applies to nonparticipating manufacturers who meet any of the following criteria: (3-20-04)

**01. No Previous Escrow Deposit.** Nonparticipating manufacturers that have not previously established and funded a qualified escrow fund in Idaho; (3-20-04)

**02. No Escrow Deposit for More Than One Year.** Nonparticipating manufacturers that have not made any escrow deposits for more than one (1) year; (3-20-04)

**03. Untimely or Incomplete Deposits.** Nonparticipating manufacturers that have failed to make a timely and complete escrow deposit for any prior calendar year; (3-20-04)

**04. Outstanding Judgments.** Nonparticipating manufacturers that have failed to pay any judgment, including any civil penalty; (3-20-04)

**05. Large Sales Volume.** Nonparticipating manufacturers that have more than one million six hundred thousand (1,600,000) of their cigarettes sold during a quarter; and (3-20-04)

**06. Other Reasonable Cause.** In addition to the reasons specified above, the Attorney General may require quarterly escrow deposits from a nonparticipating manufacturer if the Attorney General has reasonable cause to believe the nonparticipating manufacturer may not make its full required escrow deposit by April 15 of the year following the year in which the cigarettes sales were made. (3-20-04)

**101. DEADLINE FOR QUARTERLY ESCROW DEPOSITS (RULE 101).**

Nonparticipating manufacturers who are required to make quarterly escrow deposits must do so no later than thirty (30) days after the end of the quarter in which the sales are made. For example, the deadline for making a quarterly escrow deposit for cigarette sales occurring in February is April 30 of the same year. (3-20-04)

**102. DEADLINE FOR SUBMITTING QUARTERLY CERTIFICATION AND NOTIFYING ATTORNEY GENERAL OF QUARTERLY ESCROW DEPOSIT (RULE 102).**

Nonparticipating manufacturers who are required to make quarterly escrow deposits, must provide the Attorney General with official notification of the quarterly escrow deposit no later than ten (10) days after the deadline for which an escrow deposit is required. Nonparticipating manufacturers must also provide their quarterly certifications within the same deadline. For example, the deadline for certifying and officially notifying the Attorney General of a quarterly escrow deposit for sales of cigarettes that occurred in February is May 10 of the same year. (3-20-04)

**103. QUARTERLY PERIODS DEFINED (RULE 103).**

For purposes of this subchapter, the calendar year shall be divided into the following quarters: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31. (3-20-04)

**104. UNTIMELY OR INCOMPLETE QUARTERLY CERTIFICATION OR QUARTERLY ESCROW DEPOSIT (RULE 104).**

If the required quarterly escrow deposit is not timely made in full, or the required quarterly certification is not provided to the Attorney General, or the Attorney General does not receive timely official notice of the quarterly escrow deposit, the delinquent nonparticipating manufacturer and its brand families may be removed from the directory. (3-20-04)

105. -- 199. (RESERVED)

**Subchapter C -- Review of Decisions to Exclude or Remove from the Directory**  
**(Rules 200 through 299)**

**200. REVIEW OF ATTORNEY GENERAL DECISIONS RELATED TO EXCLUDING OR REMOVING FROM THE DIRECTORY (RULE 200).**

A determination of the Attorney General to exclude or remove from the directory a brand family or tobacco product manufacturer shall be subject to review in the manner prescribed by Idaho's administrative procedure act, Title 67, Chapter 52, Idaho Code. (3-20-04)

201. -- 299. (RESERVED)

**Subchapter D -- Directory**  
**(Rules 300 through 399)**

**300. DIRECTORY (RULE 300).**

The Attorney General shall develop, maintain and publish the directory, which shall list all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of Section 39-8403(1), Idaho Code, and all brand families that are listed in such certifications; provided, however, (3-20-04)

**01. Missing or Noncompliant Certification.** The Attorney General shall not include or retain in such directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with Section 39-8403(1)(b) and (c), Idaho Code, unless the Attorney General has determined that such violation has been cured to the satisfaction of the Attorney General. (3-20-04)

**02. Inadequate Escrow Deposit and Outstanding Judgments.** Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the Attorney General concludes in the case of a nonparticipating manufacturer that: (3-20-04)

**a.** Any escrow payment required pursuant to Section 39-7803(b), Idaho Code, for any period and for any brand family, whether or not listed by such nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the Attorney General; or (3-20-04)

**b.** Any outstanding final judgment, including interest thereon, for a violation of Idaho's tobacco master settlement agreement act has not been fully satisfied for such brand family and such manufacturer. (3-20-04)

**301. PUBLICATION OF DIRECTORY (RULE 301).**

The directory will be developed and published by September 1, 2003. The directory will be available on the Internet at the Attorney General's website. ( )

**302. DIRECTORY UPDATES (RULE 302).**

The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand families to keep the directory in conformity with the requirements of this chapter and Section 39-8403, Idaho Code. (3-20-04)

**303. DIRECTORY UPDATE NOTICES -- STAMPING AGENTS (RULE 303).**

The Attorney General shall transmit by electronic mail, if possible, or by other means as are reasonable to each stamping agent, notice of the addition to, or removal from, the directory of any tobacco product manufacturer or brand family. With respect to notices of removal from the directory, such notice shall be provided ten (10) calendar days prior to the Attorney General removing the tobacco product manufacturer or its brand family or both from the directory. (3-20-04)

**304. DIRECTORY UPDATE NOTICES -- TOBACCO PRODUCT MANUFACTURER -- ADDITION (RULE 304).**

The first time a tobacco product manufacturer complies with Section 39-8403(1), Idaho Code, the Attorney General shall notify by mail the tobacco product manufacturer of such compliance and that it will be added to the directory. The notice shall also indicate each brand family of the tobacco product manufacturer that the Attorney General has determined will be added to the directory. (3-20-04)

**305. DIRECTORY UPDATE NOTICES -- TOBACCO PRODUCT MANUFACTURER -- NONINCLUSION OR REMOVAL (RULE 305).**

The Attorney General shall notify by certified mail to the tobacco product manufacturer's agent for service of process of any decision not to include in or to remove from the directory the tobacco product manufacturer, a brand family of the tobacco product manufacturer, or both. With respect to notices of removal from the directory, such notice shall be provided ten (10) calendar days prior to the Attorney General taking action as provided in the notice. (3-20-04)

**306. BURDEN OF ESTABLISHING ENTITLEMENT TO BE LISTED IN THE DIRECTORY (RULE 306).**

The burden of proof shall be on the tobacco product manufacturer to establish that it or a particular brand family is entitled to be listed in the directory. (3-20-04)

**308. -- 999. (RESERVED)**

# IDAPA 11 – IDAHO STATE POLICE RACING COMMISSION

DOCKET NO. 11-0400-1900

## NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of 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 54-2506, 54-2507, 54-2508, 54-2509, 54-2512, 54-2513, and 54-2514, 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 11, rules of the Idaho State Police, Idaho State Racing Commission:

### **IDAPA 11**

- 11.04.04, *Rules Governing Disciplinary Hearings and Appeals*
- 11.04.06, *Rules Governing Racing Officials*
- 11.04.08, *Rules Governing Pari-Mutuel Wagering*
- 11.04.09, *Rules Governing Claiming Races*
- 11.04.10, *Rules Governing Live Horse Races*
- 11.04.13, *Rules Governing the Idaho State Racing Commission*
- 11.04.14 *Rules Governing Owners, Trainers, Authorized Agents, Jockeys, Apprentice Jockeys, and Jockey Agents*

These rules provide regulatory safeguards for the integrity of imminent horse races, the safety of horses and personnel involved in races, and the prevention of monetary fraud upon racing industry members and the public. The changes to these rules were clean up in nature, which in some instances consolidated and/or eliminated definitions; combined, re-ordered and re-numbered similar sections; and removed office hours and other information included on the coversheet. All the changes maintain the intent, scope, and purpose intended and previously approved.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 1335-1446](#).

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Ardie Noyes at phone (208) 884-7080, Fax (208) 884-7098, or email [ardie.noyes@isp.idaho.gov](mailto:ardie.noyes@isp.idaho.gov).

Dated this 15th day of October, 2019.

Charlie Spencer, Police Services Major / Rules Review Officer  
Phone (208) 884-7203 / Fax: (208) 884-7290  
[Charlie.spencer@isp.idaho.gov](mailto:Charlie.spencer@isp.idaho.gov)

Idaho State Police  
700 S. Stratford Drive  
Meridian, ID 83642

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 54-2506, 54-2507, 54-2508, 54-2509, 54-2512, 54-2513, and 54-2514, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 11, rules of the Idaho State Police, Idaho State Racing Commission:

**IDAPA 11**

- 11.04.04, *Rules Governing Disciplinary Hearings and Appeals*
- 11.04.06, *Rules Governing Racing Officials*
- 11.04.08, *Rules Governing Pari-Mutuel Wagering*
- 11.04.09, *Rules Governing Claiming Races*
- 11.04.10, *Rules Governing Live Horse Races*
- 11.04.13, *Rules Governing the Idaho State Racing Commission*
- 11.04.14 *Rules Governing Owners, Trainers, Authorized Agents, Jockeys, Apprentice Jockeys, and Jockey Agents*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. Specifically, the expiration of these rules on June 30, 2019 would occur during the middle of the already underway 2019 racing season, which is currently slated to end in September 2019. As such, expiration of these rules would immediately and effectively remove regulatory safeguards for the integrity of imminent horse races, the safety of horses and personnel involved in races, and the prevention of monetary fraud upon racing industry members and the public. Also, the expiration of these rules on June 30, 2019 would create inconsistent enforcement for the season, resulting in further injustice to the racing industry and the public.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

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

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Ardie Noyes at phone (208) 884-7080, Fax (208) 884-7098, or e-mail [ardie.noyes@isp.idaho.gov](mailto:ardie.noyes@isp.idaho.gov).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 10th day of May, 2019.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-0400-1900**



## 11.04.04 – RULES GOVERNING DISCIPLINARY HEARINGS AND APPEALS

### 000. LEGAL AUTHORITY.

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, of the Idaho Code. (3-29-10)

### 001. TITLE AND SCOPE.

**01. Title.** These rules of the Idaho State Racing Commission are cited as IDAPA 11.04.04, “Rules Governing Disciplinary Hearings and Appeals.” (3-29-10)

**02. Scope.** These rules govern disciplinary hearings and appeals in the State of Idaho. (3-29-10)

### 002. -- 009. (RESERVED)

### 010. DEFINITIONS.

In addition to the definitions in Title 54, Chapter 25, Idaho Code, the following apply: ( )

**01. Act.** The Idaho Racing Act, Section 54-2501, Idaho Code. (3-29-10)

**02. Appeal.** A request for the Racing Commission or its designee to investigate, consider and review any decisions or rulings of Stewards of a meeting. (3-29-10)

**03. Burden of Proof.** The obligation to establish by the preponderance of the evidence that a violation of statute or rules occurred. (3-29-10)

**04. Continuance.** Postponement of adjudicatory proceedings to a future date. (3-29-10)

**05. De Novo Hearing.** To have the matter heard anew. (3-29-10)

**06. Disciplinary Action.** A process for dealing with behavior that violates the provisions of these rules. (3-29-10)

**07. Evidence.** Data presented in proof of the facts in issue and which may include the testimony of witnesses, records, documents, or objects. (3-29-10)

**08. Exclusion.** The act of preventing a person from entering or remaining on the grounds of any racing association or simulcast facility under the jurisdiction of the Racing Commission. (3-29-10)

**09. Executive Director.** The person responsible for the administration of the Idaho State Racing Commission. (3-29-10)

**10. Hearing Officer.** An official appointed by the Idaho State Racing Commission to conduct an investigation or administrative hearing so that the agency can exercise its statutory powers. (3-29-10)

**11. Horsemen’s Bookkeeper.** A bonded racing association employee who manages the horsemen’s accounts which covers all monies due horsemen in regards to purses, stakes, rewards, claims and deposits. (3-29-10)

**12. Licensee.** Any person or entity holding a license from the Racing Commission to engage in racing or a regulated activity. (3-29-10)

**13. Motions.** A request for a steward or racing commission to make a decision. (3-29-10)

**14. Notice.** A written or printed announcement from Stewards or the Racing Commission. (3-29-10)

**15. Racing Association.** Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (3-29-10)

**16. Ruling.** An official decision by the stewards stating the charges against the licensee. (3-29-10)

**17. Stay.** To delay or stop the effect of a stewards ruling. (3-29-10)

**18. Steward.** A racing official who presides over a race meet, has jurisdiction over all racing officials, rules on protests and claims of foul, and imposes fines and suspensions. (3-29-10)

**19. Suspension.** A temporary remedial measure designed to protect the safety and integrity of the horse racing industry and the participants therein. (3-29-10)

**011. -- 019. (RESERVED)**

**020. APPLICABILITY.**

These rules apply to all proceedings for disciplinary action of licensees and associated proceedings including disqualification. (3-29-10)

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

**030. EXEMPTION FROM THE IDAHO RULES OF ADMINISTRATIVE PROCEDURE OF THE ATTORNEY GENERAL.**

**01. Findings.** In accordance with Section 67-5206(5)(b), Idaho Code, the Racing Commission makes the following findings: (3-29-10)

**a.** Horse racing is a sport requiring racing officials to make immediate binding decisions affecting the races and participants in the races. (3-29-10)

**b.** A central element of horse racing is pari-mutuel betting, and public confidence in the outcome of races is critical to the racing industry and the general public. (3-29-10)

**c.** Racing seasons at certain locations are often very short and involve preliminary and final races requiring quick action in order for disciplinary action to be effective and in order to permit final races to be run without controversy as to the participants and winners. (3-29-10)

**d.** Nationwide, participants in racing have become accustomed to, and acknowledge the need for, immediate authoritative decisions and quick disciplinary action. (3-29-10)

**02. Idaho Rules of Administrative Procedure of the Attorney General.** Because of the factors described in Subsection 030.01 of these rules, the Racing Commission adopts IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-29-10)

**a.** Proceedings before the Racing Commission are governed by IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-29-10)

**b.** Proceedings by the Stewards are governed exclusively by this chapter (IDAPA 11.04.04), and supersede IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-29-10)

**031. PROCEEDINGS BY THE RACING COMMISSION.**

De novo hearings and other proceedings before the Racing Commission are governed by IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," insofar as such provisions are not inconsistent with these rules. (3-29-10)

**032. -- 039. (RESERVED)**

**040. DISCIPLINARY ACTION.**

Only the Stewards or the Racing Commission have the right to impose a fine or suspension. (3-29-10)

**041. WRITTEN REPORT.**

The Stewards must report fines or suspensions imposed in the daily written report submitted to the Racing Commission. (3-29-10)

**042. FINES.**

All fines imposed by the Stewards must be paid to the Horsemen's Bookkeeper immediately after imposition, except: (3-29-10)

- 01. Otherwise Ordered.** As otherwise ordered by the Stewards under these rules; (3-29-10)
- 02. Stayed by Commission.** Stayed by the Racing Commission; or (3-29-10)
- 03. Stayed by Courts.** As stayed by a court of competent jurisdiction. (3-29-10)

**043. SUSPENSIONS.**

All suspensions for a specified period of time are to be considered in calendar days. The ruling will show the first and the last day of suspension. (3-29-10)

**044. -- 049. (RESERVED)**

**050. SUMMARY SUSPENSION.**

If the Stewards determine that a licensee's actions constitute an immediate danger to the public health, safety or welfare, the Stewards may summarily suspend the license pending a hearing. (3-29-10)

**01. Entitlement to Hearing.** A licensee whose license has been summarily suspended is entitled to a hearing on the summary suspension not later than the third day after the license was summarily suspended. The licensee may waive his right to a hearing on the summary suspension within the three (3) day limit. (3-29-10)

**02. Issue at Hearing.** The Stewards must conduct a hearing on the summary suspension in the same manner as other disciplinary hearings. At a hearing on a summary suspension, the sole issue is whether the licensee's license should remain suspended pending a final disciplinary hearing and ruling. (3-29-10)

**051. -- 059. (RESERVED)**

**060. RIGHTS OF THE LICENSEE.**

A licensee who is the subject of a disciplinary hearing conducted by the Stewards is entitled to the following: (3-29-10)

- 01. Proper Notice.** Proper notice of all charges; (3-29-10)
- 02. Legal Counsel.** The right to legal counsel at the licensee's own expense; (3-29-10)
- 03. Examination of Evidence.** The right to examine all evidence to be presented against the licensee; (3-29-10)
- 04. Defense.** The right to present a defense; (3-29-10)
- 05. Call Witnesses.** The right to call witnesses; and (3-29-10)
- 06. Cross Examination.** The right to cross examine witnesses. (3-29-10)

**061. -- 069. (RESERVED)**

**070. PROPER NOTICE OF ALL CHARGES.**

The Stewards must provide written notice at least three (3) days before the hearing to a licensee who is the subject of a disciplinary hearing, except as provided for by these rules regarding summary suspensions. The licensee may waive his right to a three-day notice by executing a written waiver. (3-29-10)

**071. CONTENT OF NOTICE.**

Notice given under Section 070 includes: ( )

- 01. Hearing Schedule.** A statement of the time, place and nature of the hearing; (3-29-10)
- 02. Legal Authority.** A statement of the legal authority and jurisdiction under which the hearing is to be held; (3-29-10)

- 03. Violation.** A reference to the particular sections of the statutes or rules involved; (3-29-10)
- 04. Description of Conduct.** A short, in plain language of the alleged conduct that has given rise to the disciplinary hearing; (3-29-10)
- 05. Possible Penalties.** The possible penalties that may be imposed; and (3-29-10)
- 06. Rights.** A statement summarizing the rights of the licensee as outlined in Section 060 of these rules. (3-29-10)

**072. SERVICE OF NOTICE.**

- 01. Hand Delivery.** If possible, the Stewards or their designee may hand deliver the written notice of the disciplinary hearing to the licensee who is the subject of the hearing. (3-29-10)
- 02. Mail Delivery.** If hand delivery is not possible, the Stewards may mail the notice to the licensee's last known address, as found in the Racing Commission's licensing files, by regular mail and by certified mail, return receipt requested. (3-29-10)
- 03. Disqualification.** If the disciplinary hearing involves an alleged medication violation that could result in the disqualification of a horse, the Stewards must provide notice of the hearing to the owner, managing owner or lessee of the horse in the manner provided by Section 072. (3-29-10)

**073. NONAPPEARANCE.**

- 01. Nonappearance After Adequate Notice.** Nonappearance of a summoned party after adequate notice is construed as a waiver of the right to a hearing before the Stewards. (3-29-10)
- 02. Suspension of License.** In compliance with these rules the Stewards may suspend the license of a person who fails to appear at a disciplinary hearing after written notice of the hearing has been sent. (3-29-10)

**074. -- 079. (RESERVED)**

**080. CONTINUANCES.**

- 01. Request for Continuance.** Upon receipt of a notice of disciplinary hearing, a licensee may request a continuance of the hearing. (3-29-10)
- 02. Good Cause.** The Stewards may grant a continuance of any hearing for good cause shown. (3-29-10)
- 03. Order of Continuance.** The Stewards may at any time order a continuance on their own motion. (3-29-10)

**081. -- 089. (RESERVED)**

**090. EVIDENCE.**

Each witness at a disciplinary hearing conducted by the Stewards will be sworn in by the presiding steward. ( )

**091. RULES OF EVIDENCE.**

The Stewards are to allow a full presentation of evidence and are not bound by the technical rules of evidence. However, the Stewards may disallow evidence that is irrelevant or unduly repetitive of other evidence. The Stewards have the authority to determine, in their sole discretion, the weight and credibility of any evidence or testimony. The Stewards may admit hearsay evidence if the Stewards determine the evidence is of a type that is commonly relied on by reasonably prudent people. The rules of privilege recognized by state law apply in hearings before the Stewards. (3-29-10)

**092. BURDEN OF PROOF.**

The burden of proof is on the person bringing the complaint to show, by a preponderance of the evidence, that the licensee has violated or is responsible for a violation of the Act or a Racing Commission rule. (3-29-10)

**093. RECORD OF HEARING.**

The Stewards must make a tape recording of all disciplinary hearings. A transcript of the recording may be made available at the expense of the requesting person. (3-29-10)

**094. -- 099. (RESERVED)**

**100. RULING.**

The issues at a disciplinary hearing must be decided by a majority vote of the Stewards. If the vote is not unanimous, the dissenting steward must include a written statement of the reason(s) for the dissent with the record of the hearing. (3-29-10)

**101. FORM OF RULING.**

A ruling by the Stewards must be on a form prescribed by the Racing Commission and include: (3-29-10)

**01. Personal Information.** The full name, date of birth, last record address, license type and license number of the person who is the subject of the hearing; (3-29-10)

**02. Charges.** A statement of the charges against the licensee, including a reference to the specific section of the Act or rules of the Racing Commission that the licensee is found to have violated; (3-29-10)

**03. Dates.** The date of the hearing and the date the ruling was issued; (3-29-10)

**04. Penalty.** The penalty imposed; (3-29-10)

**05. Order of Finish.** Any changes in the order of finish or purse distribution; and (3-29-10)

**06. Other Information.** Any other information required by the Racing Commission. (3-29-10)

**07. Signing of Ruling.** Signatures by a majority of the Stewards. ( )

**102. -- 109. (RESERVED)**

**110. SERVICE OF RULING.**

**01. Hand Delivery.** If possible, the Stewards or their designee may hand deliver a copy of the ruling to the person who is the subject of the ruling. (3-29-10)

**02. Mail.** If hand delivery is not possible, the Stewards may mail the ruling to the person's last known address, as found in the Racing Commission's licensing files, by regular mail and by certified mail, return receipt requested. (3-29-10)

**03. Copy.** A copy of the ruling must be sent to the association of Racing Commissioners International or association of Racing Commissioners International Ruling Database. (3-29-10)

**04. Disqualification.** If the ruling includes the disqualification of a horse, the Stewards must provide a copy of the ruling to the owner of the horse, the horsemen's bookkeeper, the appropriate past performance service(s) and the Association of Racing Commissioners International in the manner provided for in these rules. (3-29-10)

**111. -- 119. (RESERVED)**

**120. NOTICE OF RIGHT OF APPEAL.**

A licensee who is the subject of the proceeding must be informed by the Stewards of his right to appeal the ruling at

the time he is informed of the ruling. (3-29-10)

**121. -- 139. (RESERVED)**

**140. TRANSFER OF HORSE PROHIBITED.**

The transfer of a horse to avoid application of a Racing Commission rule or ruling is prohibited. (3-29-10)

**141. -- 149. (RESERVED)**

**150. APPEALS.**

Except as provided in Section 160 of these rules, a licensee aggrieved by a ruling of the Stewards may appeal to the Racing Commission. A licensee who fails to file an appeal by the deadline and in the form outlined by these rules waives the right of appeal. ( )

**151. TIME FRAME FOR APPEAL.**

An appeal must be filed with the Executive Director of the Racing Commission not later than five (5) calendar days after the entry of the ruling. If the Racing Commission determines the appeal to be frivolous, the appellant may be subject to a fine. (3-29-10)

**152. FORM OF APPEAL.**

**01. Form of Appeal.** An appeal must be in writing on a form prescribed by the Racing Commission and include: (3-29-10)

**a.** The name, address, telephone number and signature of the licensee making the appeal; and (3-29-10)

**b.** A statement of the basis for the appeal. (3-29-10)

**02. Bond.** The licensee filing the appeal may be required to furnish a bond in the amount of two hundred dollars (\$200) to cover the administrative costs and which may be forfeited should the appeal be heard. (3-29-10)

**153. RECORD FOR APPEAL.**

Upon notification by the Racing Commission that an appeal has been filed, the Stewards must forward to the Racing Commission the written record of the proceeding and any evidence or exhibits on which the appeal is based. (3-29-10)

**154. PAYMENT OF FINES DURING APPEAL.**

If a licensee against whom a fine has been assessed files an appeal of the ruling that assesses the fine, the licensee must pay the fine in accordance with these rules. If the appeal is disposed of in favor of the appellant, the Racing Commission will refund the amount of the fine. ( )

**155. -- 159. (RESERVED)**

**160. NO APPEAL FROM DISQUALIFICATION FOR INTERFERENCE.**

A decision by the Stewards regarding a disqualification for interference during the running of the race is final and may not be appealed to the Racing Commission. (3-29-10)

**161. -- 169. (RESERVED)**

**170. HEARING ON APPEAL.**

The hearing of the Racing Commission on appeal is limited to oral argument regarding issues of law and fact as may be found in the record established before the Board of Stewards, except, the Racing Commission may order a de novo hearing if the Racing Commission determines that exceptional circumstances require it. (3-29-10)

**171. WRITTEN APPEAL.**

- 01. Written Appeal.** With the consent of the appellant, an appeal may be submitted in writing. (3-29-10)
- 02. Determination.** The Racing Commission will determine the matter upon the record submitted to the Racing Commission. (3-29-10)
- 03. Papers.** All papers filed with the Racing Commission are the property of the Racing Commission. (3-29-10)
- 172. HEARING OFFICER.**  
The Racing Commission may assign a hearing officer to hear the matter pending before the Racing Commission, pursuant to the IDAPA 04.11.01, "Idaho Rules of Administrative Proceeding of the Attorney General." (3-29-10)
- 173. WRITTEN ARGUMENTS.**  
Written arguments and briefs or briefs and motions regarding the appeal will be allowed under such terms as the Racing Commission may direct in its notice of hearing, which will be issued at least twenty-eight (28) days prior to the date set for hearing. (3-29-10)
- 174. MOTIONS.**  
Requests for postponement and other motions must be filed in writing not later than seven (7) days before the scheduled hearing. The Executive Director may determine whether good cause is shown for the postponement and may grant or deny the request on behalf of the Racing Commission. (3-29-10)
- 175. -- 179. (RESERVED)**
- 180. RECORD OF PROCEEDINGS.**
- 01. Record of Proceedings.** A verbatim record of the proceedings at hearings before the Racing Commission will be maintained either by electrical devices or by stenographic means, as the Racing Commission may direct. (3-29-10)
- 02. Stenographic Record.** If any party to the action requests a stenographic record of the proceedings, the record will be done by stenographic means. (3-29-10)
- 03. Cost.** The requesting party must pay the costs of reporting the proceedings. (3-29-10)
- 181. FINAL ORDER.**  
Following the hearing the Racing Commission will issue a final order as provided by Section 67-5246, Idaho Code. The Executive Director may sign the final order on behalf of the Racing Commission Chairman. (3-29-10)
- 182. -- 199. (RESERVED)**
- 200. STAY OF RULING.**  
A licensee who has been disciplined by a ruling of the Stewards may apply to the Executive Director for a stay of the ruling. (3-29-10)
- 201. TIME FRAME FOR APPLICATION.**  
An application for a stay must be filed with the Racing Commission's Executive Director not later than the deadline for filing an appeal. (3-29-10)
- 202. FORM OF APPLICATION.**
- 01. Application for Stay.** An application for a stay must be in writing and include: (3-29-10)
- a.** The name, address, and telephone number of the person requesting the stay; (3-29-10)
- b.** A statement of the justification for the stay. (3-29-10)
- 02. Licensee Signature.** The application must be signed by the licensee requesting the stay. (3-29-10)

**203. GRANT OR DENIAL OF STAY.**

The Executive Director may grant a stay for cause. (3-29-10)

**01. Licensee Notification.** The Executive Director must notify the licensee in writing of the decision. (3-29-10)

**02. Rescission of Stay.** The Executive Director may rescind a stay granted under this Subsection of these rules for reasonable cause. (3-29-10)

**204. EFFECT OF STAY.**

The fact that a stay is granted is not a presumption that the ruling by the Stewards is invalid. (3-29-10)

**205. -- 349. (RESERVED)**

**350. EXCLUSION.**

The Stewards or Racing Commission may order an individual excluded from all or part of any premises under the regulatory jurisdiction of the Racing Commission if the Stewards, Executive Director, or Racing Commission determine that: (3-29-10)

**01. Statutory or Regulatory Exclusion.** The individual may be excluded under the statutes or rules of the Racing Commission. (3-29-10)

**02. Integrity Exclusion.** The individual's presence on racing association grounds is inconsistent with maintaining the honesty and integrity of racing. (3-29-10)

**351. HEARING ON EXCLUSION.**

An exclusion may be ordered separately or in conjunction with other disciplinary action taken by the Stewards or Racing Commission. (3-29-10)

**01. Ordered Separately.** If an exclusion is ordered separately, the excluded individual is entitled to a hearing before the Stewards or Racing Commission. (3-29-10)

**02. Conduct of Hearing.** A hearing on an exclusion is conducted in the same manner as other hearings conducted by the Stewards or Racing Commission. (3-29-10)

**03. Effect of Exclusion.** If an individual is excluded under these rules, a horse owned or trained by or under the care or supervision of the individual is ineligible to be entered or to start in a race in this jurisdiction. (3-29-10)

**352. -- 399. (RESERVED)**

**400. RULINGS IN OTHER JURISDICTIONS.**

The Racing Commission and the Stewards may honor rulings from other pari-mutuel jurisdictions regarding license suspensions, revocation, or eligibility of horses. (3-29-10)

**401. APPEALS OF RECIPROCAL RULINGS.**

Persons subject to rulings in other jurisdictions have the right to request a hearing before the Racing Commission to show cause why such ruling should not be enforced in this jurisdiction. (3-29-10)

**01. Request for Hearing.** Any request for such hearing must clearly set forth in writing the reasons for the appeal. (3-29-10)

**02. Signed.** The request must be signed by the person requesting the hearing. (3-29-10)

**402. -- 999. (RESERVED)**



## 11.04.06 – RULES GOVERNING RACING OFFICIALS

### 000. LEGAL AUTHORITY.

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, of the Idaho Code. (3-29-10)

### 001. TITLE AND SCOPE.

01. **Title.** These rules are cited as IDAPA 11.04.06, “Rules Governing Racing Officials.” (3-29-10)

02. **Scope.** These rules govern the Racing Officials of the Idaho State Racing Commission. (3-29-10)

### 002. -- 009. (RESERVED)

### 010. DEFINITIONS.

In addition to the definitions in Title 54, Chapter 25, Idaho Code, the following apply: ( )

01. **Appointment.** A person approved by the Racing Commission or its designee, for an official racing position. (3-29-10)

02. **Apprentice Jockey.** A jockey who has not ridden a certain number of winners within a specified period of time. (3-29-10)

03. **Approval.** Acceptance of a racing official’s eligibility by the Racing Commission or its designee. (3-29-10)

04. **Assistant Starter.** The employee of a racing association who, under direct supervision of the starter, helps place the starting gate for a race, leads horses into the gate, helps jockeys and handles horses while in the gate until the start. (3-29-10)

05. **Attendance.** Being at an assigned location for an assigned period of time. (3-29-10)

06. **Clerk of Scales.** The employee of a racing association responsible for sequestering all jockeys each racing day, weighing all jockeys out and in from races, checking their assigned riding weights versus their actual weights, and reporting all changes. (3-29-10)

07. **Clocker.** A person who times workouts and races. (3-29-10)

08. **Commission Veterinarian.** A Racing Commission appointed veterinarian having authority to enforce the Racing Commission’s rules relating to veterinary practices. (3-29-10)

09. **Complaint.** A written allegation of a violation of these rules. (3-29-10)

10. **Conditions.** Qualifications which determine a horse’s eligibility to be entered in a race. (3-29-10)

11. **Daily Program.** The published listing of all contests and contestants for a specific performance. (3-29-10)

12. **Dead Heat.** The finish of a race in which the noses of two (2) or more horses reach the finish line at the same time. (3-29-10)

13. **Declaration.** The act of withdrawing an entered horse from a race before the closing of overnight entries. (3-29-10)

14. **Eligibility Certificate.** Document(s) showing the eligibility of all horses competing at the track or stabled on the grounds. (3-29-10)

15. **Entrance Money Records.** A record showing all monies due and paid prior to entry of a contest. (3-29-10)

16. **Entries.** A list of horses entered in a race. (3-29-10)

17. **Gate Judge.** A track employee who is present at the starting gate just prior to the running of each

- race. (3-29-10)
- 18. Horse Identifier.** A person who is responsible for positively identifying all horses entered to a race, stabled or on racing association grounds. (3-29-10)
- 19. Horsemen's Bookkeeper.** A bonded racing association employee who manages the horsemen's accounts which covers all monies due horseman in regards to purses, stakes, rewards, claims and deposits. (3-29-10)
- 20. Jockey's Room.** A room reserved for jockey's to prepare for a race. (3-29-10)
- 21. Jockey Room Custodian.** A racing association employee authorized to regulate the conduct of the jockeys, ensure good order is maintained and monitors the jockeys. (3-29-10)
- 22. Jurisdiction.** The limits or territory within which Racing Officials authority may be exercised. (3-29-10)
- 23. Nerved Horses.** A horse that has had posterior digital neurectomy (heel nerving) surgery. (3-29-10)
- 24. Nomination.** The naming of a horse to a certain race or series of races generally accompanied by payment of a prescribed fee. (3-29-10)
- 25. Objection.** A verbal claim of foul in a race lodged with the stewards or their designee by the horse's jockey, trainer, owner or the owner's authorized agent before the race is declared official. (3-29-10)
- 26. Order of Finish.** The order of finish of the contestants in a contest as declared official by the stewards/judges. (3-29-10)
- 27. Paddock Judge.** The employee of a racing association responsible for getting jockeys and horses in order to go to the starting gate; also checks the equipment used by each horse and supervises the saddling of the horses. (3-29-10)
- 28. Paddock Judge's List.** A list of horses which may not be entered in a race for safety reasons. (3-29-10)
- 29. Patrol Judge.** A person who observes a race and reports information concerning the race to the stewards. (3-29-10)
- 30. Photo Finish.** A requested photo to help in determining the correct order of finish. (3-29-10)
- 31. Placing Judge.** A person who determines the order of finish in a race as the horses pass the finish line. (3-29-10)
- 32. Presiding State Steward.** One (1) of the three (3) stewards appointed by the Racing Commission who presides over hearings and designates duties for the other stewards. (3-25-16)
- 33. Protest.** A written complaint made to the stewards concerning a horse entered in a race and filed not later than one (1) hour prior to the scheduled post time of the first race on the day in which the questioned horse is entered. (3-29-10)
- 34. Purse.** The total dollar amount for which a race is contested. (3-29-10)
- 35. Race Meet.** The number of races and race days approved by the Racing Commission in the Racing Association license. (3-29-10)
- 36. Racing Association.** Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (3-29-10)

- 37. Racing Secretary.** The employee of a racing association, who writes the conditions for the races, assigns the weights for handicap races, receives entries, conducts the draw, and is responsible for the operation and organization of the race office. (3-29-10)
- 38. Records.** A daily log kept by the presiding steward of the stewards' official activities. Also, an accounting of each horse, owner, trainer or jockey participating at a race meet who had funds due or on deposit in the horsemen's account completed by the Horsemen's Bookkeeper's. (3-29-10)
- 39. Reports.** A daily account of the stewards' actions and observations made during each day's race program. (3-29-10)
- 40. Rule Off.** An action by the racing stewards, under these rules, to suspend a license for a violation of these rules. (3-29-10)
- 41. Stake.** The prize in a contest. (3-29-10)
- 42. Stalls.** Stable area on racing association grounds for horses assigned by the racing secretary. (3-29-10)
- 43. Starter.** The employee of a racing association responsible for dispatching the horses for a race. (3-29-10)
- 44. Starter's List.** A list of all horses which are ineligible to be entered in any race due to poor or inconsistent behavior or performance in the starting gate. (3-29-10)
- 45. Stewards.** A horse racing official who presides over a race meet, has jurisdiction over all racing officials, rules on protests and claims of foul, and imposes fines and suspensions. (3-29-10)
- 46. Substitute Officials.** An emergency vacancy among racing officials that is filled with the stewards' approval and reported to the Racing Commission. (3-29-10)
- 47. Substitute Steward.** Appointment by the remaining stewards during an absence of any steward at race time when an approved alternate is not available. (3-29-10)
- 48. Timer.** A person who accurately records the time elapsed between the start and finish of each race. (3-29-10)
- 49. Violations.** All unauthorized activities under these rules. (3-29-10)
- 50. Wagering.** To risk or stake an amount of money on an unknown outcome. (3-29-10)
- 51. Weight.** The amount that a jockey weighs prior to and after a race. (3-29-10)

**011. -- 014. (RESERVED)**

**015. LICENSED RACING OFFICIALS.**

No person may act as a racing official prior to being licensed by the Racing Commission to act in that capacity. The Racing Commission, in its sole discretion, may determine the qualifications of a racing official and, in its sole discretion, may license or not license any such official. (3-29-10)

**016. -- 019. (RESERVED)**

**020. RACING OFFICIALS.**

- 01. Officials.** Officials at a race meet may include the following: (3-29-10)

- a. Stewards; (3-29-10)
  - b. Racing Secretary; (3-29-10)
  - c. Horsemen's Bookkeeper; (3-29-10)
  - d. Paddock Judge; (3-29-10)
  - e. Identifier; (3-29-10)
  - f. Clerk of Scales; (3-29-10)
  - g. Jockey Room Custodian; (3-29-10)
  - h. Starter; (3-29-10)
  - i. Timer; (3-29-10)
  - j. Clocker; (3-29-10)
  - k. Patrol Judge; (3-29-10)
  - l. Placing Judge; and (3-29-10)
  - m. Commission Veterinarian; (3-29-10)
  - 02. **Other Persons.** Any other person designated by the Racing Commission. (3-29-10)
- 021. RACING OFFICIAL QUALIFICATIONS.**  
All racing officials must be: (3-29-10)
- 01. **Of Good Character.** Pass all Racing Commission background and fingerprint requirements. ( )
  - 02. **Experienced.** Experienced and knowledgeable in racing. (3-29-10)
  - 03. **Familiar with Rules.** Familiar with the duties of the position and with the Racing Commission's rules. (3-29-10)
  - 04. **Mentally and Physically Able.** Mentally and physically able to perform the duties of the job. (3-29-10)
  - 05. **In Good Standing.** In good standing and not under suspension or ineligible in any racing jurisdiction. (3-29-10)
- 022. -- 024. (RESERVED)**
- 025. PROHIBITED PRACTICES.**  
While serving in an official capacity, racing officials may not: (3-29-10)
- 01. **Ownership.** Participate in the sale, purchase, or ownership of any horse racing at the meeting. (3-29-10)
  - 02. **Sell Insurance.** Sell or solicit horse insurance on any horse racing at the meeting. (3-29-10)
  - 03. **Licensed in Other Capacity.** Be licensed in any other capacity without permission of the Racing Commission, or in case of an emergency, the permission of the stewards. (3-29-10)

**04. Wager.** Wager on the outcome of any race at the race meet where they are officiating. (3-29-10)

**05. Consume Alcohol.** Consume or be under the influence of alcohol or any prohibited substances. (3-29-10)

**026. -- 029. (RESERVED)**

**030. REPORT OF VIOLATIONS.**

Racing officials must report immediately to the stewards every observed violation of any Racing Commission rules and applicable state or federal laws. (3-29-10)

**031. -- 034. (RESERVED)**

**035. COMPLAINTS AGAINST OFFICIALS.**

**01. Complaints Against Racing Official.** Any complaint against a racing official other than a steward must be made to the stewards in writing and signed by the complainant. All such complaints must be reported to the Racing Commission by the stewards, together with a report of the action taken or the recommendation of the stewards. (3-29-10)

**02. Complaints Against Stewards.** Complaints against any steward must be made in writing to the Racing Commission and signed by the complainant. (3-29-10)

**03. Responsible for Subordinates.** A racing official may be held responsible by the stewards or the Racing Commission for the actions of any person they supervise. (3-29-10)

**036. -- 039. (RESERVED)**

**040. SUBSTITUTE OFFICIALS.**

When an emergency vacancy exists among racing officials, the stewards or the racing association must fill the vacancy immediately subject to the stewards' approval. Such appointment must be reported to the Racing Commission and will be effective until the vacancy is filled in accordance with these rules. (3-29-10)

**041. SUBSTITUTE STEWARDS.**

Should any steward be absent at race time, and no approved alternate steward be available, the remaining stewards must appoint a substitute for the absent steward. If a substitute steward is appointed, the Racing Commission and the racing association must be notified by the stewards. (3-29-10)

**042. -- 049. (RESERVED)**

**050. STEWARDS QUALIFICATIONS.**

To qualify for appointment as a Steward, the appointee must meet the experience, education and examination requirements necessary to be accredited by the Racing Officials Accreditation Program in association with the Universities of Arizona and Louisville and be in good standing with all racing jurisdictions. The Racing Commission may, with good cause, waive some or all of the requirements of the section. (3-29-10)

**051. STEWARDS GENERAL AUTHORITY.**

The stewards for each race meet are responsible to the Racing Commission for the conduct of the race meet in accordance with the laws of Idaho and all Racing Commission rules. (3-29-10)

**01. Jurisdiction.** The Board of Stewards' jurisdiction in any matter commences thirty (30) days prior to the first day of a race meet and extends up to and including ninety (90) days following the conclusion of a race meet. However, the Racing Commission may, at its discretion, extend this time period if any matter is not resolved after the conclusion of ninety (90) days. (3-28-18)

**02. Suspensions and Fines.** The Stewards may suspend licenses for a period not to exceed one

hundred eighty (180) days, or impose fines not to exceed twenty-five hundred dollars (\$2500) or they may impose both such fine and suspension. (3-29-10)

**03. Reported.** All such suspensions and fines must be reported to the Racing Commission. (3-29-10)

**04. Stewards Enforce Rules.** The stewards enforce all Racing Commission rules and the racing laws of the State of Idaho. (3-29-10)

**05. Supervision of Officials and Others.** The stewards' authority includes supervision of all racing officials, track management, licensed personnel, other persons responsible for the conduct of racing, and patrons, as necessary to insure compliance with any Racing Commission rules. (3-29-10)

**06. Resolve Conflicts.** The stewards have authority to resolve conflicts or disputes related to racing and to discipline violators in accordance with the provisions of any Racing Commission rules. (3-29-10)

**07. Interpret Rules.** The stewards have the authority to interpret the rules and to decide all questions of racing not specifically covered by the rules. (3-29-10)

**08. Other.** Matters not covered by Racing Commission rules must be determined by the Stewards in conformity with justice and in the best interest of racing. (3-29-10)

**052. -- 054. (RESERVED)**

**055. NUMBER OF STEWARDS.**

Three (3) Stewards must supervise each race meet; ( )

**01. Presiding State Steward.** One (1) steward will be assigned, and compensated by the Racing Commission to be the Presiding State Steward; (3-25-16)

**02. Deputy State Stewards.** Two (2) stewards will be assigned by the Racing Commission to be the Deputy State Stewards and will be compensated by the Racing Commission. ( )

**056. STEWARDS ON DUTY.**

On each entry, scratch and racing day at least one (1) Steward must be on duty at regularly posted hours. Such duty includes and is not limited to scratch time and when races are drawn. On race day the full Board of Stewards must sit in regular session to exercise the authority and perform the duties imposed. (3-29-10)

**057. STEWARDS' PRESENCE.**

**01. In Stands.** There must be three (3) Stewards in the stands when a race is being run. (3-29-10)

**02. Notice.** The Stewards must take notice of any questionable conduct with or without complaint thereof. (3-29-10)

**03. Investigations.** The Stewards must investigate promptly and render a decision in every protest and in every complaint properly made to them. (3-29-10)

**058. -- 059. (RESERVED)**

**060. ORDER OF FINISH.**

The stewards determine the official order of finish for each race in accordance with the rules governing horse racing in Idaho. The decision of the stewards as to the official order of finish, including the disqualification of a horse or horses as a result of any event occurring during the running of the race, must be final for purposes of distribution of the pari-mutuel wagering pool. (3-29-10)

**061. CANCEL WAGERING.**

The stewards have the authority to cancel wagering on an individual betting interest or on an entire race and also have

the authority to cancel a pari-mutuel pool for a race or races, if such action is necessary to protect the integrity of pari-mutuel wagering. (3-29-10)

**062. -- 064. (RESERVED)**

**065. SUBSTITUTE JOCKEY.**

The Stewards for reasonable cause may substitute a Jockey of their selection on any horse. (3-29-10)

**066. TEMPORARY CHARGE.**

The Stewards for reasonable cause may place a horse in the temporary charge of a Trainer of their selection. (3-29-10)

**067. -- 069. (RESERVED)**

**070. STEWARDS DAILY REPORTS.**

The stewards must prepare a daily report, on a form approved by the Racing Commission, detailing their actions and observations made during each day's race program. The report must contain the name of the racetrack, the date, the weather and track conditions, claims, inquiries, and objections and any unusual circumstances or conditions. The report must be signed by each steward and be filed with the Racing Commission not later than twenty-four (24) hours after the end of each race day. (3-29-10)

**071. -- 074. (RESERVED)**

**075. PRESIDING STEWARDS LOG.**

The presiding state steward must maintain a detailed log of the stewards' official activities that describes all questions, disputes, protests, complaints, or objections brought to the attention of the stewards and all interviews, investigations and rulings made by the stewards. The log must be available at all times for inspection by the Racing Commission or its designee. ( )

**076. -- 079. (RESERVED)**

**080. RACE MEET REPORT.**

Not later than seven (7) days after the last day of a race meet, the presiding steward must submit to the Racing Commission a written report regarding the race meet that contains: ( )

**01. Observations.** The Stewards' observations and comments regarding the conduct of the race meet and the overall conditions of the racing association grounds during the race meet; and (3-29-10)

**02. Recommendations.** Any recommendations for improvement by the racing association or action by the Racing Commission. (3-29-10)

**081. -- 089. (RESERVED)**

**090. STEWARD'S LIST.**

The stewards must maintain a Stewards' List of the horses which are ineligible to be entered in a race because of poor or inconsistent performance or behavior on the racetrack that endangers the health or safety of other participants in racing. (3-29-10)

**01. Ownership.** The stewards may place a horse on the Stewards' List when there exists a question as to the exact identification or ownership of said horse. (3-29-10)

**02. Inconsistent Performance.** A horse which has been placed on the Stewards' List because of inconsistent performance or behavior, may be removed from the Stewards' List when, in the opinion of the stewards, the horse can satisfactorily perform competitively in a race without endangering the health or safety of other participants in racing. (3-29-10)

**03. Identity Established.** A horse which has been placed on the Stewards' List because of questions as

to the exact identification or ownership of said horse, may be removed from the Stewards' List when, in the opinion of the stewards, proof of exact identification or ownership has been established. (3-29-10)

**091. -- 099. (RESERVED)**

**100. RACING SECRETARY.**

The racing secretary is responsible for the programming of races during the race meet, compiling and publishing condition books, assigning weights for handicap races, and must receive all entries, declarations and scratches. (3-29-10)

**101. FOAL, HEALTH, AND OTHER ELIGIBILITY CERTIFICATES.**

The racing secretary is responsible for receiving, inspecting and safeguarding the foal and health certificates, Equine Infectious Anemia (EIA) test certificates and other documents of eligibility for all horses competing at the track or stabled on the grounds. (3-29-10)

**01. Alteration of Sex.** The racing secretary determines that the alteration of the sex of a horse has been recorded on the horse's foal certificate and report such to the appropriate breed registry and past performance services. (3-29-10)

**02. Posterior Digital Neurectomy.** The racing secretary must record on a horse's registration certificate when a posterior digital neurectomy (heel nerving) is performed on that horse. (3-29-10)

**102. -- 104. (RESERVED)**

**105. LIST OF BRED FILLIES AND MARES.**

The racing secretary must maintain a list of all fillies or mares on racing association grounds who have been covered by a stallion. The list must also contain the name of the stallion to which each filly or mare was bred and be made available for inspection by other licensees participating in the race meet. (3-29-10)

**106. -- 109. (RESERVED)**

**110. ALLOCATION OF STALLS.**

The racing secretary determines that stables are properly assigned and maintain a record of arrivals and departures of all horses stabled on racing association grounds. (3-29-10)

**111. -- 114. (RESERVED)**

**115. CONDITIONS.**

The racing secretary determines that all conditions and eligibility requirements for entering races meet Racing Commission rules and cause them to be published to owners, trainers and the Racing Commission and be posted in the racing secretary's office. (3-29-10)

**01. Winnings Included.** For the purpose of establishing conditions, winnings must be considered to include all monies and prizes won up to the time of the start of a race. (3-29-10)

**02. Winnings Calculated.** Winnings during the year must be calculated by the racing secretary from the preceding January 1. (3-29-10)

**116. -- 119. (RESERVED)**

**120. LISTING OF HORSES.**

The racing secretary must: (3-29-10)

**01. Examine Entry Blanks.** Examine all entry blanks and declarations to verify information as set forth therein; and (3-29-10)

**02. Select Horses.** Select the horses to start and the also eligible horses from the declarations in



accordance with Racing Commission rules. (3-29-10)

**121. -- 124. (RESERVED)**

**125. POSTING OF ENTRIES.**

Upon completion of the draw each day, the racing secretary must post a list of entries in a conspicuous location in the racing office and make the list available to the media. (3-29-10)

**126. -- 129. (RESERVED)**

**130. DAILY PROGRAM.**

The racing secretary must publish the official daily program, ensuring the accuracy therein of the following information: (3-29-10)

**01. Sequence of Races.** Sequence of races to be run and post time for the first race; (3-29-10)

**02. Purse, Conditions, and Distance.** The purse, conditions and distance for each race, and current track record for such distance; (3-29-10)

**03. Owner's Name.** The name of licensed owners of each horse, indicated as leased, if applicable, and description of racing colors to be carried; (3-29-10)

**04. Trainer and Jockey.** The name of the trainer and the name of the jockey named for each horse together with the weight to be carried; (3-29-10)

**05. Post Position.** The post position and saddle cloth number or designation for each horse if there is a variance with the saddle cloth designation; (3-29-10)

**06. Horse Identification.** Identification of each horse by name, color, sex, age, sire and dam; and (3-29-10)

**07. Other Information.** Such other information as may be requested by the racing association or the Racing Commission. (3-29-10)

**131. -- 134. (RESERVED)**

**135. NOMINATIONS AND DECLARATIONS.**

The racing secretary must examine nominations and declarations and early closing events, late closing events and stakes events to verify the eligibility of all declarations and nominations and compile lists thereof for publication. (3-29-10)

**136. -- 139. (RESERVED)**

**140. STAKES AND ENTRANCE MONEY RECORDS.**

The racing secretary is the caretaker of the permanent records of all stakes and verifies that all entrance monies due are paid prior to entry for races conducted at the meeting. (3-29-10)

**141. -- 149. (RESERVED)**

**150. HORSEMEN'S BOOKKEEPER.**

The horsemen's bookkeeper needs to maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the racing association and Racing Commission may prescribe. ( )

**151. FINANCIAL ASSURANCE.**

The horsemen's bookkeeper needs to be insured against crime or employee dishonesty in a manner approved by the Racing Commission. ( )

**152. -- 154. (RESERVED)**

**155. HORSEMEN'S BOOKKEEPER RECORDS.**

The records must include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of each horse owner, trainer or jockey participating at the race meet who has funds due or on deposit in the horsemen's account. (3-29-10)

**01. Records Kept Separate.** All records of the horsemen's bookkeeper must be kept separate and apart from the records of the racing association. (3-29-10)

**02. Records Subject to Inspection.** All records of the horsemen's bookkeeper including records of accounts and monies and funds kept on deposit are subject to inspection by the Racing Commission at any time. (3-29-10)

**03. Record of Winnings.** The horsemen's bookkeeper must maintain the record of applicable winning races on all apprentice certificates at the meeting. (3-29-10)

**04. Apprentice Jockey Certificates.** The horsemen's bookkeeper must release apprentice jockey certificates, upon the jockey's departure or upon the conclusion of the race meet. (3-29-10)

**156. -- 159. (RESERVED)**

**160. MONIES AND FUNDS ON ACCOUNT.**

All monies and funds on account with the horsemen's bookkeeper must be maintained: (3-29-10)

**01. Separate.** Separate and apart from monies and funds of the racing association; (3-29-10)

**02. Insured Account.** In an account insured by the Federal Deposit and Insurance Corporation or the Federal Savings and Loan Insurance Corporation. (3-29-10)

**161. -- 164. (RESERVED)**

**165. PAYMENT OF PURSES.**

The horsemen's bookkeeper must receive, maintain and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, along with all applicable taxes and other monies that properly come into horsemen's bookkeeper possession in accordance with the provisions of Racing Commission rules and any applicable State or Federal statutes. (3-29-10)

**01. Disbursement Upon Request.** The horsemen's bookkeeper must disburse the purse of each race and all stakes, entrance money, jockey fees and purchase money in claiming races, along with all applicable taxes, upon request, within forty-eight (48) hours of receipt of notification that all tests with respect to such races have cleared the drug testing laboratory(ies) as reported by the stewards or the Racing Commission, except that minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory(ies). (3-29-10)

**02. No Prior Request.** Absent a prior request, the horsemen's bookkeeper must disburse monies to the persons entitled to receive same within fifteen (15) days after the last race day of the race meet, including purses for official races, provided that all tests with respect to such races have cleared the drug testing laboratory(ies) as reported by the stewards, and provided further that no protest or appeal has been filed with the stewards or the Racing Commission. (3-29-10)

**03. Disbursement Not A Finding.** The fact that purse money has been distributed prior to the issuance of a laboratory report may not be deemed a finding that no chemical substance has been administered, in violation of any Racing Commission rules, to the horse earning such purse money. (3-29-10)

**04. Protests.** In the event a protest or appeal has been filed with the stewards or the Racing Commission, the horsemen's bookkeeper must disburse the purse within forty-eight (48) hours of receipt of dismissal

or a final non-appealable order disposing of such protest or appeal. (3-29-10)

**166. -- 169. (RESERVED)**

**170. OTHER MONIES.**

The horsemen's bookkeeper may accept monies due belonging to other organizations or recognized race meets, provided prompt return is made to the organization to which the money is due. (3-29-10)

**171. -- 199. (RESERVED)**

**200. PADDOCK JUDGE.**

The Paddock Judge is in charge of the paddock and must comply with IDAPA 11.04.10, "Rules Governing Live Horse Races." (3-29-10)

**201. -- 209. (RESERVED)**

**210. PADDOCK JUDGE'S LIST.**

The paddock judge must maintain a list of horses which may not be entered in a race because of poor or inconsistent behavior in the paddock that endangers the health or safety of other participants in racing. (3-29-10)

**01. Provide List to Stewards.** At the end of each race day, the paddock judge must provide a copy of the List to the stewards. (3-29-10)

**02. Removal from List.** To be removed from the paddock judge's List, a horse must be schooled in the paddock and demonstrate to the satisfaction of the paddock judge and the stewards that the horse is capable of performing safely in the paddock. (3-29-10)

**211. -- 219. (RESERVED)**

**220. HORSE IDENTIFIER.**

The Horse Identifier is responsible for positively identifying all horses entered to race and must: ( )

**01. Inspection.** Inspect, identify and prepare I.D. cards by using the lip tattoo, markings from photos, written descriptions, or National Animal Identification System compliant devices. ( )

**02. Examination.** Examine every starter in the paddock for sex, color, markings and lip tattoo or other identification method approved by the appropriate breed registry and the Racing Commission for comparison with its registration certificate to verify the horse's identity; and ( )

**03. Report Violation.** Report to the stewards any horse not properly identified or whose registration certificate is not in conformity with any Racing Commission rules. ( )

**221. -- 229. (RESERVED)**

**230. CLERK OF SCALES.**

The Clerk of the Scales must: (3-29-10)

**01. Verify Presence.** Verify the presence of all jockeys in the jockeys' room at the appointed time and verify that all such jockeys have a current jockey's license issued by the Racing Commission; (3-29-10)

**02. Verify Weight.** Verify the correct weight of each jockey according to IDAPA 11.04.10 "Rules Governing Live Horse Races"; (3-29-10)

**03. Report Infractions.** Promptly report to the stewards any infraction of the rules with respect to weight, weighing, riding equipment or conduct; (3-29-10)

**04. Record Data.** Record all required data on the scale sheet and submit that data to the horsemen's

bookkeeper at the end of each race day; and (3-29-10)

**05. Assume Duties.** Assume the duties of the jockey room custodian in his absence. (3-29-10)

**231. -- 239. (RESERVED)**

**240. JOCKEY ROOM CUSTODIAN.**

The jockey room custodian must: (3-29-10)

**01. Supervise Conduct.** Supervise the conduct of the jockeys and their attendants while they are in the jockey room; (3-29-10)

**02. Ensure Safety.** Ensure all jockeys are in the correct colors and wearing Racing Commission approved riding vest and helmet before leaving the jockey room to prepare for mounting their horses; (3-29-10)

**03. Display Program.** Keep a daily program displayed in plain view for the jockeys so they may have ready access to mounts that may become available; (3-29-10)

**04. Secure Jockey Room.** Keep unauthorized persons out of the jockey room; and (3-29-10)

**05. Report to Stewards.** Report to the stewards any unusual occurrences in the jockey room. (3-29-10)

**241. -- 249. (RESERVED)**

**250. STARTER.**

The Starter must have complete jurisdiction over the starting gate, the starting of horses in accordance with IDAPA 11.04.10 "Rules Governing Live Horse Races." (3-29-10)

**01. Assess Jockey's Ability.** The Starter must assess the ability of each person applying for a jockey's license in breaking from the starting gate and working a horse in the company of other horses, and make said assessment known to the stewards. (3-29-10)

**251. -- 259. (RESERVED)**

**260. ASSISTANT STARTERS.**

Assistant Starters are under the direct control and responsibility of the Starter. (3-29-10)

**261. -- 269. (RESERVED)**

**270. STARTER'S LIST.**

No horse will be permitted to start in a race unless approval is given by the starter. The starter must maintain a Starter's List of all horses which are ineligible to be entered in any race because of poor or inconsistent behavior or performance in the starting gate. Such horse will be refused entry until it has demonstrated to the starter that it has been satisfactorily schooled in the gate and can be removed from the Starter's List. Schooling must be under the direct supervision of the starter. (3-29-10)

**271. -- 299. (RESERVED)**

**300. TIMER.**

In the absence of an electronic timer, the timer must: (3-29-10)

**01. Record Time.** Accurately record the time elapsed between the start and finish of each race; (3-29-10)

**02. Record From the Instant the First Horse Leaves.** Record from the instant that the first horse leaves the point from which the distance is measured until the first horse reaches the finish line; (3-29-10)

**03. Post Quarter Times.** At a racetrack equipped with an appropriate infield totalisator board, post the quarter times (splits) for thoroughbred races in fractions as a race is being run. For quarter horse races, the timer must post the official times in hundredths of a second; (3-29-10)

**04. Time All Races.** For back-up purposes, also use a stopwatch to time all races. In time trials, ensure that at least three (3) stopwatches are used by the stewards or their designees; and (3-29-10)

**05. Maintain Record.** Maintain a printed record of fractional and finish times of each race and have same available for inspection by the stewards or the Racing Commission on request. (3-29-10)

**301. -- 309. (RESERVED)**

**310. CLOCKER.**

The clocker must be present during training hours at each track on racing association grounds, which is open for training, to identify each horse working out and to accurately record the distances and times of each horse's workout and must: ( )

**01. List of Workouts.** Each day, prepare a list of workouts that describes the name of each horse which worked along with the distance and time of each horse's workout. ( )

**02. Deliver List.** At the conclusion of training hours, deliver a copy of the list of workouts to the stewards and the racing secretary. ( )

**311. -- 319. (RESERVED)**

**320. PATROL JUDGE.**

The patrol judge, when utilized, is responsible for observing the race and reporting information concerning the race to the stewards. If the track's video replay system is deemed adequate, use of patrol judges is optional. (3-29-10)

**321. -- 329. (RESERVED)**

**330. GATE JUDGE.**

The Racing Commission may require each track to employ a gate judge whose duties include being present at the starting gate just prior to the running of each race to observe and report any violations of the rules to the stewards, and to otherwise assist the stewards as they may so order. (3-29-10)

**331. -- 339. (RESERVED)**

**340. PLACING JUDGE.**

The placing judges, if utilized, determine the order of finish in a race as the horses pass the finish line. (3-29-10)

**341. PHOTO FINISH.**

In the event the placing judges or the stewards request a photo of the finish, the photo finish sign must be posted on the totalisator board. (3-29-10)

**01. Order of Finish.** Following their review of the photo finish, the placing judges, with the approval of the stewards, determine the exact order of finish for all horses participating in the race. (3-29-10)

**02. Photographic Print.** In the event a photo was requested, the placing judges must cause a photographic print of said finish to be produced. The finish photograph, when needed, will be used by the placing judges as an aid in determining the correct order of finish. ( )

**03. Photographic Prints Displayed.** Upon determination of the correct order of finish of a race in which the placing judges have utilized a photographic print to determine the first four (4) finishers, the placing judges must cause prints of said photograph to be displayed publicly in the grandstand and clubhouse areas of the racetrack. (3-29-10)

**342. DEAD HEATS.**

In the event the placing judges determine that two (2) or more horses finished the race simultaneously and cannot be separated as to their order of finish, a dead heat must, with the approval of the stewards, be declared. (3-29-10)

**343. -- 349. (RESERVED)**

**350. COMMISSION VETERINARIAN QUALIFICATIONS.**

The Commission Veterinarian must be a graduate of an accredited school of veterinary medicine and licensed to practice veterinary medicine in Idaho. (3-29-10)

**351. COMMISSION VETERINARIAN AUTHORITY.**

The Commission Veterinarian has the authority to supervise the actions of veterinarians licensed by the Racing Commission while they are practicing at any location under the jurisdiction of the Racing Commission in accordance with IDAPA 11.04.11, "Rules Governing Equine Veterinary Practices, Permitted Medications, Banned Substances, and Drug Testing of Horses." (3-29-10)

**352. EXAMINATION OF HORSES.**

**01. Examination of Horses.** The Commission Veterinarian must examine each horse prior to racing and report to the Stewards any horse that is not of the age or condition that is satisfactory for the type of racing to be conducted at the meeting. (3-29-10)

**02. Declared Ineligible.** The Stewards may declare any such horse as reported as ineligible to be entered or started at the meeting until such time as the Commission Veterinarian certifies such horse to be raceably sound. (3-29-10)

**03. Present In Paddock.** The Commission Veterinarian must be present in the paddock on the race course during the saddling, the parade and at the starting gate and until the horses are dispatched from the gate for the race. (3-29-10)

**04. Emergencies.** The Commission Veterinarian has the authority to treat any horse in event of an emergency, accident or injury, the details of which must be immediately reported to the Stewards. (3-29-10)

**05. Humanely Destroy.** The Commission Veterinarian is authorized to humanely destroy any horse which is so seriously injured that it is in the best interest of racing to so act and every horse owner and trainer participating in a race in Idaho does consent thereto. This authorization to destroy the horse is extended only in the event the owner or trainer is not present. (3-29-10)

**353. COMMISSION VETERINARIAN.**

The Commission Veterinarian is responsible to the Stewards for the conduct of horses and their attendants in the receiving and detention barn. (3-29-10)

**354. -- 359. (RESERVED)**

**360. ADDITIONAL RACING OFFICIALS.**

The Racing Commission may create additional racing official positions, as needed. Persons selected for these positions are considered racing officials and are subject to the general qualifications outlined in this chapter. (3-29-10)

**361. -- 999. (RESERVED)**

## 11.04.08 – RULES GOVERNING PARI-MUTUEL WAGERING

### 000. LEGAL AUTHORITY.

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, of the Idaho Code. (3-29-10)

### 001. TITLE AND SCOPE.

**01. Title.** These rules are cited as IDAPA 11.04.08, “Rules Governing Pari-Mutuel Wagering” of the Idaho State Racing Commission. (3-29-10)

**02. Scope.** These rules govern Pari-mutuel wagering in the State of Idaho. (3-29-10)

### 002. -- 009. (RESERVED)

### 010. DEFINITIONS.

In addition to the definitions in Title 54, Chapter 25, Idaho Code, the following apply: ( )

**01. Advanced Wagering.** Wagering before a scheduled post time for the first contest of a performance. (3-29-10)

**02. Breakage.** The net pool minus payout. (3-29-10)

**03. Cancelled Race.** A race not held. (3-29-10)

**04. Common Pool Wagering.** The inclusion of wagers placed at guest association locations and secondary pari-mutuel organizations into a common pari-mutuel pool for the purpose of display of wagering information and calculation of payoffs on winning wagers. (3-29-10)

**05. Contest.** A competitive racing event or competition between horses in which pari-mutuel wagering is conducted. (3-29-10)

**06. Coupled Entries.** Two (2) or more horses which are entered or run in a race and are coupled because of common ties or ownership. (3-29-10)

**07. Daily Double.** A daily double requires the selection of the first place finisher in two (2) consecutive races. (3-29-10)

**08. Dead Heat.** The finish of a race in which the noses of two (2) or more horses reach the finish line at the same time. (3-29-10)

**09. Exacta.** The Exacta requires selection of the first two (2) finishers, in their exact order, for a single contest. (3-29-10)

**10. Guest Association.** A racing association approved to offer simulcast races and pari-mutuel wagering on races conducted at other racetracks. (3-29-10)

**11. Independent Real Time Monitoring System.** A system approved by the Racing Commission for the purpose of immediate and continuous analysis of wagering and other pari-mutuel systems data in order to detect suspect wagering transactions or other activity indicating a possible problem relating to the integrity of the pari-mutuel system and which transmits transactional level data to a wagering security database. (3-29-10)

**12. Live Event Host.** A licensed racing association where live racing is conducted and on which pari-mutuel wagering is conducted by guest associations or secondary pari-mutuel organizations. (3-29-10)

**13. Minus Pool.** When the amount of money to be distributed on winning wagers is in excess of the amount of money comprising the net pool. (3-29-10)

**14. Odds.** Number indicating amount of profit per dollar to be paid to holders of winning pari-mutuel rickets. (3-29-10)

**15. Official Results.** The finish of the race as declared by the Stewards. (3-29-10)

16. **Pari-Mutuel Cash Voucher.** A document or card produced by a pari-mutuel system device on which a stored cash value is represented and the value of which is recorded in and redeemed through the pari-mutuel system. (3-29-10)
17. **Pari-Mutuel Pool Host.** A racing association that operates and controls access of guest associations or secondary pari-mutuel organizations to, a pari-mutuel pool. (3-29-10)
18. **Pari-Mutuel System.** The hardware, software and communications equipment used to record wagers, calculate payouts for winning wagers, and transmits wagering transactions and pari-mutuel pool data for display to patrons and to communicate with other pari-mutuel systems linked to facilitate common pool wagering. (3-29-10)
19. **Pari-Mutuel Ticket.** A document printed or record produced by a pari-mutuel system device on which is represented a pari-mutuel wager or wagers that have been authorized and accepted for purposes of participation in a pari-mutuel pool. (3-29-10)
20. **Pari-Mutuel Wagering.** A form of wagering on the outcome of an event in which all wagers are pooled and held by an pari-mutuel pool host for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning contestants. (3-29-10)
21. **Parlay.** A multi-race bet in which all winnings are subsequently wagered on each succeeding race. (3-29-10)
22. **Payout.** Money disbursed after a race is official. (3-29-10)
23. **Pick (n).** The Pick (n) requires selection of the first-place finisher in each of a designated number of contests. (3-29-10)
24. **Place Pool.** The total amount wagered on a specific entry to finish second in a race. (3-29-10)
25. **Quinella.** The Quinella requires selection of the first two (2) finishers, irrespective of order, for a single contest. (3-29-10)
26. **Quinella Double.** The Quinella Double requires selection of the first two (2) finishers, irrespective of order, in each of two (2) specified contests. (3-29-10)
27. **Racing Association.** Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (3-29-10)
28. **Scratch.** The act of withdrawing an entered horse from the race after closing of overnight entries. (3-29-10)
29. **Scratched Horse.** A horse that is withdrawn from a race after the betting has begun. (3-29-10)
30. **Secondary Pari-Mutuel Organization.** An entity other than a licensed racing association that offers and accepts pari-mutuel wagers. This may include an off-track wagering system or an account wagering system. (3-29-10)
31. **Show Pool.** The total amount wagered on a specific entry to finish third in a race. (3-29-10)
32. **Superfecta.** The Superfecta requires selection of the first four (4) finishers, in their exact order, for a single contest. (3-29-10)
33. **Take or Takeout.** Racing Commission money deducted from mutuel pools which is shared by the track and local and state governing bodies in the form of a tax. (3-29-10)



- 34. Trifecta.** The Trifecta requires selection of the first three (3) finishers, in their exact order, for a single contest. (3-29-10)
- 35. Tri-Superfecta.** The Tri-Superfecta requires selection of the first three (3) finishers, in their exact order, in the first two (2) designated contests and the first four (4) finishers, in exact order, in the second of the two (2) designated contests. (3-29-10)
- 36. Twin Quinella.** The Twin Quinella requires selection of the first two (2) finishers, irrespective of order, in each of two (2) designated contests. (3-29-10)
- 37. Twin Trifecta.** The Twin Trifecta requires selection of the first three (3) finishers, in their exact order, in each of two (2) designated contests. (3-29-10)
- 38. Voucher Identification Number.** A number specifically unique to each pari-mutuel voucher. (3-29-10)
- 39. Wager.** To risk or state an amount of money on an unknown outcome. (3-29-10)
- 40. Win Pool.** The amount wagered on a specific entry to finish a race. (3-29-10)
- 41. Win Three.** The Win Three (3) requires selection of a first-place finisher in each of three (3) specified contests. (3-29-10)
- 42. Winnings.** Money won by successfully wagering on the winner in a live or simulcast race based on the official order of finish. (3-29-10)

**011. -- 099. (RESERVED)**

**100. GENERAL PROVISIONS.**

- 01. Pari-Mutuel System.** Pari-mutuel wagering utilizes a totalisator system to pool wagers. The totalisator system may be located on property of a racing association or may, subject to compliance with applicable law and these rules, reside at another location. (3-29-10)
- 02. Wagering Subject to Approval.** Wagering subject to approval and compliance with applicable laws and rules, may be accepted by separate totalisator systems in this or another jurisdictions, and combine via communication between totalisator systems. (3-29-10)
- 03. Designee.** The Racing Commission may utilize a designee for the purposes of licensing, certification, verification, inspection, testing, and investigation. A Racing Commission designee may be another Racing Commission or equivalent regulatory authority, a multi-jurisdictional group of regulatory authorities, a racing association of regulatory authorities, or auditing, consulting, security, investigation, legal services, or other qualified entities or persons. (3-29-10)
- 04. Multi-Jurisdiction Agreements.** The Racing Commission may enter into multi-jurisdiction agreements with other regulatory authorities to facilitate certification of compliance with requirements by and licensing of, totalisator companies, entities providing services for simulcasting and common pool wagering, secondary pari-mutuel organizations, and advance deposit account wagering systems. At a minimum such agreements need to ensure certification and licensing requirements comparable to this jurisdiction. ( )

**101. PARI-MUTUEL WAGERING.**

The following requirements are applicable to racing associations licensed by the Racing Commission that offers pari-mutuel wagering. These requirements are also to such organizations licensed or approved by other regulatory authority as a condition of Racing Commission approval of any agreement or contract for simulcasting or common pool wagering (3-29-10)

- 01. Pari-Mutuel Tickets.** A pari-mutuel ticket is evidence of a contribution to the pari-mutuel pool

and is evidence of the obligation to pay to the holder of such portion of the distributable amount of the pari-mutuel pool as is represented by a valid pari-mutuel ticket. The racing association must cash all valid winning tickets when they are presented for payment during the course of the meeting where sold, and for a specified period after the last day of the meeting. (3-29-10)

**02. Valid Pari-Mutuel Ticket.** To be deemed a valid pari-mutuel ticket, the ticket must have been issued by a pari-mutuel ticket machine operated by the racing association and issued as a ticket entitled to a share of the pari-mutuel pool, and contain imprinted information as follows: (3-29-10)

- a.** The name of the racing association operating the meeting; (3-29-10)
- b.** A unique identifying number or code; (3-29-10)
- c.** Identification of the terminal at which the ticket was issued; (3-29-10)
- d.** A designation of the performance for which the wagering transaction was issued; (3-29-10)
- e.** The contest number for which the pool is conducted; (3-29-10)
- f.** The type or types of wagers represented; (3-29-10)
- g.** The number or numbers representing the betting interests for which the wager is recorded; and, (3-29-10)
- h.** The amount or amounts of the contributions to the pari-mutuel pool or pools for which the ticket is evidence. (3-29-10)

**03. Previously Paid, Cancelled, or Non-Existent Pari-Mutuel Ticket.** No pari-mutuel ticket recorded or reported as previously paid, cancelled, or non-existent may be deemed a valid pari-mutuel ticket by the racing association. The racing association may withhold payment and refuse to cash any pari-mutuel ticket deemed not valid, except as in these rules. (3-29-10)

**102. PARI-MUTUEL TICKET SALES.**

**01. Ticket Sales.** Pari-mutuel tickets may not be sold by anyone other than a racing association licensed to conduct pari-mutuel wagering. (3-29-10)

**02. Wager -- Person Under Eighteen.** No person under eighteen (18) years of age is allowed to wager. (3-29-10)

**03. License -- Person Under Eighteen.** No person under eighteen (18) years of age may be granted a license to work in the pari-mutuel department. (3-29-10)

**04. Wagering by Employees of the Mutuel Department not Permitted.** Wagering by employees of the mutuel department is not permitted while on duty. Violation of this rule may result in the revocation of the offender's license. (3-29-10)

**05. Purchase of Pari-Mutuel Tickets for Hire or Gratuity.** Only persons or messengers employed by the racing associations and approved by the Racing Commission may directly or indirectly purchase pari-mutuel tickets or participate in the purchase of any or part of a pari-mutuel pool or another for hire or for any gratuity. (3-29-10)

**06. Closed Wagering.** No pari-mutuel ticket may be sold on a contest for which wagering has already been closed and no racing association will be responsible for ticket sales not recorded into or not completed by issuance of a ticket before the totalisator is closed for wagering on such contest. (3-29-10)

**07. Claims by Bettor.** Claims pertaining to a mistake on an issued ticket, or a mistake involving failure

to issue a ticket, must be made by the bettor prior to leaving the seller's window except in accordance with written policies established by the racing association and approved by the Racing Commission. (3-29-10)

**08. Payment on Winning Pari-Mutuel Wagers.** Payment on winning pari-mutuel wagers is made on the basis of the order of finish as purposely posted and declared "official." Any subsequent change in the order of finish or award of purse money as may result from a subsequent ruling by the stewards or Racing Commission will in no way affect the pari-mutuel payout. If an error in the posted order of finish or payout figures is discovered, the official order of finish or payout prices may be corrected and an announcement concerning the change must be made to the public. (3-29-10)

**09. Cancellation or Exchange Tickets.** Cancellation or exchange of tickets issued is not permitted after a patron has left a seller's window, except in accordance with written policies established by the racing association and approved by the Racing Commission. (3-29-10)

**10. Claims on Lost, Mutilated, or Altered Tickets.** The racing association may satisfy claims on lost, mutilated, or altered pari-mutuel tickets without authorization of the Racing Commission. (3-29-10)

**11. Equipment Failure.** The racing association has no obligation to enter a wager into a betting pool if unable to do so due to equipment failure. (3-29-10)

**103. ADVANCE WAGERING.**

No racing association may permit wagering to begin more than one (1) hour before scheduled post time of the first contest of a performance unless it has first obtained the authorization of the Racing Commission. This does not preclude earlier common pool wagers in accordance with a contract with the host association that has been approved by the Racing Commission. (3-29-10)

**104. CLAIMS FOR PAYMENT FROM PARI-MUTUEL POOL.**

At a designated location, a written, verified claim for payment from a pari-mutuel pool must be accepted by the racing association in any case wherein the racing association has withheld payment or has refused to cash a pari-mutuel wager. The claim must be made on such form as approved by the Racing Commission with the original claim forwarded to the Racing Commission within 48 hours. ( )

**01. Claim for Mutilated Ticket.** In the case of a claim made for payment of a mutilated pari-mutuel ticket which does not contain the total imprinted elements outlined in these rules, the racing association will make a recommendation to accompany the claim forwarded to the Racing Commission as to whether or not the mutilated ticket has sufficient elements to be positively identified as a winning ticket. ( )

**02. Racing Commission to Adjudicate or Deny Claim.** In the case of a claim made for payment on a pari-mutuel wager, the Racing Commission will adjudicate the claim and may order payment thereon from the pari-mutuel pool or by the racing association, or may deny the claim, or may make such other order, as it may deem proper as provided for in Section 113 of these rules. ( )

**105. PAYMENT FOR ERRORS.**

If an error occurs in the payment amounts for pari-mutuel wagers that are cashed or entitled to be cashed and, as a result of such error, the pari-mutuel pool involved in the error is not correctly distributed among winning ticket holders, the following applies: (3-29-10)

**01. Underpayments.** Verification is required to show that the amount of the commission, the amount in breakage, and the amount in payouts is equal to the total gross pool. If the amount of the pool is more than the amount used to calculate the payout, the underpayment belongs to the Racing Commission. In the event there is an underpayment on any race in the amount actually due to the wagerers, the amount of such underpayments to wagerers, at the end of each day of racing, will revert to and be paid to the Racing Commission and may not be retained by the racing association. (3-29-10)

**02. Underpayment Claim.** Any claim not filed with the racing association within thirty (30) days, inclusive of the date on which the underpayment was publicly announced, is deemed waived; and the racing association has no further liability. (3-29-10)

**03. Overpayment.** In the event the error results in an overpayment to winning wagers, the racing association is responsible for such payment. (3-29-10)

**106. BETTING EXPLANATION.**

A summary explanation of pari-mutuel wagering and each type of betting pool offered must be published in the program for every wagering performance. The rules of racing relative to each type of pari-mutuel pool offered must be prominently displayed on the racing association grounds and available upon request through racing association representatives. (3-29-10)

**107. DISPLAY OF BETTING INFORMATION.**

**01. Approximate Odds for Win Pool.** Approximate odds for Win pool betting must be posted on display devices within view of the wagering public and updated at intervals of not more than sixty (60) seconds for the current race of the performance. (3-29-10)

**02. Probable Payout.** The probable payout or amounts wagered, in total and on each betting interest, for other pools may be displayed to the wagering public at intervals and in a manner approved by the Racing Commission. (3-29-10)

**03. Official Results and Payouts.** Official results and payouts must be displayed upon each contest being declared official. (3-29-10)

**04. Errors Corrected Promptly.** If an error is made in posting the payoff figures on the public board, it will be corrected promptly and only the correct amounts will be used in the payoff, irrespective of the error. If because of mechanical failure it is impossible to promptly correct the posted payoff, a statement must be made over the public address system stating the facts and corrections. (3-29-10)

**108. CANCELLED CONTESTS.**

If a contest is cancelled or declared "no contest," refunds must be granted on valid wagers in accordance with these rules. (3-29-10)

**01. Refunds.** Notwithstanding other provisions of these rules, refunds of the entire pool must be made on: (3-29-10)

**a.** Win pools, Exacta pools, and first-half Double pools offered in contests in which the number of betting interests has been reduced to fewer than two (2). (3-29-10)

**b.** Place pools, Quinella pools, Trifecta pools, first-half Quinella Double pools, first-half Twin Quinella pools, first-half Twin Trifecta pools, and first-half Tri-Superfecta pools offered in contest in which the number of betting interests has been reduced to fewer than three (3). (3-29-10)

**c.** Show pools, Superfecta pools, and first-half Twin Superfecta pools offered in contests in which the number of betting interests has been reduced to fewer than four (4). (3-29-10)

**02. Authorized Refund to be Paid.** Authorized refunds must be paid upon presentation and surrender of the affected pari-mutuel ticket. (3-29-10)

**03. Scratched Horse.** If a horse is scratched from racing after the betting has begun, the money bet on that horse must be refunded; except that when the horse is part of an Entry or the Field there will be no refund if the Entry or the Field, as the case may be, has at least one (1) actual starter. (3-29-10)

**04. Horse Prevented from Racing Because of Starting Gate Failure.** If it is determined by the Stewards that a horse has been prevented from racing because of the failure of the stall door of the starting gate to open, the money bet on that horse must be refunded; except that when the horse is part of an Entry or the Field there will be no refund if the Entry or the Field, as the case may be, has at least one (1) actual starter. (3-29-10)

**05. Coupled Entries and Mutuel Fields.** If no horse finished in a race, all money wagered on that race must be refunded. (3-29-10)

**109. COUPLED ENTRIES AND MUTUEL FIELDS.**

**01. Coupled Entry Considered Single Betting Interest.** Contestants coupled in wagering as a coupled entry or mutuel field are considered part of a single betting interest for the purpose of price calculations and distribution of pools. Should any contestant in a coupled entry or mutuel field be officially withdrawn or scratched, the remaining contestant in that coupled entry or mutuel field may remain valid betting interests and no refunds will be granted; or the stewards may order a refund for the entire betting interest. If all contestants within a coupled entry or mutuel field are scratched, then tickets on such betting interests must be refunded, notwithstanding other provisions of these rules. (3-29-10)

**02. Dead Heat Involving Coupled Entry.** For the purpose of price calculations only, coupled entries and mutuel fields are calculated as a single finisher, using the finishing position of the leading contestant in that coupled entry or mutuel field to determine order of placing. This rule applies to all circumstances, including situations involving a dead heat, except as otherwise provided by these rules. (3-29-10)

**110. POOLS DEPENDANT UPON BETTING INTERESTS.**

**01. Offer Wagering Pools.** Unless otherwise provided by the Racing Commission, upon request received no later than twenty-four (24) hours after the post position draw, at the time the pools are opened for wagering, the racing association: (3-29-10)

**a. Must offer:** ( )

i. Win wagering on all contests with three (3) or more betting interests. May offer win wagering on all contests with two (2) or more betting interests. (3-29-10)

ii. Place wagering on all contests with four (4) or more betting interests. If the number of starting betting interests drops below four (4), the racing association may at its discretion cancel place wagering. The racing association must make an appropriate public address announcement. (3-29-10)

iii. Show wagering on all contests with five (5) or more betting interests. If the number of starting betting interests drops below five (5), the racing association may at its discretion cancel show wagering. The racing association must make an appropriate public address announcement. (3-29-10)

**b. May offer:** ( )

i. Quinella wagering on all contests with three (3) or more betting interests. (3-29-10)

ii. Quinella double wagering on all contests with three (3) or more betting interests. (3-29-10)

iii. Exacta wagering on all contests with two (2) or more betting interests. (3-29-10)

iv. Trifecta wagering on all contests with three (3) or more betting interests. (3-29-10)

v. Superfecta wagering on all contests with four (4) or more betting interests. (3-29-10)

vi. Twin quinella wagering on all contests with three (3) or more betting interests. (3-29-10)

**c. May not offer twin trifecta, tri-superfecta or twin trifecta wagering on any contests with six (6) or less betting interests.** (3-29-10)

**111. PRIOR APPROVAL FOR BETTING POOLS.**

**01. Prior Approval for Betting Pools.** A racing association that desires to offer new forms of

wagering must apply in writing to the Racing Commission and receive written approval prior to implementing the new betting pool. ( )

**02. Suspend Previously Approved Forms of Wagering.** The racing association may suspend previously-approved forms of wagering with the prior approval of the Racing Commission. Any carryover must be held until the suspended form of wagering is reinstated. A racing association may request approval of a form of wagering or separate wagering pool for specific performances. (3-29-10)

**112. CLOSING OF WAGERING IN A CONTEST.**

**01. Close Wagering.** A Racing Commission representative must close wagering for each contest after which time no pari-mutuel tickets may be sold for that contest. (3-29-10)

**02. Approved Close Wagering System.** The racing association must maintain, in good order, a system approved by the Racing Commission for closing wagering. (3-29-10)

**113. COMPLAINTS PERTAINING TO PARI-MUTUEL OPERATIONS.**

**01. Compliance Report.** When a patron makes a complaint regarding the pari-mutuel department to a racing association, the racing association must immediately issue a compliance report, setting out: (3-29-10)

- a. The name of the complainant; (3-29-10)
- b. The nature of the complaint; (3-29-10)
- c. The name of the persons, if any, against whom the complaint was made; (3-29-10)
- d. The date of the complaint; and (3-29-10)
- e. The action taken or proposed to be taken, if any, by the racing association. (3-29-10)

**02. Submit Complaint to Racing Commission.** The racing association must submit every complaint report to the Racing Commission within forty-eight (48) hours after the complaint was made. The Racing Commission will review the complaint and a decision must be issued within seven (7) working days. (3-29-10)

**114. LICENSEES -- DUTY TO REPORT.**

All licensees must report any known irregularities or wrong doings by any person involving pari-mutuel wagering immediately to the Racing Commission and cooperate in subsequent investigations. (3-29-10)

**115. EMERGENCY SITUATIONS.**

In the event of an emergency in connection with the pari-mutuel department not covered in these rules, the pari-mutuel manager representing the racing association must report the problem to the stewards and the racing association and the stewards render a full report to the Racing Commission within forty-eight (48) hours. (3-29-10)

**116. UNRESTRICTED ACCESS.**

The racing association must permit the Racing Commission unrestricted access at all times to its facilities and equipment and to all books, ledgers, accounts, documents and records of the racing association that relate to pari-mutuel wagering. (3-29-10)

**117. PARI-MUTUEL CASH VOUCHERS.**

**01. Cash Vouchers.** Pari-mutuel cash vouchers may be offered by a racing association that issues pari-mutuel tickets. These vouchers must be dispensed through the totalisator system. The stored value on a voucher may be redeemed in the same manner as a value of a winning pari-mutuel ticket for wagers placed at a pari-mutuel window or a self-service terminal, and may be redeemed for their cash value at any time. (3-29-10)

**02. Vouchers as Incentives or Promotional Prizes.** A racing association may, with the prior approval

of the Racing Commission, issue special pari-mutuel cash vouchers as incentives or promotional prizes, and may restrict the use of those vouchers to the purchase of pari-mutuel wagers. (3-29-10)

**03. Voucher Identification Number.** The tote system transaction record for all pari-mutuel vouchers must include the voucher identification number in subsequent pari-mutuel transactions and pari-mutuel wagers made from a voucher must identify the voucher by identification number. (3-29-10)

**118. OTHER STORED VALUE INSTRUMENTS AND SYSTEMS.**

**01. Stored Value Instrument or System.** A racing association may not utilize any form of stored value instrument or system other than a pari-mutuel voucher for purpose of making or cashing pari-mutuel wagers without the prior approval of the Racing Commission,. (3-29-10)

**02. Request for Approval.** Any request for approval of a stored value instrument or system must include a detailed description of the standards utilized: (3-29-10)

**a.** To identify the specific stored value instrument or account in the pari-mutuel system wagering transaction record; (3-29-10)

**b.** To verify the identity and business address of the person(s) obtaining, holding, and using the stored value instrument or system; (3-29-10)

**c.** To record and maintain records of deposits, credits, debits, transaction numbers, and account balances involving the stored value instruments or accounts. (3-29-10)

**03. Prevent Wagering Transactions.** A stored value instrument or system must prevent wagering transactions in the event such transactions would create a negative balance in an account, and may not operate so as to automatically facilitate a transfer of funds into a stored value instrument or account without the direct authorization of each such deposit transfer by the person holding the instrument or account. (3-29-10)

**04. Affirmation.** Any request for approval of a stored value instrument or system must include an affirmation of the ready availability when requested by the Racing Commission. All records and reports relating to all transactions, account records, and customer identification and verification in hard copy or standard electronic format approved by the Racing Commission certification of secure retention of all records for a period of not less than three (3) years or such longer period specified by the Racing Commission. (3-29-10)

**119. -- 199. (RESERVED)**

**200. CALCULATION OF PAYOFFS AND DISTRIBUTION OF POOLS.**

**01. Pari-Mutuel Wagering Pools Separately and Independently Calculated and Distributed.** All permitted pari-mutuel wagering pools must be separately and independently calculated and distributed. Takeout will be deducted from each gross pool as stipulated by law. The remainder of the monies in the pool constitutes the net pool for distribution as payoff on winning wagers. ( )

**02. Standard or Net Price Calculation.** Either the standard or net price calculation procedure may be used to calculate single commission pools, while the net price calculation procedure must be used to calculate multi-commission pools. (3-29-10)

**03. Profit per Dollar.** For each wagering pool, the amount wagered on the winning betting interest or betting combinations is deducted from the net pool to determine the profit; the profit is then divided by the amount wagered on the winning betting interest or combinations, such quotient being the profit per dollar. (3-29-10)

**04. Single Commission Pools.** With written approval from the Racing Commission, either the standard or net price calculation procedure may be used to calculate single commission pools, while the net price calculation procedure must be used to calculate multi-commission pools. (3-29-10)

**a.** Standard Price Calculation Procedure.

<b>Table - Single Price Pool (Win Pool)</b>	
gross pool =	sum of wagers on all betting interest-refunds
takeout =	gross pool x percent takeout
net pool =	gross pool - takeout
profit =	net pool - gross amount bet on winner
profit per dollar =	profit / gross amount bet on winner
\$1 unbroken price =	profit per dollar + \$1
\$1 broken price =	\$1 unbroken price rounded down to the break point
total payout =	\$1 broken price x gross amount bet on winner
total breakage =	net pool - total payout

(3-29-10)

i. Profit Split (Place Pool). Profit is net pool less gross amount bet on all place finishers. Finishers split profit one-half (1/2) and one-half (1/2) (place profit), then divide by gross amount bet on each place finisher for two (2) unique prices. (3-29-10)

ii. Profit Split (Show Pool). Profit is net pool less gross amount bet on all show finishers. Finishers split profit one-third (1/3) and one-third (1/3) and one-third (1/3) (show profit), then divide by gross amount bet on each show finisher for three (3) unique prices. (3-29-10)

**b.** Net Price Calculation Procedure.

<b>Table - Single Price Pool (Win Pool)</b>	
gross pool =	sum of wagers on all betting interest-refunds
takeout =	gross pool x percent takeout
# for each source:	gross pool - takeout
net pool =	gross pool - takeout
net bet on winner =	gross amount bet on winner x (1 - percent takeout)
total net pool =	sum of all sources net pools
total net bet on winner =	sum of all sources net bet on winner
total profit =	total net pool - total net bet on winner
profit per dollar =	total profit / total net bet on winner
\$1 unbroken base price =	profit per dollar + \$1 for each source:
\$1 unbroken price =	\$1 unbroken base price x (1 - percent takeout)
\$1 broken price =	\$1 unbroken price rounded down to the break point
total payout =	\$1 broken price x gross amount bet on winner
total breakage =	net pool - total payout



Table - Single Price Pool (Win Pool)		
net pool	=	gross pool - takeout

(3-29-10)

i. Profit Split (Place Pool). Total profit is the total net pool less the total net amount bet on all place finishers. Finishers split total profit one-half (1/2) and one-half (1/2) (place profit), then divide by total net amount bet on each place finisher for two (2) unique unbroken base prices. (3-29-10)

ii. Profit Split (Show Pool). Total profit is the total net pool less the total net amount bet on all show finishers. Finishers split total profit one-third (1/3) and one-third (1/3) and one-third (1/3) (show profit), then divide by total net amount bet on each show finisher for three (3) unique unbroken base prices. (3-29-10)

c. If a profit split results in only one (1) covered winning betting interest or combinations it is calculated the same as a single price pool. (3-29-10)

d. Minimum payout and the method used for calculating breakage are established by the Racing Commission. (3-29-10)

e. The individual pools outlined in these rules may be given alternative names by each racing association, provided prior approval is obtained from the Racing Commission. (3-29-10)

f. In the event a minus pool occurs in either the Win, Place or Show pool, the expense of said minus pool will be born by the racing association and the State will receive intact its share of the remaining pools. (3-29-10)

**201. WIN POOLS.**

**01. Win Pools.** The amount wagered on the betting interest that finishes first is deducted from the net pool, the balance remaining being the profit; the profit is divided by the amount wagered on the betting interest finishing first, such quotient being the profit per dollar wagered to Win on that betting interest. (3-29-10)

**02. Net Win Pool.** The net Win pool must be distributed as a single price pool to winning wagers in the following precedence, based upon the official order of finish: (3-29-10)

a. To those whose selection finished first; but if there are no such wagers, then; (3-29-10)

b. To those whose selection finished second; but if there are no such wagers, then; (3-29-10)

c. To those whose selection finished third; but if there are no such wagers, then; (3-29-10)

d. The entire pool must be refunded on Win wagers for that contest. (3-29-10)

**03. Dead Heat for First.** If there is a dead heat for first involving: (3-29-10)

a. Contestants representing the same betting interest, the Win pool is distributed as if no dead heat occurred. (3-29-10)

b. Contestants representing two (2) or more betting interests, the Win pool is distributed as a profit split.

Table 1 -- Win Pool (Standard Price Calculation)	
Sum of Wagers on All Betting Interest =	\$194,230.00
Refunds =	\$1,317.00

<b>Table 1 -- Win Pool (Standard Price Calculation)</b>	
Gross Pool:	
Sum of Wagers on All Betting Interest - Refunds	= \$192,913.00
Percent Takeout	= 18%
Takeout:	
Gross Pool x Percent Takeout	= \$34,724.34
Net Pool:	
Gross Pool - Takeout	= \$158,188.66
Gross Amount Bet on Winner	= \$23,872.00
Profit:	
Net Pool - Gross Amount Bet on Winner	= \$134,316.66
Profit Per Dollar:	
Profit / Gross Amount Bet on Winner	= \$5.6265357
\$1 Unbroken Price:	
Profit Per Dollar + \$1	= \$6.6265357

(3-29-10)

**202. PLACE POOLS.**

**01. Place Pools.** The amounts wagered to Place on the first two (2) betting interests to finish are deducted from the net pool, the balance remaining being the profit; the profit is divided into two (2) equal portions, one (1) being assigned to each winning betting interest and divided by the amount wagered to Place on that betting interest, the resulting quotient is the profit per dollar wagered to Place on that betting interest. (3-29-10)

**02. Net Place Pool.** The net Place pool must be distributed to winning wagers in the following precedence, based upon the official order of finish: (3-29-10)

**a.** If contestants of a coupled entry or mutuel field finished in the first two (2) places, as a single price pool to those who selected the coupled entry or mutuel field; otherwise (3-29-10)

**b.** As a profit split to those whose selection is included within the first two (2) finishers; but if there are no such wagers on one (1) of those two (2) finishers, then; (3-29-10)

**c.** As a single price pool to those who selected the one (1) covered betting interest included within the first two (2) finishers; but if there are no such wagers, then; (3-29-10)

**d.** As a single price pool to those who selected the third-place finisher; but if there are no such wagers, then; (3-29-10)

**e.** The entire pool must be refunded on Place wagers for that contest. (3-29-10)

**03. Dead Heat for First.** If there is a dead heat for first involving: (3-29-10)

**a.** Contestants representing the same betting interest, the Place pool must be distributed as a single price pool. (3-29-10)

**b.** Contestants representing two (2) or more betting interest, the Place pool must be distributed as a profit split. (3-29-10)

- 04. Dead Heat for Second.** If there is a dead heat for second involving: (3-29-10)
- a.** Contestants representing the same betting interest, the Place pool is distributed as if no dead heat occurred. (3-29-10)
- b.** Contestants representing two (2) or more betting interests, the Place pool is divided with one-half (1/2) of the profit distributed to Place wagers on the betting interest finishing first and the remainder is distributed equally among Place wagers on those betting interests involved in the dead heat for second.

<b>Table 2 -- Place Pool (Standard Price Calculation)</b>	
Sum of Wagers on All Betting Interests	= \$194,230.00
Refunds	= \$1,317.00
Gross Pool:	
Sum of Wagers on All Betting Interests - Refunds	= \$192,913.00
Percent Takeout	= 18%
Takeout:	
Gross Pool x Percent Takeout	= \$34,724.34
Net Pool:	
Gross Pool - Takeout	= \$158,188.66
Gross Amount Bet on 1st place finisher	= \$23,872.00
Gross Amount Bet on 2nd place finisher	= \$12,500.00
Profit:	
Net Pool-Gross Amount Bet on 1st place finisher - Gross Amount Bet on 2nd place finisher	= \$121,816.66
Place Profit:	
Profit / 2	= \$60,908.33
Profit Per Dollar for 1st place:	
Place Profit / Gross Amount Bet on 1st place finisher	= \$2.5514548
\$1 Unbroken Price for 1st place:	
Profit Per Dollar for 1st place + \$1	= \$3.5514548
Profit Per Dollar for 2nd place:	
Place Profit / Gross Amount Bet on 2nd place finisher	= \$4.8726664
\$1 Unbroken Price for 2nd place:	
Profit Per Dollar for 2nd place + \$1	= \$5.8726664

(3-29-10)

**203. SHOW POOLS.**

- 01. Show Pools.** The amounts wagered to Show on the first three (3) betting interests to finish are deducted from the net pool, the balance remaining being the profit; the profit is divided into three (3) equal portions,

one (1) being assigned to each winning betting interest and divided by the amount wagered to Show on that betting interest, the resulting quotient being the profit per dollar wagered to Show on that betting interest. (3-29-10)

**02. Net Show Pool Distribution.** The net Show pool must be distributed to winning wagers in the following precedence, based upon the official order of finish: (3-29-10)

**a.** If contestants of a coupled entry or mutuel field finished in the first three (3) places, as a single price pool to those who selected the couple entry or mutuel field, otherwise; (3-29-10)

**b.** If contestants of a coupled entry or mutuel field finished as two (2) of the first three (3) finishers, the profit is divided with two-thirds (2/3) distributed to those who selected the coupled entry or mutuel field and one-third (1/3) distributed to those who selected the other betting interest included within the first three (3) finishers, otherwise; (3-29-10)

**c.** As a profit split to those whose selection is included within the first three (3) finishers; but if there are no such wagers on one (1) of those three (3) finishers, then; (3-29-10)

**d.** As a profit split to those who selected one (1) of the two (2) covered betting interests included within the first three (3) finishers; but if there are no such wagers on two (2) of those three (3) finishers, then; (3-29-10)

**e.** As a single price pool to those who selected the one (1) covered betting interest included within the first three (3) finishers; but if there are no such wagers, then; (3-29-10)

**f.** As a single price pool to those who selected the fourth-place finisher; but if there are no such wagers, then; (3-29-10)

**g.** The entire pool must be refunded on Show wagers for that contest. (3-29-10)

**03. Dead Heat for First.** If there is a dead heat for first involving: (3-29-10)

**a.** Two (2) contestants representing the same betting interest, the profit is divided with two-thirds (2/3) distributed to those who selected the first-place finishers and one-third (1/3) distributed to those who selected the betting interest finishing third. (3-29-10)

**b.** Three (3) contestants representing a single betting interest, the Show pool must be distributed as a single price pool. (3-29-10)

**c.** Contestants representing two (2) or more betting interests, the Show pool must be distributed as a profit split. (3-29-10)

**04. Dead Heat for Second.** If there is a dead heat for second involving: (3-29-10)

**a.** Contestants representing the same betting interest, the profit is divided with one-third (1/3) distributed to those who selected the betting interest finishing first and two-thirds (2/3) distributed to those who selected the second-place finishers. (3-29-10)

**b.** Contestants representing two (2) betting interests, the Show pool must be distributed as a profit split. (3-29-10)

**c.** Contestants representing three (3) betting interests, the Show pool is divided with one-third (1/3) of the profit distributed to Show wagers on the betting interest finishing first and the remainder is distributed equally amongst Show wagers on those betting interests involved in the dead heat for second. (3-29-10)

**05. Dead Heat for Third.** If there is a dead heat for third involving: (3-29-10)

**a.** Contestants representing the same betting interest, the Show pool must be distributed as if no dead

heat occurred.

(3-29-10)

**b.** Contestants representing two (2) or more betting interests, the Show pool is divided with two-thirds (2/3) of the profit distributed to Show wagers on the betting interests finishing first and second and the remainder is distributed equally among Show wagers on those betting interests involved in the dead heat for third.

<b>Table 3 -- Show Pool (Standard Price Calculation)</b>	
Sum of Wagers on All Betting Interests	= \$194,230.00
Refunds	\$1,317.00
Gross Pool:	
Sum of Wagers on All Betting Interests - Refunds	= \$192,913.00
Percent Takeout	= 18%
Takeout:	
Gross Pool x Percent Takeout	= \$34,724.34
Net Pool:	
Gross Pool - Takeout	= \$158,188.66
Gross Amount Bet on 1st place finisher	= \$23,872.00
Gross Amount Bet on 2nd place finisher	= \$12,500.00
Gross Amount Bet on 3rd place finisher	= \$4,408.00
Profit:	
Net Pool - Gross Amount Bet on 1st place finisher - Gross Amount Bet on 2nd place finisher - Gross Amount Bet on 3rd place finisher	= \$117,408.66
Show Profit:	
Profit / 3	= \$39,136.22
Profit Per Dollar for 1st place:	
Show Profit / Gross Amount Bet on 1st place finisher	= \$1.6394194
\$1 Unbroken Price for 1st place:	
Profit Per Dollar for 1st place + \$1	= \$2.6394194
Profit Per Dollar for 2nd place:	
Show Profit / Gross Amount Bet on 2nd place finisher	= \$3.1308976
\$1 Unbroken Price for 2nd place:	
Profit Per Dollar for 2nd place + \$1	= \$4.1308976
Profit Per Dollar for 3rd place:	
Show Profit / Gross Amount Bet on 3rd place finisher	= \$8.8784528
\$1 Unbroken Price for 3rd place:	
Profit Per Dollar for 3rd place + \$1	= \$9.8784528

<b>Table 4 -- Show Pool</b>	
<b>Single Takeout Rate &amp; Single Betting Source</b>	
(Net Price Calculation)	
Sum of Wagers on All Betting Interests	= \$194,230.00
Refunds	= \$1,317.00
Gross Pool:	
Sum of Wagers on All Betting Interests - Refunds	= \$192,913.00
Percent Takeout	= 18%
Takeout:	
Gross Pool x Percent Takeout	= \$34,724.34
Total Net Pool:	
Gross Pool - Takeout	= \$158,188.66
Gross Amount Bet on 1st place finisher	= \$23,872.00
Net Amount Bet on 1st place finisher	= \$19,575.04
Gross Amount Bet on 2nd place finisher	= \$12,500.00
Net Amount Bet on 2nd place finisher	= \$10,250.00
Gross Amount Bet on 3rd place finisher	= \$4,408.00
Net Amount bet on 3rd place finisher	= \$3,614.56
Total Net Bet on Winners:	
Net Amount Bet on 1st place finisher + Net Amount Bet on 2nd place finisher + Net Amount Bet on 3rd place finisher	= \$33,439.60
Total Profit:	
Total Net Pool - Total Net Bet on Winners	= \$124,749.06
Show Profit:	
Total Profit / 3	= \$41,583.02
Profit Per Dollar for 1st place:	
Show Profit / Net Amount Bet on 1st place finisher	= \$2.1242879
\$1 Unbroken Base Price for 1st place:	
Profit Per Dollar for 1st place + \$1	= \$3.1242879
\$1 Unbroken Price for 1st place:	
\$1 Unbroken Base Price for 1st place x (1 - percent takeout)	= \$2.5619161
Profit Per Dollar for 2nd place: Show Profit / Net Amount Bet on 2nd place finisher	= \$4.0568800
\$1 Unbroken Base Price for 2nd place:	
Profit Per Dollar for 2nd place + \$1	= \$5.0568800
\$1 Unbroken Price for 2nd place:	
\$1 Unbroken Base Price for 2nd place x (1 - percent takeout)	= \$4.1466416

<b>Table 4 -- Show Pool Single Takeout Rate &amp; Single Betting Source</b>	
Profit Per Dollar for 3rd place:	
Show Profit / Net Amount Bet on 3rd place finisher =	\$11.504310
\$1 Unbroken Base Price for 3rd place:	
Profit Per Dollar for 3rd place + \$1 =	\$12.504310
\$1 Unbroken Price for 3rd place:	
\$1 Unbroken Base Price for 3rd place x (1 - percent takeout) =	\$10.253534

(3-29-10)

**204. DOUBLE POOLS.**

**01. Double Pools.** Only one (1) Daily Double will be permitted during a single racing day, unless approval is obtained from the Racing Commission. (3-29-10)

**02. First Place Finisher.** The Double requires selection of the first-place finisher in each of two (2) specified contests. (3-29-10)

**03. Winning Distribution.** The net Double pool must be distributed to winning wagers in the following precedence, based upon the official order of finish: (3-29-10)

**a.** As a single price pool to those whose selection finished first in each of the two (2) contests; but if there are no such wagers, then; (3-29-10)

**b.** As a profit split to those who selected the first-place finisher in either contest; but if there are no such wagers, then; (3-29-10)

**c.** As a single price pool to those who selected the one (1) covered first-place finisher in either contest; but if there are no such wagers, then; (3-29-10)

**d.** As a single price pool to those whose selection finished second in each of the two (2) contests; but if there are no such wagers, then; (3-29-10)

**e.** The entire pool must be refunded on Double wagers for those contests. (3-29-10)

**04. Dead Heat for First.** If there is a dead heat for first in either of the two (2) contests involving: (3-29-10)

**a.** Contestants representing the same betting interest, the Double pool is distributed as if no dead heat occurred. (3-29-10)

**b.** Contestants representing two (2) or more betting interests, the Double pool is distributed as a profit split if there is more than one (1) covered winning combination. (3-29-10)

**05. Scratched Interest -- First-Half.** Should a betting interest in the first-half of the Double be scratched prior to the first Double contest being declared official, all money wagered on combinations including the scratched betting interest is deducted from the Double pool and refunded. (3-29-10)

**06. Scratched Interest -- Second-Half.** Should a betting interest in the second-half of the Double be scratched prior to the close of wagering on the first Double contest, all money wagered on combinations including the scratched betting interest is deducted from the Double pool and refunded. (3-29-10)

**07. Consolation Payout.** Should a betting interest in the second-half of the Double be scratched after

the close of wagering on the first Double contest, all wagers combining the winner of the first contest with the scratched betting interest in the second contest are allocated a consolation payout. In calculating the consolation payout the net Double pool is divided by the total amount wagered on the winner of the first contest and an unbroken consolation price obtained. The broken consolation price is multiplied by the dollar value of wagers on the winner of the first contest combined with the scratched betting interest to obtain the consolation payout. Breakage is not declared in this calculation. The consolation payout is deducted from the net Double pool before calculation and distribution of the winning Double payout. Dead heats including separate betting interests in the first contest will result in a consolation payout calculated as a profit split. (3-29-10)

**08. Cancelled or “No Contest.”** If either of the Double contests are cancelled prior to the first Double contest, or the first Double contest is declared “no contest,” the entire Double pool must be refunded on Double wagers for those contests. (3-29-10)

**09. Second Double Cancelled or “No Contest.”** If the second Double contest is cancelled or declared “no contest” after the conclusion of the first Double contest, the net Double pool is distributed as a single price pool to wagers selecting the winner of the first Double contest. In the event of a dead heat involving separate betting interests, the net Double pool is distributed as a profit split. (3-29-10)

**10. Payoff Posting.** Before the running of the last half of the Daily Double pool, the payoff of each combination coupled with the winner of the first half of the Daily Double must be posted in a prominent place. (3-29-10)

**11. Third Heat Announcement.** In case of a dead heat for winner in the first half (1/2) of the Daily Double, the payoff of the Daily Double need not be posted until after the running of the second half (1/2) of the Daily Double. However, announcement of this fact must be made over the loud speaker and notice to this effect be posted on the board at conclusion of the first half (1/2) of the Daily Double. (3-29-10)

**12. Close of Sale.** Sale of Daily Double tickets must close not later than “off-time” of the first race of the Daily Double. (3-29-10)

**13. Daily Double Not a Parlay.** The Daily Double Pool is not a parlay and is not connected with the WIN, PLACE, SHOW or other pools in any manner whatsoever.

<b>Table 5 -- Double Pool (Standard Price Calculation)</b>	
Sum of Wagers on All Betting Interests	= \$194,230.00
Refunds	= \$1,317.00
Gross Pool:	
Sum of Wagers on All Betting Interests - Refunds	= \$192,913.00
Percent Takeout	= 18%
Takeout:	
Gross Pool x Percent Takeout	= \$34,724.34
Net Pool:	
Gross Pool - Takeout	= \$158,188.66
Gross Amount Bet on Winning Combination	= \$23,872.00
Profit:	
Net Pool - Gross Amount Bet on Winning Combination	= \$134,316.66
Profit Per Dollar:	
Profit / Gross Amount Bet on Winning Combination	= \$5.6265357



<b>Table 5 -- Double Pool (Standard Price Calculation)</b>	
\$1 Unbroken Price:	
Profit Per Dollar + \$1	= \$6.6265357

<b>Table 6 -- Double Pool Consolation Pricing:</b>	
Sum of Wagers on All Betting Interests	= \$194,230.00
Refunds	= \$1,317.00
Gross Pool:	
Sum of Wagers on All Betting Interests - Refunds	= \$192,913.00
Percent Takeout	= 18%
Takeout:	
Gross Pool x Percent Takeout	= \$34,724.34
Net Pool:	
Gross Pool - Takeout	= \$158,188.66
Consolation Pool:	
Sum Total Amount Bet on winner of the first contest with all second contest betting interests	= \$43,321.00
\$1 Consolation Unbroken Consolation Price:	
Net Pool / Consolation Pool	= \$3.6515468
\$1 Consolation Broken Price:	= \$3.65
Amount Bet on winner of the first contest with scratched betting interests:	= \$1,234.00
Consolation Liability:	
\$1 Consolation Broken Price x (Amount Bet on the winner of the first contest with scratched betting interests)	= \$4,504.10
Adjusted Net Pool:	
Net Pool - Consolation Liability	= \$153,684.56
Gross Amount Bet on the Winning Combination	= \$23,872.00
Profit:	
Adjusted Net Pool - Gross Amount Bet on the Winning Combination	= \$129,812.56
Profit Per Dollar:	
Profit / Gross Amount Bet on the Winning Combination	= \$5.4378586
Unbroken Price:	
Profit Per Dollar + \$1	= \$6.4378586

(3-29-10)

**205. WIN THREE POOLS.**

**01. Win Three Pools.** The Win Three (3) requires selection of the first-place finisher in each of three (3) specified contests. (3-29-10)

**02. Distribution.** The net Win Three (3) pool must be distributed to winning wagers in the following precedence, based upon the official order of finish: (3-29-10)

**a.** As a single price pool to those whose selection finished first in each of the three (3) contests; but if there are no such wagers, then; (3-29-10)

**b.** As a single price pool to those who selected the first-place finisher in any two (2) of the three (3) contests; but if there are no such wagers, then; (3-29-10)

**c.** As a single price pool to those who selected the first-place finisher in any one (1) of the three (3) contests; but if there are no such wagers, then; (3-29-10)

**d.** The entire pool must be refunded on Win Three (3) wagers for those contests. (3-29-10)

**03. Dead Heat.** If there is a dead heat for first in any of the three (3) contests involving: (3-29-10)

**a.** Contestants representing the same betting interest, the Win Three (3) pool is distributed as if no dead heat occurred. (3-29-10)

**b.** Contestants representing two (2) or more betting interests, the Win Three (3) pool is distributed as a single price pool and is distributed as follows: (3-29-10)

**i.** As a profit split to those whose selections finished first in each of the three (3) contests; but if there are no such wagers, then; (3-29-10)

**ii.** As a single price pools to those who selected the first place finisher in any two (2) of the three (3) contests; but if there are no such wagers, then; (3-29-10)

**iii.** As a single price pool to those who selected the first place finisher in any one (1) of the three (3) contests; but if there are no such wagers, then; (3-29-10)

**iv.** The entire Win Three pool is refunded. (3-29-10)

**04. Substitution of a Scratch.** Should a betting interest be scratched from a leg of the Win Three (3) all bets with the scratched betting interest will be handled as follows: (3-29-10)

**a.** If the scratch (that herein after includes being declared a non-starter or a non-betting starter) was made prior to the start of the first leg, all bets containing such scratched betting interest must be refunded to determine the gross pool an removed from further consideration in the pool; (3-29-10)

**b.** If the scratch was made in the second leg after the start of the first leg, a consolation payoff will be computed for those bets combining the winners of the first and third legs with the scratched betting interest as follows: (3-29-10)

**i.** The statutory take-out is deducted from the gross pool and then the amount represented by the bets on combinations involving betting interests scratched from the third leg (reduced by the take-out thereon). (3-29-10)

**ii.** The resulting remainder is divided by the amounts bet on the combination of such first and third leg winners with all betting interests (less breaks) to determine the consolation price per dollar payable to those bets combining winners of the first and third legs with the betting interest scratched in the second leg. The break may not be deduced from the pool. (3-29-10)

c. If a betting interest is scratched in the third leg after the start of the first leg, a consolation payoff must be computed as for those bets combining the winners of the first and second legs with such scratched betting interest as follows: (3-29-10)

i. The statutory take-out is deducted from the gross pool and then the amount represented by bets on combinations involving betting interests scratched from the second leg (reduced by the rate of the take-out thereon). (3-29-10)

ii. The resulting remainder is divided by the amount bet on the combination of such first and second leg winners with all betting interests in the third leg (less breaks) to determine the consolation price per dollar payable to those bets combining winners of the first and second legs with a betting interest scratched in the third leg. The breaks must not be deducted from the pool. (3-29-10)

d. If betting interests are scratched in both the second and third legs after the start of the first leg, a consolation payoff is computed for those bets combining the winner of the first leg with the betting interests scratched in both the second and third legs as follows: (3-29-10)

i. The takeout is deducted from the gross pool and the remainder is divided by the amount bet on the winner of the first leg combined with all other betting interests (less breaks) to determine the consolation price per dollar payable to those tickets combining the winner of the first leg with the scratch betting interests from both the second and third legs. (3-29-10)

**05. All Three Cancelled.** If all three (3) Win Three (3) contests are cancelled or declared “no contest,” the entire pool must be refunded on Win Three (3) wagers for those contests. (3-29-10)

**06. One or Two Canceled.** If one (1) or two (2) of the Win Three (3) contests are cancelled or declared “no contest,” the Win Three (3) pool will remain valid and must be distributed in accordance with these rules. (3-29-10)

## **206. PICK (N) POOLS.**

**01. Pick (n) Pools.** The Pick (n) requires selection of the first-place finisher in each of a designated number of contests. The racing association must obtain written approval from the Racing Commission concerning the scheduling of Pick (n) contests, the designation of one (1) of the methods prescribed in these rules, and the amount of any cap to be set on the carryover. Any changes to the approved Pick (n) format require prior approval from the Racing Commission. (3-29-10)

**02. Apportioning the Pool.** The Pick (n) pool is apportioned under one (1) of the following methods: (3-29-10)

a. Method 1- Pick (n) with Carryover: The net Pick (n) pool and carryover, if any, must be distributed as a single price pool to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. If there are no such wagers, then a designated percentage of the net pool will be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests; and the remainder will be added to the carryover. (3-29-10)

b. Method 2 - Pick (n) with Minor Pool and Carryover: The major share of the net Pick (n) pool and the carryover, if any, must be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool is distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first- place finisher of all Pick (n) contests, the minor share of the net Pick (n) pool will be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests; and the major will be added to the carryover. (3-29-10)

c. Method 3 - Pick (n) with No Minor Pool and No Carryover: The net Pick (n) pool must be distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n)

contests, based upon the official order of finish. If there are no winning wagers, the pool is refunded. (3-29-10)

**d.** Method 4 - Pick (n) with Minor Pool and No Carryover: The major share of the net Pick (n) pool must be distributed to those who selected the first place finisher in the greatest number of Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool is distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in a second greatest number of Pick (n) contests, the minor share of the net Pick (n) pool is combined with the major share for distribution as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests. If the greatest number of first-place finishers selected is one (1), the major and minor shares are combined for distribution as a single price pool. If there are no winning wagers, the pool is refunded. (3-29-10)

**e.** Method 5 - Pick (n) with Minor Pool and No Carryover: The major share of net Pick (n) pool must be distributed to those who selected the first-place finisher in each of the Pick (n) contests, based upon the official order of finish. The minor share of the net Pick (n) pool is distributed to those who selected the first-place finisher in the second greatest number of Pick (n) contests, based upon the official order of finish. If there are no wagers selecting the first-place finisher in all Pick (n) contests, the entire net Pick (n) pool is distributed as a single price pool to those who selected the first-place finisher in the greatest number of Pick (n) contests. If there are no wagers selecting the first-place finisher in a second greatest number of Pick (n) contests, the minor share of the net Pick (n) pool is combined with the major share for distribution as a single price pool to those who selected the first-place finisher in each of the Pick (n) contests. If there are no winning wagers, the pool is refunded. (3-29-10)

**f.** Method 6 - Pick (n) with Minor Pool, Jackpot Pool, Major Carryover and Jackpot Carryover: Predetermined percentages of the net Pick (n) pool must be set aside as a Major pool, Minor pool and Jackpot pool. The Major share of the net Pick (n) pool and the Major carryover, if any, is distributed to those who selected the first-place finisher of each of the Pick (n) contests, based on the official order of finish. If there are no tickets selecting the first-place finisher in each of the Pick (n) contests, the Major net pool is added to the Major carryover. If there is only one (1) single ticket selecting the first-place finisher of each of the Pick (n) contests, based on the official order of finish, the Jackpot share of the net Pick (n) pool and the Jackpot carryover, if any, is distributed to the holder of that single ticket, along with the Major net pool and the Major carryover, if any. If more than one (1) ticket selects the first-place finisher of each of the Pick (n) contests the Jackpot net pool is added to the Jackpot carryover. The Minor share of the net Pick (n) pool is distributed to those who selected the first-place finisher of the second greatest number of Pick (n) contests, based on the official order of finish. If there are no wagers selecting the first-place finisher of all Pick (n) contests, the Minor net pool of the Pick (n) pool is distributed as a single price pool to those who selected the first-place finisher of the greatest number of Pick (n) contests. (3-29-10)

**03. Dead Heat.** If there is a dead heat for first in any of the Pick (n) contests involving: (3-29-10)

**a.** Contestants representing the same betting interest, the Pick (n) pool must be distributed as if no dead heat occurred. (3-29-10)

**b.** Contestants representing two (2) or more betting interests, the Pick (n) pool must be distributed as a single price pool with each winning wager receiving an equal share of the profit. (3-29-10)

**04. Scratched Entry.** Should a betting interest in any of the Pick (n) contests be scratched, the actual favorite, as evidenced by total amounts wagered in the Win pool at host association for the contest at the close of wagering on that contest, will be substituted for the scratched betting interest for all purposes, including pool calculations. In the event that the Win pool total for two (2) or more favorites is identical, the substitute selection will be the betting interest with the lowest program number. The totalisator must produce reports showing each of the wagering combinations with substituted betting interests which became winners as a result of the substitution, in addition to the normal winning combination. (3-29-10)

**05. Cancellation and Refunds.** The Pick (n) pool will be cancelled and all Pick (n) wagers for the individual performance will be refunded, if: (3-29-10)

**a.** At least two (2) contests included as part of a Pick Three (3) are cancelled or declared "no contest"; (3-29-10)

b. At least three (3) contests included as part of a Pick Four (4), Pick Five (5) or Pick Six (6) are cancelled or declared “no contest”; (3-29-10)

c. At least four (4) contests included as part of a Pick Seven (7), Pick Eight (8) or Pick Nine (9) are cancelled or declared “no contest”; or (3-29-10)

d. At least five (5) contests included as part of a Pick Ten (10) are cancelled or declared “no contest.” (3-29-10)

**06. Net Pool Distribution.** If at least one (1) contest included as part of a Pick (n) is cancelled or declared “no contest,” but not more than the number specified in these rules the net pool must be distributed as a single price pool to those whose selection finished first in the greatest number of Pick (n) contests for that performance. Such distribution must include the portion ordinarily retained for the Pick (n) carryover but not the carryover from previous performances. (3-29-10)

**07. Course Condition.** If the condition of the course warrants a change of racing surface in any of the legs of the Pick (n) races, and such change was not known to the public prior to the closing of wagering for the Pick (n) pool, the stewards must declare the changed leg(s) a “no contest” for Pick (n) wagering purposes only. A “no contest” race is not to be considered as a contested race. (3-29-10)

**08. Capped Carryover.** The Pick (n) carryover may be capped at a designed level approved by the Racing Commission so that if, at the close of any performance, the amount in the Pick (n) carryover equals or exceeds the designated cap, the Pick (n) carryover will be frozen until it is won or distributed under other provisions of this rule. After the Pick (n) carryover is frozen, one hundred (100%) percent of the net pool, part of which ordinarily would be added to the Pick (n) carryover, must be distributed to those whose selection finished first in the greatest number of Pick (n) contests for that performance. (3-29-10)

**09. Carryover Requested.** A written request for permission to distribute the Pick (n) carryover on a specific performance may be submitted to the Racing Commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. (3-29-10)

**10. Single Price Distribution.** Should the Pick (n) carryover be designated for distribution on a specified date and performance in which there are no wagers selecting the first-place finisher in each of the Pick (n) contests, the entire pool must be distributed as a single price pool to those whose selection finished first in the greatest number of Pick (n) contests. The Pick (n) carryover must be designated for distribution on a specified date and performance only under the following circumstances: (3-29-10)

a. Upon written approval from the Racing Commission as provided in these rules. (3-29-10)

b. Upon written approval from the Racing Commission when there is a change in the carryover cap, a change from one (1) type of Pick (n) wagering to another or when the Pick (n) is discontinued. (3-29-10)

c. On the closing performance of the meet or split meet. (3-29-10)

**11. Carryover Deposit.** If, for any reason, the Pick (n) carryover must be held over to the corresponding Pick (n) pool of a subsequent meet, the carryover must be deposited in an interest-bearing account approved by the Racing Commission. The Pick (n) carryover plus accrued interest must then be added to the net Pick (n) pool of the following meet on a date and performance so designated by the Racing Commission. (3-29-10)

**12. Contribution to Pool.** With the written approval of the Racing Commission, the racing association may contribute to the Pick (n) carryover a sum of money up to the amount of any designated cap. (3-29-10)

**13. Prohibited Information.** Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of live tickets remaining is strictly prohibited until the race is made official. This does not prohibit necessary communication between totalisator and

pari-mutuel department employees for processing of pool data. (3-29-10)

**14. Suspension of Wagering.** The racing association may suspend previously-approved Pick (n) wagering with the prior approval of the Racing Commission. Any carryover must be held until the suspended Pick (n) wagering is reinstated. A racing association may request approval of a Pick (n) wager or separate wagering pool for specific performances.

**TABLE 7 -- PICK 7 POOL**  
**MULTIPLE TAKEOUT RATES AND MULTIPLE BETTING SOURCES**

	<b>Percent Takeout</b>	<b>Gross Pool Bet On</b>	<b>Gross Amount - Win</b>	<b>Net Pool Bet On</b>	<b>Net Amount - Win</b>
Source 1:	16%	\$190,000	\$44	\$159,600	\$36.96
Source 2:	18.5%	\$10,000	\$18	\$8,150	\$14.67
Source 3:	21%	\$525,730	\$124	\$415,326.70	\$97.96
<b>TOTALS:</b>		<b>\$725,730</b>	<b>\$186</b>	<b>\$583,076.70</b>	<b>\$149.59</b>

<b>(Net Price Calculation)</b>	
Total Profit:	
Total Net Pool - Total Net Bet on the Winning Combination	= \$582,927.11
Profit Per Dollar:	
Total Profit / Total Net Bet on the Winning Combination	= \$3,896.8321
\$1 Unbroken Base Price:	
Profit Per Dollar + \$1	= \$3,897.8321
\$1 Unbroken Price for Source 1:	
\$1 Unbroken Base Price x (1 - Percent Takeout)	= \$3,274.1789
\$1 Unbroken Price for Source 2:	
\$1 Unbroken Base Price x (1 - Percent Takeout)	= \$3,176.7331
\$1 Unbroken Price for Source 3:	
\$1 Unbroken Base Price x (1 - Percent Takeout)	= \$3,079.2873

(3-29-10)

**207. QUINELLA POOLS.**

**01. Quinella Pools.** The Quinella requires selection of the first two (2) finishers, irrespective of order, for a single contest. (3-29-10)

**02. Distribution.** The net Quinella pool must be distributed to winning wagers in the following precedence, based upon the official order of finish: (3-29-10)

**a.** If contestants of a coupled entry or mutuel field finish as the first two (2) finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the

official order of finish, otherwise; (3-29-10)

**b.** As a single price pool to those whose combination finished as the first two (2) betting interests; but if there are no such wagers, then; (3-29-10)

**c.** As a profit split to those whose combination included either the first- or second-place finisher; but if there are no such wagers on one (1) of those two (2) finishers, then; (3-29-10)

**d.** As a single price pool to those whose combination included the one (1) covered betting interest included within the first two (2) finishers; but if there are no such wagers, then; (3-29-10)

**e.** The entire pool must be refunded on Quinella wagers for that contest. (3-29-10)

**03. Dead Heat -- First Place.** If there is a dead heat for first involving: (3-29-10)

**a.** Contestants representing the same betting interest, the Quinella pool is distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish. (3-29-10)

**b.** Contestants representing two (2) betting interests, the Quinella pool is distributed as if no dead heat occurred. (3-29-10)

**c.** Contestants representing three (3) or more betting interests, the Quinella pool is distributed as a profit split. (3-29-10)

**04. Dead Heat -- Second Place.** If there is a dead heat for second involving contestants representing the same betting interest, the Quinella pool is distributed as if no dead heat occurred. (3-29-10)

**05. Dead Heat -- Two or More Interests.** If there is a dead heat for second involving contestants representing two (2) or more betting interests, the Quinella pool is distributed to wagers in the following precedence, based upon the official order of finish: (3-29-10)

**a.** As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second; but if there is only one (1) covered combination, then; (3-29-10)

**b.** As a single price pool to those combining the winner with the one (1) covered betting interest involved in the dead heat for second; but if there are no such wagers, then; (3-29-10)

**c.** As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then; (3-29-10)

**d.** As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second; but if there are no such wagers, then; (3-29-10)

**e.** The entire pool must be refunded on Quinella wagers for that contest. (3-29-10)

**208. QUINELLA DOUBLE POOLS.**

**01. Quinella Double Pools.** The Quinella Double requires selection of the first two (2) finishers, irrespective of order, in each of two (2) specified contests. (3-29-10)

**02. Distribution.** The net Quinella Double pool must be distributed to winning wagers in the following precedence, based upon the official order of finish: (3-29-10)

**a.** If a coupled entry or mutuel field finishes as the first two (2) contestants in either contest, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest

in the official order of finish for that contest, as well as the first two (2) finishers in the alternate Quinella Double contest, otherwise; (3-29-10)

**b.** As a single price pool to those who selected the first two (2) finishers in each of the two (2) Quinella Double contests; but if there are no such wagers, then; (3-29-10)

**c.** As a profit split to those who selected the first two (2) finishers in either of the two (2) Quinella Double contests; but if there are no such wagers on one (1) of those contests, then; (3-29-10)

**d.** As a single price pool to those who selected the first two (2) finishers in the one (1) covered Quinella Double contest; but if there were no such wagers, then; (3-29-10)

**e.** The entire pool must be refunded on Quinella Double wagers for those contests. (3-29-10)

**03. Dead Heat - First Place.** If there is a dead heat for first in either of the two (2) Quinella Double contests involving: (3-29-10)

**a.** Contestants representing the same betting interest, the Quinella Double pool is distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish for that contest. (3-29-10)

**b.** Contestants representing two (2) betting interests, the Quinella Double pool is distributed as if no dead heat occurred. (3-29-10)

**c.** Contestants representing three (3) or more betting interests, the Quinella Double pool is distributed as a profit split. (3-29-10)

**04. Dead Heat -- Second Place.** If there is a dead heat for second in either of the Quinella Double contests involving contestants representing the same betting interest, the Quinella Double pool is distributed as if no dead heat occurred. (3-29-10)

**05. Dead Heat -- Second Place Two or More Interests.** If there is a dead heat for second in either of the Quinella Double contests involving contestants representing two (2) or more betting interests, the Quinella Double pool is distributed as a profit split. (3-29-10)

**06. Betting Interest Deducted -- First Half.** Should a betting interest in the first-half of the Quinella Double be scratched prior to the first Quinella Double contest being declared official, all money wagered on combinations including the scratched betting interest will be deducted from the Quinella Double pool and refunded. (3-29-10)

**07. Betting Interest Deducted -- Second Half.** Should a betting interest in the second-half of the Quinella Double be scratched prior to the close of wagering on the first Quinella Double contest, all money wagered on combinations including the scratched betting interest will be deducted from the Quinella Double pool and refunded. (3-29-10)

**08. Consolation Payoff.** Should a betting interest in the second-half of the Quinella Double be scratched after the close of wagering on the first Quinella Double contest, all wagers combining the winning combination in the first contest with a combination including the scratched betting interest in the second contest will be allocated a consolation payout. In calculating the consolation payout the net Quinella Double pool is divided by the total amount wagered on the winning combination in the first contest and an unbroken consolation price obtained. The unbroken consolation price is multiplied by the dollar value of wagers on the winning combination in the first contest combined with a combination including the scratched betting interest in the second contest to obtain the consolation payout. Breakage is not declared in this calculation. The consolation payout is deducted from the net Quinella Double pool before calculation and distribution of the winning Quinella Double payout. In the event of a dead heat involving separate betting interests, the net Quinella Double pool is distributed as a profit split. (3-29-10)

**09. Refunded Quinella.** If either of the Quinella Double contests is cancelled prior to the first Quinella



Double contest, or the first Quinella Double contest is declared “no contest,” the entire Quinella Double pool must be refunded on Quinella Double wagers for those contests. (3-29-10)

**10. Second Double Contest Cancelled.** If the second Quinella Double contest is cancelled or declared “no contest” after the conclusion of the first Quinella Double contest, the net Quinella Double pool must be distributed as a single price pool to wagers selecting the winning combination in the first Quinella Double contest. If there are no wagers selecting the winning combination in the first Quinella Double contest, the entire Quinella Double pool must be refunded on Quinella Double wagers for those contests. (3-29-10)

**209. EXACTA POOLS.**

**01. Exacta Pools.** The Exacta requires selection of the first two (2) finishers, in their exact order, for a single contest. (3-29-10)

**02. Distribution.** The net Exacta pool must be distributed to winning wagers in the following precedence, based upon the official order of finish: (3-29-10)

**a.** If contestants of a coupled entry or mutuel field finish as the first two (2) finishers, as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise; (3-29-10)

**b.** As a single price pool to those whose combination finished in correct sequence as the first two (2) betting interests; but if there are no such wagers, then; (3-29-10)

**c.** As a profit split to those whose combination included either the first-place betting interest to finish first or the second-place betting interest to finish second; but if there are no such wagers on one (1) of those two (2) finishers, then; (3-29-10)

**d.** As a single price pool to those whose combination included the one (1) covered betting interest to finish first or second in the correct sequence; but if there are no such wagers, then; (3-29-10)

**e.** The entire pool must be refunded on Exacta wagers for that contest. (3-29-10)

**03. Dead Heat for First.** If there is a dead heat for first involving: (3-29-10)

**a.** Contestants representing the same betting interest, the Exacta pool is distributed as a single price pool to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish. (3-29-10)

**b.** Contestants representing two (2) or more betting interests, the Exacta pool is distributed as a profit split. (3-29-10)

**04. Dead Heat for Second.** If there is a dead heat for second involving contestants representing the same betting interest, the Exacta pool is distributed as if no dead heat occurred. (3-29-10)

**05. Dead Heat for Second -- Two or More Betting Interests.** If there is a dead heat for second involving contestants representing two (2) or more betting interests, the Exacta pool is distributed to ticket holders in the following precedence, based upon the official order of finish: (3-29-10)

**a.** As a profit split to those combining the first-place betting interest with any of the betting interests involved in the dead heat for second; but if there is only one (1) covered combination, then; (3-29-10)

**b.** As a single price pool to those combining the first-place betting interest with the one (1) covered betting interest involved in the dead heat for second; but if there are no such wagers, then; (3-29-10)

**c.** As a profit split to those wagers correctly selecting the winner for first-place and those wagers selecting any of the dead-heated betting interests for second-place; but if there are no such wagers, then; (3-29-10)

- d. The entire pool must be refunded on Exacta wagers for that contest. (3-29-10)

**210. TRIFECTA POOLS.**

**01. Trifecta Pools.** The Trifecta requires selection of the first three (3) finishers, in their exact order, for a single contest. (3-29-10)

**02. Distribution.** The net Trifecta Pool must be distributed to winning wagers in the following precedence, based upon the official order of finish: (3-29-10)

a. As a single price pool to those whose combination finished in correct sequence as the first three (3) betting interests; but if there are no such wagers, then; (3-29-10)

b. As a single price pool to those whose combination included, in correct sequence, the first two (2) betting interests; but if there are no such wagers, then; (3-29-10)

c. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then; (3-29-10)

- d. The entire pool must be refunded on Trifecta wagers for that contest. (3-29-10)

**03. Less Than Three Interests Finish.** If less than three (3) betting interests finish and the contest is declared official, payoffs will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest will be ignored. (3-29-10)

- 04. Dead Heat for First.** If there is a dead heat for first involving: (3-29-10)

a. Contestants representing three (3) or more betting interests, all of the wagering combinations selecting three (3) betting interests which correspond with any of the betting interests involved in the dead heat will share in a profit split. (3-29-10)

b. Contestants representing two (2) betting interests, both of the wagering combinations selecting the two (2) dead-heated betting interests, irrespective of order, along with the third-place betting interest will share in a profit split. (3-29-10)

**05. Dead Heat -- Second Place.** If there is a dead heat for second, all of the combinations correctly selecting the winner combined with any of the betting interests involved in the dead heat for second will share a profit split. (3-29-10)

**06. Dead Heat -- Third Place.** If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any of the betting interests involved in the dead heat for third will share in a profit split. (3-29-10)

**07. Coupled Entries and Mutuel Fields.** Trifecta pools with hard entries may not be established for any race with fewer than eight (8) racing interests scheduled to start. For those licensees who hold race meets only during their county fair meets, a trifecta pool can be established for any race with a hard entry in which there are no fewer than six (6) racing interests scheduled to start. In all cases, entrees coupled as a single wagering interest will be permitted provided that such single wagering interest constitutes an individual wagering selection and a scratch of any horse that is a part of any entry or the field does not constitute a scratch of the single wagering interest.(3-29-10)

**211. SUPERFECTA POOLS.**

**01. Superfecta Pools.** The Superfecta requires selection of the first four (4) finishers, in their exact order, for a single contest. (3-29-10)

**02. Distribution.** The net Superfecta pool must be distributed to winning wagers in the following precedence, based upon the official order of finish: (3-29-10)

**a.** As a single price pool to those whose combination finished in correct sequence as the first four (4) betting interests; but if there are no such wagers, then; (3-29-10)

**b.** As a single price pool to those whose combination included, in correct sequence, the first three (3) betting interests; but if there are no such wagers, then; (3-29-10)

**c.** As a single price pool to those whose combination included, in correct sequence, the first two (2) betting interests; but if there are no such wagers, then; (3-29-10)

**d.** As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then; (3-29-10)

**e.** The entire pool must be refunded on Superfecta wagers for that contest. (3-29-10)

**03. Less Than Four Finish.** If less than four (4) betting interests finish and the contest is declared official, payouts will be made based upon the order of finish of those betting interests completing the contest. The balance of any selection beyond the number of betting interests completing the contest will be ignored. (3-29-10)

**04. Dead Heat -- First Place.** If there is a dead heat for first involving: (3-29-10)

**a.** Contestants representing four (4) or more betting interests, all of the wagering combinations selecting four (4) betting interests which correspond with any of the betting interests involved in the dead heat will share in a profit split. (3-29-10)

**b.** Contestants representing three (3) betting interests, all of the wagering combinations selecting the three (3) dead-heated betting interests, irrespective of order, along with the fourth-place betting interest will share in a profit split. (3-29-10)

**c.** Contestants representing two (2) betting interests, both of the wagering combinations selecting the two (2) dead-heated betting interests, irrespective of order, along with the third-place and fourth-place betting interests will share in a profit split. (3-29-10)

**05. Dead Heat -- Second Place.** If there is a dead heat for second involving: (3-29-10)

**a.** Contestants representing three (3) or more betting interests, all of the wagering combinations correctly selecting the winner combined with any of the three (3) betting interests involved in the dead heat for second will share in a profit split. (3-29-10)

**b.** Contestants representing two (2) betting interests, all of the wagering combinations correctly selecting the winner, the two (2) dead-heated betting interests, irrespective of order, and the fourth-place betting interest will share in a profit split. (3-29-10)

**06. Dead Heat - Third Place.** If there is a dead heat for third, all wagering combinations correctly selecting the first two (2) finishers, in correct sequence, along with any two (2) of the betting interests involved in the dead heat for third will share in a profit split. (3-29-10)

**07. Dead Heat -- Fourth Place.** If there is a dead heat for fourth, all wagering combinations correctly selecting the first three (3) finishers, in correct sequence, along with any of the betting interests involved in the dead heat for fourth will share in a profit split. (3-29-10)

**212. TWIN QUINELLA POOLS.**

**01. Twin Quinella Pools.** The Twin Quinella requires selection of the first two (2) finishers, irrespective of order, in each of two (2) designated contests. Each winning ticket for the first Twin Quinella contest

must be exchanged for a free ticket on the second Twin Quinella contest in order to remain eligible for the second-half Twin Quinella pool. Such tickets may be exchanged only at attended ticket windows prior to the second Twin Quinella contest. There will be no monetary reward for winning the first Twin Quinella contest. Both of the designated Twin Quinella contests will be included in only one (1) Twin Quinella pool. (3-29-10)

**02. Winning Procedure.** In the first Twin Quinella contest only, winning wagers must be determined using the following precedence, based upon the official order of finish for the first Twin Quinella contest: (3-29-10)

**a.** If a coupled entry or mutuel field finishes as the first two (2) finishers, those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish are winners, otherwise; (3-29-10)

**b.** Those whose combination finished as the first two (2) betting interests are winners; but if there are no such wagers, then; (3-29-10)

**c.** Those whose combination included either the first- or second-place finisher are winners; but if there are no such wagers on one (1) of those two (2) finishers, then; (3-29-10)

**d.** Those whose combination included the one (1) covered betting interest included within the first two (2) finishers are winners; but if there are no such wagers, then; (3-29-10)

**e.** The entire pool must be refunded on Twin Quinella wagers for that contest. (3-29-10)

**03. Dead Heat -- First Place.** In the first Twin Quinella contest only, if there is a dead heat for first involving: (3-29-10)

**a.** Contestants representing the same betting interest, those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish are winners. (3-29-10)

**b.** Contestants representing two (2) betting interests, the winning Twin Quinella wagers are determined as if no dead heat occurred. (3-29-10)

**c.** Contestants representing three (3) or more betting interests, those whose combination included any two (2) of the betting interests finishing in the dead heat are winners. (3-29-10)

**04. Dead Heat -- Second Place.** In the first Twin Quinella contest only, if there is a dead heat for second involving contestants representing two (2) or more betting interests, the Twin Quinella pool will be distributed to wagers in the following precedence, based upon the official order of finish: (3-29-10)

**a.** As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second but if there is only one (1) covered combination, then; (3-29-10)

**b.** As a single price pool to those combining the winner with the one (1) covered betting interest involved in the dead heat for second; but if there are no such wagers, then; (3-29-10)

**c.** As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then; (3-29-10)

**d.** As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead hear for second; but if there are no such wagers, then; (3-29-10)

**e.** The entire pool must be refunded on Twin Quinella wagers for that contest. (3-29-10)

**05. Distribution.** In the second Twin Quinella contest only, the entire net Twin Quinella pool must be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Twin Quinella contest: (3-29-10)

**a.** If a coupled entry or mutuel field finishes as the first two (2) finishers, as a single price pool to those who selected the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish, otherwise; (3-29-10)

**b.** As a single price pool to those whose combination finished as the first two (2) betting interests; but if there are no such wagers, then; (3-29-10)

**c.** As a profit split to those whose combination included either the first- or second-place finisher; but if there are no such wagers on one (1) of those two (2) finishers, then; (3-29-10)

**d.** As a single price pool to those whose combination included the one (1) covered betting interest included within the first two (2) finishers; but if there are no such wagers, then; (3-29-10)

**e.** As a single price pool to all the exchange ticket holders for that contest; but if there are no such tickets, then; (3-29-10)

**f.** In accordance with Subsection 212.02 of these rules. (3-29-10)

**06. Dead Heat -- First Place.** In the second Twin Quinella contest only, if there is a dead heat for first involving: (3-29-10)

**a.** Contestants representing the same betting interest, the net Twin Quinella pool will be distributed to those selecting the coupled entry or mutuel field combined with the next separate betting interest in the official order of finish. (3-29-10)

**b.** Contestants representing two (2) betting interests, the net Twin Quinella pool will be distributed as if no dead heat occurred. (3-29-10)

**c.** Contestants representing three (3) or more betting interests, the net Twin Quinella pool will be distributed as a profit split to those whose combination included any two (2) of the betting interests finishing in the dead heat. (3-29-10)

**07. Dead Heat -- Second Place.** In the second Twin Quinella contest only, if there is a dead heat for second involving contestants representing two (2) or more betting interests, the Twin Quinella pool will be distributed to wagers in the following precedence, based upon the official order of finish: (3-29-10)

**a.** As a profit split to those combining the winner with any of the betting interests involved in the dead heat for second; but if there is only one (1) covered combination, then; (3-29-10)

**b.** As a single price pool to those combining the winner with the one (1) covered betting interest involved in the dead heat for second; but if there are no such wagers, then; (3-29-10)

**c.** As a profit split to those combining the betting interests involved in the dead heat for second; but if there are no such wagers, then;; (3-29-10)

**d.** As a profit split to those whose combination included the winner and any other betting interest and wagers selecting any of the betting interests involved in the dead heat for second, then; (3-29-10)

**e.** As a single price pool to all the exchange ticket holders for that contest; but if there are no such tickets, then; (3-29-10)

**f.** In accordance with Subsection 212.02 of these rules. (3-29-10)

**08. Forfeiture of Rights.** If a winning ticket for the first-half of the Twin Quinella is not presented for exchange prior to the close of betting on the second-half Twin Quinella contest, the ticket holder forfeits all rights to any distribution of the Twin Quinella pool resulting from the outcome of the second contest. (3-29-10)

**09. First-Half Scratch.** Should a betting interest in the first-half of the Twin Quinella be scratched, those Twin Quinella wagers including the scratched betting interest must be refunded. (3-29-10)

**10. Second-Half Scratch.** Should a betting interest in the second-half of the Twin Quinella be scratched, an announcement concerning the scratch must be made and a reasonable amount of time be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Twin Quinella contest, the ticket holder forfeits all rights to the Twin Quinella pool. (3-29-10)

**11. Contest Cancelled.** If either of the Twin Quinella contests is cancelled prior to the first Twin Quinella contest, or the first Twin Quinella contest is declared “no contest,” the entire Twin Quinella pool must be refunded on Twin Quinella wagers for that contest. (3-29-10)

**12. Second-Half Cancelled.** If the second-half Twin Quinella contest is cancelled or declared “no contest” after the conclusion of the first Twin Quinella contest, the net Twin Quinella pool will be distributed as a single price pool to wagers selecting the winning combination in the first Twin Quinella contest and all valid exchange tickets. If there is no such wagers, the net Twin Quinella pool must be distributed as described in Subsection 212.02 of these rules. (3-29-10)

### **213. TWIN TRIFECTA POOLS.**

**01. Twin Trifecta Pools.** The Twin Trifecta requires selection of the first three (3) finishers, in their exact order, in each of two (2) designated contests. Each winning ticket for the first Twin Trifecta contest must be exchanged for a free ticket on the second Twin Trifecta contest in order to remain eligible for the second-half Twin Trifecta pool. Such ticket may be exchanged only at attended ticket windows prior to the second Twin Trifecta contest. Winning first-half Twin Trifecta wagers will receive both an exchange and a monetary payoff. Both of the designated Twin Trifecta contests will be included in only one (1) Twin Trifecta pool. (3-29-10)

**02. Providing Pools.** After wagering closes for the first-half of the Twin Trifecta and commissions have been deducted from the pool, the net pool is then divided into separate pools: the first-half Twin Trifecta pool and the second-half Twin Trifecta pool. (3-29-10)

**03. Winning Precedence.** In the first Twin Trifecta contest only, winning wagers must be determined using the following precedence, based upon the official order of finish for the first Twin Trifecta contest: (3-29-10)

**a.** As a single price pool to those whose combination finished in correct sequence as the first three (3) betting interests, but if there are no such wagers, then; (3-29-10)

**b.** As a single price pool to those whose combination included, in correct sequence, the first two (2) betting interests, but if there are no such wagers, then; (3-29-10)

**c.** As a single price pool to those whose combination correctly selected the first-place betting interest only, but if there are no such wagers, then; (3-29-10)

**d.** The entire Twin Trifecta pool must be refunded on Twin Trifecta wagers for that contest and the second-half cancelled. (3-29-10)

**04. Carryover Pool.** If no first-half Twin Trifecta ticket selects the first three (3) finishers of that contest in exact order, winning ticket holders will not receive any exchange tickets for the second-half Twin Trifecta pool. In such case, the second-half Twin Trifecta pool must be retained and added to any existing Twin Trifecta carryover pool. (3-29-10)

**05. Exchange of Tickets.** Winning tickets from the first-half of the Twin Trifecta will be exchanged for tickets selecting the first three (3) finishers of the second-half of the Twin Trifecta. The second-half Twin Trifecta pool must be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Twin Trifecta contest: (3-29-10)

a. As a single price pool, including any existing carryover monies, to those whose combination finished in the correct sequence as the first three (3) betting interests; but if there are no such tickets, then; (3-29-10)

b. The entire second-half Twin Trifecta pool for that contest must be added to any existing carryover monies and retained for the corresponding second-half Twin Trifecta pool of the next consecutive performance. (3-29-10)

**06. Forfeiture of Rights.** If a winning first-half Twin Trifecta ticket is not presented for cashing and exchange prior to the second-half Twin Trifecta contest, the ticket holder may still collect the monetary value associated with the first-half Twin Trifecta pool but forfeits all rights to any distribution of the second-half Twin Trifecta pool. (3-29-10)

**07. Coupled Entries and Mutuel Field.** Coupled entries and mutuel fields are prohibited in Twin Trifecta contests. (3-29-10)

**08. Scratched Interests.** Should a betting interest in the first-half of the Twin Trifecta be scratched, those Twin Trifecta wagers including the scratched betting interest must be refunded. (3-29-10)

**09. Second-Half Betting Interest Scratch.** Should a betting interest in the second-half of the Twin Trifecta be scratched, an announcement concerning the scratch must be made and a reasonable amount of time be provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Twin Trifecta contest, the ticket holder forfeits all rights to the second-half Twin Trifecta pool. (3-29-10)

**10. Reduced Interests.** If, due to a late scratch, the number of betting interests in the second-half of the Twin Trifecta is reduced to fewer than the minimum, all exchange tickets and the outstanding first-half winning tickets will be entitled to the second-half Twin Trifecta pool for that contest as a single price pool, but not the Twin Trifecta carryover. (3-29-10)

**11. Dead Heat.** If there is a dead heat or multiple dead heats in either the first or second-half of the Twin Trifecta, all Twin Trifecta wagers selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, is a winner. In case of a dead heat occurring in: (3-29-10)

a. The first-half of the Twin Trifecta, the payoff is calculated as a profit split. (3-29-10)

b. The second-half of the Twin Trifecta, the payoff is calculated as a single price pool. (3-29-10)

**12. Cancelled Contest.** If either of the Twin Trifecta contests are cancelled prior to the first Twin Trifecta contest, or the first Twin Trifecta contest is declared "no contest," the entire Twin Trifecta pool must be refunded on Twin Trifecta wagers for that contest and the second-half cancelled. (3-29-10)

**13. Second-Half Cancelled.** If the second-half Twin Trifecta contest is cancelled or declared "no contest," all exchange tickets and outstanding first-half winning Twin Trifecta tickets will be entitled to the net Twin Trifecta pool for that contest as a single price pool, but not Twin Trifecta carryover. If there are no such tickets, the net Twin Trifecta pool must be distributed as described in Subsection 213.05 of these rules. (3-29-10)

**14. Capped Carryover.** The Twin Trifecta carryover may be capped at a designated level approved by the Racing Commission so that if, at the close of any performance, the amount in the Twin Trifecta carryover equals or exceeds the designated cap, the Twin Trifecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the Twin Trifecta carryover is frozen, one hundred percent (100%) of the net Twin Trifecta pool for each individual contest must be distributed to winners of the first-half of the Twin Trifecta pool. (3-29-10)

**15. Request to Distribute Carryover.** A written request for permission to distribute the Twin Trifecta carryover on a specific performance may be submitted to the Racing Commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. (3-29-10)

**16. Winning Precedence.** Should the Twin Trifecta carryover be designated for distribution on a specific date and performance, the following precedence will be followed in determining winning tickets for the second-half of the Twin Trifecta after completion of the first-half of the Twin Trifecta: (3-29-10)

**a.** As a single price pool to those whose combination finished in correct sequence as the first three (3) betting interests; but if there are no such wagers, then; (3-29-10)

**b.** As a single price pool to those whose combination included, in the correct sequence, the first two (2) betting interests; but if there are no such wagers, then; (3-29-10)

**c.** As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then; (3-29-10)

**d.** As a single price pool to holders of valid exchange tickets. (3-29-10)

**e.** As a single price pool to holders of outstanding first-half winning tickets. (3-29-10)

**17. Exchange of Tickets.** Contrary to Subsection 213.04 of these rules, during a performance designated to distribute the Twin Trifecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the Twin Trifecta. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets will be issued for combinations correctly selecting the first- and second-place betting interest. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets will be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first-half of the Twin Trifecta, all first-half tickets will become winners and will receive one hundred percent (100%) of that day's net Twin Trifecta pool and any existing Twin Trifecta carryover. (3-29-10)

**18. Carryover Designation.** The Twin Trifecta carryover must be designated for distribution on a specified date and performance only under the following circumstances: (3-29-10)

**a.** Upon written approval from the Racing Commission as provided in Subsection 213.15 of these rules. (3-29-10)

**b.** Upon written approval from the Racing Commission when there is a change in the carryover cap or when the Twin Trifecta is discontinued. (3-29-10)

**c.** On the closing performance of the meet or split meet (3-29-10)

**19. Carryover from Past Subsequent Meet.** If, for any reason, the Twin Trifecta carryover must be held over to the corresponding Twin Trifecta pool of a subsequent meet, the carryover must be deposited in an interest-bearing account approved by the Racing Commission. The Twin Trifecta carryover plus accrued interest will then be added to the second-half Twin Trifecta pool of the following meet on a date and performance so designated by the Racing Commission. (3-29-10)

**20. Prohibited Information.** Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited until the race is made official. This does not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data. (3-29-10)

**21. Contest Approval.** The racing association must obtain written approval from the Racing Commission concerning the scheduling of Twin Trifecta contests, the percentage of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved Twin Trifecta format require prior approval from the Racing Commission. (3-29-10)

**214. TRI-SUPERFECTA POOLS.**



**01. Tri-Superfecta Pools.** The Tri-Superfecta requires selection of the first three (3) finishers, in their exact order, in the first two (2) designated contests and the first four (4) finishers, in exact order, in the second of the two (2) designated contests. Each winning ticket for the first Tri-Superfecta contest must be exchanged for a free ticket on the second Tri-Superfecta contest in order to remain eligible for the second-half Tri-Superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second Tri-Superfecta contest. Winning first-half Tri-Superfecta tickets will receive both an exchange and a monetary payoff. Both of the designated Tri-Superfecta contests will be included in only one (1) Tri-Superfecta pool. (3-29-10)

**02. Providing Pools.** After wagering closes for the first-half of the Tri-Superfecta and commissions have been deducted from the pool, the net pool will then be divided into two (2) separate pools: the first-half Tri-Superfecta pool and the second-half Tri-Superfecta pool. (3-29-10)

**03. Winning Precedence.** In the first Tri-Superfecta contest only, winning tickets must be determined using the following precedence, based upon the official order of finish for the first Tri-Superfecta contest: (3-29-10)

**a.** As a single price pool to those whose combination finished in correct sequence as the first three (3) betting interests; but if there are no such wagers, then; (3-29-10)

**b.** As a single price pool to those whose combination included, in correct sequence, the first two (2) betting interests; but if there are no such wagers, then; (3-29-10)

**c.** As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then; (3-29-10)

**d.** The entire Tri-Superfecta pool must be refunded on Tri-Superfecta wagers for that contest and the second-half cancelled. (3-29-10)

**04. Carryover Pool.** If no first-half Tri-Superfecta ticket selects the first three (3) finishers of that contest in exact order, winning ticket holders will not receive any exchange tickets for the second-half Tri-Superfecta pool. In such case, the second-half Tri-Superfecta pool must be retained and added to any existing Tri-Superfecta carryover pool. (3-29-10)

**05. Exchange of Tickets.** Winning tickets from the first-half of the Tri-Superfecta will be exchanged for tickets selecting the first four (4) finishers of the second-half of the Tri-Superfecta. The second-half Tri-Superfecta pool must be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Tri-Superfecta contest: (3-29-10)

**a.** As a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first four (4) betting interests; but if there are no such tickets, then; (3-29-10)

**b.** The entire second-half Tri-Superfecta pool for that contest must be added to any existing carryover monies and retained for the corresponding second-half Tri-Superfecta pool of the next performance. (3-29-10)

**06. Forfeiture of Rights.** If a winning first-half Tri-Superfecta ticket is not presented for cashing and exchange prior to the second-half Tri-Superfecta contest, the ticket holder may still collect the monetary value associated with the first-half Tri-Superfecta pool but forfeits all rights to any distribution of the second-half Tri-Superfecta pool. (3-29-10)

**07. Coupled Entries and Mutuel Field.** Coupled entries and mutuel fields are prohibited in Tri-Superfecta contests. (3-29-10)

**08. Scratched Interest.** Should a betting interest in the first-half of the Tri-Superfecta be scratched, those Tri-Superfecta tickets including the scratched betting interest must be refunded. (3-29-10)

**09. Second-Half Betting Interest Scratch.** Should a betting interest in the second-half of the Tri-Superfecta be scratched, an announcement concerning the scratch must be made and a reasonable amount of time

provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Tri-Superfecta contest, the ticket holder forfeits all rights to the second-half Tri-Superfecta pool. (3-29-10)

**10. Reduced Interests.** If, due to a late scratch, the number of betting interests in the second-half of the Tri-Superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets will be entitled to the second-half Tri-Superfecta pool for that contest as a single price pool, but not the Tri-Superfecta carryover. (3-29-10)

**11. Dead Heat.** If there is a dead heat or multiple dead heats in either the first- or second-half of the Tri-Superfecta, all Tri-Superfecta tickets selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, is a winner. In the case of a dead heat occurring in: (3-29-10)

**a.** The first-half of the Tri-Superfecta, the payoff is calculated as a profit split. (3-29-10)

**b.** The second-half of the Tri-Superfecta, the payoff is calculated as a single price pool. (3-29-10)

**12. Cancelled Contest.** If either of the Tri-Superfecta contests are cancelled prior to the first Tri-Superfecta contest, or the first Tri-Superfecta contest is declared “no contest,” the entire Tri-Superfecta pool must be refunded on Tri-Superfecta wagers for that contest and the second-half cancelled. (3-29-10)

**13. Second-Half Cancelled.** If the second-half Tri-Superfecta contest is cancelled or declared “no contest,” all exchange tickets and outstanding first-half winning Tri-Superfecta tickets will be entitled to the net Tri-Superfecta pool for that contest as a single price pool, but not the Tri-Superfecta carryover. If there are no such tickets, the net Tri-Superfecta pool must be distributed as described in Subsection 214.03 of these rules. (3-29-10)

**14. Capped Carryover.** The Tri-Superfecta carryover may be capped at a designated level approved by the Racing Commission so that if, at the close of any performance, the amount in the Tri-Superfecta carryover equals or exceeds the designated cap, the Tri-Superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half Tri-Superfecta carryover is frozen, one hundred percent (100%) of the net Tri-Superfecta pool for each individual contest will be distributed to winners of the first-half of the Tri-Superfecta pool. (3-29-10)

**15. Request to Distribute Carryover.** A written request for permission to distribute the Tri-Superfecta carryover on a specific performance may be submitted to the Racing Commission. The request must contain justification for the distribution, an explanation of the benefits to be derived, and the intended date and performance for the distribution. (3-29-10)

**16. Winning Precedence.** Should the Tri-Superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second-half of the Tri-Superfecta after completion of the first-half of the Tri-Superfecta: (3-29-10)

**a.** As a single price pool to those whose combination finished in correct sequence as the first four (4) betting interests; but if there are no such wagers, then; (3-29-10)

**b.** As a single price pool to those whose combination included, in correct sequence, the first three (3) betting interests; but if there are no such wagers, then; (3-29-10)

**c.** As a single price pool to those whose combination included, in correct sequence, the first two (2) betting interests; but if there are no such wagers, then; (3-29-10)

**d.** As a single price pool to those whose combination included, in correct sequence, the first-place betting interest only; but if there are no such wagers, then; (3-29-10)

**e.** As a single price pool to holders of valid exchange tickets. (3-29-10)

**f.** As a single price pool to holders of outstanding first-half winning tickets. (3-29-10)

**17. Exchange of Tickets.** Contrary to Subsection 214.04 these rules, during a performance designated to distribute the Tri-Superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the Tri-Superfecta. If there are no wagers correctly selecting the first-, second-, and third-place finishers, in their exact order, then exchange tickets will be issued for combinations correctly selecting the first- and second-place betting interests. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets will be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first-half of the Tri-Superfecta, all first-half tickets will become winners and will receive one hundred percent (100%) of that day's net Tri-Superfecta pool and any existing Tri-Superfecta carryover as a single price pool. (3-29-10)

**18. Carryover Designation.** The Tri-Superfecta carryover may be designated for distribution on a specified date and performance only under the following circumstances: (3-29-10)

**a.** Upon written approval from the Racing Commission as provided in Subsection 214.15 of these rules. (3-29-10)

**b.** Upon written approval from the Racing Commission when there is a change in the carryover cap or when the Tri-Superfecta is discontinued. (3-29-10)

**c.** On the closing performance of the meet or split meet. (3-29-10)

**19. Carryover from Past Subsequent Meet.** If, for any reason, the Tri-Superfecta carryover must be held over to the corresponding Tri-Superfecta pool of a subsequent meet, the carryover must be deposited in an interest-bearing account approved by the Racing Commission. The Tri-Superfecta carryover plus accrued interest will then be added to the second-half Tri-Superfecta pool of the following meet on a date and performance so designated by the Racing Commission. (3-29-10)

**20. Prohibited Information.** Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited until the race is made official. This does not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data. (3-29-10)

**21. Contest Approval.** The racing association must obtain written approval from the Racing Commission concerning the scheduling of Tri-Superfecta contest, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved Tri-Superfecta format requires prior approval from the Racing Commission. (3-29-10)

## **215. TWIN SUPERFECTA POOLS.**

**01. Twin Superfecta Pools.** The Twin Superfecta requires selection of the first four (4) finishers, in their exact order, in each of two (2) designated contests. Each winning ticket for the first Twin Superfecta contest must be exchanged for a free ticket on the second Twin Superfecta contest in order to remain eligible for the second-half Twin Superfecta pool. Such tickets may be exchanged only at attended ticket windows prior to the second Twin Superfecta contest. Winning first-half Twin Superfecta tickets will receive both an exchange and a monetary payoff. Both of the designated Twin Superfecta contests will be included in only one (1) Twin Superfecta pool. (3-29-10)

**02. Dividing Pools.** After wagering closes for the first-half of the Twin Superfecta and commissions have been deducted from the pool, the net pool must then be divided into two (2) separate pools: the first-half Twin Superfecta pool and the second-half Twin Superfecta pool. (3-29-10)

**03. Winning Precedence.** In the first Twin Superfecta contest only, winning wagers must be determined using the following precedence, based upon the official order of finish for the first Twin Superfecta contest: (3-29-10)

**a.** As a single price pool to those whose combination finished in correct sequence as the first four (4)

betting interests; but if there are no such wagers, then; (3-29-10)

**b.** As a single price pool to those whose combination included, in correct sequence, the first three (3) betting interests; but if there are no such wagers, then; (3-29-10)

**c.** As a single price pool to those whose combination included, in correct sequence, the first two (2) betting interests; but if there are no such wagers, then; (3-29-10)

**d.** As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then; (3-29-10)

**e.** The entire Twin Superfecta pool must be refunded on Twin Superfecta wagers for that contest and the second-half cancelled. (3-29-10)

**04. Carryover Pool -- First Race.** If no first-half Twin Superfecta ticket selects the first four (4) finishers of that contest in exact order, winning ticket holders will not receive any exchange tickets for the second-half Twin Superfecta pool. In such case, the second-half Twin Superfecta pool will be retained and added to any existing Twin Superfecta carryover pool. (3-29-10)

**05. Winning Distribution.** Winning tickets from the first-half of the Twin Superfecta will be exchanged for tickets selecting the first four (4) finishers of the second-half of the Twin Superfecta. The second-half Twin Superfecta pool must be distributed to winning wagers in the following precedence, based upon the official order of finish for the second Twin Superfecta contest: (3-29-10)

**a.** As a single price pool, including any existing carryover monies, to those whose combination finished in correct sequence as the first four (4) betting interests; but if there are no such tickets, then; (3-29-10)

**b.** The entire second-half Twin Trifecta pool for that contest must be added to any existing carryover monies and retained for the corresponding second-half Twin Superfecta pool of the next performance. (3-29-10)

**06. Forfeiture of Second-Half Rights.** If a winning first-half Twin Superfecta ticket is not presented for cashing and exchange prior to the second-half Twin Superfecta contest, the ticket holder may still collect the monetary value associated with the first-half Twin Superfecta pool but forfeits all rights to any distribution of the second-half Twin Trifecta pool. (3-29-10)

**07. Prohibited Entries.** Coupled entries and mutuel fields are prohibited in Twin Superfecta contests. (3-29-10)

**08. Scratched First-Half Interest.** Should a betting interest in the first-half of the Twin Superfecta be scratched, those Twin Superfecta tickets including the scratched betting interest must be refunded. (3-29-10)

**09. Scratched Second-Half Interest.** Should a betting interest in the second-half of the Twin Superfecta be scratched, an announcement concerning the scratch must be made and a reasonable amount of time provided for exchange of tickets that include the scratched betting interest. If tickets have not been exchanged prior to the close of betting for the second Twin Superfecta contest, the ticket holder forfeits all rights to the second-half Twin Superfecta pool. (3-29-10)

**10. Late Scratch.** If, due to a late scratch, the number of betting interests in the second-half of the Twin Superfecta is reduced to fewer than the minimum, all exchange tickets and outstanding first-half winning tickets will be entitled to the second-half Twin Superfecta pool for that contest as a single price pool, but not the Twin Superfecta carryover. (3-29-10)

**11. Dead Heat.** If there is a dead heat or multiple dead heats in either the first- or second-half of the Twin Superfecta, all Twin Superfecta tickets selecting the correct order of finish, counting a betting interest involved in a dead heat as finishing in any dead-heated position, is a winner. In the case of a dead heat occurring in: (3-29-10)

**a.** The first-half of the Twin Superfecta, the payoff is calculated as a profit split. (3-29-10)

- b. The second-half of the Twin Superfecta, the payoff is calculated as a single price pool. (3-29-10)
- 12. Canceled Contest.** If either of the Twin Superfecta contests are cancelled prior to the first Twin Superfecta contest, or the first Twin Superfecta contest is declared “no contest,” the entire Twin Superfecta pool must be refunded on Twin Superfecta wagers for that contest and the second-half cancelled. (3-29-10)
- 13. Canceled Second-Half Contest.** If the second-half Twin Superfecta contest is cancelled or declared “no contest,” all exchange tickets and outstanding first-half winning Twin Superfecta tickets will be entitled to the net Twin Superfecta pool for that contest as a single price pool, but not the Twin Superfecta carryover. If there are no such tickets, the net Twin Superfecta pool must be distributed as described in Subsection 215.03 of these rules. (3-29-10)
- 14. Capped Carryover.** The Twin Superfecta carryover may be capped at a designated level approved by the Racing Commission so that if, at the close of any performance, the amount in the Twin Superfecta carryover equals or exceeds the designated cap, the Twin Superfecta carryover will be frozen until it is won or distributed under other provisions of this rule. After the second-half Twin Superfecta carryover is frozen, one hundred percent (100%) of the net Twin Superfecta pool for each individual contest will be distributed to winners of the first-half of the Twin Superfecta pool. (3-29-10)
- 15. Request for Carryover.** A written request for permission to distribute the Twin Superfecta carryover on a specific performance may be submitted to the Racing Commission. The request must contain justification for the distribution, an explanation of the benefit to be derived, and the intended date and performance for the distribution. (3-29-10)
- 16. Winning Precedence.** Should the Twin Superfecta carryover be designated for distribution on a specified date and performance, the following precedence will be followed in determining winning tickets for the second-half of the Twin Superfecta: (3-29-10)
- a. As a single price pool to those whose combination finished in correct sequence as the first four (4) betting interests; but if there are no such wagers, then; (3-29-10)
- b. As a single price pool to those whose combination included, in correct sequence, the first three (3) betting interests; but if there are no such wagers, then; (3-29-10)
- c. As a single price pool to those whose combination included, in correct sequence, the first two (2) betting interests; but if there are no such wagers, then; (3-29-10)
- d. As a single price pool to those whose combination correctly selected the first-place betting interest only; but if there are no such wagers, then; (3-29-10)
- e. As a single price pool to holders of valid exchange tickets. (3-29-10)
- f. As a single price pool to holders of outstanding first-half winning tickets. (3-29-10)
- 17. Exchange Ticket Distribution.** Contrary to Subsection 215.04 of these rules, during a performance designated to distribute the Twin Superfecta carryover, exchange tickets will be issued for those combinations selecting the greatest number of betting interests in their correct order of finish for the first-half of the Twin Superfecta. If there are no wagers correctly selecting the first-, second-, third-, and fourth-place finishers, in their exact order, then exchange tickets will be issued for combinations correctly selecting the first-, second-, and third-place betting interests. If there are no wagers correctly selecting the first-, second- and third-place finishers, in their exact order, then exchange tickets will be issued for combinations correctly selecting the first- and second-place betting interests. If there are no wagers correctly selecting the first- and second-place finishers, in their exact order, then exchange tickets will be issued for combinations correctly selecting the first-place betting interest only. If there are no wagers selecting the first-place betting interest only in the first-half of the Twin Superfecta, all first-half tickets will become winners and will receive one hundred percent (100%) of that day’s net Twin Superfecta pool and any existing Twin Superfecta carryover as a single price pool. (3-29-10)

**18. Carryover Distribution.** The Twin Superfecta carryover must be designated for distribution on a specified date and performance only under the following circumstances: (3-29-10)

**a.** Upon written approval from the Racing Commission as provided in Subsection 215.15 of these rules. (3-29-10)

**b.** Upon written approval from the Racing Commission when there is a change in the carryover cap or when the Twin Superfecta is discontinued. (3-29-10)

**c.** On the closing performance of the meet or split meet. (3-29-10)

**19. Carryover Held.** If, for any reason, the Twin Superfecta carryover must be held over to the corresponding Twin Superfecta pool of a subsequent meet, the carryover must be deposited in an interest-bearing account approved by the Racing Commission. The Twin Superfecta carryover plus accrued interest will then be added to the second-half Twin Superfecta pool of the following meet on a date and performance so designated by the Racing Commission. (3-29-10)

**20. Prohibited Information.** Providing information to any person regarding covered combinations, amounts wagered on specific combinations, number of tickets sold, or number of valid exchange tickets is prohibited until the race is made official. This does not prohibit necessary communication between totalisator and pari-mutuel department employees for processing of pool data. (3-29-10)

**21. Written Approval.** The racing association must obtain written approval from the Racing Commission concerning the scheduling of Twin Superfecta contests, the percentages of the net pool added to the first-half pool and second-half pool, and the amount of any cap to be set on the carryover. Any changes to the approved Twin Superfecta format require prior approval from the Racing Commission. (3-29-10)

**216. -- 999. (RESERVED)**

## 11.04.09 – RULES GOVERNING CLAIMING RACES

### 000. LEGAL AUTHORITY.

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, of the Idaho Code. (3-29-10)

### 001. TITLE AND SCOPE.

01. **Title.** This chapter is cited as IDAPA 11.04.09 “Rules Governing Claiming Races.” (3-29-10)

02. **Scope.** This chapter describes the procedures and requirements for the claiming of horses and the conduct of claiming races. (3-29-10)

### 002. -- 009. (RESERVED)

### 010. DEFINITIONS.

In addition to the definitions in Title 54, Chapter 25, Idaho Code, the following apply: ( )

01. **Certificate of Registration.** A document identifying a horse, its breeding and registry. (3-29-10)

02. **Claimant.** A person who has successfully claimed a horse in a claiming race. (3-29-10)

03. **Claimed.** A horse that has been properly purchased under these rules. (3-29-10)

04. **Claiming Race.** A race in which any horse starting may be purchased for a designated amount in conformance with this chapter. (3-29-10)

05. **Colt.** An intact male horse under five (5) years of age. (3-29-10)

06. **Eligible.** A horse that is qualified to run in a race under these rules. (3-29-10)

07. **Eligible Person.** A licensed owner, licensed trainer or authorized agent who has been properly authorized to claim a horse. (3-29-10)

08. **Engagements.** Race days where a horse has been entered to race. (3-29-10)

09. **Filly.** A female horse that has not reached five (5) years of age. (3-29-10)

10. **Gelding.** An altered male horse of any age. (3-29-10)

11. **Horse.** Includes filly, mare, colt, horse or gelding in general; when referring to sex, a horse is an intact male when five (5) years old or older. (3-29-10)

12. **Ineligible or Undisclosed Person.** A person that is not eligible to be licensed or a person who has not been properly authorized to claim a horse. (3-29-10)

13. **In-foal.** A filly or mare that is pregnant. (3-29-10)

14. **Licensed Authorized Agent.** A person licensed by the Racing Commission and appointed by a written instrument, signed and acknowledged before a notary public by the owner in whose behalf the agent will act. (3-29-10)

15. **Mare.** A female horse that has reached the age of five (5) years. (3-29-10)

16. **Officials.** Persons licensed by the state to ensure the rules of racing are enforced. (3-29-10)

17. **Owner.** A person who holds any title, right or interest, whole or partial in a horse, including the lessee and lessor of a horse. (3-29-10)

18. **Racing Association.** Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (3-29-10)

19. **Racing Secretary.** The employee of a racing association, who writes the conditions for the races,

assigns the weights for handicap races, receives entries, conducts the draw, and is responsible for the operation and organization of the race office. (3-29-10)

**20. Stable.** All the race horses belonging to a particular owner. (3-29-10)

**21. Starter Allowance Race.** A race where entrants have established eligibility by participation in a previous race. ( )

**22. Steward.** A horse racing official who presides over a race meeting, has jurisdiction over all racing officials, rules on protests and claims of foul, and imposes fines and suspensions. (3-29-10)

**23. Title.** Legal document showing ownership of a horse. (3-29-10)

**24. Transfer.** To convey the possession or legal title of a horse to another. (3-29-10)

**011. -- 019. (RESERVED)**

**020. FREE AND CLEAR TITLE.**

No person may enter a horse in a claiming race unless the title to said horse is free and clear of any existing lien, either as security interest mortgage, bill of sale, or lien of any kind. (3-29-10)

**021. TITLE VESTED.**

Title to a claimed horse must be transferred to the claimant at the time the horse becomes an official starter. The successful claimant must then become the owner of the horse whether it be alive or dead, sound or unsound or injured at any time after becoming an official starter. A transfer of ownership arising from a recognized claiming race will terminate any existing prior lease for that horse. (3-29-10)

**022. -- 024. (RESERVED)**

**025. IN-FOAL FILLY OR MARE.**

An in-foal filly or mare is eligible to be entered into a claiming race only if the following conditions are fulfilled: (3-29-10)

**01. Condition Disclosed.** Full disclosure of such fact is on file with the racing secretary and such information is posted in the racing office; (3-29-10)

**02. Service Certificate.** The stallion service certificate has been deposited with the racing secretary's office; and (3-29-10)

**03. Release of Service Certificate.** The release of the stallion service certificate to the successful claimant at the time of claim is guaranteed. (3-29-10)

**026. -- 028. (RESERVED)**

**029. RESCISSION OF CLAIM.**

The stewards may set aside and order rescission of a claim for any horse from a claiming race run in Idaho upon a showing that any party to the claim committed a prohibited action, as specified in any Racing Commission rule, or that the owner of the horse at the time of entry in the claiming race failed to comply with any requirement of any Racing Commission rule. Should the stewards order a rescission of a claim, they may make a further order for the costs of maintenance and care of the horse as they may deem appropriate. (3-29-10)

**030. CLAIMED FOR ENTERED PRICE.**

Any horse starting in a claiming race is subject to be claimed for its entered price by any: (3-29-10)

**01. Licensed Owner.** Owner licensed in Idaho; (3-29-10)

**02. Authorized Agent.** Licensed authorized agent acting on behalf of an eligible person. (3-29-10)



**031. -- 034. (RESERVED)**

**035. ELIGIBLE HORSES.**

No horse which has been claimed out of a claiming race in which said horse was declared the official winner, is eligible to start in any other claiming race for a period of thirty (30) days, exclusive of the day it was claimed, for less than twenty-five percent (25%) more than the amount for which it was claimed. A horse which has been claimed out of a claiming race in which said horse was not declared the official winner may be eligible to start for any price desired by the claimant. No horse which has been claimed out of a claiming race is eligible to race at any other race meeting in this state or elsewhere until the close of the meeting where it was claimed, unless its removal from the grounds of such meeting is approved by the Stewards for good cause or is required by the Racing Association where it was claimed. (3-29-10)

**036. -- 049. (RESERVED)**

**050. PROHIBITIONS.**

**01. Financial or Beneficial Interest.** A person may not claim a horse in which the person has a financial or beneficial interest as an owner or trainer. (3-29-10)

**02. Undisclosed Financial or Beneficial Interest.** A person may not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse. (3-29-10)

**03. Agreement.** A person may not enter into an agreement for the purpose of preventing another person from obtaining a horse in a claiming race. (3-29-10)

**04. Ineligible or Undisclosed Person.** A person may not claim a horse, or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person. (3-29-10)

**05. No More Than One Horse.** A person may not claim more than one (1) horse in a race. No authorized agent may submit more than one (1) claim for the same horse in a race, even if the authorized agent represents several owners. When a trainer's stable consists of more than one (1) owner, each owner may submit a claim in any one race, but no two (2) or more can submit a claim for any one (1) horse or all such claims are void. No person, corporation, partnership, stable name, or other legal entity will be eligible to claim another owner's horse from his own trainer's stable. ( )

**051. -- 059. (RESERVED)**

**060. VALID CLAIMS.**

To make a valid claim for a horse, an eligible person must: (3-29-10)

**01. Funds on Deposit.** Have on deposit with the horsemen's bookkeeper an amount equal to the amount of the claim, plus all transfer fees and applicable taxes; (3-29-10)

**02. Written Claim Form.** Complete a written claim on a form furnished by the racing association and approved by the Racing Commission; (3-29-10)

**03. Horses Name.** Identify the horse to be claimed by the spelling of its name as the name appears on the certificate of registration or as spelled on the official program; (3-29-10)

**04. Sealed Envelope.** Place the completed claim form inside a sealed envelope furnished by the racing association and approved by the Racing Commission; (3-29-10)

**05. Time of Day.** Have the time of day that the claim is entered, recorded or electronically stamped by a racing official at the paddock on the envelope; and (3-29-10)

**06. Deposit Envelope.** Have the envelope deposited in the claim box no later than ten (10) minutes

prior to post time of the race for which the claim is entered. (3-29-10)

**061. -- 064. (RESERVED)**

**065. CLAIMS ARE IRREVOCABLE.**

After a claim has been deposited in the claim box, it is irrevocable by the claimant and may not be withdrawn from the claim box until the time designated by the stewards. (3-29-10)

**066. -- 069. (RESERVED)**

**070. NO INFORMATION PROVIDED.**

Officials and employees of the racing association may not provide any information as to the filing of claims until after the race has been run, except as is necessary for processing of the claim. (3-29-10)

**071. -- 079. (RESERVED)**

**080. MORE THAN ONE CLAIM.**

If more than one (1) claim is filed on a horse, the successful claim must be determined by drawing lots conducted by the Stewards or their representatives. (3-29-10)

**081. -- 089. (RESERVED)**

**090. SEX OR AGE OF A HORSE CLAIMED.**

Notwithstanding any designation of sex or age appearing in the racing program or in any racing publication, the claimant of a horse is solely responsible for the determination of the sex or age of any horse claimed. (3-29-10)

**091. -- 099. (RESERVED)**

**100. TRANSFER OF OWNERSHIP.**

Upon successful claim an authorization of transfer of the horse from the original owner to the claimant must be issued by the stewards on forms approved by the Racing Commission. Copies of the transfer authorization must be forwarded to and maintained by the stewards and the racing office. Upon notification by the stewards, the horsemen's bookkeeper must immediately debit the claimant's account for the claiming price, applicable taxes and transfer fees. (3-29-10)

**101. -- 109. (RESERVED)**

**110. TRANSFER OF POSSESSION.**

Transfer of possession of a claimed horse must take place immediately after the race has been run unless otherwise directed by the stewards. If the horse has to be taken to the test barn for post-race testing, the original trainer or an authorized representative must maintain physical custody of the claimed horse and observe the testing procedure and sign the test sample tag. The successful claimant or an authorized representative of that claimant may also accompany the horse to the test barn. ( )

**111. -- 119. (RESERVED)**

**120. DELIVERY OF A CLAIMED HORSE.**

No person may refuse to deliver a properly claimed horse to the successful claimant. (3-29-10)

**121. -- 129. (RESERVED)**

**130. TRANSFER OF ENGAGEMENTS.**

When a horse is claimed out of a claiming race, the horse's engagements and eligibilities are transferred, with the horse, to the claimant. (3-29-10)

**131. -- 139. (RESERVED)**

**140. RESALE OR TRANSFER OF OWNERSHIP.**

Ownership interest in any horse claimed from a race may not be resold or transferred for thirty (30) days after such horse was claimed, except by claim from a subsequent race. (3-29-10)

**141. -- 149. (RESERVED)**

**150. CONTROL OR MANAGEMENT OF FORMER OWNER.**

A claimed horse may not remain in the same stable or under the control or management of its former owner. (3-29-10)

**151. -- 999. (RESERVED)**

## 11.04.10 – RULES GOVERNING LIVE HORSE RACES

### 000. LEGAL AUTHORITY.

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, of the Idaho Code. (3-29-10)

### 001. TITLE AND SCOPE.

01. **Title.** These rules are cited as IDAPA 11.04.10, “Rules Governing Live Horse Races.” (3-29-10)

02. **Scope.** These rules govern the running of live horse races in Idaho. (3-29-10)

### 002. -- 009. (RESERVED)

### 010. DEFINITIONS.

In addition to the definitions in Title 54, Chapter 25, Idaho Code, the following apply: ( )

01. **Apprentice Jockey.** A thoroughbred jockey who has ridden less than one (1) year and less than forty-five (45) winners since first having been licensed in any racing jurisdiction and who otherwise meets the requirements and qualifications for a license as a Jockey. (3-29-10)

02. **Authorized Agent.** A person appointed by a written instrument signed and acknowledged before a notary public by the owner and filed in accordance with these rules. (3-29-10)

03. **Chemical.** A substance composed of chemical elements or obtained by chemical processes. (3-29-10)

04. **Claiming Race.** A race in which any horse entered therein may be claimed in conformity with these rules. (3-29-10)

05. **Dead Heat.** The finish of a race in which the noses of two (2) or more horses reach the finish line at the same time. (3-29-10)

06. **Declaration.** The act of withdrawing an entered horse from a race before the closing of overnight entries. (3-29-10)

07. **Disqualification.** Interference or a foul determined by the stewards in a contest that may result in an adjustment to the offending entrants finish position. (3-29-10)

08. **Engagements.** Race days where a horse has been entered to race. (3-29-10)

09. **Entry.** Means, according to the requirements of these rules: (3-29-10)

a. A horse made eligible to run a race. (3-29-10)

b. Two (2) or more horses that are entered or run in a race and are coupled because of common ties or ownership. (3-29-10)

10. **Equipment.** As applied to a horse means whips, blinkers, tongue straps, muzzle, nosebands, bits, shadow rolls, martingales, breast plate, bandages, boots, hoods, flipping halters, goggles and plates. (3-29-10)

11. **Forfeit.** Money due because of an error fault, neglect of duty, breach of contract or a penalty. (3-29-10)

12. **Foul.** A violation, by a jockey or horse, of these rules during a race. (3-29-10)

13. **Grounds.** Any area owned or leased by any licensed Racing Association which is operated for the purpose of conducting pari-mutuel racing. (3-29-10)

14. **Handicap.** A weight adjustment for entered horses for the purpose of equalizing the respective chances of winning. (3-29-10)

15. **Horse.** Includes filly, mare, colt, horse and gelding in general; when referring to sex, a filly

- becomes a mare when five (5) years old; a horse is an entire male when five (5) years old or older. (3-29-10)
16. **Jockey.** A race rider, whether a licensed Jockey, apprentice, or amateur. (3-29-10)
17. **Jostle.** To bump, push or shove. (3-29-10)
18. **Maiden.** A horse that has never won a race on the flat in a state or country where racing is supervised by a legalized Racing Commission or board and where the races are covered by the Racing Form, American Quarter Horse chart books, the Appaloosa Horse Club chart books, the Paint Horse chart books and the Arabian Horse chart books. A maiden that has been disqualified after finishing first still is a maiden. (3-29-10)
19. **Nomination.** The act of nominating to a stake race. (3-29-10)
20. **Nominator.** A person in whose name a horse is entered for a race. (3-29-10)
21. **Owner.** Includes the owner, part owner and lessee of any horse. An interest only in the earnings of a horse does not constitute ownership. In case of husband and wife, it is presumed that joint ownership exists. (3-29-10)
22. **Paddock.** An enclosure in which horses scheduled to compete in a contest are saddled prior to racing. (3-29-10)
23. **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (3-29-10)
24. **Place.** Means first, second or third and in that order is called "Win," "Place," and "Show." (3-29-10)
25. **Post Position.** The starting position assigned. (3-29-10)
26. **Post Time.** The time set for the arrival at the starting point. (3-29-10)
27. **Preference System.** A method used by the Racing Secretary to determine the order of qualification for a race. (3-29-10)
28. **Race.** A contest between horses for purse, stake or reward on any licensed race track and in the presence of a Judge or Judges. (3-29-10)
29. **Race Day.** Any period of twenty-four (24) hours beginning at midnight and included in the period of a race meeting and in the matter of penalties the word "DAY" means a "CALENDAR DAY." (3-29-10)
30. **Race Meet.** The entire consecutive period for which a license to race has been granted to any one (1) Racing Association by the Racing Commission. (3-29-10)
31. **Racing Association.** Any person licensed by the Racing Commission to conduct live horse racing and pari-mutuel wagering. (3-29-10)
32. **Racing Interest.** Any individual owner or any partnership of owners or corporations or any registered stable, but not including a lessee, which participates as an owning entity or nominator of a race horse. A licensed owner may participate in more than one (1) racing interest. (3-29-10)
33. **Recognized Meet.** Any meet wherever held, which is under the jurisdiction of the Idaho State Racing Commission. The Racing Commission will recognize all race meets conducted under the jurisdiction of members of the National Association of State Racing Commissioners International, or associate members or state and other recognized authority. (3-29-10)

- 34. Ringer.** In addition to the definitions expressed in these rules, means any horse which runs under the name and identity of another or under a fictitious name. (3-29-10)
- 35. Scratch.** The act of withdrawing an entered horse from the race after closing of overnight entries. (3-29-10)
- 36. Scratch Time.** The time set by the Racing Association for the closing of applications for permission to withdraw from the races of that day. (3-29-10)
- 37. Stake Race.** A race to which nominators of the engaged entries contribute to a purse; to which money, or any other award, may be added; but no overnight race, regardless of its conditions, is deemed a stake race. (3-29-10)
- 38. Starter.** (3-29-10)
- a.** The individual approved to dispatch the horses in a race. (3-29-10)
- b.** The horse is a “starter” for a race when the stall doors of the starting gate open in front of it at the time the starter dispatches the horses. (3-29-10)
- 39. Stewards.** The Stewards of the meeting or their duly appointed deputies. (3-29-10)
- 40. Suspension.** A temporary remedial measure designed to protect the safety and integrity of the horse racing industry and the participants therein. (3-29-10)
- 41. Trial.** A race to determine qualifiers for a future race. (3-29-10)
- 42. Straightaway Race.** A race ran for a specified distance with no turns. (3-29-10)
- 43. Weight for Age.** Standard weight according to the scale adopted by the Racing Commission and set forth herein. (3-29-10)
- 44. Year.** A calendar year. (3-29-10)

**011. -- 019. (RESERVED)**

**020. ENTER, SEARCH, AND INSPECT.**

Every Racing Association, the Racing Commission, the Stewards, or trained and qualified agents of the Idaho State Police, have the right to enter, search and inspect the buildings, stables, rooms and other places where horses that are eligible to race are kept, or where property and effects of the licensee are kept within the grounds of the Racing Association. Any licensee accepting a license is deemed to have consented to such search and to the seizure of any non-approved or prohibited materials, chemicals, drugs or devices and anything apparently intended to be used in connection therewith. (3-29-10)

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

**030. ILLEGAL PRACTICES.**

**01. Offer of Bribes.** No person may give, offer or promise, directly or indirectly, to anyone any bribe, gift or gratuity in any form for the purpose of improperly influencing the result of a race. (3-29-10)

**02. Acceptance of Bribes.** No person licensed by the Racing Commission, nor any other person, may accept or offer to accept, on his own behalf or on behalf of another, any bribe, gift or gratuity in any form to influence the result of a race. (3-29-10)

**03. Conspire.** No person may conspire with any other person for the commission of any corrupt or fraudulent practice in relation to racing, nor may he commit such an act on his own account. (3-29-10)

**04. Bets.** No person except the Owner or Trainer of the horse the Jockey is riding may make a bet for the account of any Jockey and then only on the horse being ridden by said Jockey. (3-29-10)

**05. Shodding.** A horse starting in a race must not be shod with ordinary shoes, training shoes or bar plates except by permission of the Stewards. (3-29-10)

**06. Devices.** No electrical or mechanical device or other appliance designed to increase or decrease the speed of a horse, other than ordinary whip, may be possessed by anyone or applied by anyone to a horse at any time on the grounds of a Racing Association during a meeting whether in a race or otherwise. (3-29-10)

**07. Tampering.** No person may improperly tamper or attempt to tamper with any horse in such a way as to affect his speed in a race, nor may he counsel or in any way aid or abet any such tampering. (3-29-10)

**08. Jockey's Spouse.** A jockey may not compete in any race against a horse which is trained by the jockey's spouse. (3-29-10)

**031. -- 039. (RESERVED)**

**040. CONSUMPTION OF ALCOHOL.**

No jockey, starter, assistant starter, pony person, outrider, or racing official may have present within his body any amount of alcohol while participating in any horse race held that day. (3-29-10)

**041. -- 049. (RESERVED)**

**050. HORSE RACES -- GENERAL RULES.**

**01. Post Time.** Post time must be shown a reasonable time prior to the race on a clock device, provided for that purpose, prominently displayed and clearly readable from the grandstand. (3-29-10)

**02. Paddocks.** Horses must be in the paddock at least twenty (20) minutes before post time and be saddled in the paddock. ( )

**03. Number.** In a race, each horse must carry a conspicuous saddlecloth number and a head number, corresponding to the assigned number on the official program. In the case of an Entry, each horse making up the Entry must carry the same number (head and saddlecloth) with a distinguishing letter. In the case of a Field, the horses comprising the Field must carry an individual number. (3-29-10)

**04. Jockey.** After the horses enter the track, no Jockey may dismount and no horse is entitled to the care of an attendant without consent of the Stewards or the Starter, and the horse must be free of all hands other than those of the Jockey or assistant starter before the starter dispatches the Field. (3-29-10)

**05. Accidents.** In case of accident to a Jockey, his mount, or equipment, the Stewards or the starter may permit the Jockey to dismount and the horse to be cared for during the delay, and may permit all Jockeys to dismount and all horses to be attended during the delay. (3-29-10)

**06. Injured Jockey.** If a Jockey is injured on the way to the post so as to require replacement, the horse must be taken to the paddock and another Jockey and equipment obtained. (3-29-10)

**07. Parade.** All horses must parade and, under penalty of disqualification, carry their weight from the paddock to the starting post, such parade to pass the Stewards' stand. (3-29-10)

**08. Delays.** After entering the track, no more than twelve (12) minutes may be consumed in the parade of the horses to the post except in cases of unavoidable delay. After passing the stand once, horses will be allowed to break formation and canter, warm up or go as they please to the post. When horses have reached the post, they must be started without unnecessary delay. (3-29-10)

- 09. Willful Delay.** No person may willfully delay the arrival of a horse at the post. (3-29-10)
- 10. Selection of Horses.** When the number of horses competing in a race exceeds the numbered capacity of the tote, the Field horses are to be selected by the handicapper or the Racing Secretary. (3-29-10)
- 11. Limit on Number of Horses.** No more than eight (8) horses may start in any race on a one-half (1/2) mile track. (3-29-10)
- 12. Start.** A horse may not be qualified to start in any race unless the horse has been and continues to be properly entered therein. (3-29-10)
- 054. -- 059. (RESERVED)**
- 060. STRAIGHTAWAY RACES.**
- 01. Maintain Position.** In a Straightaway Race every horse must maintain position as nearly as possible in the lane in which it starts. (3-29-10)
- 02. Entitled to Room.** Every horse in the race is entitled to racing room and may not be deliberately impeded. If a horse is ridden or drifts out of its lane in such a manner that it interferes with or impedes another horse in any way, it is a foul. (3-29-10)
- 03. Offending Horse.** The offending horse may be disqualified when, in the opinion of the Stewards, the outcome of the race was affected by the foul. This applies whether the foul was caused by the horse or by the rider, irrespective of cause. (3-29-10)
- 04. Caused by Horse.** When the Stewards rule that the foul was caused by the horse, in spite of obvious efforts of the Jockey to maintain position in its lane, no blame will be attached to the Jockey. (3-29-10)
- 05. Effort of Jockey.** When the Stewards rule that the Jockey did not make an effort to prevent the foul, then the Jockey may be fined or suspended, or both. (3-29-10)
- 06. Fined or Suspended.** A Jockey who rides the horse out of its lane or fails to make an effort to hold the horse in its lane when the horse is lugging either in or out may be fined or suspended even though no actual foul occurs. (3-29-10)
- 061. -- 069. (RESERVED)**
- 070. RACES AROUND A TURN.**
- 01. Race Around a Turn.** In a race run around a turn, a horse that is in the clear may be taken to any part of the track, except that weaving back and forth in front of another horse may be considered interference or intimidation and may be penalized. (3-29-10)
- 02. Jostles.** If a horse or Jockey jostles another horse, the aggressor may be disqualified unless the jostled horse or Jockey was at fault or the jostle was wholly caused by the fault of some other horse or Jockey. (3-29-10)
- 03. Crossing Another Horse.** A horse crossing another so as to actually impede it is disqualified, unless the impeded horse was partly in fault or the crossing was wholly caused by the fault of some other horse or Jockey. (3-29-10)
- 04. Strikes.** If a Jockey willfully strikes another horse or Jockey or rides willfully or carelessly so as to injure another horse, which is in no way at fault, or so as to cause other horses to do so, the Jockey's horse is disqualified. (3-29-10)
- 05. Shorten Strides.** No Jockey may unnecessarily shorten his horses stride so as to give the



appearance of having suffered a foul. (3-29-10)

**071. -- 079. (RESERVED)**

**080. DISQUALIFICATION.**

The Stewards are vested with the power to determine the extent of disqualification in case of fouls. (3-29-10)

**01. Placing.** They may place the offending horse behind such horses as in their judgment it interfered with or they may place it last. (3-29-10)

**02. Entries.** When a horse is disqualified under these rules, the other horse or horses in the same race coupled as an Entry may be disqualified. (3-29-10)

**081. -- 089. (RESERVED)**

**090. CLAIMS OF FOUL.**

Claims of foul under these rules can only be received from the owner, trainer or jockey of the horse alleged to be aggrieved and must be made to the Clerk of the Scales or to the Stewards before the jockey has passed the scales. But nothing in these rules prevents the Stewards taking cognizance of foul riding. (3-29-10)

**01. Fouls.** Any Jockey against whom a foul is claimed will be given the opportunity to appear or communicate with the Stewards before any decision is made. (3-29-10)

**02. Frivolous Complaints.** An owner, trainer, or jockey who frivolously complains his horse was crossed or jostled may be subject to disciplinary action. (3-29-10)

**091. -- 099. (RESERVED)**

**100. BEST EFFORT.**

All participants are expected to give their best efforts in races and any instructions or advice to Jockeys to ride or handle their mounts otherwise than for the purpose of winning are forbidden and such instructions must be reported immediately to the Board of Stewards by the Jockey. All persons giving or following such instructions or advice are subject to disciplinary action by the Board of Stewards. ( )

**101. - 109. (RESERVED)**

**110. ENTRIES AND DECLARATIONS.**

The Racing Secretary is authorized to receive entries and declarations for all races. (3-29-10)

**01. Overnight Race.** Overnight Race Entries closes at a time designated and published by the Racing Secretary. (3-29-10)

**02. Ineligible.** No person may enter or start a horse which is known or believed to be ineligible or disqualified. (3-29-10)

**03. Ringer.** No person may enter or start a horse which is a ringer. (3-29-10)

**04. Declaring an Entry.** No person may offer or receive money or any other benefit for declaring an Entry from a race. (3-29-10)

**05. Entry Refused.** The entries of any person, or the transfer of any Entry, may be refused without notice for reasons deemed to be in the best interest of racing as determined by the stewards. (3-29-10)

**06. Eligible.** All horses must be eligible to start at time of Entry, and to compete in a race, a horse needs to be eligible at the time of starting that race. ( )

**07. Responsibility.** Any person participating in the entry will be jointly and severally responsible and

liable with the Trainer for the accuracy and authority of the entry. (3-29-10)

**08. Trainer.** No horse is permitted to enter or to start unless in the care and attendance of a licensed Trainer. (3-29-10)

**09. Name of Jockey.** Upon making an entry, every Trainer needs to furnish the name of the Jockey who will ride the entry or, if this is not possible, in any event to furnish the information not later than scratch time. If no Jockey has been named by that hour, the Stewards will name the best available rider for the horse. ( )

**10. Entry Void.** If any entry from any disqualified person or a disqualified horse is received, such entry is void and any money paid for such entry may be forfeited to the purse of the race. (3-29-10)

**11. Entries.** All entries are under the supervision of the Stewards. (3-29-10)

**111. -- 112. (RESERVED)**

**113. COUPLED ENTRIES.**

**01. Coupled Entries.** Two (2) or more horses that are entered in a race will be joined as a mutuel entry and single betting interest if they are owned or leased in whole or in part by the same racing interest or are trained by a trainer who owns or leases any interest in any of the other horses in the race, except: (3-29-10)

**a.** Multiple horses owned by the same racing interest may be uncoupled in stake races for the purpose of pari-mutuel wagering; or (3-29-10)

**b.** Multiple horses owned by the same racing interest may be uncoupled for the purpose of pari-mutuel wagering. (4-11-15)

**02. Overnight Race.** No more than two (2) horses owned by the same racing interest may be entered in an overnight race. Under no circumstances may both horses of such an entry start to the exclusion of a single entry. When making an entry, a preference for one (1) of the horses must be made. (4-11-15)

**114. (RESERVED)**

**115. WRITTEN ENTRIES.**

Entries and declarations must be made in writing and signed by the Trainer of the horse, or his delegate or some person deputized by him, except: (3-29-10)

**01. Telephone.** Entries may be made by telephone or facsimile if approved by the State Steward. All telephone or facsimile entries must be signed by the Trainer of the horse, or his delegate or some person authorized by him, before the horse will be allowed to start in any race. (3-29-10)

**02. Entry Blanks.** Each Racing Association must provide blank forms on which entries and declarations are to be made as approved by the Racing Commission. ( )

**116. -- 119. (RESERVED)**

**120. REGISTRATION.**

**01. Duly Registered.** No thoroughbred horse will be allowed to enter or start in any race unless duly registered and named at the registry office of the Jockey Club (New York), nor will a quarter horse be allowed to enter or start in any race unless duly registered with the American Quarter Horse Association (Amarillo, Texas), nor any Appaloosa horse will be allowed to enter or start unless duly registered with the Appaloosa Horse Club, Inc., (Moscow, Idaho), with the exception that the Stewards may at their discretion, for good cause, waive this requirement if the horse is otherwise properly identified. (3-29-10)

**02. Certificate or Facsimile.** At the time of entry, certificate or facsimile of registration from the

Jockey Club (New York) or the American Quarter Horse Association (Amarillo, Texas) or the Appaloosa Horse Club, Inc., (Moscow, Idaho) of every horse starting must be filed in the office of the Racing Secretary. The Stewards may at their discretion waive this rule in the case of haul in horses. (3-29-10)

**03. New Name.** If the name of a horse is changed, the new name together with the former name will be published in the official program for the first three (3) starts after the change has been made. No change of names will be acceptable unless first granted by the Jockey Club, the American Quarter Horse Association, the Appaloosa Horse Club or other registry under which the horse is registered. Violation of any part of this rule will cause the horse to be named a "RINGER" and the horse and all persons connected with the violation will be ruled off and referred to the Racing Commission. (3-29-10)

**04. Sex Altered.** All geldings and all fillies and mares which have been "spayed" (i.e., rendered incapable of conception by whatever procedure, including removal of the ovaries) must be reported promptly by the owner or person in charge of the animal to the registry office, giving, in the case of geldings, the date of castration (or any other procedures having the effect of castration) and, in the case of fillies and mares, the date and nature of the procedure employed. (3-29-10)

**121. -- 129. (RESERVED)**

**130. IDENTIFICATION.**

**01. Identification.** If entered for the first time, a horse will be identified by stating his name, color, sex and age and the name of his sire and dam as registered. This description must be repeated in every entry until a description of the horse with its name has been published in the official program or the list of entries of the Association or in such other publication as the Racing Commission may designate. In every entry after such publication, its name and age will be sufficient. (3-29-10)

**02. Permitted to Start.** No horse is permitted to start that has not been fully identified. (3-29-10)

**03. Responsibility.** Responsibility in the matter of establishing either the identity of a horse or its complete and actual ownership is as binding on the persons so identifying or undertaking to establish as it is on the person having the horse requiring identification and the same penalty applies to them in case of fraud or attempt at fraud. (3-29-10)

**04. Method of Identification.** All horses must have either a lip tattooed or be identified by a National Animal Identification System compliant device. (3-29-10)

**131. -- 139. (RESERVED)**

**140. OWNERSHIP.**

**01. Disclosure of Ownership.** All ownerships in a horse must be filed with the Racing Secretary before the horse may start, and update every change in ownership thereafter during the race meeting. Failure to disclose all ownerships may result in a fine or suspension, or both. ( )

**02. Registration of Partnerships.** No horse involved in a partnership will be permitted to enter or to start until the rules for the registration of partnerships have been complied with. (3-29-10)

**03. Disqualified.** No horse will be qualified to be entered or to start in any race if owned in whole or in part by or if under the direct or indirect management of a person disqualified under Idaho Law or Racing Commission rules. (3-29-10)

**141. -- 149. (RESERVED)**

**150. WORKOUTS.**

**01. Minimum Number of Workouts.** A horse that has never run at a recognized race meet must have

a minimum of two (2) official workouts and be approved by the Starter before being eligible to start in an official race. (3-29-10)

**02. Recognized Meet.** Any horse that has not run at a recognized race meet in the forty-five (45) days prior to the race in which it is sought to be entered must have at least one (1) official workout before being eligible to start in an official race. (3-29-10)

**03. Workout Around the Turn.** Any horse that has not raced around one (1) turn must have one (1) official workout around the turn before being able to enter or start any race around the turn. (3-29-10)

**151. -- 159. (RESERVED)**

**160. ENTRIES CLOSED.**

**01. Entries Closed at Advertised Time.** Entries must be closed at an advertised time and no entry accepted thereafter. The Racing Secretary, however, with the consent of the Stewards, may postpone closing of overnight races. (3-29-10)

**02. Absence of Notice.** In the absence of notice to the contrary, entrance and declarations for a stakes race must be at the office of the Racing Secretary who will make provisions therefore. (3-29-10)

**03. Hour of Closing.** When the hour for closing is designated, entries and declaration for stake races cannot be received afterwards. If an hour is not designated, then the close of entries and declarations will be at the close of the day's draw. (3-29-10)

**04. Entries Compiled.** Entries that have closed must be compiled without delay by the Racing Secretary and conspicuously posted. (3-29-10)

**05. Changes.** No changes may be made in any entry after closing of entries except the Racing Secretary may correct an error with the approval of the Stewards. (3-29-10)

**06. Unclosed Race.** The Racing Association has the right to withdraw or change any unclosed race. (3-29-10)

**161. -- 169. (RESERVED)**

**170. NOT QUALIFIED TO START.**

**01. Listed.** No horse on the Stewards, Veterinarians, Starters, or Paddock list is qualified to start. (3-29-10)

**02. Money Paid.** No horse is allowed to start in a race unless any stake or entrance money payable in respect to that race has been duly paid. (3-29-10)

**03. Nominator.** The nominator is liable for the entrance money or stake and the death of a horse or mistake in its entry does not release the subscriber or transferee from liability for stake. The entrance money to the purse that is run off will not be returned on the death of a horse or its failure to start for any cause whatever. (3-29-10)

**04. Registration Papers.** No horse is allowed to start unless the horses registration papers are on file in the Racing Secretary's office. (3-29-10)

**05. Unlicensed Owner.** No horse is allowed to start unless the horses owner has been licensed by the Racing Commission. (3-29-10)

**171. -- 189. (RESERVED)**

**190. PREFERENCE SYSTEM.**

**01. Preferred List.** A copy of the preferred list will be made available to the Racing Commission and horsemen before taking entries for the following race day. (3-29-10)

**02. Excluded Twice.** If a horse has been excluded twice consecutively, it has preference over a horse excluded only once and so on. (3-29-10)

**03. Opportunity.** No horse will be placed on the preferred list if the Owner or Trainer thereof did not accept the opportunity of starting when it was presented. (3-29-10)

**04. No Consideration.** Horses whose names appear in the entries and have an opportunity to start will be given no consideration whatsoever should they be entered for the following race day and the race overfills, except stakes races. (3-29-10)

**05. Claim.** In entering horses on the preferred list, a claim of preference must be made at time of entry and noted on the entry or the preference will be lost and no claim of error will be considered by the Stewards if the person making the claim has signed an entry not marked in keeping with these rules. (3-29-10)

**191. -- 194. (RESERVED)**

**195. NOMINATIONS AND ENGAGEMENTS.**

**01. Nominations and Engagements.** Nominations and all entries or rights of entry are valid when a horse is sold with its engagements duly transferred in duly registered partnerships when subscriptions, entries and rights of entry survive in the remaining partners and when entries under the decedent's subscriptions have been made previous to the decedent's death by the transfer of the rights of entry. (3-29-10)

**02. When Nominations Void.** Nominations and all entries or rights of entry become void on the death of a nominator except in the case of duly registered partnerships or except, subject to the sanction of the Stewards, when the personal representative of an estate of the decedent nominator for the privilege of transfer agrees to assume any and all obligations incident to the original entries. (3-29-10)

**03. Transfer.** In case of any transfer of a horse with its engagements, such horse will not be eligible to start in any stake unless at the usual time of the running of the stake, or prior thereto, the transfer of the horse and its engagements are exhibited to the Racing Secretary when demanded. (3-29-10)

**04. Sold.** Should a horse be sold with its engagements, or any part of them, the seller cannot strike the horse out of any such engagements. (3-29-10)

**05. Claimed Out.** When a horse is claimed out of a claiming race, its engagements are included. (3-29-10)

**06. Engagements Voided.** If a horse is sold to a disqualified person, said horse's racing engagements is void as of the date of sale. (3-29-10)

**196. -- 199. (RESERVED)**

**200. POST POSITIONS.**

**01. Post Positions Determined by Lot.** Post positions are determined publicly by lot in the presence of the Racing Secretary and Steward. Thereafter if a regular carded horse is excused from a race, all horses will move up in post position order. (3-29-10)

**02. Applicability.** This rule applies unless the Association specifically provides otherwise in writing in its stake or condition book. (3-29-10)

**03. Position.** Horses must take their position at the post in the post position order in which their names have been drawn, beginning from the inside rail. (3-29-10)

**04. Starter.** The starter is the final authority as to the horses' numerical loading order into the starting gate and the order may be changed by the starter with the approval of the Board of Stewards. (3-29-10)

**201. -- 209. (RESERVED)**

**210. NUMBER OF STARTERS.**

**01. Limit.** The race is limited to the number of starters as specified in the conditions. (3-29-10)

**02. More Than the Specified Number.** If more than the specified number of entries is received in an overnight race, then: (3-29-10)

**a.** Winners of a stakes race have first preference; (3-29-10)

**b.** Winners have second preference; (3-29-10)

**c.** Stake placed maidens have third preference; (3-29-10)

**d.** Other maidens have fourth preference; and (3-29-10)

**e.** Non-starters have fifth preference. (3-29-10)

**211. -- 219. (RESERVED)**

**220. DEAD HEAT.**

**01. Dead Heat.** When two (2) or more horses run a dead heat, the dead heat will not be run off. (3-29-10)

**02. Purse Divided Equally.** The owners of the horses in a dead heat must equally divide the purse money and other prizes. If no agreement can be reached as to which receives the cup, plate or other indivisible prize, they must draw lots for it in the presence of one (1) or more of the Stewards. (3-29-10)

**03. First Place.** If a dead heat is for first place, each horse is considered a winner of the amount received in accordance with Subsection 202.02 of these rules. (3-29-10)

**221. -- 229. (RESERVED)**

**230. DECLARATIONS.**

**01. Scratched or Declared.** No horse is considered scratched or declared until the Trainer or an authorized agent, or some person authorized by the Trainer, has given due and timely notice in writing to the Racing Secretary. (3-29-10)

**02. Stake Races.** For stake races, if a horse is not named through the entry box at the specified time of closing, the horse is automatically out. (3-29-10)

**03. Irrevocable.** The declaration or scratch of a horse is irrevocable. (3-29-10)

**04. Miscarriage.** If the miscarriage of any declaration by mail or otherwise is alleged, satisfactory proof of such miscarriage is required; otherwise, the declaration is accepted as of the time alleged. (3-29-10)

**05. Stewards.** All declarations are under the supervision of the Stewards. (3-29-10)

**231. -- 239. (RESERVED)**

**240. SCRATCHES.**

**01. Scratches.** A horse may be scratched from a race if eight (8) betting interests remain in the race. (3-29-10)

**02. Request to Withdraw.** If there are more requests to withdraw than are available, permission to withdraw will be decided by lot. However, in all races involving the Daily Double or Trifecta, no entry may be withdrawn that would reduce the starting field to less than the number designated by the Racing Secretary except with the permission of the Stewards. (3-29-10)

**03. Other Causes.** No other entries will be excused except upon receipt of a Veterinarian's Certificate of unfitness, a change of track conditions since the time of entry, or other causes acceptable to the Stewards. (3-29-10)

**241. -- 249. (RESERVED)**

**250. COLORS.**

**01. Racing Colors.** Owners may obtain suitable racing colors that must be registered annually, together with the owners' license application. (3-29-10)

**02. Fine.** Anyone using colors other than their own are subject to a fine. However, in case of emergency, the Stewards may allow the use of substitute colors which must be of standard track colors furnished by the Racing Association. (3-29-10)

**03. Standard Colors.** Racing Associations may use standard colors if approved by the Racing Commission. If standard colors are used, such colors must be furnished by the Racing Association and in these instances the owner will not need to provide colors. ( )

**251. -- 259. (RESERVED)**

**260. WEIGHTS.**

The following weights are carried when they are not stated in the condition of the race: (3-29-10)

**01. Intermediate Length.** In races of intermediate lengths, the weights for the shorter distance are carried. (3-29-10)

**02. Allowances.** In all races, except handicaps and races where the conditions expressly state to the contrary, two-year old fillies are allowed three (3) pounds, three-year old and older fillies and mares are allowed five (5) pounds before the first of September and three (3) pounds thereafter. (3-29-10)

**03. Overnight Races.** In all overnight races, except handicaps, not more than six (6) pounds may be deducted from the scale of weight for age, except allowances; but in no case may the total of allowance of any type reduce the lowest weight below one hundred three (103) pounds, except that this minimum weight need not apply to two-year olds or three-year olds when racing older horses. (3-29-10)

**04. Penalties.** Penalties and allowances of weight are not cumulative unless so declared by the conditions of the race. Horses not entitled to the first weight allowance in a race are not entitled to the second and so on. (3-29-10)

**261. -- 262. (RESERVED)**

**263. APPRENTICE JOCKEY WEIGHT ALLOWANCE.**

**01. Weight Allowance.** An Apprentice Jockey must ride with a five (5) pound weight allowance

beginning with the first mount for one (1) full year from the date of the fifth winning mount. (3-29-10)

**02. After One Year.** If after riding one (1) full year from the date of the fifth winning mount the Apprentice Jockey has failed to ride a total of forty (40) winners from the date of the first winning mount, the apprentice must continue to ride with a five (5) pound weight allowance for one (1) more year from the date of the fifth winning mount or until the apprentice has ridden a total of forty (40) winners, whichever comes first. (3-29-10)

**03. If Unable to Ride.** If an Apprentice Jockey is unable to ride for a period of fourteen (14) consecutive days or more from the date of the apprentice's fifth winning mount because of service in the Armed Forces of the United States or because of physical disablement, the Racing Commission may extend the time during which such apprentice weight allowance may be claimed for a period not to exceed the period such Apprentice Jockey was unable to ride. (3-29-10)

**264. (RESERVED)**

**265. WEIGHTS IN HANDICAP RACES.**

**01. Weight Assignment.** The Handicapper or Board of Handicappers assigns all weight to be carried in a handicap race. (3-29-10)

**02. No Alterations.** No alteration may be made after publication except in the case of omission through error of the name or weight of a horse duly entered; in which case, by permission of the Stewards, the omission may be rectified by the Handicapper. (3-29-10)

**266. -- 269. (RESERVED)**

**270. WEIGHT FOR AGE.**

**01. Scale of Weight for Age.**

DISTANCE	AGE	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
<b>1/4 Mile</b>	2yrs	104	104	104	108	108	108	112	112	112	116	116	116
	3yrs	120	120	120		122	122	124	124	124	126	126	126
	4yrs & up	128	128	128	128	128	128	128	128	128	128	128	128
<b>1/2 Mile</b>	2yrs	105	108	111	114	114							
	3yrs	117	117	119	119	121	123	125	127	127	128	129	129
	4yrs	130	130	130	130	130	130	130	130	130	130	130	130
	5yrs	130	130	130	130	130	130	130	130	130	130	130	130
	& up	13	13	11	11	9	7	5	4	3	2	1	1
<b>Furlongs</b>	2yrs	102	105	108	111	111							
	3yrs	114	114	117	117	119	121	123	125	126	127	128	128
	4yrs	129	129	130	130	130	130	130	130	130	130	130	130
	5yrs	130	130	130	130	130	130	130	130	130	130	130	130
	& up	15	15	13	13	11	9	7	5	4	3	2	2
<b>One Mile</b>	2yrs	96	99	102	102								



	3yrs	107	107	111	111	113	115	117	119	121	122	123	123
	4yrs	127	127	128	128	127	126	126	126	126	126	126	126
	5yrs	128	128	128	128	127	126	126	126	126	126	126	126
	& up	20	20	17	17	14	11	9	7	5	4	3	3
<b>1-1/4 Mile</b>	2yrs												
	3yrs	101	101	107	107	111	113	116	118	120	121	122	122
	4yrs	125	125	127	127	127	126	126	126	126	126	126	126
	5yrs	127	127	127	127	127	126	126	126	126	126	126	126
	& up	24	24	20	20	16	13	10	8	6	5	4	4
<b>1-1/2 Mile</b>	2yrs												
	3yrs	98	98	104	104	108	111	114	117	119	121	122	122
	4yrs	124	124	126	126	126	126	126	126	126	126	126	126
	5yrs	126	126	126	126	126	126	126	126	126	126	126	126
	& up	26	26	22	22	18	15	12	9	7	5	4	4
<b>2 Miles</b>	3yrs	96	96	92	92	106	109	112	114	117	119	120	120
	4yrs	124	124	126	126	126	126	126	125	125	124	124	124
	5yrs	126	126	126	126	126	126	126	125	125	124	124	124
	& up	28	28	24	24	20	17	14	11	8	5	4	4

(3-29-10)

**02. Limit.** Exclusively for three-year olds or four-year-olds the weight is one hundred twenty-six (126) pounds and in races exclusively for two-year olds it is one hundred twenty-two (122) pounds. (3-29-10)

**271. -- 279. (RESERVED)**

**280. CLERK OF THE SCALES.**

**01. In Charge of the Scales.** The Clerk of the Scales is in charge of the scales furnished by the Racing Association. (3-29-10)

**02. Check the Weight.** The Clerk of the Scales must check the weight of all Jockeys out and perform such other duties as are customary. ( )

**03. Record.** At the time of weighing out, the Clerk of the Scales must record all overweights and announce them publicly prior to the first race of the day and before the running of each race. ( )

**04. Weigh In.** After each race the Clerk of the Scales must weigh in all Jockeys running fourth or better. (3-29-10)

**281. -- 284. (RESERVED)**

**285. PRE-RACE WEIGH OUT.**

**01. Specific Horse.** Every Jockey must be weighed for a specified horse no more than thirty (30) minutes before the time fixed for the race. (3-29-10)

**02. Jockey Equipment.** A Jockey's weight includes riding clothes, saddle and pad but does not include the safety helmet or whip. (3-29-10)

**286. -- 289. (RESERVED)**

**290. OVERWEIGHT.**

**01. Overweight.** If a Jockey intends to carry overweight, the amount thereof must be declared at the time of weighing out. If in doubt as to the proper weight, the weight to be carried may be declared. (3-29-10)

**02. More Than Two Pounds.** If a Jockey intends to carry overweight exceeding by more than two (2) pounds the weight which the horse is to carry and the Trainer consents, the Jockey must declare the amount of overweight to the Clerk of the Scales at least forty-five (45) minutes before the time appointed for the race and the Clerk must state the overweight on the notice board immediately. Failure on the part of the Jockey to comply with this rule must be reported to the Stewards. (3-29-10)

**03. No More Than Seven Pounds.** No horse may carry more than seven (7) pounds overweight, except at fair circuit racetracks with the permission of the stewards. (3-29-10)

**291. -- 294. (RESERVED)**

**295. POST RACE WEIGH IN.**

**01. Upon Completion of a Race.** After a race has been run and after the Jockey has pulled up the horse ridden, the Jockey must ride promptly to the area designated by the Stewards. After obtaining permission from the Judges, the Jockey must dismount and present himself to the Clerk of the Scales to be weighed in. If a Jockey is prevented from riding a mount to the Judges stand because of an accident or an illness either to the Jockey or the horse, the Jockey may walk or be carried to the scales or may be excused by the Stewards from weighing. (3-29-10)

**02. Preparation for Weigh In.** Except by permission of the Stewards upon returning to the Placing Judges stand, every Jockey must unsaddle the horse ridden. No person may touch the Jockey or the horse, except by the bridle, nor cover the horse in any manner until the Jockey has removed the equipment to be weighed. (3-29-10)

**03. Carrying Equipment.** Each Jockey must weigh in carrying over the Scales all pieces of equipment with which weighed out. Thereafter, the equipment may be given to the Jockey's attendant. (3-29-10)

**04. Same Weight.** Each Jockey must weigh in at the same weight as that which he weighed out and, if short of it by more than two (2) pounds, the horse will be disqualified. (3-29-10)

**05. More Weight.** If any Jockey weighs in at more than two (2) pounds over the proper or declared weight, the Jockey will be fined or suspended or ruled off by the Stewards, having due regard for any excess weight caused by rain or mud. The case must be reported to the Racing Commission for such action as it may deem proper. (3-29-10)

**296. -- 299. (RESERVED)**

**300. PADDOCK JUDGE.**

The Paddock Judge is in charge of the paddock. (3-29-10)

**01. Horses.** The Paddock Judge must check all horses for each race. (3-29-10)

**02. Records.** The Paddock Judge must keep a record of equipment carried by horses in races under the Paddock Judge's jurisdiction and he may not permit any change in equipment not authorized by the Stewards. ( )

**03. Shod.** The Paddock Judge must determine that horses in the paddock are properly shod and report any irregularities to the Stewards. (3-29-10)

**04. Bandages.** The Paddock Judge and the Commission Veterinarian must inspect bandages on horses prior to the participation in a race. They may order removal and replacement of bandages. They must report any indications of fraud in the type of bandages or other equipment to the Stewards. (3-29-10)

**05. Commands.** The Paddock Judge issues the command "RIDERS UP" and the order to proceed to the post parade. (3-29-10)

**06. Conduct.** The Paddock Judge is responsible for the conduct of all persons in the paddock and all irregularities in conduct must be reported to the Stewards. (3-29-10)

**07. Paddock Safety.** The Paddock Judge is responsible for safety in the paddock and for safety reasons may limit the number of people allowed in the paddock area. (3-29-10)

**301. -- 309. (RESERVED)**

**310. EQUIPMENT.**

**01. Permission Needed for Equipment Change.** Permission for any change of equipment from that which a horse carried in its last race must be secured from the Paddock Judge before being granted by the Stewards. Such change needs to be announced or posted for public information. ( )

**02. Blinkers.** Permission to use or discontinue the use of blinkers must be secured from the starter before being granted by the Stewards. (3-29-10)

**03. Bridles and Whips.** All bridles and whips must be of racing design and in a clean serviceable condition approved by the Stewards. All whips must have a minimum of three (3) rows of feathers. (3-29-10)

**04. Tongue Tie.** Permission to use or discontinue the use of a tongue tie must be secured from the Paddock Judge before being granted by the Stewards. (3-29-10)

**05. Change.** Any equipment change from the time the horses enter the track until the horses are dispatched at the start of the race must be made by the Starter. If schooled before the Starter and approved by him and the Stewards before time of entry, a whip or blinkers, or both, may be used on two-year-olds and other first time starters. (3-29-10)

**06. Head Number.** Every horse in a race must have a head number attached at the junction of the brow band and the head piece of the bridle. This number must correspond to the saddle cloth number of the horse as shown on the program. The Stewards may for good cause excuse this requirement. ( )

**311. -- 319. (RESERVED)**

**320. THE STARTER.**

**01. Starter.** The Starter must give orders to secure a fair start. To avoid delay, if after reasonable efforts a horse cannot be led or backed into position, the Starter will request the horse scratched by the Stewards. (3-29-10)

**02. Starting Gate.** All races must utilize a starting gate approved by the Racing Commission, except that with permission of the Stewards a race may be started with or without a gate. When the starting gate is used, it must be placed on the track at the direction of the Starter. (3-29-10)

**03. Assistants.** The Starter may appoint assistants but neither the Starter nor assistants may strike or use abusive language toward a Jockey. The Starter or assistant will be disciplined by the Stewards for violation of this rule. (3-29-10)

**04. Schooled.** Horses must be schooled under the supervision of the Starter or assistants and the Starter must designate the horses to be placed on the starters list, a copy of which is to be posted in the office of the Racing Secretary. ( )

**05. Approval.** The Starter must approve all entries of two-year-olds and first time starters before they are allowed to start. (3-29-10)

**06. Disciplinary Action.** The Starter may recommend to the Stewards disciplinary action against Jockeys or other persons. (3-29-10)

**321. -- 329. (RESERVED)**

**330. TIMER.**

**01. Timers.** The Timers, the number to be determined by the Stewards, must occupy the Timer's stand or other appropriate place during the running of a race and they will record the time of each race for posting. At the close of each day's racing, they must file a written report of the time, including the fractional time, of each race of the day with the Racing Secretary. (3-29-10)

**02. Recorded Time.** The time recorded for the first horse to cross the finish line is the official time of the race. If a horse establishes a track record and it is later determined there is a presence of a drug, such track record is null and void. (3-29-10)

**03. Electronic Timing.** Electronic timing devices must be approved by the Racing Commission. (3-29-10)

**331. -- 339. (RESERVED)**

**340. PATROL JUDGE.**

**01. Duties.** The Racing Association may appoint and assign Patrol Judges, as required by the Stewards, whose duties are to view each race from the vantage point assigned to them by the Stewards. (3-29-10)

**02. Communication.** The Racing Association must provide communication devices between the Patrol Judges and the Stewards. (3-29-10)

**03. Report.** Prior to 9 a.m. the following work day the Patrol Judge must report in writing the Judge's observation of each race and be provided to the Stewards. ( )

**341. -- 349. (RESERVED)**

**350. PLACING JUDGES.**

The Placing Judge or Judges may decide which horse wins and assign respective places in the race as is proper, usually the first four (4) finishing positions. When the Judges differ, the majority governs. In determining the places of horses at the finish of a race, the Placing Judges must consider only the respective noses of such horses. (3-29-10)

**351. -- 359. (RESERVED)**

**360. PHOTO FINISH CAMERA.**

**01. Approved Camera.** A photo finish camera that has been approved by the Racing Commission must be installed as an aid to the Placing Judges at each track. (3-29-10)

**02. Judges Decision.** The camera is merely an aid and the decision of the Judges is final. The finish line must appear in the photos. (3-29-10)

**03. Photo Posted.** The photograph of each photo finish must be posted in at least one (1) conspicuous place at the track as promptly as possible after each such race. (3-29-10)

**04. Photographic Record.** The Racing Association must keep a photographic record of each race on file for the duration of the race meet for reference or reproduction upon request of the Racing Commission. (3-29-10)

**361. PLACING ERRORS.**

**01. Errors.** Nothing in these rules may be construed to prevent the Placing Judges, with the approval of the Stewards, from correcting an error before the display of the sign "OFFICIAL." (3-29-10)

**02. Method.** If the "OFFICIAL" sign is displayed in error, the pools and purses must be calculated for both error and correction and the Racing Association must make up any losses. (3-29-10)

**362. VIDEO RECORDS.**

In instances where there was an inquiry, disqualification or suspension as a result of the running of the race, video camera tapes of races will be kept until released in writing by the Racing Commission. (3-29-10)

**363. -- 369. (RESERVED)**

**370. CLAIMING RACES.**

All claiming races must be run in conformance with these rules and IDAPA 11.04.09 "Rules Governing Claiming Races". (3-29-10)

**371. -- 399. (RESERVED)**

**400. STAKE RACE APPLICATIONS.**

**01. Stake Race Nomination Applications.** Stake race nomination applications must be submitted to the Racing Commission for approval. Rules adopted by the Racing Commission supersede conditions of the race. (3-29-10)

**02. Weights.** Weights, or the method of selection of weights, must be listed on the nomination application. (3-29-10)

**03. Purse.** Stake nomination applications must indicate the amount of money to be added to the purse by the Racing Association or sponsor, if any. (3-29-10)

**04. No Deductions.** No deductions may be withheld from the purse unless so stated on the nomination application. (3-29-10)

**401. -- 404. (RESERVED)**

**405. STAKE RACE NOMINATIONS.**

If a nominee is sold, the entry goes with the foal and fees may be kept up by the buyer. There will be no refunds. If a nominee dies, the entry fees remain in the race. (3-29-10)

**406. -- 409. (RESERVED)**

**410. NOMINATION AND ENTRY FEES.**

**01. Fees Deposited.** Nomination and entry fees must be deposited in an account approved by the Racing Commission. (3-29-10)

**02. Interest.** Accrued interest must be added to the purse of the stakes race. (3-29-10)

**03. List.** A list of all horses remaining eligible must be sent to the Racing Commission and each nominator or made available on a website listed on the nomination application to the stake no later than fourteen (14) days after the closing of each payment. (3-29-10)

**04. Deposits.** All monies and accrued interest must be deposited with the Horsemen's Bookkeeper prior to the day of entry. (3-29-10)

- 05. Refund.** Any horses drawing outside the gate will have the entry fee refunded. (3-29-10)
- 411. -- 414. (RESERVED)**
- 415. CANCELLATION OF A STAKES RACE.**  
A Racing Association reserves the right, with the consent of the Racing Commission, to cancel or postpone a stakes race. (3-29-10)
- 416. -- 419. (RESERVED)**
- 420. FAILURE OF STALL GATE.**  
No liability will be incurred beyond the refund of starting and entry fees if a stall gate fails to open and such horse is declared a nonstarter. (3-29-10)
- 421. -- 424. (RESERVED)**
- 425. RACE OFF.**  
If a stake race is declared off, all nominations and fees and accrued interest paid in connection with that race must be refunded. Incurred administration expense may be deducted, subject to review by the Racing Commission. (3-29-10)
- 426. -- 429. (RESERVED)**
- 430. STAKE TRIALS.**
- 01. Trial.** Except in cases where the starting gate physically restricts the number of horses starting, each trial must consist of no more than ten (10) horses. (3-29-10)
- 02. Less Than Ten Stalls.** If the Racing Association's starting gate has less than ten (10) stalls, then the maximum number of qualifiers will correspond to the maximum number of starting gate positions. (3-29-10)
- 03. Finals Only.** The Racing Association may choose to run a finals only if the number of horses eligible is less than the available stalls in the starting gate. (3-29-10)
- 431. -- 434. (RESERVED)**
- 435. TRIALS RACED UNDER SAME CONDITIONS.**
- 01. Same Conditions.** The trials must be raced under the same conditions as the finals and the number of qualifiers for the finals must correspond to the number of stalls in the starting gate for the finals. (3-29-10)
- 02. Conducted On Same Day.** If the trials are conducted on the same day, the number of horses corresponding to the stalls available in the starting gate per the conditions of the race will qualify to participate in the finals. (3-29-10)
- 03. Conducted On Two Days.** If the trials are conducted on two (2) days, one-half (1/2) of the horses that qualify for the finals must come from the first day of trials and one-half (1/2) of the horses that qualify for the finals must come from the second day of trials. (3-29-10)
- 04. More Than One Entry.** When trials are conducted on two (2) days, the Racing Secretary must split owners with more than one (1) entry into separate days. (3-29-10)
- 436. -- 439. (RESERVED)**
- 440. QUALIFICATION BASED ON TIME.**
- 01. Qualifying.** In the time trials, horses qualify on the basis of time and order of finish. The times of

the horses in the time trial will be determined to the limit of the timer. (3-29-10)

**02. Same Trial Heat.** The only exception is when two (2) or more horses have the same time in the same trial heat. Then the order of finish also determines the preference in qualifying for the finals. (3-29-10)

**03. Different Trial Heats.** Should two (2) or more horses in different time trials have the same qualifying time to the limit of the timer for the final qualifying position(s), then a draw by public lot will be conducted as directed by the Stewards. (3-29-10)

**04. Not Determined Beyond the Limit of the Timer.** Qualifying times in separate trials will not be determined beyond the limit of the timer by comparing or enlarging photo-finish images, or both. (3-29-10)

**05. Adjustments.** No adjustments will be made in the times recorded in the time trials to account for head-wind, tail-wind, off-track, etc. (3-29-10)

**441. -- 444. (RESERVED)**

**445. DISQUALIFICATION.**

**01. Disqualification.** Except in the case of disqualification, under no circumstances will a horse qualify ahead of a horse that finished ahead of that horse in the official order of finish in a time trial. (3-29-10)

**02. Interference.** Should a horse be disqualified for interference during the running of a time trial, it will receive the time of the horse it is immediately placed behind plus one hundredth (.01) of a second, or the maximum accuracy of the electronic timing device. (3-29-10)

**03. No Time.** If a horse is disqualified for interference with another horse causing loss of rider or the horse not to finish the race, the disqualified horse will be given no time plus one hundredth (.01) of a second, or the maximum accuracy of the electronic timing device. (3-29-10)

**446. -- 449. (RESERVED)**

**450. TIMER MALFUNCTION IN A TIME TRIAL.**

**01. Electronic Time Malfunction.** Should a malfunction occur with electronic timer on any time trial, finalists from that time trial will then be determined by official hand times operated by three (3) official and disinterested persons. (3-29-10)

**02. Average of Times.** The average of the three (3) hand times will be utilized for the winning time, unless one (1) of the hand times is clearly incorrect. In such cases, the average of the two (2) accurate hand times will be utilized for the winning time. Other horses will be given times according to the order and margins of finish with the aid of the photo-finish, if available. (3-29-10)

**03. Malfunction in Some Trials Only.** When there is a malfunction of the timer in some time trials, but the timer operates correctly in other time trials, the accurate electronic times will not be discarded, nor will the average of the hand times be used for all time trials. (3-29-10)

**04. Accuracy Questioned.** If the accuracy of the electronic timer or the average of the hand times, or both, are questioned, the video of a time trial may be used by the stewards to estimate the winning time by counting the number of video frames in the race from the moment the starting gate stall doors are fully open parallel to the racing track. (3-29-10)

**05. Based on Video.** When the timer malfunctions and there are no hand times, the stewards may select qualifiers based on the video. (3-29-10)

**451. QUALIFICATION BASED ON ORDER OF FINISH.**

**01. Order of Finish.** Qualification for finals may be based upon order of finish in the trials as opposed to time. (3-29-10)

**02. Top Finishers.** The top finishers in each trial heat will qualify in equal numbers from each heat with the total number of qualifiers limited to the maximum number of starting gate positions. (3-29-10)

**03. Equal Number of Qualifiers.** In the event an equal number of qualifiers from each trial heat will not be sufficient to fill all starting gate positions, the remaining positions will be filled by lot between the horses in each trial heat that finished directly behind those that qualified. (3-29-10)

**452. -- 454. (RESERVED)**

**455. STARTING GATE MALFUNCTION.**

**01. Malfunction.** Should there be a malfunction of the starting gate, and one (1) or more stall doors do not open or open after the exact moment when the starter dispatches the field, the stewards may declare the horses with malfunctioning stall doors non-starters and the starting and entry fees refunded, or may allow any horse whose stall door opened late, but still ran a time fast enough to qualify to be declared a starter for qualifying purposes. (3-29-10)

**02. Breaks Through Gate.** If a horse breaks through the stall door, or the stall door opens prior to the exact moment the starter dispatched the field, the horse must be declared a non-starter and the starting and entry fees refunded. If the field has not been dispatched, the horse may be allowed to start at the discretion of the Stewards. (3-29-10)

**03. Considered Starters.** If one (1) or more, but not all, stall doors open at the exact moment the starter purposely dispatches the field, all horses should be considered starters for qualifying purposes and placed according to their electronic time. (3-29-10)

**456. -- 459. (RESERVED)**

**460. SCRATCHED FROM TRIALS.**  
If a horse should be scratched from the trials, the horse's owner is not eligible for a refund of the fees paid and is not allowed to enter the final. (3-29-10)

**461. -- 464. (RESERVED)**

**465. SCRATCHED FROM FINALS.**  
If a horse that qualified for the final should be unable to enter due to racing soundness, or scratched for any reason other than a positive drug test or a rule violation, the horse is deemed to have earned and the owner will receive, last place purse money. If more than one (1) horse is scratched from the final, then those purse monies will be added together and divided equally among those owners. (3-29-10)

**466. -- 469. (RESERVED)**

**470. QUALIFIER INELIGIBLE.**

**01. Prior to Entry.** If a qualifier for a final or consolation is disqualified for ineligibility or a rule violation after the trials are declared official, but prior to entry for the final or consolation, the next eligible horse to qualify will replace the disqualified horse. (3-29-10)

**02. After Entry.** If a qualifier is disqualified after entry for the final or consolation for ineligibility or a rule violation in the trials, the purse will be redistributed, and the next eligible horse to qualify will receive last place purse money. (3-29-10)

**471. -- 474. (RESERVED)**



**475. ALSO ELIGIBLE.**

**01. Also Eligibles.** There will be no more than four (4) also eligibles selected when one (1) division of a stake is to be run. Horses cannot be advanced after the regular advertised scratch time. (3-29-10)

**02. No Also Eligible List.** When two (2) or more divisions of the same stake are to be run, there will be no “also eligible list” in any of the two (2) or more divisions and if a horse should scratch, the owner will receive last place purse money in that particular division for which the horse qualified. (3-29-10)

**03. More Than One Scratch.** If more than one (1) horse should scratch out of the same division, than those monies will be added together and divided equally among those scratching out of that division. (3-29-10)

**476. -- 499. (RESERVED)**

**500. JOCKEY ROOM CUSTODIAN.**

The Jockey Room Custodian must be in attendance at all times that the Jockeys are in the Jockey room. The Custodian is authorized to regulate the conduct of Jockeys. (3-29-10)

**501. -- 529. (RESERVED)**

**530. IDENTIFIER.**

**01. Identifier.** The Identifier is responsible for positively identifying all horses entered to race. (3-29-10)

**02. Inspection.** The Identifier inspects each horse prior to its departure for the post. (3-29-10)

**03. Other.** The Identifier inspects, identifies and prepares I.D. cards by using the lip tattoo, markings from photos, written descriptions, or National Animal Identification System compliant devices. (3-29-10)

**531. -- 999. (RESERVED)**

## 11.04.13 – RULES GOVERNING THE IDAHO STATE RACING COMMISSION

### 000. LEGAL AUTHORITY.

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, of the Idaho Code. (5-8-09)

### 001. TITLE AND SCOPE.

**01. Title.** These rules are cited as IDAPA 11.04.13, “Rules Governing the Idaho State Racing Commission.” (5-8-09)

**02. Scope.** These rules govern the Idaho State Racing Commission. (5-8-09)

### 002. -- 009. (RESERVED)

### 010. DEFINITIONS.

In addition to the definitions in Title 54, Chapter 25, Idaho Code, the following apply: ( )

**01. Chairman.** The presiding officer of the Racing Commission. (5-8-09)

**02. Commissioner.** One (1) of the three (3) members of the Idaho State Racing Commission. (5-8-09)

**03. Costs.** Charges and expenses reasonably necessary to carry out the business of the Racing Commission. (5-8-09)

**04. Exclusion.** The act of preventing a person from entering or remaining on the grounds of any racing association or simulcast facility under the jurisdiction of the Racing Commission. (5-8-09)

**05. License.** A permission granted by the Racing Commission to engage in any regulated activity. (5-8-09)

**06. Natural Person.** Any person eighteen (18) years of age or older, but does not include any corporation, partnership, limited liability company, trust, or estate. (5-8-09)

**07. Person.** Any individual, racing association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, limited liability company or any legal entity, that is recognized by law as the subject of rights and duties. (5-8-09)

**08. Quorum.** Two (2) or more members of the Racing Commission. (5-8-09)

**09. Race.** A contest between horses for purse, stake or reward run by any racing association and in the presence of a judge or judges. (5-8-09)

**10. Race Days.** The number of racing days authorized by the Racing Commission in a racing association license. (5-8-09)

**11. Racing Association.** Any person licensed by the Racing Commission to conduct a race meet and pari-mutuel wagering. (5-8-09)

**12. Simulcast Operator.** A person licensed by the Racing Commission to operate a simulcast wagering system as provided for by these rules. (5-8-09)

### 011. -- 014. (RESERVED)

### 015. GENERAL AUTHORITY.

**01. Racing Commission to Regulate Races and Participation.** The Racing Commission will regulate each race meet and the persons who participate in each race meet. (5-8-09)

**02. Racing Commission to Regulate Simulcast and Advance Deposit Wagering.** The Racing Commission will license and regulate all simulcast operators and activities and advance deposit wagering and activities. (5-8-09)

**016. COSTS AND ANNUAL REPORT.**

**01. Audited and Approved.** Costs necessary to administer the Racing Commission will be audited and approved by the Racing Commission. (5-8-09)

**017. -- 019. (RESERVED)**

**020. MEETINGS.**

The Racing Commission will meet at the call of the chair or a majority of the members, or as otherwise provided by statute. Notice of the meetings will be given and the meetings conducted in accordance with Idaho's Open Meeting Act, Section 67-2340 through 67-2347, Idaho Code. ( )

**021. -- 023. (RESERVED)**

**024. HORSEMEN'S GROUP.**

For purposes of these rules, whichever group was the recognized horsemen's group in 2004 is hereby designated as the existing horsemen's group. (5-8-09)

**01. Decertifying an Existing Horsemen's Group - Notice of Intent and Petition.** Upon the filing with the Racing Commission of a notice of intent to decertify an existing horsemen's group by an alternate horsemen's group, the alternate horsemen's group has no more than six (6) months from the date of filing to acquire, on a petition, the signatures of twenty-five percent (25%) of the existing horsemen's group's licensed members. (5-8-09)

**a.** Contents of Notice. The notice of intent needs to contain the following: ( )

i. The name of the alternate horsemen's group; (5-8-09)

ii. The names of the principals of the horsemen's group; (5-8-09)

iii. The date of filing; (5-8-09)

iv. The articles of incorporation and bylaws; and (5-8-09)

v. A copy of the petition as it will be circulated. (5-8-09)

**b.** No more than one (1) petition by any alternate horsemen's group to decertify an existing horsemen's group will be circulated at any given time. (5-8-09)

**c.** In addition, the alternate horsemen's group must submit the names of a minimum of fifty (50) members who are Idaho licensed owners or trainers. ( )

**02. Racing Commission's Receipt of Petition.** (5-8-09)

**a.** Upon receipt of a petition that meets the criteria set forth in Subsection 024.01 of these rules, the Racing Commission will consider the petition and will validate the signatures found on said petition. Validation includes, but is not limited to, verification of current Idaho licensed owners and trainers and signature verification. (5-8-09)

**b.** If the validated signatures do not meet the requirements of these rules, the Racing Commission will notify the alternate and the existing horsemen's groups that no further action will be taken on the petition. (5-8-09)

**03. Validating Signatures, Setting of Election Date, Conducting an Election.** (5-8-09)

**a.** If the validated signatures are found to meet these requirements, the Racing Commission will set the date for the election prior to the next regularly scheduled meeting. (5-8-09)

b. A representative of the alternate horsemen's group must appear to answer any questions at the meeting at which signatures are validated. (5-8-09)

c. The existing horseman's group must conduct an election among the licensed members and report the results to the Racing Commission. ( )

d. A deciding vote of fifty percent plus one (50% + 1) of the ballots returned must be used to determine the one organization to be recognized as the horsemen's group, absent clear and convincing evidence that the election was fraudulent. (5-8-09)

**04. Good Cause.** Except for good cause, the Racing Commission will not conduct an election within eighteen (18) months of a prior election among the existing group's licensed members. (5-8-09)

**025. (RESERVED)**

**026. PROHIBITED ACTS.**

The Commissioners and Racing Commission employees cannot: ( )

**01. Financial Interest.** Own a financial interest in a racing association or simulcast operation located in Idaho. (5-8-09)

**02. Accept Remuneration.** Accept remuneration from a racing association or simulcast operation located in Idaho. (5-8-09)

**03. Owner, Lessor or Lessee.** Be an owner, lessor or lessee of a horse or a mule that is entered in a race at a licensed race meet in Idaho. (5-8-09)

**04. Wager.** Commissioners and Racing Commission employees cannot wager in any pari-mutuel pool at any facility or through any pari-mutuel system in the State of Idaho. ( )

**027. -- 029. (RESERVED)**

**030. POWER OF ENTRY.**

Members of the Racing Commission will have the right to enter and inspect any part of the grounds and facilities of the racing association or simulcast operator. (5-8-09)

**031. -- 034. (RESERVED)**

**035. EXCLUSION.**

The Racing Commission may order an individual excluded from all or part of any racing association or simulcast operator's grounds under the statutory jurisdiction of the Racing Commission if the stewards or judges or executive director of the Racing Commission determine that: (5-8-09)

**01. Deemed to Be Detrimental.** The individual is deemed to be detrimental to the best interest of racing or is in violation of Section 54-2509, Idaho Code, or these rules. (5-8-09)

**02. Honesty and Integrity.** The individual's presence on a racing association or simulcast operator's grounds is inconsistent with maintaining the honesty and integrity of racing. (5-8-09)

**036. -- 039. (RESERVED)**

**040. ALLOCATION OF RACE DAYS AND RACES.**

The Racing Commission is the sole judge of the number of race days and races for which each racing association is licensed. (5-8-09)

**041. PUBLIC HEALTH OR SAFETY HAZARD.**

Nothing in these rules is intended to require race days and races to be held if it constitutes a public health or safety hazard. (5-8-09)

**042. CANCELLATION OF RACE DAYS OR RACES.**

Racing days or races within a racing day specified on a racing association's license may be cancelled under the following conditions: (5-8-09)

**01. Conditions.** Conditions at the racing facility constitute a health or safety hazard for people using the facility. (5-8-09)

**02. Inclement Weather.** Inclement weather or track conditions constitute a health or safety hazard for track personnel or horses entered to race. (5-8-09)

**03. Approved Cancellation.** The Racing Commission approved the cancellation due to a health or safety hazard. (5-8-09)

**04. Advanced Approval.** Races cancelled for any reason other than a health or safety hazard must be approved in advance by the Racing Commission. (5-8-09)

**05. Rescheduling Cancelled Races.** The Racing Association will make a good-faith effort to reschedule cancelled races. (5-8-09)

**043. -- 999. (RESERVED)**

**11.04.14 – RULES GOVERNING OWNERS, TRAINERS, AUTHORIZED AGENTS,  
JOCKEYS, APPRENTICE JOCKEYS, AND JOCKEY AGENTS**

**000. LEGAL AUTHORITY.**

This chapter is adopted pursuant to the legal authority of Title 54, Chapter 25, of the Idaho Code. (3-29-10)

**001. TITLE AND SCOPE.**

**01. Title.** These rules are cited as IDAPA 11.04.14, “Rules Governing Owners, Trainers, Authorized Agents, Jockeys, Apprentice Jockeys, and Jockey Agents”. (3-29-10)

**02. Scope.** These rules govern the conduct of Owners, Trainers, Authorized Agents, Jockeys, Apprentice Jockeys, and Jockey Agents in Idaho. (3-29-10)

**002. -- 009. (RESERVED).**

**010. DEFINITIONS.**

In addition to the definitions in Title 54, Chapter 25, Idaho Code, the following apply: ( )

**01. Apprentice Jockey.** A Jockey who has ridden less than one (1) year and less than forty-five (45) thoroughbred winners since first having been licensed in any racing jurisdiction and who otherwise meets the requirements and qualifications for a license as a Jockey. (3-29-10)

**02. Authorized Agent.** A person appointed by a written instrument signed and acknowledged before a notary public by the Owner and filed in accordance with these rules. (3-29-10)

**03. Bleeder.** Any horse known to have bled from its nostrils during a workout or race, and so designated by the Commission Veterinarian. (3-29-10)

**04. Bribe.** Anything of value not limited to money. (3-29-10)

**05. Chemical.** A substance composed of chemical elements or obtained by chemical processes. (3-29-10)

**06. Declaration.** The act of withdrawing an entered horse from a race before the closing of overnight entries. (3-29-10)

**07. Disqualified Person.** A person whose license is suspended. (3-29-10)

**08. Drug.** Any chemical compound or any noninfectious biological substance not used for its mechanical properties, which may be administered to or used on or for patients, either human or animal, as an aid in diagnosis, treatment or prevention of disease or other abnormal condition, for the relief of pain or suffering, or to control or improve any physiological or pathological condition. (3-29-10)

**09. Engagement.** An agreement between a Jockey and an Owner or Trainer. (3-29-10)

**10. Entry.** A horse made eligible to run a race. (3-29-10)

**11. Equipment.** As applied to a horse means whips, blinkers, tongue straps, muzzle, nosebands, bits, shadow rolls, martingales, breast plate, bandages, boots, hoods, flipping halters, goggles and plates. (3-29-10)

**12. Gifts.** Anything of value not limited to money. (3-29-10)

**13. Gratuities.** Anything of value not limited to money. (3-29-10)

**14. Grounds.** Any area owned or leased by any licensed Racing Association, which is operated for the purpose of conducting pari-mutuel wagering. (3-29-10)

**15. Horse.** Any filly, mare, colt, horse or gelding includes filly, mare, colt, horse and gelding in general; when referring to sex, a filly becomes a mare when five (5) years old; a horse is an intact male when five (5) years old or older. (3-29-10)

16. **Jockey.** A person licensed by the Racing Commission to ride in races. (3-29-10)
17. **Jockey Agent.** A person who helps a Jockey obtain mounts in return for a portion of the Jockey's earnings. (3-29-10)
18. **Jockey's Fees.** The approved amount of money a Jockey receives for riding in a race. (3-29-10)
19. **Month.** A calendar month. (3-29-10)
20. **Nerved.** A surgical procedure in which the nerve supply to the navicular area is removed. The toe and remainder of the foot have feeling. (3-29-10)
21. **Nomination.** Submitting the name of a horse to run in a certain race or series of races accompanied by the payment of any prescribed fee. (3-29-10)
22. **Nominator.** A person in whose name a horse is entered for a race. (3-29-10)
23. **Overnight Race.** A race for money or any other prize to which the Owners of the horses do not contribute. (3-29-10)
24. **Owner.** Includes the owner, part owner and lessee of any horse. An interest only in the earnings of a horse does not constitute ownership. In case of husband and wife, it is presumed that joint ownership exists. (3-29-10)
25. **Paddock.** An enclosure in which horses scheduled to compete in a contest are saddled prior to racing. (3-29-10)
26. **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (3-29-10)
27. **Place.** Means first, second or third and in that order is called "Win," "Place," and "Show." (3-29-10)
28. **Race.** A contest between horses for purse, stake or reward on any licensed race track and in the presence of a Judge or Judges. (3-29-10)
29. **Race Meet.** The entire consecutive period for which a license to race has been granted to any one (1) racing association by the Racing Commission. (3-29-10)
30. **Racing Association.** Any person licensed by the Racing Commission to conduct live or simulcast pari-mutuel wagering. (3-29-10)
31. **Racing Colors.** Racing silks, the jacket and cap worn by Jockeys. Silks can be generic and provided by the track or specific to one (1) Owner. (3-29-10)
32. **Recognized Race Meet.** Any race meet wherever held, which is under the jurisdiction of the Racing Commission. The Racing Commission will recognize all race meets conducted under the jurisdiction of members of the Association of Racing Commissioner International, or associate members or state and other recognized authority. (3-29-10)
33. **Ringer.** Any horse which runs under the name and identity of another or under a fictitious name. (3-29-10)
34. **Safety Equipment.** Any safety equipment to be worn as specified by these rules. ( )
35. **Scratch.** The act of withdrawing an entered horse from the race after closing of overnight entries.

- (3-29-10)
36. **Scratch Time.** The time set by the Racing Association for the closing of applications for permission to withdraw from the races of that day. (3-29-10)
37. **Sound.** A horse that is in competitive racing condition. (3-29-10)
38. **Stake Race.** A race to which nominators of the engaged entries contribute to a purse; to which money, or any other award, may be added; but no overnight race, regardless of its conditions, may be deemed a stake race. (3-29-10)
39. **Steward.** A horse racing official who presides over a race meet, has jurisdiction over all racing officials, rules on protests and claims of foul, and imposes fines and suspensions. (3-29-10)
40. **Suspension.** Punishment for infraction of the rules. The offender is denied privileges of the racetrack for a specified period of time. (3-29-10)
41. **Trainer.** The person who conditions and prepares a race horse for racing, with the absolute responsibility to ensure the physical condition and eligibility of the race horse. (3-29-10)
42. **Valet.** An employee who takes care of a Jockey's equipment, ensures that the correct silks are at the Jockey's locker, and the Jockey has the proper weight in the lead pad. (3-29-10)
43. **Weight In.** Post-race weight of the Jockey and equipment. (3-29-10)
44. **Weight Out.** Pre-race weight of the Jockey and equipment. (3-29-10)
45. **Winner.** The horse whose nose reaches the finish line first or is place first through disqualification by stewards. (3-29-10)
46. **Year.** A calendar year. (3-29-10)

**011. -- 019. (RESERVED)**

**020. OWNERS AND TRAINERS.**

All Owners and Trainers of horses and their stable employees are subject to the Laws of Idaho and the Rules promulgated by the Racing Commission upon occupancy of stabling accommodations on the grounds of a Racing Association or upon entering a horse to run in a race on a Racing Association track. (3-29-10)

**021. -- 024. (RESERVED)**

**025. ENTER, SEARCH, AND INSPECT.**

Every Racing Association, the Racing Commission, the Stewards or trained and qualified Agents of the Idaho State Police, has the right to enter, search and inspect the buildings, stables, rooms and other places where horses which are eligible to race are kept, or where property and effects of the licensee are kept within the grounds of the Racing Association. Any licensee is deemed to have consented to such search and to the seizure of any non-approved or prohibited materials, chemicals, drugs or devices and anything apparently intended to be used in connection therewith. (3-29-10)

**026. -- 029. (RESERVED)**

**030. EMPLOYEES.**

Any Owner or Trainer that employs any person in a capacity that needs to be licensed by the Racing Commission prior to the Racing Commission granting such a license will be subject to suspension or fine, or both, to be determined by the Board of Stewards. ( )

**031. -- 034. (RESERVED)**



**035. BRIBES, GIFTS, AND GRATUITIES.**

No Owner or Trainer may accept or offer, directly or indirectly, any bribe, gift or gratuity in any form which might influence the result of any race or tend to do so. (3-29-10)

**036. -- 039. (RESERVED)**

**040. ILLNESS OF HORSES.**

The Owner or Trainer or their representative must immediately report any illness or an unusual condition of his horse to the Racing Secretary, Board of Stewards or Commission Veterinarian. (3-29-10)

**041. -- 049. (RESERVED)**

**050. TRAINER CHANGES.**

If an Owner changes trainers, the racing secretary and stewards must be notified within twenty-four (24) hours. (3-29-10)

**051. -- 059. (RESERVED)**

**060. REPRESENTATION FOR ENTRIES.**

A Trainer licensed in Idaho may represent the Owner in the matter of entries, declarations and the employment of Jockeys. (3-29-10)

**061. -- 069. (RESERVED)**

**070. RESTRICTIONS ON OWNERS AND TRAINERS.**

No Owner or Trainer may enter or start a horse that: (3-29-10)

**01. Is Not Sound.** Is not in sound competitive racing condition. (3-29-10)

**02. Has Been Nerved.** (3-29-10)

**a.** Horses that have had posterior digital neurectomy (heel nerved) may be permitted to race subject to the pre-race veterinary examination and subject to posting with the racing secretary and being recorded on its foal certificate. (3-29-10)

**b.** Horses that have been nerved, blocked with alcohol or any other medical drug that desensitizes the nerves, other than posterior digital nerves, will not be permitted to race. (3-29-10)

**03. Impaired Vision.** Has impaired vision in both eyes. (3-29-10)

**071. -- 079. (RESERVED)**

**080. POWERS AND DUTIES OF AUTHORIZED AGENTS.**

A licensed Authorized Agent may perform on behalf of a licensed owner-principal all acts as relate to racing, as specified in the Racing Commission approved agency appointment, that could be performed by the principal if such principal were present. The acts of the Authorized Agent are deemed the acts of his licensed principal and the principal accepts responsibility for the Authorized Agent's acts. (3-29-10)

**01. Documents.** In executing any document on behalf of the principal, the Authorized agent must clearly identify the Authorized Agent and the owner-principal. (3-29-10)

**02. Ownership Disclosure.** Authorized Agents are responsible for disclosure of the true and entire ownership of each horse for which they have authority. Any change in ownership must be reported immediately to, and approved by, the stewards and recorded by the racing secretary. (3-29-10)

**03. Entering a Claim.** When an Authorized Agent enters a claim for the account of a principal, the

name of the licensed Owner for whom the claim is being made and the name of the Authorized Agent must appear on the claim slip or card. (3-29-10)

**081. -- 099. (RESERVED)**

**100. TRAINER IS ABSOLUTE INSURER.**

The Trainer is the absolute insurer of, and responsible for, the condition of the horses entered in a race regardless of the acts of third parties. (3-29-10)

**01. Chemical Tests.** Should the analysis of blood or urine samples or tests of other materials prove positive, showing the presence of any chemical or drug of any kind or description, except as permitted in IDAPA 11.04.11, "Rules Governing Equine Veterinary Practices, Permitted Medications, Banned Substances and Drug Testing of Horses," the Trainer of the horse will be fined or suspended, or both. (3-29-10)

**02. Trainer Absent.** When a Trainer is absent from the stable or the grounds for a period of more than two (2) days and the Trainer's horses are to be entered, a substitute licensed Trainer must assume the complete responsibility of the horses entered or running. Such licensed Trainer must sign a form in the presence of the Stewards accepting complete responsibility for the horse or horses being entered or running. (3-29-10)

**101. -- 109. (RESERVED)**

**110. SAFETY EQUIPMENT.**

The Trainer is responsible to ensure that every Jockey and exercise person wears an approved helmet properly fastened when exercising horses. (3-29-10)

**111. -- 114. (RESERVED)**

**115. DISQUALIFIED PERSON.**

No Trainer may have charge or supervision of any horse owned, in whole or part, by a disqualified person. (3-29-10)

**116. -- 129. (RESERVED)**

**130. HORSES IN PADDOCK AT APPOINTED TIME.**

All Trainers must have their horses in the paddock in accordance with IDAPA 11.04.10, "Rules Governing Live Horse Races," Subsection 050.02. (3-29-10)

**131. -- 139. (RESERVED)**

**140. TRAINER'S PRESENCE IN PADDOCK.**

All Trainers must attend their horses in the paddock and be present to supervise saddling unless the permission of a steward has been obtained to send another licensed Trainer to substitute. (3-29-10)

**141. -- 199. (RESERVED)**

**200. PREVENTING JOCKEYS FROM RIDING.**

No Owner or Trainer may employ a Jockey for the purpose of preventing him from riding for another Trainer in any race. (3-29-10)

**201. -- 219. (RESERVED)**

**220. PHYSICAL EXAMINATION.**

The Stewards may require any Jockey to be examined by a licensed medical professional at any time and may refuse to allow any Jockey to ride until such examination has been satisfactorily completed. (3-29-10)

**221. -- 224. (RESERVED)**

**225. JOCKEY FALLS FROM HORSE.**

In the event any Jockey falls or is thrown from a mount prior to, during or after a race, the Stewards may refuse to allow that Jockey to ride until examined by a licensed medical professional and determined by such examiner to be physically fit to ride. (3-29-10)

**226. -- 229. (RESERVED)**

**230. JOCKEYS OBLIGATIONS.**

All Jockeys must faithfully fulfill all engagements to ride except when excused by the stewards. An excuse may be given by a medical professional with the approval of the stewards. (3-29-10)

**231. -- 244. (RESERVED)**

**245. RACING COLORS.**

All Jockeys must wear the colors of the Owner or Owners of the horse being ridden, except by special permission of the Stewards or where approved standard colors are used. (3-29-10)

**246. -- 249. (RESERVED)**

**250. SAFETY EQUIPMENT.**

All Jockeys must wear the following safety equipment: (3-29-10)

**01. Helmet.** When mounted, a fastened protective helmet approved by the Jockey Guild. ( )

**02. Safety Vest.** A safety vest when riding in any official or exhibition race that weighs no more than two (2) pounds, and is designed to provide shock absorbing protection to the upper body of at least a rating of five (5), as defined by the British Equestrian Trade Racing Association. ( )

**251. -- 254. (RESERVED)**

**255. JOCKEY'S VALET.**

No Jockey may have a valet other than one (1) provided by the Racing Association. (3-29-10)

**256. -- 259. (RESERVED)**

**260. JOCKEYS WEIGHED.**

Every Jockey who is engaged in a race must report to the Jockey's Room on the day of the race at the time required by the Stewards. (3-29-10)

**01. Engagements.** The Jockey's engagements and overweight, if any, must then be reported to the clerk of the scales and, thereafter, the Jockey may not leave the Jockey Room except to view the races from a point approved by the Stewards or to ride in a race until all engagements of the day have been fulfilled. (3-29-10)

**02. Weighed Out.** Jockeys need to present themselves to be weighed out at the time fixed by the clerk of the scales. ( )

**261. -- 269. (RESERVED)**

**270. RESTRICTIONS ON JOCKEYS.**

**01. Owner.** No licensed Jockey may be the Owner or Trainer of any race horse. (3-29-10)

**02. Betting.** No Jockey may make a bet on any race nor accept the promise or the token of any bet with respect to the race in which riding, except through or from the Owner or Trainer of the horse being ridden and then only that horse. (3-29-10)

**03. Spurs.** No Jockey may use spurs or steels of any kind in an official or exhibition race. (3-29-10)

**271. -- 279. (RESERVED)**

**280. JOCKEY'S FEES.**

Jockey's riding fees for a race meet must be approved by the Racing Commission. (3-29-10)

**01. Engagements.** If any Owner or Trainer engages two (2) or more Jockeys for the same race, each engaged Jockey not riding in the race must be paid the losing fee. The proper fee must be paid the Jockey riding. (3-29-10)

**02. Fees.** A Jockey's fee is considered earned when the Jockey is weighed out by the Clerk of the Scales. The fee is not considered earned if the Jockey takes himself off of his mount where injury to the horse or rider is not involved. Any conditions or considerations not covered by this Section are at the discretion of the stewards. (3-29-10)

**03. Posted Fees.** The fee to a Jockey in all races must be posted prominently and provided to the Horsemen's Bookkeeper by the Racing Association at each race meet. (3-29-10)

**04. Dead Heat.** In a dead heat the Jockeys involved will divide equally the total fees they would have received individually had one (1) beaten the other or others. The Owners of the horses involved must pay an equal share of the fees. (3-29-10)

**281. -- 289. (RESERVED)**

**290. JOCKEY SUSPENSIONS.**

A Jockey who is under suspension will not be permitted to fulfill any engagements, including stake races. (3-29-10)

**01. Suspended in Another Jurisdiction.** A Jockey under suspension in any other State will not be permitted to ride in Idaho during such suspension. (3-29-10)

**02. Time Suspension Begins.** The suspension of a Jockey for an offense not including fraud begins at the time set by the stewards. (3-29-10)

**03. Temporary Suspensions.** A Jockey temporarily suspended may be permitted by the stewards to exercise or gallop horses during the morning hours. (3-29-10)

**291. -- 299. (RESERVED)**

**300. APPRENTICE JOCKEYS.**

Apprentice Jockeys are bound by all the rules for Jockeys, except in the instance of a specific exception for an Apprentice Jockey. (3-29-10)

**01. End of Apprenticeship.** The apprenticeship automatically terminates one (1) year from the date of the apprentice's fifth winning ride or on the first anniversary of the date of issuance of the license as an Apprentice Jockey if during such first year the apprentice has ridden at least forty-five (45) thoroughbred winners. Otherwise, the apprenticeship automatically terminates after the first anniversary date on the date of the forty-fifth winning mount is ridden by the apprentice or on the date of the third anniversary of the first apprentice license, whichever comes first. (3-29-10)

**02. Extend Apprenticeship Termination.** For good cause, the Racing Commission may extend the termination date of any apprenticeship or the conditions under which the apprenticeship may be granted. (3-29-10)

**03. Races Considered.** Races other than recognized thoroughbred races in the United States, Canada or Mexico reported in the Daily Racing Form or other similar official publication will not be considered in determining eligibility for a license as Apprentice Jockey; provided, however, that any person who has ridden as a licensed Jockey at any recognized meeting in the United States or other country will have the burden of establishing that the granting of an apprentice license to such person is in the best interest of thoroughbred racing in Idaho. (3-29-10)

**301. -- 319. (RESERVED)**

**320. MANAGEMENT OF APPRENTICE JOCKEYS.**

No person other than an Owner, Trainer, Jockey Agent or an Authorized Agent of an Owner may make engagements for or manage Apprentice Jockeys. (3-29-10)

**321. -- 329. (RESERVED)**

**330. APPRENTICE WEIGHT ALLOWANCE.**

An Apprentice Jockey must ride with a five (5) pound weight allowance beginning with the first mount for one (1) full year from the date of the fifth winning mount. (3-29-10)

**01. After One Year.** If after riding one (1) full year from the date of the fifth winning mount the Apprentice Jockey has failed to ride a total of forty (40) winners from the date of the first winning mount, the apprentice must continue to ride with a five (5) pound weight allowance for one (1) more year from the date of the fifth winning mount or until the apprentice has ridden a total of forty (40) winners, whichever comes first. (3-29-10)

**02. Unable to Ride.** If an Apprentice Jockey is unable to ride for a period of fourteen (14) consecutive days or more from the date of the apprentice's fifth winning mount because of service in the Armed Forces of the United States or because of physical disablement, the Racing Commission may extend the time during which such apprentice weight allowance may be claimed for a period not to exceed the period such Apprentice Jockey was unable to ride. (3-29-10)

**331. -- 339. (RESERVED)**

**340. APPRENTICE JOCKEY CONTRACTS.**

An Apprentice Jockey may be granted an apprentice certificate in lieu of an apprentice contract. The apprentice certificate grants an apprentice all the allowances and conditions granted to the apprentice who is under contract. (3-29-10)

**01. Forms.** Apprentice contracts entered into in the state of Idaho must be made on forms supplied by the Idaho State Racing Commission and a copy be filed with the Racing Commission. (3-29-10)

**02. Filed With Racing Commission.** A copy of all apprentice contracts, wherever entered into, must be filed with the Racing Commission. (3-29-10)

**03. Contract Transferred.** If an apprentice contract is transferred, said transfer must be approved by the stewards and registered with the Racing Commission by both the transferrer and the transferor. ( )

**04. Certificate.** An application for a license as an Apprentice Jockey must be accompanied by an original or photo static copy of his birth certificate or an apprentice certificate. (3-29-10)

**341. -- 349. (RESERVED)**

**350. ONLY ONE JOCKEY AGENT.**

No Jockey may have more than one (1) agent. All engagements to ride, other than those for contract employers, must be made by the Jockey's Agent. A Jockey may make his own engagements. (3-29-10)

**351. -- 359. (RESERVED)**

**360. JOCKEY AGENT.**

No person may act as a Jockey Agent prior to being licensed by the Racing Commission. Each Jockey Agent is permitted to make the riding engagements of three (3) riders only; two (2) Jockeys and one (1) Apprentice Jockey. (3-29-10)

**01. Other Jockeys.** No Jockey Agent may make or assist in making any engagement for any rider other than those he is licensed to represent. (3-29-10)

**02. Records.** Each Jockey Agent must keep a record of all engagements made for the represented riders that is up to date and ready at all times for inspection by the Stewards. ( )

**03. Notify Stewards.** If any Jockey Agent gives up the making of engagements for any rider, the Stewards must be immediately provided a written list of any unfilled engagements. All rival claims for the services of a rider will be adjusted by the Stewards. (3-29-10)

**361. -- 369. (RESERVED)**

**370. GIVING INFORMATION.**  
No Jockey Agent may give to anyone, directly or indirectly, any information or advice pertaining to a race or engage in the practice commonly known as “touting” for the purpose of influencing or tending to influence any person in the making of a wager on any race. (3-29-10)

**371. -- 379. (RESERVED)**

**380. JOCKEY AGENT ACCESS.**  
No Jockey Agent is permitted within the saddling enclosure during racing hours; nor may said Agent have access to the Jockey Room at any time; nor may said Agent be allowed on the race track at the conclusion of any race run; nor may said Agent communicate with any Jockey during racing hours except with the approval of the Stewards. (3-29-10)

**381. -- 999. (RESERVED)**

**IDAPA 15 – OFFICE OF THE GOVERNOR  
IDAHO MILITARY DIVISION**

**DOCKET NO. 15-0600-1900**

**NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE**

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of 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 31-4816(18), 39-7101, 46-804, 46-805, and 46-1027, 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapters promulgated as proposed rules under this docket number under IDAPA 15.06, rules of the Military Division:

**IDAPA 15.06**

- 15.06.01, *Rules Governing the Idaho Public Safety Communications Commission*
- 15.06.04, *Rules Governing the Idaho Youth Challenge Program*
- 15.06.05, *Hazardous Substance Response Rules*

This pending rule vacates the following proposed rules previously promulgated as part of the omnibus proposed rulemaking under IDAPA 05.06, rules of the Military Division:

- **(VACATED)** \*15.06.02, *Rules Governing the Idaho Public Safety Communications Commission Grants*
- **(VACATED)** 15.06.06, *Rules Governing Use of Disaster Emergency Account Funds*

IDAPA \*15.06.02 has been combined with IDAPA 15.06.01 to consolidate the Idaho Public Safety Communications Commission rules into a single chapter.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The complete text of these proposed rules was published in the June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 1857 – 1879](#).

These rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. Many of the rules listed above govern various emergency response, public safety, and communications functions necessary for the continued health and safety of the public. Further, the rules governing the Youth Challenge Program help ensure the continued success of that program. The text of 15.06.04, Rules Governing the Idaho Youth Challenge Program, and 15.06.05, Hazardous Substance Response Rules, contain minor changes as annotated in the bulletin.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Major Lauren Tschampl at (208) 422-5399.

Dated this 3rd day of October, 2019.

Michael J. Garshak  
The Adjutant General  
Idaho Military Division  
4040 W. Guard, Building 600  
Boise, Idaho 83705  
(208) 422-5242

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 31-4816(18), 39-7101, 46-804, 46-805, and 46-1027, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 15.06, rules of the Military Division:

**IDAPA 15.06**

- 15.06.01, *Rules Governing the Idaho Public Safety Communications Commission*
- 15.06.02, *Rules Governing the Idaho Public Safety Communications Commission Grants*
- 15.06.04, *Rules Governing the Idaho Youth Challenge Program*
- 15.06.05, *Hazardous Substance Response Rules* - some technical corrections were made
- 15.06.06, *Rules Governing Use of Disaster Emergency Account Funds*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. Many of the rules listed above govern various emergency response, public safety, and communications functions necessary for the continued health and safety of the public. Further, the rules governing the Youth Challenge Program help ensure the continued success of that program.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.



**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Major Lauren Tschampl, (208) 422-5399.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0600-1900**

# IDAHO PUBLIC SAFETY COMMUNICATIONS COMMISSION

## 15.06.01 – RULES GOVERNING THE IDAHO PUBLIC SAFETY COMMUNICATIONS COMMISSION

### 000. LEGAL AUTHORITY.

These rules are promulgated in accordance with Section 31-4816(18), Idaho Code, by the Commission. (3-29-17)

### 001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 15.06.01, “Rules Governing the Idaho Public Safety Communications Commission.” (3-29-17)

02. **Scope.** These rules govern the Commission’s mediation and grant processes. ( )

### 002. -- 009. (RESERVED)

### 010. DEFINITIONS.

01. **Applicant.** A Consolidated Emergency Communication Center submitting a grant application. ( )

02. **Commission.** The Idaho Public Safety Communications Commission as established within the Military Division by Section 31-4815(1), Idaho Code. (3-29-17)

03. **Local Government Agency.** Those entities subject to Sections 31-4801 through 31-4818, Idaho Code. ( )

04. **Consolidated Emergency Communication Center.** A governmental or multi-governmental organization authorized to collect emergency communication fees in accordance with Title 31, Chapter 48, Idaho Code. ( )

05. **Emergency Communications Grant Fund (ECGF).** The portion of the Fund made available annually for grant disbursement. ( )

06. **Fund.** The Idaho Emergency Communications Fund established by Section 31-4818, Idaho Code. ( )

07. **Grant Cycle.** The period between July 1 through the following June 30 for grant application distribution, submission, award notice and disbursement in accordance with dates established in Section 021 of these rules. ( )

08. **Local Government Agency.** Those entities subject to Sections 31-4801 through 31-4818, Idaho Code. ( )

09. **Mediation.** The process required by Section 31-4817, Idaho Code, as a condition precedent to local government agencies initiating any legal action. (4-11-16)

10. **Submission.** Submission of the issues for mediation has occurred when the documents referred to in Sections 012, 020, and 035, if applicable, have been received by the Commission. ( )

11. **Taxing District.** A fire protection district created pursuant to Section 31-1402, Idaho Code, an ambulance service created pursuant to Section 31-3901, Idaho Code, or an ambulance service district created pursuant to Section 31-3908, Idaho Code. ( )

### 011. (RESERVED)

## SUB CHAPTER A - RULES GOVERNING MEDIATION

### 012. REQUEST FOR MEDIATION.

The parties must submit a written request for mediation to the Commission demonstrating to the reasonable satisfaction of the Commission that all parties are requesting the mediation. ( )

**013. SCHEDULED GROUP MEDIATION.**

Within fifteen (15) days from the date of receipt of a request for mediation, the Commission shall schedule a date for a mediation at which all parties and a quorum of the Commission can be present. The Commission shall notify the parties in writing of the date of the group mediation. (4-11-06)

**014. REQUIREMENT OF SUBMISSION OF DOCUMENTS AND EXHIBITS.**

The Commission may require the parties to produce documents at or before the date set for the group mediation. Such documents may include, but are not limited to, individual statements of position from each party. The Commission will notify the parties in writing of any documents that may be required to be produced and the date of submission. No later than the date set by the Commission, the parties shall exchange and simultaneously submit to the Commission the required documents and exhibits. (4-11-06)

**015. INDIVIDUAL POSITION STATEMENTS.**

If the Commission requires individual statements of position from each party, the statements of position should begin with a one (1) page statement of the dispute. (4-11-06)

**01. Stipulation of Facts.** The parties are encouraged to stipulate to as many facts as possible and clearly identify what facts are being stipulated. (4-11-06)

**02. Supporting Documents.** The parties should present their entitlement position with specific references to appropriate supporting documents, to be included with the statement of position. (4-11-06)

**016. JUDICIAL RULES.**

The Commission will not be bound by any judicial rules of evidence or burden of proof applicable to civil proceedings. (4-11-06)

**017. GROUP MEDIATION.**

The Commission chairman, or in his absence the vice-chairman or other commissioner designated by the chairman, will preside over the mediation. (4-11-06)

**01. Initial Presentation.** Each party shall make an initial presentation of its position with respect to the dispute. (4-11-06)

**02. Rebuttals.** The Commission may allow rebuttals to such presentations when it considers them relevant or necessary to make its recommendations. (4-11-06)

**03. Time Limits.** The Commission may set and limit the time of any presentation as it deems necessary for a sufficient understanding of the facts or issues to make its recommendation. (4-11-06)

**04. Questions by Commission.** The Commission may question the parties during the group mediation. (4-11-06)

**018. SUPPLEMENTAL DOCUMENTATION.**

The Commission may require the parties to provide supplemental documentation and may establish a date by which such documentation is due. (4-11-06)

**019. COMMISSION RECOMMENDATION.**

Oral or Written: The Commission may make such recommendation orally or in writing. ( )

**020. TERMINATION OF MEDIATION.**

The mediation shall be terminated: (4-11-06)

**01. Settlement.** By the signing of a settlement agreement between the parties covering any or all of the issues between them; and/or (4-11-06)

**02. Failure to Agree.** By the written declaration of all parties and the chairman, on behalf of the

Commission, that the parties could not come to an agreement in the mediation covering any or all of the issues between them. (4-11-06)

**021. -- 099. (RESERVED)**

**SUB CHAPTER B - COMMISSION GRANTS**

**100. GRANT ADMINISTRATION.**

**01. Emergency Communications Grant Fund Source.** The moneys that may be available through the ECGF are from the emergency communications fees placed in the Fund pursuant to Section 31-4819, Idaho Code. ( )

**02. Alternate Emergency Communications Grant Fund Sources.** Grants, donations, gifts, and revenues from other sources may augment the ECGF amount available when any limitations or requirements related to the use of such revenues are consistent with these rules. ( )

**03. Other Emergency Communications Grants.** The Commission may secure grants from federal, foundation, or other sources. When these sources place requirements or restrictions that are contrary to these rules, the Commission may establish a separate application, disbursement, or documentation program as appropriate. ( )

**04. Emergency Communications Fund Grant.** The amount of funds available through ECGF will be determined annually by the Commission in accordance with Section 31-4819, Idaho Code. ( )

**101. GRANT CYCLE.**

**01. Application Availability.** The Commission will make an application and guidance available no later than July 1 of each year. ( )

**02. Application Period.** The Applicant has until July 31 to complete and submit the application to the Commission. ( )

**03. Application Evaluation Period.** Prior to September 15, the Commission and, if applicable, a grant subcommittee, shall evaluate the applications received. ( )

**04. Award Notification.** Prior to October 31, the Commission shall issue notification to every Applicant regarding the disposition of its grant request. ( )

**05. Grant Disbursement.** Grant disbursement shall occur prior to April 30. ( )

**06. Deadline for Return of Funds.** All unused grant funds not expended for costs associated with Applicant's award must be returned by the Applicant no later than May 31. ( )

**102. APPLICATION.**

A completed application must be submitted by the Applicant on or before the conclusion of the application period specified in Section 101 of these rules to be considered during the Grant Cycle. ( )

**01. Application Frequency.** Only one (1) application per Consolidated Emergency Communication Center may be filed in any Grant Cycle. ( )

**02. Required Information.** The Applicant must provide the Commission with information, including: ( )

**a.** Description of proposed equipment purchases; ( )

**b.** Type, quantity, and purpose of similar equipment presently in use by the Applicant; ( )

- c. Age and condition of equipment being replaced, if applicable; ( )
  - d. Documentation of one (1) or more vendor price quotes for all proposed equipment purchases; ( )
  - e. Prioritization by the Applicant of equipment requested when the application requests funding for two (2) or more items; ( )
  - f. Operating budget; ( )
  - g. All funding sources and revenue generated by source; ( )
  - h. Amount of emergency communications fee charged in accordance with Title 31, Chapter 48, Idaho Code; ( )
  - i. Resident population within the Applicant response area in Idaho; ( )
  - j. Migrant and tourist population within the Applicant response area in Idaho; ( )
  - k. Number and name(s) of law enforcement, fire, and emergency medical service organizations for which the Consolidated Emergency Communications Center serves as the primary 911 agency; ( )
  - l. County, city, or Taxing District endorsement(s); ( )
  - m. Federal Tax Identification Number and DUNS Number (Dun & Bradstreet Data Universal Numbering System); ( )
  - n. Contact person for verification of information; and ( )
  - o. Narrative description of need. ( )
- 03. Incomplete Application.** An application missing required information may be excluded from consideration for an award. ( )
- 04. Application Purpose.** The grant application and any attachments submitted by the Applicant shall be the primary source of information for awarding a grant. ( )
- 05. Applicant’s Request for Amendment.** An Applicant may amend its application after the application period has ended by sending both a written request and the proposed application amendment to the IPSCC grant subcommittee. The Applicant shall provide detailed reasons for the Applicant’s request for amendment. The IPSCC grant subcommittee shall review the Applicant’s request for amendment and make a recommendation to the IPSCC concerning the request. The IPSCC shall either approve or deny the Applicant’s request for amendment by vote. The IPSCC’s decision is final. If the IPSCC does not use a grant subcommittee, an Applicant’s request for amendment shall be submitted directly to the IPSCC. ( )
- a. An amended application can be submitted by any Applicant before award notifications have been issued. After award notifications have been issued, an amended application can only be submitted by an Applicant who has been awarded a grant for the applicable grant cycle. ( )
  - b. If an Applicant’s request for amendment is approved before grant award notifications have been issued, the Applicant’s amended application and not the Applicant’s original application shall be considered for award eligibility. If an application amendment is approved after grant award notifications have been issued, the Applicant’s award amount will not increase and may decrease depending on the needs specified in the amended application. ( )

**103. AWARD ELIGIBILITY REQUIREMENTS.**

**01. Equipment.** Only equipment identified as allowable in the application guidance may be purchased with grant funds. ( )

**02. Award Consideration Criteria.** To be considered for an award, an Applicant must meet all of the following requirements: ( )

**a.** Be a Consolidated Emergency Communication Center collecting emergency communications fees in accordance with Title 31, Chapter 48, Idaho Code, delivering or seeking to deliver Consolidated Emergency Communication services; ( )

**b.** Comply and warrant to comply with applicable law, including but not limited to Section 31-4804(5), Idaho Code; ( )

**c.** Agree to follow all applicable bid laws in the acquisition of any equipment paid for with grant funds; and ( )

**d.** Agree to use any grant funds in strict compliance with the grant terms and agree to provide written documentation or proof of expenses to the Commission as required by the grant terms. ( )

**104. AWARD RECOMMENDATION.**

If the Commission uses a grant subcommittee, the Commission shall request a recommendation from the grant subcommittee regarding the distribution of grant funds. ( )

**01. Assessment and Validation of Need.** The grant subcommittee, if used, shall review grant applications prior to making a recommendation about awards. ( )

**02. Contingency Awards.** The grant subcommittee, if used, may make contingency award recommendations in the event that other awards are withdrawn as described in Section 047 of these rules. ( )

**03. Commission Approval.** Whether or not a grant subcommittee is used, all awards must be approved by the Commission. If no grant subcommittee is used, the Commission shall review the applications and may make provision for contingency awards, as set forth above. ( )

**105. CRITERIA FOR EQUIPMENT.**

The following weighted criteria shall be used to evaluate applications for equipment, with maximum weight available for each criterion as indicated. Greater value will be assigned to conditions indicating greater need for each criterion: ( )

**01. Applicant Equipment Age.** The age of similar equipment currently in use by the Applicant; value = fifteen (15). The application demonstrating older equipment will be assigned greater value. The application demonstrating replacement of older equipment with NG911/I3 compliant equipment will be assigned a greater value. ( )

**02. Applicant Equipment Availability.** Similar equipment currently in use by the Applicant; value = fifteen (15). The application demonstrating lack of similar equipment will be assigned greater value; the application demonstrating no access to similar equipment will be assigned the maximum value. ( )

**03. Anticipated Use.** An estimate of the frequency of use for the equipment; value = fifteen (15). The application demonstrating a higher ratio of dispatch per capita will be assigned greater value. ( )

**04. Duration of Use.** An estimate of the length of time the equipment would be used, expressed as a mean time; value = fifteen (15). The application demonstrating a greater duration of use will be assigned greater value. ( )

**05. Fiscal Resource Base.** The proportion of operating budget supported by tax revenue; value = ten (10). The application demonstrating less revenue from taxes expressed as a percent of total revenue for the most ( )

recent year will be assigned greater value. ( )

**06. City, County and Taxing District Endorsement.** The proportion of Idaho cities, counties and Taxing Districts within which the Applicant's primary service area occurs that endorse the application; value = five (5). The application demonstrating a larger percent of endorsements will be assigned greater value. ( )

**07. Population.** The number of people residing in the Consolidated Emergency Communications Center's service area; value = five (5). The application demonstrating a greater number of people will be assigned greater value. ( )

**08. Square Mileage.** The area served by the Consolidated Emergency Communications Center; value = fifteen (15). The application demonstrating a greater square mileage will be assigned greater value. ( )

**09. Number of Law Enforcement, Fire and Emergency Medical Service Agencies Dispatched.** Value = ten (10). The application demonstrating a higher number of law enforcement, fire and emergency medical service agencies will be assigned greater value. ( )

**10. Narrative.** The need for and lack of availability of funds from other sources as documented by the Applicant; value = twenty (20). The application demonstrating a greater need for and lack of available funds will be assigned greater value. The application seeking to share resources and equipment with other 911 service areas (e.g., host remote) will be assigned a greater value. ( )

**106. WITHDRAWAL, DISCONTINUANCE, ASSIGNMENT.**

**01. Withdrawal.** Any Applicant may withdraw or forfeit an application at any time. ( )

**02. Ability to Compete.** The withdrawal of an application does not affect the Applicant's ability to reapply in a subsequent Grant Cycle. ( )

**03. Discontinuance.** The Commission may discontinue the grant award or approval process if any of the following occurs: ( )

**a.** The chief administrative official of the Applicant or his designee submits a notice of withdrawal in written form to the Commission. ( )

**b.** The Applicant does not provide required documentation during the award or approval process. ( )

**c.** The Commission determines the Applicant is out of compliance with any award eligibility requirements. ( )

**04. No Right of Assignment.** The Applicant may not assign any award to another Applicant or another Consolidated Emergency Communications Center. ( )

**108. FRAUDULENT INFORMATION ON GRANT APPLICATION.**

Providing false information on any application or document submitted under these rules is grounds for declaring the Applicant ineligible. Any and all funds determined to have been acquired on the basis of fraudulent information must be returned to the Commission. ( )

**109. -- 999. (RESERVED)**

**15.06.04 – RULES GOVERNING THE IDAHO YOUTH CHALLENGE PROGRAM**

**000. LEGAL AUTHORITY.**

This chapter is adopted under the authority of Sections 46-804 and 46-805, Idaho Code. (3-20-14)

**001. TITLE AND SCOPE.**

**01. Title.** This chapter is titled IDAPA 15.06.04, “Rules Governing the Idaho Youth Challenge Program.” (3-20-14)

**02. Scope.** These rules establish the criteria for student enrollment in the Idaho Youth Challenge Program. (3-20-14)

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. High School Dropout.** An individual who is no longer attending any school and who has not received a secondary school diploma or certificate from a program of equivalency for such diploma. ( )

**02. Participant.** A participant is a person who meets all of the participant selection criteria for the Youth Challenge Program and is selected to participate in the Program from among the eligible applicants. (3-20-14)

**03. Program.** The National Guard Youth Challenge Program is a community-based program that leads, trains, and mentors at-risk youth so that they may become productive citizens. ( )

**011. -- 099. (RESERVED)**

**100. PARTICIPANT SELECTION CRITERIA.**

A participant must meet the following criteria: ( )

**01. Age.** Be between the ages of sixteen (16) and eighteen (18) years of age at the time of entry into the Program. ( )

**02. Residency Requirements.** ( )

**a.** Be a citizen or legal resident of the United States. ( )

**b.** Be a resident of the state of Idaho. ( )

**03. Physical and Mental Requirements.** (3-20-14)

**a.** Be physically and mentally capable to participate in the Program in which enrolled with reasonable accommodation for physical and other disabilities. ( )

**b.** Receive a physical examination in conjunction with their entry into the Program. Such examination must be sufficient to reach a conclusion as to the Participant’s ability to complete the program with only reasonable accommodation for physical and other disabilities. The examination may also include testing for substance abuse and pregnancy insofar as directed by Department of Defense instructions and insofar as such testing does not conflict with state law. ( )

**04. Additional Requirements.** ( )

**a.** Be a high school dropout. ( )

**b.** Be unemployed or underemployed at the time an application is submitted. ( )

**c.** Not currently on parole or probation for anything other than juvenile status offenses or misdemeanors. ( )

**d.** Not be serving time or awaiting sentencing. ( )



- e. Not under indictment, charged with or convicted of a crime that is considered a felony when charged as an adult. ( )
  - f. Be free from use of illegal substances. ( )
  - g. Be free from the illegal use of substances. ( )
- 101. -- 999. (RESERVED)**

# MILITARY DIVISION – OFFICE OF EMERGENCY MANAGEMENT

## 15.06.05 – HAZARDOUS SUBSTANCE RESPONSE RULES

### 000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the authority of Section 39-7101, Idaho Code. (3-23-10)

### 001. TITLE AND SCOPE (RULE 1).

**01. Title.** This chapter is titled IDAPA 15.06.05, “Hazardous Substance Response Rules.” (3-23-10)

**02. Scope.** This chapter creates local emergency response authorities and regional response teams; the location and jurisdiction of regional response teams; liability for incident response costs; notification to local and state emergency response authorities of a hazardous substance incident; call-out procedure for emergency response agencies; and cost recovery and cost reimbursement procedures for emergency response agencies. ( )

### 002. -- 009. (RESERVED).

### 010. DEFINITIONS (RULE 10).

In addition to the definitions in Section 39-7103, Idaho Code, the following definitions apply: ( )

**01. Emergency.** As used in this chapter, “emergency” means a release or threat of release that, in the reasonable judgment of the local emergency response authority in consultation with the office, threatens immediate harm to the environment or the health and safety of any individual and that requires immediate action for the containment or control of a hazardous or potentially hazardous substance to prevent, minimize or mitigate harm to the public health, safety or the environment that may result if action is not taken. (3-23-10)

**02. Emergency Responder.** Person affiliated with an emergency response agency who is dispatched to the scene upon notification of a hazardous substance incident. Emergency responders may be local, state, federal or industry personnel who have received appropriate hazardous materials training as defined by OSHA and EPA Regulations. (3-23-10)

**03. EPCRA.** Emergency Planning and Community Right to Know Act of 1986 (Title III of the Superfund Amendments and Reauthorization Act).. (3-23-10)

**04. Hazardous Substance.** (3-23-10)

**a.** Any “hazardous substance” within the scope of section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601(14); (3-23-10)

**b.** Any hazardous substance within the scope of section 104 of the Federal Hazardous Materials Transportation Act, (HMTA) 49 U.S.C. 1803, and the federal Department of Transportation regulations; (3-23-10)

**c.** Any extremely hazardous substance within the scope of section 302 of the federal Emergency Planning and Community Right-to-Know Act, (EPCRA) 42 U.S.C. 11002; and (3-23-10)

**d.** Any explosive or weapon of mass destruction utilized or threatened to be utilized in an act of terrorism, crime, or other threat to public safety. (3-23-10)

**05. Hazardous Substance Incident.** An emergency circumstance that requires a response by the state emergency response team or the local emergency response agency to monitor, assess and evaluate a release of, or the threat of a release of, a hazardous or potentially hazardous substance. A hazardous substance incident may require containment or confinement, or both, but does not include site cleanup or remediation efforts after the incident commander has determined the emergency has ended. (3-23-10)

**06. Hazardous Substance Incident Levels.** (3-23-10)

**a.** Regulatory - A release of a ‘reportable quantity’ or less of regulated hazardous substances that does not require any emergency response on the part of public sector responders. This would include a weapons of mass destruction threat or suspicion that is clearly a hoax without requiring additional analysis. (3-23-10)

**b.** Level 1 - An incident involving any response, public or private, to an incident involving hazardous substances that can be contained, extinguished, or abated using resources immediately available to the responders having jurisdiction. A weapons of mass destruction threat or suspicion that requires local response to determine whether or not it is life threatening. A Level 1 incident presents little risk to the environment or public health with containment and clean up. (3-23-10)

**c.** Level 2 - An incident involving hazardous substances that is beyond the capabilities of the first responders on the scene, and may be beyond the capabilities of the public sector response agency having jurisdiction. Level 2 incidents may require the services of a state of Idaho Regional Response Team, or other state/federal assistance. This would include a weapons of mass destruction (WMD) threat or incident that involves explosives, release of toxic material, release of radioactive material or release of organisms that can be analyzed and stabilized using resources that exist within the state of Idaho. This level may pose immediate and long-term risk to the environment and public health and could result in a local declaration of disaster. (3-23-10)

**d.** Level 3 - An incident involving weapons of mass destruction/hazardous substances that will require multiple state of Idaho Regional Response Teams or other resources that do not exist within the state of Idaho. These incidents may require resources from state and federal agencies and private industry. Level 3 incidents generally pose extreme, immediate and long-term risk to the environment and public health. (3-23-10)

**07. Idaho Hazardous Materials/WMD Incident Command and Response Support Plan.** A plan that has the primary purpose of providing effective, coordinated emergency response support to local government by state, federal and private agencies for incidents involving the release of hazardous substances in the state of Idaho. (3-23-10)

**a.** This plan may be activated independently of the Idaho Emergency Operations Plan. (3-23-10)

**b.** Authority for implementation of this plan is derived from the Idaho Hazardous Substance Emergency Response Act (Section 39-7101, Idaho Code), the Idaho Environmental Protection and Health Act (Section 39-101 et seq., Idaho Code), the Hazardous Waste Management Act (Section 39-4401 et seq., Idaho Code), Protection from Radioactive Materials (Section 39-3005, Idaho Code), and the Idaho Homeland Security Act of 2004 (Section 46-1001 et seq. Idaho Code). (3-23-10)

**08. Idaho Regional Response Teams.** Teams authorized by the state of Idaho which are trained and equipped to respond to incidents. These teams are based in local departments and respond outside local jurisdictional boundaries upon approval of the Office of Emergency Management. These teams include Regional Hazardous Materials Response Teams (RRT's) as well as Regional Bomb Squads (RBS's). The Idaho Regional Response Teams are responsible to the local Incident Commander. (3-23-10)

**09. Incident Command System (ICS)/National Incident Management System (NIMS).** (3-23-10)

**a.** The Incident Command System (ICS) is a widely used and understood emergency management tool. It is used by local, state, and federal agencies and the military. Use of the ICS for hazardous substance incidents is required by the Emergency Planning and Community Right to Know Act (EPCRA), Occupational Safety and Health Administration (OSHA) rules, and the National Fire Protection Association (NFPA). It has been adopted by the National Fire Academy as the model system for the fire service. It is also the policy of the state of Idaho that the ICS will be used in response to hazardous substance incidents. (3-23-10)

**b.** NIMS is a system mandated by Homeland Security Presidential Directive 5 that provides a consistent nationwide approach for federal, state, local and tribal governments, as well as the private-sector and nongovernmental organizations to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size or complexity. NIMS builds on the ICS and the proven principles of unified command. (3-23-10)

**10. Incident Commander.** The designated local emergency response official responding to an incident. This person must be fully trained and knowledgeable in the ICS. Normally, the Incident Commander will be the local fire chief or law enforcement officer. A local jurisdiction, based on its local plan and resource assessment, may request that Idaho State Police assume incident command, particularly for incidents on U.S. Interstates and state-

numbered routes, including rights-of-way. The Incident Commander shall be in overall charge of all efforts at the scene. (3-23-10)

**11. Local Emergency Planning Committee (LEPC).** A committee made up of local officials, citizens, and industry representatives charged with development and maintenance of emergency response plans for the local emergency planning district as per EPCRA requirements. Planning procedures include hazardous substance inventories, compilation and coordination of fixed facility emergency response plans, hazardous substance response training, and assessment of local response capabilities. (3-23-10)

**12. Local Emergency Response Authority (LERA).** Persons or agencies designated under Section 39-7105, Idaho Code, by the city or county to be the local representatives for hazardous substance incidents. ( )

**13. Regional Response Team (RRT).** See Idaho Regional Response Teams. (3-23-10)

**14. Reimbursable Costs.** The total eligible expenses arising from response to a hazardous substance incident. Such costs generally include, but are not limited to, all state and local government expenses that result from the assessment and emergency phases of the response activity. Emergency response costs do not include clean-up or disposal costs of hazardous substances, except as may be reasonably necessary and incidental to preventing a release or threat of release of a hazardous substance or in stabilizing the emergency response incident. (3-23-10)

**15. Responsible Party or Spiller.** Any person who owns, controls, transports, or causes the release, or threat of release of a hazardous substance which is involved in a hazardous substance incident shall be strictly liable for the costs arising out of the response. (3-23-10)

**16. State Communications.** The communications center for state hazardous substance emergency response. State Communications can be reached by calling 1-800-632-8000 or 208-846-7610. Notification of State Communications is the first step in initiating the Idaho Hazardous Materials/WMD Incident Command and Response Support Plan. (3-23-10)

**17. State Emergency Response Teams.** See Idaho Regional Response Teams. (3-23-10)

**18. State On-Scene Coordinator (SOSC).** To ensure coordination during a significant incident, the state of Idaho will provide a State On-Scene-Coordinator (SOSC). The SOSC will facilitate the formation of a unified command during a significant incident. Under Unified Command, the Idaho SOSC can assist by acquiring resources, advising on response issues, and coaching the jurisdiction in overall scene management. The SOSC will coordinate with responding state agencies and be the principal state spokesperson in the unified command as an advocate for all state interests. In this role, the SOSC effectively represents the interests of the state of Idaho and its citizens. The Idaho SOSC will be appointed by the Director, Office of Emergency Management or his designee. (3-23-10)

**011. ABBREVIATIONS (RULE 11).**

- 01. A.G.** Office of the State Attorney General. (3-23-10)
- 02. CERCLA.** Comprehensive Environmental Response, Compensation, and Liability Act. (3-23-10)
- 03. CFR.** Code of Federal Regulations. (3-23-10)
- 04. HMTA.** Hazardous Materials Transportation Act. (3-23-10)
- 05. NIMS.** National Incident Management System. (3-23-10)
- 06. NFPA.** National Fire Protection Act. (3-23-10)
- 07. OEM.** Office of Emergency Management. (3-23-10)
- 08. OSHA.** Occupational Safety and Health Administration. (3-23-10)

- 09. RBS. Idaho Regional Bomb Squads. (3-23-10)
- 10. WMD. Weapons of Mass Destruction. (3-23-10)

012. -- 099. (RESERVED).

**100. REGIONAL RESPONSE TEAMS, DESIGNATION, LOCATION, JURISDICTION, ACTIVATION, LIABILITY (RULE 100).**

**01. Designation of Regional Response Teams.** Each RRT shall be capable of responding to hazardous substance emergencies within their jurisdiction or, when approved by the state of Idaho Military Division, Office of Emergency Management, in their region, or other state regions. (3-23-10)

**02. Location of Regional Response Teams.**

Area of Idaho	Primary Response Counties	Designation	Team Location – Headquarters
Region 1	Benewah, Bonner, Boundary, Kootenai, Shoshone	RRT1  Spokane Bomb Squad	Kootenai County Fire and Rescue  Spokane Police and Sheriff's Office
Region 2	Clearwater, Idaho, Latah, Lewis, Nez Perce	RRT2  Explosive response covered by Spokane and RBS3	Lewiston Fire Department
Region 3	Adams, Canyon, Gem, Owyhee, Payette, Washington (Gem response may come from Boise for access time)	RRT3  RBS3	Nampa/Caldwell Fire Department  Nampa Police Department
Region 4	Ada, Boise, Camas, Elmore, Valley (Gem response for access time)	RRT4  RBS4	Boise Fire Department  Boise Police Department
Region 5	Blaine, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls (Minidoka and Cassia may come from Southeast for access time)	RRT 3, 4, 6, 7  RBS5	RRTs 3, 4, 6, 7  Twin Falls Police Department
Region 6	Bannock, Bear Lake, Butte, Bingham, Caribou, Franklin, Oneida, Power (Minidoka and Cassia responses for access time)	RRT6  Explosive response covered by RBS5 and RBS7	Pocatello Fire Department
Region 7	Bonneville, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, Teton	RRT7  RBS7	Idaho Falls Fire Department  Idaho Falls Police Department

(3-23-10)

**03. Primary Jurisdiction of Regional Response Teams.** See Subsection 100.02 of these rules.

(3-23-10)

- 04. Activation of Regional Response Teams.** (3-23-10)
- a.** The party requesting the assistance must: (3-23-10)
- i. Contact State Communications at 1-800-632-8000, or (208-846-7610). (3-23-10)
- ii. State their name; (3-23-10)
- iii. State their location; (3-23-10)
- iv. Provide a description of the incident; and (3-23-10)
- v. Provide a description of the type of assistance requested. (3-23-10)
- b.** RRTs must be activated by the Military Division when responding outside their jurisdiction by calling Idaho State Communications Center at 800-632-8000, or (208) 846-7610. This will initiate a conference call, if appropriate, with the appropriate state and local agencies. (3-23-10)
- c.** If the request is for assistance with a drug lab response, the requester must call State Communications and provide the following: (3-23-10)
- i. That the request is for a drug lab response; (3-23-10)
- ii. The location, which must include, at a minimum, the county and city; (3-23-10)
- iii. The type of assistance requested; and (3-23-10)
- iv. The nature of the chemicals released. (3-23-10)
- d.** State communications will then page the OEMHS Haz Mat Duty Officer, provide the information, and request authorization for the RRT to respond. Upon authorization, State Communications will notify the appropriate RRT of the request for assistance and the authorization to respond. (3-23-10)
- 05. Reimbursable Costs -- Hazardous Substances.** (3-23-10)
- a.** State emergency response teams and local emergency response agencies may submit claims within sixty (60) days of the termination of the incident, to the Military Division for reimbursement. Eligible documented costs, incurred as a result of their response to a hazardous substance incident, may be submitted. (3-23-10)
- b.** State emergency response teams and local emergency response agencies may submit claims within sixty (60) days of the termination of the incident, to the Military Division for reimbursement. The following documented costs, incurred as a result of their response to a hazardous substance incident may be submitted: (3-23-10)
- i. Disposable materials and supplies acquired, consumed, and expended specifically for the purpose of the response; (3-23-10)
- ii. Compensation of employees for the time and efforts devoted specifically to the response that are not otherwise provided for in the applicant's operating budget, (e.g., overtime pay for permanent fulltime and other than fulltime employees, recalled personnel or responding when out of jurisdiction); (3-23-10)
- iii. Rental or leasing of equipment used specifically for the response (e.g., protective equipment or clothing, scientific and technical equipment); (3-23-10)
- iv. Replacement costs for equipment owned by the applicant that is contaminated beyond reuse or repair, if the applicant can demonstrate that the equipment was a total loss and that the loss occurred as a result of the response (e.g., self-contained breathing apparatus irretrievably contaminated during the response); (3-23-10)

- v. Decontamination of equipment contaminated during the response; (3-23-10)
  - vi. Special technical services required for the incident response (e.g., costs associated with the time and efforts of local and state personnel to recover the costs of response, and of technical experts/specialists not otherwise provided for by the local government); (3-23-10)
  - vii. Medical monitoring, treatment of response personnel, and rehabilitation costs as per 29 CFR 1910, 120; NFPA 1500; and NFPA 1584; and (3-23-10)
  - viii. Laboratory costs for purposes of analyzing samples taken during the response. (3-23-10)
- c.** Reimbursement for costs will not exceed the duration of the response. Reimbursements shall only be paid after the military division finds that the actions by the RRT, or the emergency response agency were taken in response to a hazardous substance incident as defined in this chapter. (3-23-10)

**06. Liability for Response Costs - Non-Hazardous Substances. (3-23-10)**

- a.** The spiller or transporter of non-hazardous substances shall be liable for the response costs of spills of non-hazardous substances when the spiller or transporter failed to comply with laws or regulations of the state or federal government which would have facilitated identification of the product as a non-hazardous substance. ( )
- b.** The person or entity requesting assistance in all other instances shall be liable for response costs to non-hazardous substances. ( )

**101. -- 199. (RESERVED).**

**200. LERA (RULE 200).**

**01. Responsibility of Local Governments for Establishment of LERA.** LERA means those persons or agencies designated under Section 39-7105, Idaho Code, by the city, or county to be the first response authority for hazardous substance incidents. ( )

**02. LERA Powers and Duties. (3-23-10)**

**a.** Respond: The LERA will provide response to all hazardous substances incidents in their jurisdiction and to any incidents that overlap jurisdictions in a fashion consistent with the Idaho Hazardous Materials/WMD Incident Command and Response Support Plan except as provided in a local emergency response plan. (3-23-10)

**b.** Initiate State Plan: The LERA may request state assistance consistent with the Idaho Hazardous Materials/WMD Incident Command and Response Support Plan through the State Communications Center. (3-23-10)

**c.** Right to Claim Reimbursement: The LERA may claim reimbursement or costs associated with a hazardous substance emergency directly from the spiller, shipper, transporter, property owner, occupant or party responsible for the hazardous substance incident or emergency. The LERA may, in the alternative, if the incident was reported to the State, submit claims to the Military Division within sixty (60) days after the termination of an incident for the reimbursement of documented costs listed in Section 39-7109, Idaho Code, incurred as a result of response to a hazardous substance incident. Reimbursement claims for those costs may not exceed the duration of the response. The LERA must provide a written incident report and any backup documentation to the Military Division containing the following information: (3-23-10)

- i. Date and time of incident; (3-23-10)
- ii. Type of incident; (3-23-10)

- iii. Level of response required; (3-23-10)
- iv. Response action taken; (3-23-10)
- v. Time the incident commander declared the incident ended; (3-23-10)
- vi. Follow-up information; and (3-23-10)
- vii. Any other pertinent information such as responsible party etc. (3-23-10)

**d.** Local Planning: The LERA, as a member of the LEPC, should be an active participant in their jurisdictions emergency planning process. (3-23-10)

**03. Training.** Personnel responding to a hazardous substance emergency shall be trained, at a minimum, to the Hazardous Substance Operations level. In addition, all personnel must have training in the ICS and the NIMS set forth in the Idaho Hazardous Materials/WMD Incident Command and Response Support Plan. (3-23-10)

**04. LERA Notification.** (3-23-10)

**a.** Any spiller, shipper, transporter, property owner, occupant or other person with knowledge of a hazardous substance incident shall notify the LERA of any spill or potential spill. (3-23-10)

**b.** Notification of the LERA may be through the local dispatch authorities or through the State Communications Center at 800-632-8000, or (208) 846-7610. The State Communications Center shall notify the Local Authority and the Military Division HAZMAT Duty Officer. ( )

**c.** The spiller, shipper, transporter, property owner, occupant or other person with knowledge of a hazardous substance incident notifying the LERA and State Communications Center shall provide their: (3-23-10)

- i. Name; (3-23-10)
- ii. Address and telephone number; (3-23-10)
- iii. An address and telephone number where they can be reached for the duration of the incident. (3-23-10)

**d.** Such person shall remain available to the incident commander throughout the duration of the incident. (3-23-10)

**201. -- 299. (RESERVED).**

**300. COST REIMBURSEMENT (RULE 300).**

**01. Submission of Claims and Forms.** State RRTs and local emergency response agencies may submit claims within sixty (60) days of the termination of the incident to the State of Idaho, Military Division, for reimbursement of documented and reimbursable costs incurred as a result of their response to a hazardous or potentially hazardous substance incident. Reimbursable costs are those set forth in Section 39-7109, Idaho Code. (3-23-10)

**02. Limitations for Seeking Reimbursement, Acceptance of Claims.** Claims for reimbursement shall be submitted to the Military Division within sixty (60) days after termination of the hazardous substance incident for the State's determination of payment. Termination of the incident occurs when the Incident Commander declares the incident terminated. The Military Division will review the costs submitted and notify the response agency or agencies as to which costs disqualify for reimbursement within thirty (30) days of receipt. (3-23-10)

**03. Claims Against Spiller or Other Responsible Party.** (3-23-10)



**a.** Upon receipt and review of claims for reimbursement within sixty (60) calendar days after close of incident, the Military Division will compile a thirty (30) calendar day demand letter to the responsible party to be sent certified mail, as well as standard mail, with a copy of the complete packet. (3-23-10)

**b.** If responsible party does not respond or submit payment within thirty (30) calendar days of first letter, a ten (10) calendar day demand letter will be sent certified mail. (3-23-10)

**c.** If the responsible party has not responded to the ten-day letter; within ten (10) calendar days, a packet will be assembled for the A.G. This packet will include the entire file, and a letter to the A.G. explaining the steps taken and requesting their assistance in collecting the costs. (3-23-10)

**d.** If the responsible party does not respond to the A.G., upon their recommendation, the packet will be submitted to a Collection Agency. If the incident is submitted to a collection agency, the responsible party will incur additional costs. (3-23-10)

**04. Cost Recovery, Deficiency Warrants.** The Military Division shall be responsible for recovering documented and reimbursable costs incurred from the spiller. If a spiller is unknown, cannot be located, or refuses to pay upon demand, the Military Division will make recommendations as to payment to the Board of Examiners within one hundred twenty (120) days after termination of the hazardous substance incident. The Board of Examiners may authorize the issuance of deficiency warrants for the purpose of reimbursing reasonable and documented costs associated with emergency response actions taken by response agencies. (3-23-10)

**05. Civil Actions.** It is the duty of the A.G. to commence any civil action brought by the Military Division pursuant to nonpayment from a spiller. At the request of the Military Division, a political subdivision of the state, or a local governmental entity that has responded to or contained a hazardous substance incident, the A.G. may commence a civil action on their behalf. (3-23-10)

**301. DUTY TO COOPERATE.**

**01. Responding Agencies.** Local emergency response authorities, first responders, and regional response teams shall cooperate with the Military Division and the A.G. in collecting and securing payment from the spiller or other responsible party. (3-23-10)

**02. Cooperation Provided.** Such cooperation includes, but is not limited to: (3-23-10)

**a.** Allowing lawsuits to be filed in the name of the local jurisdiction, LERA, or regional response team; (3-23-10)

**b.** Providing testimony and assistance in preparing for trial; (3-23-10)

**c.** Investigation; (3-23-10)

**d.** The collection of evidence, including securing photographs or videotape of the spill site; and (3-23-10)

**e.** Providing relevant test data. (3-23-10)

**302. -- 999. (RESERVED).**

# IDAPA 31 – IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-0000-1900

## NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. These rules are adopted under the general legal authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code. Chapters 8 through 10, 13, 15 through 17, Title 61, Idaho Code; Chapters 3 and 4, Title 62, Idaho Code; the Telecommunications Act of 1988, as amended, Chapter 6, Title 62; Chapters 12 and 13, Title 62, Idaho Code; and the Public Records Act, Chapter 1, Title 74, Idaho Code; and the particular authority of Sections 56-904, 61-110, 61-111, 61-129, 61-301 through 61-309, 61-315, 61-501 through 61-505, 61-508, 61-510, 61-512, 61-515 through 61-517, 61-520, 61-523, 61-524, 61-538, 61-541, 61-601 through 61-607, 61-610 through 61-619, 61-621 through 61-626, 61-803 through 61-806, 61-902 through 61-905, 61-909, 61-1003 through 61-1005, 61-1007, 61-1305, 61-1306, 61-1603 through 61-1607, 61-1703 through 61-1709, 62-301 through 62-308, 62-424, 62-602 through 62-616A, 62-619, 62-622, 62-622A, 62-1201 through 62-1207, 62-1303, 62-1304, 63-3029I, 67-6528, and 74-107(13), 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 31, rules of the Idaho Public Utilities Commission:

### IDAPA 31

- 31.01.01, *Rules of Procedure of the Idaho Public Utilities Commission*
- 31.11.01, *Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission*
- 31.12.01, *Systems of Accounts for Public Utilities Regulated by the Idaho Public Utilities Commission*
- 31.21.01, *Customer Relations Rules for Gas, Electric and Water Public Utilities (the Utility Customer Relations Rules)*
- 31.26.01, *Master-Metering Rules for Electric Utilities*
- 31.31.01, *Gas Service Rules*
- 31.36.01, *Policies and Presumptions for Small Water Companies*
- 31.41.01, *Customer Relations Rules for Telephone Corporations Providing Services in Idaho Subject to Customer Service Regulation by the Idaho Public Utilities Commission*
- 31.46.01, *Universal Service Fund Rules*
- 31.46.02, *Rules for Telecommunications Relay Services (TRS)*
- 31.61.01, *Rules for the Measurement of Stray Current or Voltage*
- 31.71.01, *Railroad Safety Rules*
- 31.81.01, *Energy Consumption Reporting Rules*

This pending rule vacates the following proposed rule previously promulgated as part of the omnibus proposed rulemaking under IDAPA 31, rules of the Idaho Public Utilities Commission:

- **(VACATED)** 31.51.01, *Operator Service and Pay Telephone Rules*
- **(VACATED)** \*31.71.03, *Railroad Safety and Accident Reporting Rules*

IDAPA \*31.71.03 has been combined with IDAPA 31.71.01 to consolidate the Railroad Safety Rules into a single chapter. Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code.

The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, [Vol. 19-6SE, pages 5149–5322](#). Changes to these proposed rules are in compliance with [Executive Order 2019-02](#): Red Tape Reduction Act.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Stephen Goodson at (208) 334-0323.

Dated this 10th day of October, 2019.

Diane Holt, Commission Secretary  
Idaho Public Utilities Commission  
11331 W. Chinden Blvd, Bldg 8, Ste 201-A  
Boise, Idaho 83714  
P.O. Box 83720  
(208) 334-0323 Office  
(208) 334.4045 Fax

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. These rules are adopted under the general legal authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code; Chapters 8 through 10, 13, 15 through 17, Title 61, Idaho Code; Chapters 3 and 4, Title 62, Idaho Code; the Telecommunications Act of 1988, as amended, Chapter 6, Title 62; Chapters 12 and 13, Title 62, Idaho Code; and the Public Records Act, Chapter 1, Title 74, Idaho Code; and the particular authority of Sections 56-904, 61-110, 61-111, 61-129, 61-301 through 61-309, 61-315, 61-501 through 61-505, 61-508, 61-510, 61-512, 61-515 through 61-517, 61-520, 61-523, 61-524, 61-538, 61-541, 61-601 through 61-607, 61-610 through 61-619, 61-621 through 61-626, 61-803 through 61-806, 61-902 through 61-905, 61-909, 61-1003 through 61-1005, 61-1007, 61-1305, 61-1306, 61-1603 through 61-1607, 61-1703 through 61-1709, 62-301 through 62-308, 62-424, 62-602 through 62-616A, 62-619, 62-622, 62-622A, 62-1201 through 62-1207, 62-1303, 62-1304, 63-3029I, 67-6528, and 74-107(13), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 31, rules of the Idaho Public Utilities Commission:

**IDAPA 31**

- 31.01.01, *Rules of Procedure of the Idaho Public Utilities Commission*
- 31.11.01, *Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission*
- 31.12.01, *Systems of Accounts for Public Utilities Regulated by the Idaho Public Utilities Commission*
- 31.21.01, *Customer Relations Rules for Gas, Electric and Water Public Utilities (the Utility Customer Relations Rules)*
- 31.26.01, *Master-Metering Rules for Electric Utilities*
- 31.31.01, *Gas Service Rules*
- 31.36.01, *Policies and Presumptions for Small Water Companies*
- 31.41.01, *Customer Relations Rules for Telephone Corporations Providing Services in Idaho Subject to Customer Service Regulation by the Idaho Public Utilities Commission*
- 31.46.01, *Universal Service Fund Rules*
- 31.46.02, *Rules for Telecommunications Relay Services (TRS)*
- 31.51.01, *Operator Service and Pay Telephone Rules*
- 31.61.01, *Rules for the Measurement of Stray Current or Voltage*
- 31.71.01, *Railroad Clearance Rules*
- 31.71.03, *Railroad Safety and Accident Reporting Rules*
- 31.81.01, *Energy Consumption Reporting Rules*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The Idaho Public Utilities Commission is required to regulate public utilities that provide electric, gas, telephone, water, and rail service. The utilities typically hold monopoly franchises that obligate them to serve all members of the public in a defined service territory. These rules help ensure the utilities safely and reliably serve their customers using just, reasonable, and nondiscriminatory rates and practices.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Stephen Goodson at (208) 334-0323.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 9th of May, 2019.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-0000-1900**

**31.01.01 – RULES OF PROCEDURE OF THE IDAHO PUBLIC UTILITIES COMMISSION**

**SUBCHAPTER A -- GENERAL PROVISIONS**

**(Rules 0 -- 20)**

**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. Chapters 8 through 10, 13, 15 through 17, Title 61, Idaho Code; Chapters 3 and 4, Title 62, Idaho Code; the Telecommunications Act of 1988, as amended, Chapter 6, Title 62; Chapters 12 and 13, Title 62, Idaho Code; and the particular authority of Sections 56-904, 61-304 through 61-309, 61-501 through 61-505, 61-507, 61-516, 61-538, 61-541, 61-601 through 61-607, 61-610 through 61-619, 61-621 through 61-626, 61-803 through 61-806, 61-902 through 61-905, 61-909, 61-1003 through 61-1005, 61-1007, 61-1305, 61-1306, 61-1603 through 61-1607, 61-1703 through 61-1709, 62-304, 62-305, 62-424, 62-602 through 62-616A, 62-619, 62-622, 62-622A, 62-1201 through 62-1207, 62-1303, 62-1304, 63-3029I, and 67-6528, Idaho Code. (4-7-11)

**001. TITLE AND SCOPE (RULE 1).**

The name of this chapter is “Rules of Procedure of the Idaho Public Utilities Commission.” This chapter has the following scope: These rules govern all procedure before the Idaho Public Utilities Commission (the Commission). (7-1-93)

**002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).**

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

**003. ADMINISTRATIVE APPEALS (RULE 3).**

There are no provisions for administrative appeals within the Commission under these rules of procedure, except that under Rules 253 and 265 a presiding officer may in the presiding officer’s discretion refer a ruling on evidence or a motion to the full Commission. (7-1-93)

**004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).**

Except as provided by statute and Rules 26, 52, 67, 233, and 287, all materials filed with the Commission pursuant to these rules and all materials issued by the Commission pursuant to these rules are public documents subject to inspection, examination and copying. (4-7-11)

**005. DEFINITIONS (RULE 5).**

Terms of art used throughout these rules are defined within the rules themselves. The term “utility” used in these rules includes every common carrier, pipeline corporation, gas corporation, electric corporation, telephone corporation, and water corporation as defined in Chapter 1, Title 61, Idaho Code, and Section 62-603, Idaho Code. (4-7-11)

**006. -- 009. (RESERVED)**

**010. THESE RULES SUPERSEDE THE ATTORNEY GENERAL’S RULES OF PROCEDURE (RULE 10).**

Except as provided in Rule 401 addressing rulemaking, these rules are affirmatively promulgated to supersede the Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01.000 et seq. The Attorney General’s Idaho Rules of Administrative Procedure do not apply to proceedings before the Commission except as provided in Rule 401. (7-1-93)

**011. PROCEEDINGS GOVERNED (RULE 11).**

Rules 11 through 401 govern all procedure before the Idaho Public Utilities Commission (the Commission) in all investigations, contested cases, licensing, rulemaking, and other matters specifically addressed by these rules, unless otherwise directed by the Commission. (7-1-93)

**012. OFFICE – OFFICE HOURS – FAX NUMBER – MAILING, ELECTRONIC AND STREET ADDRESSES – DROP BOX (RULE 12).**

The principal office of the Commission is in Boise, Idaho. This office is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The Commission’s telephone number is (208) 334-0300. The hearing or speech impaired may reach the Commission through the Idaho Telecommunications Relay Service by dialing 711. The Commission has no drop box for filing documents after the close of business. (5-8-09)

**01. Fax Number, Mailing and Street Addresses.** The Commission’s FAX number is (208) 334-3762. The Commission’s mailing address is: Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074. The street address of the Commission is: 11331 W. Chinden Blvd, Bldg 8, Suite 201-A, Boise, Idaho 83714. Except

as noted in Subsection 012.03 of this rule, all documents filed in all proceedings must be filed with the Commission at one (1) of these addresses. (5-8-09)

**02. Internet Homepage.** The Commission’s electronic address is <http://www.puc.idaho.gov>. (5-8-09)

**03. Electronic Address.** The Commission’s e-mail address is [secretary@puc.idaho.gov](mailto:secretary@puc.idaho.gov), for filing authorized documents per Subsections 061.02 through 061.04. (5-8-09)

**013. LIBERAL CONSTRUCTION (RULE 13).**

These rules will be liberally construed to secure just, speedy and economical determination of all issues presented to the Commission. Unless prohibited by statute, the Commission may permit deviation from these rules when it finds compliance with them is impracticable, unnecessary or not in the public interest. (7-1-93)

**014. COMMISSION SECRETARY -- COMMUNICATIONS WITH COMMISSION -- TIMELY FILING (RULE 14).**

**01. The Commission Secretary.** The Commission Secretary is the custodian of all public files of the Commission and is responsible for service of all orders and notices of the Commission and of all complaints filed with the Commission. Unless otherwise directed by order, the Commission Secretary issues all official notices of the Commission. All written communications and documents that are intended to be part of an official Commission record (other than a hearing record) must be filed with the Commission Secretary. (5-8-09)

**02. Timely Filing.** Unless otherwise provided by statutes, these rules, order or notice, documents are considered filed when received by the Commission Secretary, not when mailed or otherwise transmitted. (5-8-09)

**03. Case Information.** Information concerning proceedings before the Commission or the status of any matter before the Commission is available from the Commission Secretary or the Commission’s Internet homepage. (5-8-09)

**015. IDENTIFICATION OF COMMUNICATIONS (RULE 15).**

Parties’ communications addressing or pertaining to a given case or proceeding must be written under that case caption and case number. General communications by other persons should refer to case captions, case numbers, permit numbers, or the like, if this information is known. (7-1-93)

**016. SERVICE BY COMMISSION - DESIGNATION OF AGENT (RULE 16).**

The Commission Secretary serves all notices, orders, summonses, and complaints issued by the Commission or by the Secretary. (7-1-93)

**01. Service of Orders and Notices.** All notices and orders served by the Commission may be served by United States mail. Notices and orders may also be served by electronic mail in cases designated by the Commission. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is either deposited in the United States mail or transmitted electronically. All orders and notices shall be affixed with the Commission Secretary’s official service date on the first page. The Commission Secretary will serve all orders and notices in a proceeding on the representatives of each party designated pursuant to Rule 41 for that proceeding and upon other persons designated by these rules or by the Commission or any Commissioner. (3-16-04)

**02. Service of Summonses and Complaints.** The Commission Secretary will serve complaints against utilities upon the person designated for that purpose by the utility. Summonses and complaints directed to regulated utilities or other persons shall be served by registered or certified mail. Writs of summons or subpoena and warrants of attachments directed to all other persons must be served by a person authorized to serve process by statute or by the Idaho Rules of Civil Procedure. (4-7-11)

**03. Designation of Agent for Service.** All utilities shall designate a person as their agent to be served with summons and complaints. Utilities shall be responsible for maintaining on file with the Commission Secretary the current name, mailing address and e-mail address of the person designated as the agent to receive service. (4-7-11)

**017. COMPUTATION OF TIME (RULE 17).**

Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count. If the day the act must be done is a Saturday, Sunday or legal holiday, the act may be done on the first day following that is not a Saturday, Sunday or legal holiday. (7-1-93)

**018. PAYMENT OF FEES AND REMITTANCES (RULE 18).**

**01. Payments.** Fees and remittances to the Commission must be paid by money order, bank draft or check payable to "Idaho Public Utilities Commission." Remittances in currency or coin are wholly at the risk of the remitter, and the Commission assumes no responsibility for their loss. (2-15-14)

**02. Annual Regulatory Fees.** Utilities and railroads shall pay their annual special regulatory fees as required by Chapter 10, Title 61 and Section 62-611, Idaho Code. Utilities and railroads that fail to pay their special regulatory fees, are no longer conducting business in Idaho, and fail to maintain a designated agent for service with the Commission Secretary (Subsection 016.03) may be administratively removed from the list of utilities and railroads subject to the annual regulatory fee. (2-15-14)

**019. INCORPORATED BY REFERENCE -- IDAHO BAR COMMISSION RULE (RULE 19).**

Rule 43 incorporates by reference Idaho Bar Commission Rule 227 (Pro Hac Vice Admission). Bar Rule 227 is promulgated by the Idaho State Bar and adopted by order of the Idaho Supreme Court. Bar Rule 227 may be obtained from the Idaho State Bar, PO Box 895, Boise, ID 83701, or online at <http://www.isb.idaho.gov>. Bar Rule 227 is also available for inspection and copying at the Idaho State Law Library or at the offices of the Idaho Public Utilities Commission. (2-15-14)

**020. DISCONTINUANCE OF TELECOMMUNICATIONS SERVICE (RULE 20).**

A telephone corporation that intends to discontinue service in Idaho shall file a notice with the Commission at least ninety (90) days in advance of the date that it intends to cease operations. The telephone corporation proposing to discontinue basic local exchange or message telecommunications services shall also publish a notice of such discontinuance in a legal newspaper circulated in its service area pursuant to Section 62-612, Idaho Code. If the telephone corporation held any customer deposits or advance payments, the telephone corporation shall indicate in the notice how the deposits are to be returned to customers. See also IDAPA 31.41.01, "Customer Relations Rules for Telephone Corporations Providing Services in Idaho Subject to Customer Service Regulation by the Idaho Public Utilities Commission," Section 312 (4-7-11)

**SUBCHAPTER B -- CONTESTED CASES**

**(Rules 21 -- 400)**

**PART 1 -- DEFINITIONS AND GENERAL PROVISIONS**

**(Rules 21 -- 100)**

**INFORMAL AND FORMAL PROCEEDINGS**

**(Rules 21 -- 30)**

**021. INFORMAL PROCEEDINGS DEFINED (RULE 21).**

Informal proceedings are proceedings in cases authorized by statute, rule or order of the Commission to be conducted using informal procedures, i.e., procedures without a record to be preserved for later Commission or judicial review, without the necessity of representation according to Rule 43, without formal designation of parties, without the necessity of presiding officers, or without other formal procedures required by these rules for formal proceedings. Unless prohibited by statute, the Commission may provide that informal proceedings may precede formal proceedings in the consideration of a rulemaking or a case. (7-1-93)

**022. INFORMAL PROCEDURE (RULE 22).**

These rules encourage the use of informal proceedings to settle or determine cases. Unless prohibited by statute, the Commission may provide for the use of informal procedure at any stage of a case. Informal procedure may include individual contacts by or with the Commission staff asking for information, advice or assistance from the



Commission staff, or proposing informal resolution of formal disputes. Informal procedures may be conducted in writing, by telephone, or in person. (7-1-93)

**023. FURTHER PROCEEDINGS (RULE 23).**

Except as provided in Rule 24, any person participating in an informal proceeding must be given an opportunity for a later formal administrative proceeding before the Commission, at which time the parties may fully develop the record before the Commission. (7-1-93)

**024. INFORMAL PROCEEDINGS DO NOT EXHAUST ADMINISTRATIVE REMEDIES (RULE 24).**

Unless all parties agree to the contrary in writing, informal proceedings do not substitute for formal proceedings and do not exhaust administrative remedies, and informal proceedings are conducted without prejudice to the right of the parties to present the matter formally to the Commission. The Commission Staff will consider and investigate informal inquiries or complaints without prejudice to the right of the interested persons to present the matter formally to the Commission, unless all affected persons agree in writing to be bound by the informal decision. Settlement offers made in the course of informal proceedings are confidential and shall be excluded from the agency record of any later formal proceedings. Informal procedure is recommended and preferred for informal inquiries or complaints. However, the Commission itself may formally consider any informal inquiry or complaint presented to it or to the Staff. (7-1-93)

**025. FORMAL PROCEEDINGS (RULE 25).**

Formal proceedings, which are governed by rules of procedure other than Rules 21 through 24, must be initiated by a pleading listed in Rules 51 through 58. (7-1-93)

**026. INFORMAL FILES MAY BE INVESTIGATIVE RECORDS (RULE 26).**

Files created by the Commission and its Staff in response to informal inquiries or complaints are investigatory records and are generally exempt from disclosure according to Section 74-105(1), Idaho Code, but are available under Section 74-113(1), Idaho Code, to the customer, applicant, utility, carrier, etc., that are the subjects of the investigation. (4-5-00)

**027. -- 030. (RESERVED)**

**PARTIES -- OTHER PERSONS**

**(Rules 31 -- 40)**

**031. PARTIES LISTED (RULE 31).**

Parties to proceedings before the Commission are called applicants, petitioners, complainants, respondents, or intervenors. Applicants, petitioners, complainants, and respondents are original parties. On reconsideration parties are called by their original titles listed above. (7-1-93)

**032. APPLICANTS (RULE 32).**

Persons who seek any right, license, award, or authority (except intervenors requesting intervenor funding) from the Commission are called "applicants." (7-1-93)

**033. PETITIONERS (RULE 33).**

Persons not applicants who seek to modify, amend or stay existing orders or rules, to clarify their rights or obligations under law administered by the Commission, to ask the Commission to initiate a proceeding (other than an application or a complaint), or to otherwise take action that will result in the issuance of an order or rule, but not seeking a right or authority from the Commission, are called "petitioners." (7-1-93)

**034. COMPLAINANTS (RULE 34).**

Persons charging other person(s) with any act or omission are called "complainants." In any proceeding which the Commission charges an act or omission, the Commission is called "complainant." (7-1-93)

**035. RESPONDENTS (RULE 35).**

Persons against whom complaints or petitions are filed or about whom investigations are initiated are called "respondents." (7-1-93)

**036. INTERVENORS (RULE 36).**

Persons, not original parties to a proceeding, permitted to participate as parties pursuant to Rules 71 through 75, are called “intervenors.” (7-1-93)

**037. COMMISSION STAFF (RULE 37).**

The Commission Staff, without intervention, may appear at any hearing and has all rights of participation as a party to the proceeding. If counsel is desired, a Deputy Attorney General for the Commission represents the Staff. (3-16-04)

**038. RIGHTS OF PARTIES AND OF COMMISSION STAFF (RULE 38).**

Subject to Rules 249, 251 and 261, all parties and the Commission Staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (7-1-93)

**039. PERSONS -- PERSONS NOT PARTIES -- INTERESTED PERSONS -- PUBLIC INVOLVEMENT (RULE 39).**

**01. Persons and Person Not Parties.** The term “person” includes natural persons, partnerships, corporations, associations, municipalities, government entities and subdivisions, and any other entity authorized by law to participate in administrative proceedings. Persons other than the persons named in Rules 32 through 37 are not parties for the purpose of any statute or rule addressing rights or obligations of parties. (2-15-14)

**02. Interested Persons.** Interested persons for purposes of the Commission Secretary’s service of notice under Rules 113, 123, and 202 are municipalities, counties, and chambers of commerce in the area affected by a proceeding and persons who were parties in any proceeding of a similar kind involving the same utility or railroad in the preceding three (3) years. This rule defines interested persons for purposes of Rules 113, 123, and 202, but not for purposes of Section 61-626, Idaho Code. (2-15-14)

**03. Public Involvement.** Persons interested in receiving periodic updates about filings made in certain groups of cases, in individual cases, or the issuance of press releases, orders and notices may subscribe to the Commission’s Rich Site Summary (RSS) feed located on the Commission’s home page at: [www.puc.idaho.gov](http://www.puc.idaho.gov). Subscription to general information will be available at the home page at “Keep Me Updated” and case specific subscription will be available at each case summary page. The Commission’s home page also contains links to other utility or Commission topics. (2-15-14)

**040. (RESERVED)**

**REPRESENTATIVES OF PARTIES  
(Rules 41 -- 50)**

**041. INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES (RULE 41).**

**01. Designation of Representative Required.** The initial pleading of each party to a proceeding (be it an application, petition, complaint, motion, or answer) must name the party’s representative(s) for service and state each representative’s mailing and electronic (if available) address for purposes of receipt of all official documents. Service of documents on the named representative(s) by mail or by electronic mail is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as a party’s representative, the person signing the pleading will be considered the party’s representative. (3-16-04)

**02. Number of Representatives.** No more than two (2) persons may be designated as a party’s representatives for purposes of service or receipt of official documents unless otherwise authorized by order. The Commission may condition such an order upon reasonable terms concerning payment of copying costs and mailing costs to additional representatives. (7-1-93)

**042. TAKING OF APPEARANCES (RULE 42).**

The presiding officer at hearing or prehearing conference will take appearances to identify the representatives of all

parties at the hearing. Parties whose pleadings have not been received by or distributed to all other parties may be required to state their interests at the hearing. (7-1-93)

**043. REPRESENTATION OF PARTIES (RULE 43).**

Proceedings before the Commission are sometimes administrative in nature or quasi-judicial in nature. General requirements for the representation of parties are outlined below. (2-15-14)

**01. Administrative Proceedings.** Administrative proceedings before the Commission include matters such as the filing of tariff schedules, tariff advices, price lists, certificates to provide local exchange service, interconnection agreements, rulemaking, written comments in modified procedure, or written comments provided at a customer hearing. These filings may be made by a natural person pro se, a partner in a partnership, an employee or officer of a corporation, or a licensed attorney. (4-7-11)

**02. Quasi-Judicial Proceedings.** The representation of parties at quasi-judicial proceedings for the purpose of adjudicating the legal rights or duties of a party is restricted as set out below. Quasi-judicial proceedings before the Commission include matters such as formal complaints, petitions, motions, applications for modified procedure or technical/evidentiary hearings. Representation of parties of these types of proceedings shall be as follows: (4-7-11)

- a. A natural person may represent himself or herself or be represented by a licensed attorney. (4-7-11)
- b. A partnership or corporation shall be represented by a licensed attorney. (4-7-11)
- c. A municipal corporation; a state, federal, tribal, or local government agency; an unincorporated association; a non-profit organization, or other entity shall be represented by a licensed attorney. (4-7-11)

**03. Attorney Representation.** Only an active member of the Idaho State Bar may represent a party as an attorney except as provided by Idaho Bar Commission Rule 227 (Pro Hac Vice Admission). The Commission adopts by incorporation Bar Rule 227 as modified below. (2-15-14)

a. Limited admission by out-of-state attorneys will not be necessary in conjunction with administrative proceedings. Out-of-state attorneys representing the same party in one (1) or more quasi-judicial proceedings must request limited admission at least one (1) time per calendar year. (4-7-11)

b. An attorney applying for limited admission to appear before the Commission in a representative capacity shall file a written motion with the Commission Secretary and serve a copy on all parties. The motion shall be substantially in the form set out in Bar Rule 227(j) with references to the Commission instead of the court. (2-15-14)

c. A copy of the written motion shall be submitted to the Idaho State Bar accompanied by the fee prescribed in Bar Rule 227. (2-15-14)

**044. SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS (RULE 44).**

From the time a party files its initial pleading in a proceeding, that party must serve and all other parties must serve all future documents listed in Rule 51 upon all other parties' representatives designated pursuant to Rule 41, unless otherwise directed by order or notice or by the presiding officer on the record. The Commission may order parties to serve past documents filed in the case upon those representatives. The Commission may order parties to serve past or future documents filed in the case upon persons not parties to the proceedings before the Commission. (3-16-04)

**045. WITHDRAWAL OF PARTIES (RULE 45).**

Any party must move the Commission in writing or at hearing to withdraw from a proceeding. (7-1-93)

**046. SUBSTITUTION OF REPRESENTATIVE -- WITHDRAWAL OF REPRESENTATIVE (RULE 46).**

A party's representative may be changed and a new representative may be substituted by notice to the Commission and to all other parties so long as the proceedings are not unreasonably delayed. The presiding officer at hearing may permit substitution of representatives at hearing in the presiding officer's discretion. Persons representing a party who wish to withdraw their representation of a party in a proceeding before the Commission must immediately file in

writing a notice of withdrawal of representation and serve that notice on the party represented and all other parties. (7-1-93)

**047. CONDUCT REQUIRED (RULE 47).**

Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. (7-1-93)

**048. FORMER EMPLOYEES -- RESTRICTION ON REPRESENTATION OF PARTIES (RULE 48).**

No former employee of the Commission or member of the Attorney General's staff may appear in a representative capacity or as an expert witness on behalf of other parties in a formal proceeding in which he or she previously took an active part. (7-1-93)

**049. NOTICE OF PARTIES (RULE 49).**

As reasonably necessary in a proceeding, and in any event, at least once in every proceeding, the Commission Secretary will issue to the parties a notice of parties. The notice of parties will list all parties, their representative(s) under Rule 41, their representative's(s') mailing or electronic address(es), exhibit numbers assigned to the parties, and any other information required by the Commission. The Commission Secretary will maintain on file a current list of all parties to a proceeding and issue a revised notice of parties as reasonably necessary to reflect changes in the previous notice of parties. (4-5-00)

**050. (RESERVED)**

**PLEADINGS -- IN GENERAL  
(Rules 51 -- 60)**

**051. PLEADINGS LISTED -- MISCELLANEOUS (RULE 51).**

Pleadings before the Commission are called applications, petitions, complaints, motions, answers and consent agreements. Affidavits may be filed in support of any pleading. Initial pleadings must comply with Rule 41. All pleadings must be filed in accordance with Rules 61 through 66. A party may adopt or join any other party's pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1) pleading. (7-1-93)

**052. APPLICATIONS -- DEFINED -- FORM AND CONTENTS (RULE 52).**

All pleadings requesting a right, certificate, permit, or authority from the Commission are called "applications." Applications must: (2-15-14)

**01. State Facts.** Fully state the facts upon which they are based, (7-1-93)

**02. Refer to Provisions.** Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based, and (7-1-93)

**03. Pray for the Action Sought.** Request the action desired. (3-16-04)

**04. Public Information.** Unless otherwise exempted from disclosure by statute, information in applications is public information not exempt from disclosure under Section 74-106(8) and 74-106(9), Idaho Code. (3-16-04)

**053. PETITIONS -- DEFINED -- FORM AND CONTENTS (RULE 53).**

All pleadings requesting: (7-1-93)

**01. Modification, Amendment or Stay of Existing Orders or Rules.** (7-1-93)

**02. Clarification or Construction of Orders, Rules or Statute.** (7-1-93)

**03. Initiation of Proceeding.** The initiation of a proceeding not an application or a proceeding that will lead to the issuance of an order. (7-1-93)

- 04. Reconsideration.** (2-15-14)
- 05. Request for Intervenor Funding.** (2-15-14)
- 06. Intervention are Called “Petitions.”** (2-15-14)
- 07. Form and Content.** Petitions must: (2-15-14)
- a.** Fully state the facts upon which they are based, (7-1-93)
- b.** Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based, (7-1-93)
- c.** Pray for the relief desired, and (7-1-93)
- d.** State the name of the person petitioned against (the respondent), if any. (7-1-93)
- 054. FORMAL COMPLAINTS -- DEFINED -- CONTENTS AND PROCESS (RULE 54).**  
All pleadings charging utilities or other person(s) with acts or omissions under law administered by the Commission are called “formal complaints.” Formal complaints must be in writing and: (5-8-09)
- 01. Name the Respondent.** State the name of the utility or person complained against (the respondent). (5-8-09)
- 02. State the Facts.** Fully state the facts constituting the acts or omissions of the utility or person against whom the complaint is filed and the dates when the acts or omissions occurred. (5-8-09)
- 03. Refer to Applicable Provisions.** Refer to the specific provision of statute, rule, order, notice, tariff or other controlling law that the utility or person has violated. (5-8-09)
- 04. State the Relief Desired.** State what action or outcome should be taken to resolve the complaint. (5-8-09)
- 05. Process.** The Commission encourages the use of informal proceeding (see Rules 21 through 26) to resolve or settle formal complaints. The Commission shall determine how a formal complaint should be processed, e.g., issuance of a summons, open an investigation, informal procedure with Staff. The Commission Secretary may serve a copy of the formal complaint upon the utility or person to which the formal complaint is directed. (5-8-09)
- 055. INFORMAL INQUIRIES OR COMPLAINTS (RULE 55).**  
Informal inquiries or complaints are addressed in Rules 21 through 26. (7-1-93)
- 056. MOTIONS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 56).**  
All other pleadings requesting the Commission to take any other action, except consent agreements or pleadings specifically answering other pleadings, are called “motions.” Motions must: (7-1-93)
- 01. State the Facts.** Fully state the facts upon which they are based. (7-1-93)
- 02. Refer to Provisions.** Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based. (7-1-93)
- 03. Pray for the Relief Sought.** If the moving party desires oral argument or hearing on the motion, the moving party must so state in the motion. Any motion to dismiss, strike or limit a complaint or petition must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within fourteen (14) days after service of the answer. Other motions may be filed at any time upon compliance with Rule 256. The Commission will act on motions as provided in Rule 256. (7-1-93)

**057. ANSWERS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 57).**

**01. Answers Defined.** All pleadings responding to the allegations or requests of applications, complaints, petitions or motions are called “answers.” All pleadings responding to the allegations or prayers of complaints, petitions or motions are called “answers.” (7-1-93)

**02. Answers to Complaints or Petitions.** Answers to complaints or petitions must be filed with the Commission and served on all parties of record within twenty-one (21) days after service of the complaint or petition, unless the Commission modifies the time within which answer may be made or a motion to dismiss is made within twenty-one (21) days. (7-1-93)

**a.** Answers to complaints or petitions must admit or deny each material allegation of the complaint or petition. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. (7-1-93)

**b.** A party that fails to answer a complaint or petition within the prescribed time will be treated as generally denying the allegations of the complaint or petition and will be precluded, except for good cause shown, from setting up any affirmative defense in the proceeding. In these cases, the Commission may proceed with the matter solely upon the issues set forth in the complaint or petition. The complainant or petitioner must offer evidence of its allegations regardless of whether the complaint or petition is answered or denied. (7-1-93)

**03. Answers to Motions.** Answers to motions may be filed by persons or parties who are the object of a motion or by parties opposing a motion. The person or party answering the motion must do so with all deliberate and reasonable speed. In no event is a party entitled to more than fourteen (14) days to answer a motion or to file a motion for additional time to answer. The Commission may act upon a motion under Rule 256. (7-1-93)

**058. CONSENT AGREEMENTS -- DEFINED -- FORM AND CONTENTS (RULE 58).**

**01. Definition of Consent Agreement.** Agreements between a regulated utility or carrier and the Commission Staff, a customer or another utility or regulated carrier in which one (1) or more parties agree prospectively to engage in certain conduct mandated by statute, rule, order, tariff, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, tariff, or other provision of law, are called “consent agreements.” Consent agreements are intended to require compliance with existing law. Settlements of differing positions in ongoing cases under Rules 271 through 277 in the development of new rules, orders, tariffs, etc., are not consent agreements. (7-1-93)

**02. Form and Content of Consent Agreement.** Consent agreements must: (7-1-93)

**a.** Recite Parties. Recite the parties to the agreement; and (7-1-93)

**b.** Statement of Conduct. Fully state the conduct proscribed or prescribed by the consent agreement. In addition, consent agreements may; (7-1-93)

**c.** Recite the consequences of failure to abide by the consent agreement; (7-1-93)

**d.** Provide for payment of civil or administrative penalties authorized by law; (7-1-93)

**e.** Provide for payment of reparations of overcharges authorized by law; (7-1-93)

**f.** Provide for loss of rights, licenses, awards or authority; (7-1-93)

**g.** Provide for consent to adjustment of rates, charges, certificates, permits, tariffs, or other action as authorized by law; or (7-1-93)

**h.** Provide that parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. (7-1-93)

**059. -- 060. (RESERVED)**

**FILING, SERVICE, AMENDMENT AND WITHDRAWAL OF DOCUMENTS  
(Rules 61 -- 70)**

**061. FILING DOCUMENTS WITH THE COMMISSION -- NUMBER OF COPIES -- DISCOVERY --  
FACSIMILE (FAX) AND ELECTRONIC FILING (RULE 61).**

The following numbers of documents shall be filed with the Commission Secretary: (5-8-09)

- 01. Printed Filings.** When filing printed material: (4-5-00)
  - a.** In utilities cases (other than those cases specified in Subsections 061.01.b. and 061.01.c. of this rule): (5-8-09)
    - i.** Pleadings (applications, petitions, complaints, motions, answers and consent agreements)--an original (unbound and unstapled) and seven (7) copies. (5-8-09)
    - ii.** Briefs, proposed orders, statements of position, and exceptions under Rule 312--an original (unbound and unstapled) and seven (7) copies. (5-8-09)
    - iii.** Prepared testimony and exhibits--nine (9) copies (one (1) copy designated as reporter's copy) plus CD-ROM as required by Rule 231.05. (5-8-09)
  - b.** Security issuance cases: (4-5-00)
    - i.** Pleadings--an original (unbound and unstapled) and four (4) copies. (5-8-09)
    - ii.** Other documents except for discovery-related documents -- three (3) copies. (5-8-09)
  - c.** Telecommunication interconnection agreements: (3-16-04)
    - i.** Pleadings--an original (unbound and unstapled) and three (3) copies. (5-8-09)
    - ii.** All other documents -- two (2) copies. (3-16-04)
- 02. Filing Discovery.** Discovery-related documents (notice of taking deposition, production requests, written interrogatories, requests for admission, answers to discovery, explanations in lieu of discovery under Rule 225, and objections to discovery) shall be filed in either printed or electronic format. (5-8-09)
  - a.** If printed filing -- three (3) copies to the Commission Secretary. (5-8-09)
  - b.** If electronic filing -- the discovery document(s) shall be submitted to the Commission Secretary as attachments to an e-mail or placed on a CD-ROM and the CD-ROM is filed with the Secretary. The electronic discovery documents shall be in a computer searchable form of Adobe Acrobat in portable document format (PDF) without password protection. The transmitting e-mail or CD-ROM shall be labeled with the case number, case name, and the name of the person and the party submitting the discovery. (5-8-09)
- 03. FAX and Electronic Filings.** Notices of withdrawal of party or of withdrawal of representative, stipulations, and documents requiring emergency or immediate action by the Commission may be filed with the Commission Secretary as an attachment to an e-mail or by facsimile transmission (FAX). The attached electronic document shall be in a computer searchable form of Adobe Acrobat (PDF) without password protection. Whenever any such document is filed by electronic mail or by FAX, the required number of printed documents per Subsection 061.01 must be delivered to the Commission by overnight mail on the next working day. The use of electronic mail or FAX is prohibited to file prepared testimony and exhibits, discovery-related documents or any other documents except as authorized by this paragraph. (5-8-09)

**04. Reducing the Number or Changing the Form of Filing.** The Commission Secretary is authorized to reduce the number of required copies or allow electronic copies to be filed in lieu of a printed original or copies. (5-8-09)

**062. FORM OF DOCUMENTS (RULE 62).**

**01. Information to be Listed.** All documents listed in Rule 61 submitted by a party and intended to be part of the record must: (7-1-93)

- a.** Be submitted on white eight and one-half inch by eleven inch (8 1/2" by 11") paper copied on either one (1) side or both sides (duplexed); (5-8-09)
- b.** State the case caption, case number and title of the document; (7-1-93)
- c.** Include on the upper left corner of the first page: (3-16-04)
  - i.** The name(s); (3-16-04)
  - ii.** Mailing, street and e-mail address(es); and (3-16-04)
  - iii.** Telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; and (3-16-04)
- d.** Have at least one-inch (1") left and top margins. (7-1-93)

**02. Example.** These documents complying with this rule will be in the following form:

Name of Representative (State Bar No. if applicable)  
Mailing Address of Representative  
Street Address of Representative (if different)  
Telephone Number of Representative  
FAX Number of Representative (if there is one)  
E-mail address (if available)  
Attorney/Representative (for Name of Party)

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

(Title of Proceeding)

)  
)  
)

CASE NO. ABC-X-XX-XX

TITLE OF DOCUMENT

(5-8-09)

**03. Identification of Parties.** Every document filed under this rule must identify the party filing it in its title. The party must be identified by both the party's designation as a party (e.g., intervenor) and the party's name. For example, the Intervenor ABC Company would title its motion to strike as "Motion to Strike of Intervenor ABC Company." A short title of the document must appear at the bottom left corner of each page of the document. For example, the short title of the motion above could be: "ABC's Motion to Strike." (7-1-93)

**04. Original Documents.** All original documents filed with the Commission Secretary shall be unbound and unstapled. Copies of original documents may be bound or stapled. (5-8-09)

**063. SERVICE ON PARTIES AND OTHER PERSONS (RULE 63).**



**01. Service in General.** All documents referred to in Rule 61 (except as noted below) must be served upon the representatives of every party of record concurrently with filing with the Commission Secretary. When a document has been filed with the Commission Secretary by FAX or electronic mail, it must be served upon all other parties with FAX facilities or by electronic mail, respectively. For parties without electronic capability, service shall be made by overnight mail, hand delivery, or the next best available service if these services are not available. The Commission may direct that some or all of these documents be served on interested or affected persons who are not parties. The Commission Secretary's notice of parties (and revisions to it) will list all persons whom the parties must serve and their representatives as of the date of the notice or its revision. (5-8-09)

**02. Service by Electronic Mail.** The Commission may direct or the parties may agree that service among parties be accomplished by electronic mail. (5-8-09)

**03. Service of Discovery.** The service of discovery documents on parties shall be accomplished by electronic mail (as attachments to e-mail). For parties without electronic mail capability, service shall be made by overnight mail, hand delivery, or the next best available service if these services are not available. See Rule 229. (5-8-09)

**064. PROOF OF SERVICE (RULE 64).**

Every document that is filed with the Commission and intended to be part of the record for decision must be attached to or accompanied by proof of service by the following or similar certificate: (7-1-93)

I HEREBY CERTIFY (swear or affirm) that I have this day of, served the foregoing (name(s) of document(s)) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names)).  
(Signature)

Each certificate of service must individually list the names and addresses of each person served. (7-1-93)

**065. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 65).**

Defective, insufficient or late pleadings may be returned or dismissed, except that applications under Rule 121 cannot be dismissed during the period of suspension of rates under Rule 123, but can only be returned for correction once the suspension period has begun. (7-1-93)

**066. AMENDMENTS TO PLEADINGS (RULE 66).**

The Commission may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. (7-1-93)

**067. INFORMATION EXEMPT FROM PUBLIC REVIEW -- DEFINITIONS -- FORM -- PROCEDURES (RULE 67).**

**01. Definitions.** (4-5-00)

**a.** "Trade secrets" filed with the Commission are exempt from public inspection, examination, and copying pursuant to Section 74-107(1), Idaho Code. Trade secrets means information, including a formula, pattern, compilation, program, computer program, device, method, technique, process, or unpublished or in progress research that: (4-5-00)

i. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and (4-5-00)

ii. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. (4-5-00)

**b.** "Confidential information" means information, documents, or records filed with the Commission that are specifically exempt from public inspection, examination and copying pursuant to Sections 74-104 through 74-109, Idaho Code. (4-5-00)

**02. Form.** In addition to the requirements of Rule 62 (except Subsection 062.01.a.), information that is alleged to be trade secrets, confidential or otherwise exempt from public disclosure shall be served upon the Commission and other parties who have entered into a protective agreement pursuant to Subsection 067.04 in either printed or electronic format. (4-5-00)

**a.** If in printed form, the page(s) containing the trade secret or confidential information shall be reproduced on yellow paper. Each page shall be marked as “TRADE SECRETS” or “CONFIDENTIAL.” See Rule 61 for the number of printed copies. (5-8-09)

**b.** If in electronic form, the trade secret or confidential information shall be reproduced separately on a CD-ROM or other electronic storage format approved by the Commission Secretary; and not included with other material electronically filed. Each CD-ROM or other storage device containing trade secret or confidential information shall be clearly identified with the case caption, case number, title of document and marked as “TRADE SECRETS” or “CONFIDENTIAL.” (5-8-09)

**03. Procedure.** Whenever a party believes that information contained in pleadings or other documents are trade secrets, confidential or otherwise exempt from public disclosure, the attorney of such party designated by Rule 41 must state in writing that the information is protected by law from public inspection, examination or copying, citing the specific grounds and legal authority for that assertion. Documents containing trade secrets or confidential information shall be separated from documents not containing trade secrets or confidential information. Trade secrets or confidential information contained in documents will be removed and replaced with a page marked: “This page allegedly contains trade secrets or confidential material and is separately filed.” All materials for which no assertion of protection from public inspection, examination and copying is made will be placed in files available for public inspection. Trade secrets, confidential information and other records exempt from public inspection shall be separately stored in a secured location with limited access and safeguarded from unauthorized disclosure. (4-5-00)

**04. Protective Agreements.** In proceedings before the Commission involving trade secrets or other confidential information, parties may enter into protective agreements to facilitate and safeguard the exchange of necessary information. Protective agreements may include procedures for copying, exchanging, serving, safeguarding, or challenging the characterization of trade secrets or confidential information. The Commission shall not be a party and will not be bound by the terms of a protective agreement. (4-5-00)

**068. WITHDRAWAL OF PLEADINGS (RULE 68).**

A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading with the Commission and serve all parties with it. Unless otherwise ordered by the Commission, the notice is effective fourteen (14) days after filing. (3-30-01)

**069. -- 070. (RESERVED)**

**INTERVENTION -- PUBLIC WITNESSES  
(Rules 71 -- 80)**

**071. ORDER GRANTING INTERVENTION NECESSARY (RULE 71).**

Persons not original parties to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the Commission granting intervention to become a party. (7-1-93)

**072. FORM AND CONTENTS OF PETITIONS TO INTERVENE (RULE 72).**

Petitions to intervene must comply with Rules 41, 61, and 62. The petition must set forth the name and address of the petitioner and clearly and concisely state the direct and substantial interest of the petitioner in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. Petitions for intervenor funding should be made in a separate document from the petition to intervene. (2-15-14)

**073. TIMELY FILING OF PETITIONS TO INTERVENE (RULE 73).**

Petitions to intervene must be filed at least fourteen (14) days before the date set for hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must

state a substantial reason for delay. The Commission may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenor who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. (7-1-93)

**074. GRANTING PETITIONS TO INTERVENE (RULE 74).**

If a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the Commission or the presiding officer will grant intervention, subject to reasonable conditions. If it later appears that an intervenor has no direct or substantial interest in the proceeding, or that the intervention is not in the public interest, the Commission may dismiss the intervenor from the proceeding. (7-1-93)

**075. ORDERS GRANTING INTERVENTION -- OPPOSITION (RULE 75).**

No order granting a petition to intervene will be acted upon fewer than seven (7) days after its filing, except in a hearing in which any party may be heard. Any party opposing a petition to intervene must do so by motion in opposition filed within seven (7) days after receipt of the petition to intervene and served upon all parties of record and upon the person petitioning to intervene. (7-1-93)

**076. PUBLIC WITNESSES (RULE 76).**

Persons not parties and not called by a party who testify at hearing are called "public witnesses." Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings. Subject to Rules 249 and 251, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits introduced at hearing, except that public witnesses offering expert opinions at hearing or detailed analysis or detailed exhibits must comply with Rule 231 with regard to filing and service of testimony and exhibits to the same extent as witnesses of parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection. (4-5-00)

**077. -- 100. (RESERVED)**

**PART 2 - SPECIFIC REQUIREMENTS OF CERTAIN FILINGS -- RELATED RULES**

(Rules 101 -- 200)

**PETITIONS FOR DECLARATORY ORDERS**

(Rules 101 -- 110)

**101. FORM AND CONTENTS OF PETITION FOR DECLARATORY ORDERS (RULE 101).**

**01. Form of Petition.** Any person petitioning for a declaratory ruling must substantially follow this form. (7-1-93)

**02. Contents of Petition.** The petition shall: (7-1-93)

**a.** Identify the petitioner and state the petitioner's interest in the matter, (7-1-93)

**b.** State the declaratory ruling that the petitioner seeks, and (7-1-93)

**c.** Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. Legal assertions in these paragraphs may be accompanied by citations of cases and/or statutory provisions. (7-1-93)

**102. NOTICE OF PETITION FOR DECLARATORY ORDERS (RULE 102).**

Notice of petition for declaratory ruling will be issued to all affected utilities. Orders disposing of the petition will be served on all affected utilities. (4-5-00)

**103. -- 110. (RESERVED)**

**APPLICATIONS FOR CERTIFICATES OF CONVENIENCE AND NECESSITY**  
**(Rules 111 -- 120)**

**111. FORM AND CONTENTS -- NEW UTILITY (RULE 111).**

Applicants for the issuance of a certificate of convenience and necessity for a new utility under Section 61-526, Idaho Code, or Commission order, must submit the data required by this rule (where relevant) with their applications. (4-5-00)

- 01. Name, Address and Form of Business.** (7-1-93)
  - a.** If the applicant is a sole proprietor: (7-1-93)
    - i. The name, business address, and electronic address (if available) of the applicant; and (4-5-00)
    - ii. The business name (including “doing business as” (dba)) of the sole proprietorship. (3-16-04)
  - b.** If the applicant is a partnership: (7-1-93)
    - i. A list of the names, business addresses, and electronic addresses (if available) of all the partners; and (4-5-00)
    - ii. The business name (including dba) of the partnership. (3-16-04)
  - c.** If the applicant is a corporation or limited liability company (LLC): (2-15-14)
    - i. A short statement of the character of public service in which it may engage; (7-1-93)
    - ii. The name of the entity (including dba) and the state in which it is incorporated or organized; (2-15-14)
    - iii. Its principal business address, its principal business address within Idaho, and electronic address (if available); (4-5-00)
    - iv. A certified copy of its articles of incorporation or its certificate of organization if an LLC; and (2-15-14)
    - v. If not incorporated or organized in Idaho, a certificate of authority from the Idaho Secretary of State, a certificate of good standing issued by the secretary of state of the state in which it is incorporated or organized, and the name and address of its registered agent for service in Idaho. (2-15-14)
- 02. Written Explanation Why Service Is Proposed.** A statement or prepared testimony and exhibits explaining why the proposed utility service is or will be in the public convenience and necessity. (7-1-93)
- 03. Proposed Operations.** A full description of the proposed location, route or routes of the utility service, including a description of the manner of construction, and the names of all public utilities, corporations, or persons with whom the proposed new utility is likely to compete. (7-1-93)
- 04. Maps.** A map of suitable scale showing the location of the utility service and its relation to other public utilities in the area that offer or provide similar utility service. (7-1-93)
- 05. Financing of Construction.** A statement of the manner in which the applicant proposes to finance new utility service construction, the time when the applicant proposes to begin construction and the time when the applicant proposes to begin service. (7-1-93)
- 06. Cost of Service.** Estimates of the cost of extending to and the annual cost of serving the territory

for which the certificate is sought, of the number of service connections already made or to be made, of the annual revenue from them or expected annual revenue from them, and of anticipated rates and charges. (7-1-93)

**07. Financial Statement.** A financial statement of the applicant. (7-1-93)

**112. FORM AND CONTENTS -- EXISTING UTILITY (RULE 112).**

Existing utilities applying for the issuance of or the amendment of a certificate of convenience and necessity under Section 61-526, Idaho Code, must submit the following data (where relevant): (4-5-00)

**01. Statement and Explanation.** A statement or prepared testimony and exhibits explaining why the proposed construction or expansion is or will be in the public convenience and necessity. (7-1-93)

**02. Description of Construction or Expansion.** A full description of the proposed construction or expansion, including the manner of construction or expansion, and if an expansion, the names of all public utilities, corporations, or persons with whom the expanded utility is likely to compete. (7-1-93)

**03. Map.** A map of suitable scale showing the location of the construction or expansion and its relation to other public utilities in the area(s) that offer or provide similar utility service. (7-1-93)

**04. Financial Statement and Construction Timelines.** A statement of the manner in which the applicant proposes to finance the construction or expansion, the time when the applicant proposes to begin the construction or expansion, and the time when the applicant proposes to complete the construction or expansion. (7-1-93)

**05. Cost Estimates and Revenue Requirements.** Estimates of the cost of the construction or expansion, the number of additional customers to be served by the construction or expansion, the revenues to be derived from the construction or expansion, and of the effects of the construction or expansion on revenue requirements. (7-1-93)

**113. NOTICE OF APPLICATION -- ORDERS (RULE 113).**

Notice of application for a certificate of convenience and necessity will be issued to all interested persons in all cases in which statute requires formal consideration of the application or in which the Commission intends to conduct formal proceedings to consider the application. (4-5-00)

**114. APPLICATION FOR NEW COMPETITIVE LOCAL EXCHANGE CARRIER (CLEC) – FORM AND CONTENT (RULE 114).**

The Commission issues Certificates of Public Convenience and Necessity to competitive local exchange carriers (CLECs) seeking to provide local exchange services in Idaho. The Commission uses the certification process to register and review applications to provide local telecommunications services. See Commission Order No. 26665 issued November 7, 1996. Each CLEC application shall include the following information: (5-8-09)

**01. Name, Address and Form of Business.** (5-8-09)

**a.** If the applicant is the sole proprietor, provide the name and business address of the applicant and the business name of the sole proprietorship. (5-8-09)

**b.** If the applicant is a partnership, provide a list of the names and business addresses of all the partners, and the business name of the partnership. (5-8-09)

**c.** If the applicant is a corporation or limited liability company (LLC), along with the entity's name (and dba, if any), provide, if applicable: (2-15-14)

**i.** A short statement of the character of public service in which it is engaged; (5-8-09)

**ii.** The name of the entity (including dba, if any) and the state in which it is incorporated or organized; (2-15-14)

- iii. Its principal business address and its principal address within Idaho; (5-8-09)
  - iv. A certified copy of its articles of incorporation or its certificate of organization if an LLC; (2-15-14)
  - v. The names and addresses of the officers and directors of applicant; (5-8-09)
  - vi. The names and addresses of subsidiaries owned or controlled by applicant; (5-8-09)
  - vii. If not incorporated or organized in Idaho, a certificate of authority from the Idaho Secretary of State, a certificate of good standing issued by the secretary of state in the state it is incorporated or organized, and the name and address of its registered agent for service in Idaho; and (2-15-14)
  - viii. The name and address of any corporation, association, or similar organization holding a five percent (5%) or greater ownership or a managerial interest in the applicant, and indicate the amount and character of the ownership interest. Include a copy of any management agreement with the application. (5-8-09)
- 02. Services and Territory.** The application shall include: (5-8-09)
- a. A written description of customer classes and customer services that the applicant proposes to offer to the public. The application shall indicate the date on which the applicant proposes to begin construction or anticipates it will begin to provide service in Idaho. (5-8-09)
  - b. A description sufficient for determining whether service is to be offered in a particular location and the names of incumbent local exchange corporations (ILECs) with whom the proposed utility is likely to compete. The application shall include a description of the intended manner of service, e.g., resold services or facilities-based services; and a general description of the property owned or controlled by applicant. (5-8-09)
  - c. A map of reasonable size and detail showing where the applicant is proposing to provide service including exchanges (if different from existing exchanges), rural zones, and local calling areas. If the service area is identical to an incumbent LEC's service area, then applicant may refer to the incumbent's service area. (5-8-09)
- 03. Financial Information.** (5-8-09)
- a. The application shall provide the current detailed balance sheets, including a detailed income and profit and loss statements of applicant reflecting current and prior year balance for the twelve (12) months ending as of the date of the balance sheet, or if not readily available, for the period since the close of the preceding calendar year. If a balance sheet and income statement are not available, the applicant shall submit financial data sufficient to establish it possesses adequate financial resources to provide the proposed services. (5-8-09)
  - b. The application shall include the latest annual report, if any. (5-8-09)
- 04. Tariffs and Price Lists.** The application shall include proposed initial tariffs or price sheets setting forth rates, rules, terms, and regulations applicable to the contemplated service. Initial tariffs and price lists filings shall be in an electronic form as well as paper. The tariffs and price lists in electronic format will be in computer searchable Adobe Acrobat (PDF), or submitted on a CD-ROM or other format as prescribed by the Commission Secretary. (5-8-09)
- 05. Tariff and Customer Contact.** The application shall include the name, address, and telephone number for those persons responsible for tariff and price list questions, as well as customer complaints and inquiries. The application shall state the toll-free telephone number for customer inquiries and complaints. (5-8-09)
- 06. Interconnection Agreements.** The application shall state whether the applicant has initiated interconnection negotiations and, if so, when and with whom. Include copies of any interconnection contracts which have been completed for the provision of telecommunication services. (5-8-09)
- 07. Compliance with Commission Rules.** The application shall contain a written statement that the

applicant has reviewed all of the Commission's rules and agrees to comply with them, or include a request for waiver of those rules believed to be inapplicable. (5-8-09)

**08. Conservation of Telephone Numbers.** The application shall contain a written statement acknowledging that non-paging telecommunications carriers with telephone numbering resources in Idaho shall be subject to numbering conservation measures including mandatory one thousand (1,000) block pooling. See Commission Order No. 30425. All CLECs shall evaluate their numbering resources and donate to the numbering resource pool unused one thousand (1,000) number blocks and one thousand (1,000) number blocks that have fewer than ten percent (10%) of the telephone numbers assigned. Applicable carriers shall also file the necessary utilization reports with NeuStar and semi-annual report their number resource utilization/forecast (NRUF) data at the one thousand (1,000) block level for each rate center within their service territory. The Federal Communications Commission has appointed NeuStar to manage the assignment and conservation of telephone area codes and telephone numbers in North America. (5-8-09)

**115. -- 120. (RESERVED)**

**APPLICATIONS TO CHANGE RATES OR RULES  
(Rules 121 -- 130)**

**121. FORM AND CONTENTS OF APPLICATION TO CHANGE RATES (RULE 121).**

**01. Utility Applications to Change Rates.** Applications by any public utility subject to Title 61, Idaho Code, to increase, decrease or change any rate, fare, toll, rental or charge or any classification, contract, practice, rule or regulation resulting in any such increase, decrease or change must include the following data: (4-7-11)

**a.** An exhibit showing in full each proposed change in rates, tolls, rentals, charges, rules or regulation by striking over proposed deletions to existing tariffs and underlining proposed additions or amendments to existing tariffs, except applications to increase or decrease all or almost all rates and charges by a uniform percentage or by a uniform amount may be made by filing a tariff listing the proposed change and all unchanged rates and charges or rates and charges not changed by a uniform percentage or a uniform amount, or by use of another designation previously approved by the Commission that clearly calls attention to all proposed changes in numbers or wording. (7-1-93)

**b.** If the application is subject to Rule 122, a complete justification of the proposed increase in the form of testimony and exhibits or a narrative exposition. (7-1-93)

**c.** If the application is subject to Rule 122, a statement showing how and when the application has been or will be brought to the attention of affected customers and a copy of the press release and customer notice required by Rule 125. (2-15-14)

**d.** A statement that the applicant stands ready for immediate consideration of the application. (7-1-93)

**e.** If the application is subject to Rule 122, testimony and exhibits showing financial statements, cost of capital and appropriate cost of service studies. (7-1-93)

**f.** Workpapers or documentation showing how test year data were adjusted. (7-1-93)

**g.** If the applicant provides utility service in states other than Idaho or utility service subject to federal regulation, a jurisdictional separation of all investments, revenues and expenses allocated or assigned in whole or in part to Idaho intrastate utility business regulated by this Commission showing allocations or assignments to Idaho. (7-1-93)

**02. Proposals Based upon Computer Modeling.** In addition, in any application in which a computer model is used to represent or simulate processes from which the revenue requirement is derived or upon which allocations of the revenue requirement to different customer classes are based, complete documentation of all those computer models must be supplied to the Staff, upon request, and be available in the utility's office or other depository. The Staff may request that the computer model itself be provided. A computer model includes the

representation or simulation of a process, but does not mean or include the compilation of actual data. The application must state that the documentation of the models already on file in the applicant's office or other depository fully describes the models or that necessary updates or additions to previous documentation that will fully describe the models is on file and will be supplied on request. (4-5-00)

**03. Grounds for Returning or Dismissing Application.** Failure to comply with Rule 121.01 and 121.02 of this rule is grounds to return or dismiss an application under Rule 65. (7-1-93)

**122. NOTICE OF INTENT TO FILE A GENERAL RATE CASE (RULE 122).**

**01. Which Utilities Must File Notice.** Utilities with annual gross revenues from retail customers in the State of Idaho exceeding three million dollars (\$3,000,000) must file with the Commission a "notice of intent to file a general rate case" at least sixty (60) days before filing a general rate case. If the general rate case described in the notice is not filed within one-hundred twenty (120) days after filing of the notice of intent to file a general rate case, by operation of this rule a notice of intent to file a general rate case will be considered withdrawn unless it is supplemented with a written statement that the utility still intends to file a general rate case of the kind described in its notice of intent to file a general rate case. (7-1-93)

**02. Exceptions for Trackers or Annual Cost Adjustments.** This rule applies only to general rate increases. Examples of cases outside the scope of this rule include (but are not limited to) fuel cost adjustments (e.g., PGA), power cost adjustment (PCA), commodity or purchased power tracker rate increases, emergency or other short-notice increases caused by disaster or weather-related or other conditions unexpectedly increasing a utility's expenses, rate increases designed to recover governmentally-imposed increases in costs of doing business, such as changes in tax laws or ordinances, or other increases designed to recover increased expenses arising on short notice and beyond the utility's control. (5-8-09)

**123. PROPOSED CHANGES TO RATES OR RULES -- EFFECTIVE DATE -- NOTICE OF APPLICATION -- SUSPENSION (RULE 123).**

**01. Statutory Notice of Rate Changes.** No application by any public utility to change any rate, fare, toll, rental, charge or classification, or any rule, regulation, or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service, or in any privilege or facility, can be effective unless notice is given to the Commission and the public pursuant to Section 61-307, Idaho Code. If the application for such a change proposes an effective date fewer than thirty (30) days after the application is filed, the effective date of the change is delayed until thirty (30) days after the application is filed by operation of Section 61-307, Idaho Code, unless the Commission by order approves an earlier effective date for good cause shown. In the absence of an order approving or suspending any or all such proposed changes, the changes not suspended or approved go into effect thirty (30) days after filing or on their proposed effective date, whichever is later. If no effective date is proposed for the changes, the changes do not go into effect until approved by order. (4-5-00)

**02. Notice of Application.** Within twenty-one (21) days of the date of any application to change any rate, fare, toll, charge, or classification, or any rule, regulation or contract relating to or affecting any rate, fare, toll, rental, charge, classification, or service, or in any privilege or facility, the Commission Secretary will issue a notice of application to all interested persons, unless notice is issued pursuant to modified procedure or the application is earlier approved or described by order. (4-5-00)

**03. Suspension of Proposed Rate Changes.** At any time before proposed changes take effect pursuant to Sections 61-307, Idaho Code and Rule 123.01 of this rule, the Commission may suspend the effectiveness of the changes pursuant to Sections 61-622, Idaho Code. Whenever the Commission suspends proposed changes for less than the maximum period of suspension allowed by statute, it may extend the period of the suspension to the statutory maximum consistent with the statutory standards. (7-1-93)

**124. DESIGNATION AS GENERAL RATE CASE IN NOTICE OF APPLICATION (RULE 124).**

When a notice of application designates a proceeding as a general rate case, all persons are thereby put upon notice that the following are at issue and the Commission may make decisions addressing them, whether the notice explicitly repeats the following or not: (7-1-93)



**01. Revenue Requirement.** The utility's Idaho intrastate revenue requirement, and every component of it, both rate base and expense, are at issue. The Commission may grant, deny, or modify the revenue requirement requested and may find a revenue requirement different from that proposed by any party is just, fair and reasonable.

(7-1-93)

**02. Rates, Charges, and Service.** The rates and charges of all Idaho retail customers, both recurring and non-recurring, including those of special contract customers, are at issue, and every component of every existing and proposed rate and charge is at issue. The Commission may approve, reject or modify the rates and charges proposed and may find that rates and charges different from those proposed by any party are just, fair and reasonable.

(7-1-93)

**a.** The Commission may approve, reject or modify existing or proposed relationships between and among rates and charges within, between or among customer classes or rate groupings and may approve, reject or modify existing or proposed relationships among and between customer classes or rate groupings.

(7-1-93)

**b.** The Commission may abolish, reduce or create rate blocks or categories of rates and charges, abolish, create or reduce components of rates and charges, abolish, reduce or create customer classes or rate groupings, and abolish, reduce or create absolute or relative differences among and between existing classes or rate groupings of customers.

(7-1-93)

**c.** The tariffs, practices, rules and regulations, service, instrumentalities, equipment, facilities, classifications, and customer relations of the utility are at issue, and the Commission may address any of them in its order.

(7-1-93)

## **125. NOTICES TO CUSTOMERS OF PROPOSED CHANGES IN RATES (RULE 125).**

### **01. Customer Notice of a Change in Rates.**

(4-7-11)

**a.** If a utility is requesting a rate increase, the utility shall issue a customer notice to each customer. The customer notice shall include a brief explanation of the utility's need for additional revenue and the dollar amount requested. The notice shall give the proposed overall percentage change from current rates as well as the proposed percentage increase in revenue for each major customer class.

(4-7-11)

**b.** If the utility is requesting a rate decrease, the utility shall issue a customer notice to each customer. The customer notice shall include a brief explanation of the reason for the decrease, the overall dollar amount of the proposed decrease, and the proposed percentage decrease for each major customer class.

(4-7-11)

**c.** The customer notice shall make it clear that the application is a proposal, subject to public review and a Commission decision. It shall also inform customers that a copy of the utility's application is available for public review at the offices of both the Commission and the utility, and on the Commission's homepage at [www.puc.idaho.gov](http://www.puc.idaho.gov).

(2-15-14)

**d.** The customer notice shall inform customers that written comments regarding the utility's application may be filed with the Commission. It shall also inform customers that they may subscribe to the Commission's RSS feed (Subsection 039.03) to receive periodic updates via e-mail about the case.

(2-15-14)

**02. Timing of Notice for Trackers or Annual Cost Adjustments.** Tracker adjustments occasioned by federal action that result in an increase or decrease in rates may be brought to the attention of customers in compliance with this rule after approval by the Commission. Other tracker or annual cost adjustment cases that result in an increase in rates remain subject to the requirements of advance notice contained in this rule. Other tracker or annual cost adjustment cases that result in a decrease in rates may be brought to the attention of customers in compliance with this rule after being approved by the Commission.

(4-7-11)

**03. Timely Distribution of Customer Notices.** The customer notices referred to in Subsection 125.01 may be mailed separately to customers or included in the customer's regular bill as a bill stuffer. At the customer's option, the customer notice may be provided electronically. The information required by this rule is to be clearly identified, easily understood, and pertain only to the proposed rate change. Distribution of customer notices shall

commence when the utility files its application or as soon as possible thereafter. (2-15-14)

**04. Press Release.** In instances covered by Subsection 125.01, the utility shall also send a press release containing, at minimum, the same information presented in the customer notices to all newspapers, radio, and television stations listed on the Commission’s news organization list for that utility. The press releases shall be mailed or delivered simultaneously with filing of the application. (5-8-09)

**05. Filing of a Press Release and Customer Notice.** A copy of the press release and customer notice shall be filed with the application. (5-8-09)

**06. Purposes and Effects of This Rule.** The purposes of Subsections 125.01 through 125.05 of this rule are to encourage wide dissemination to customers of information concerning proposed rate changes for utility services. It is not a purpose of these subsections to create due process or other procedural rights in customers by expanding, contracting, or otherwise modifying the notice and due process rights of customers under the Public Utilities Law and the Commission’s Rules of Procedure, IDAPA 31.01.01. Accordingly, Subsections 125.01 through 125.05 of this rule create no individual procedural rights in any customer for notice that would give rise to a due process or other procedural claim cognizable by the Commission, but failure to comply with Subsections 125.01 through 125.05 of this rule can be grounds for returning an application for incompleteness. (5-8-09)

**126. APPLICATION TO APPROVE INTERCONNECTION AGREEMENTS (RULE 126).**

**01. Uncontested Agreements.** A telephone corporation may file an application for the Commission to approve voluntarily negotiated, adopted or amended interconnection agreements pursuant to Section 252 of the federal Telecommunications Act of 1996, <http://www.fcc.gov/telecom.html>. The Commission acts on adopted or negotiated interconnection agreements and uncontested amendments to previously approved agreements with the assistance of an ex parte recommendation of the Commission Staff. (5-8-09)

**02. Contested Agreements.** Petitions to arbitrate, mediate or otherwise resolve interconnection disputes between or among telecommunication carriers shall be processed under Rule 53. (3-16-04)

**127. PUBLIC WORKSHOPS ON APPLICATIONS TO INCREASE RATES (RULE 127).**

**01. Public Workshop.** When a public utility files an application to increase any rate, fare, toll, rental or charge regarding any classification or service, the Commission will determine if the staff should conduct a public workshop. The purpose of any workshop is for the staff to dispense information concerning the utility’s application and to receive written or oral comments from the public prior to the staff filing testimony or comments in the case. (3-16-04)

**02. Notice and Location of Workshop.** Notice of the public workshop shall be disseminated a minimum of seven (7) days prior to the workshop to newspapers of general circulation and radio and television stations in the affected area. The Commission shall determine the location for the workshop within the area served by the public utility. The notice shall also be posted on the Commission’s website. (3-16-04)

**03. Exemptions.** The requirements of Subsection 127.01 shall not apply to applications regarding uniform statewide surcharges under Sections 56-904, 62-610 and 62-610F, Idaho Code, or to utility tariff advices. (5-8-09)

**128. -- 130. (RESERVED)**

**TARIFF SCHEDULES  
(Rules 131 -- 140)**

**131. FORM OF TARIFFS (RULE 131).**

Tariff schedules of utilities must show the designation “Idaho Public Utilities Commission” on their title page. A blank space approximately three by one and one-half inches (3” x 1-1/2”) must be provided for the Commission’s stamp of approval in the upper right or lower right corner of each schedule filed. (4-5-00)

**132. NUMBER OF TARIFF COPIES FILED (RULE 132).**

The Commission encourages public utilities to file their tariff schedules via electronic mail. (3-16-04)

**01. Electronic Tariffs.** For electronically filed tariffs, each utility shall submit its tariff schedules prepared in searchable Adobe Acrobat in portable document format (PDF) as an attachment to an e-mail, [secretary@puc.idaho.gov](mailto:secretary@puc.idaho.gov), message sent to the Commission Secretary. Electronic tariff schedules may also be submitted as PDF documents on appropriately formatted CD-ROM or other electronic storage format approved by the Commission Secretary. (5-8-09)

**02. Printed Tariffs.** To file printed tariffs, each utility shall file an original and two (2) copies of their tariff schedules with the Commission Secretary. (3-16-04)

**03. Approval.** The Commission will stamp its approval in the space provided on each copy of an approved tariff, placing the original in its files and returning one (1) copy to the public utility. (3-16-04)

**133. TARIFFS SUBMITTED PURSUANT TO ORDER (RULE 133).**

**01. Order May Require Submission of Tariffs.** When the Commission directs or authorizes by order that certain tariffs be filed, the order may require the tariff submissions to the Commission to be accompanied by appropriate explanatory documents, summaries, workpapers, or similar material. When the Commission authorizes a utility to file new tariffs pursuant to order in a general rate case, the Commission may require the utility to file a complete set of tariffs containing both pages with changed rates and charges and those without. (7-1-93)

**02. Staff Review of Tariffs Filed Pursuant to Order.** When a utility files tariffs with the Commission pursuant to an order of the Commission in a proceeding in which other persons are party, the responsibility for reviewing the tariff submission to determine whether it complies with the Commission's order is upon the Commission Staff, which shall promptly report to the Commission whether the tariffs do comply. The review of tariffs filed pursuant to order is an ex parte, ministerial responsibility of the Commission Staff. Tariffs may be approved in the minutes of the Commission's decision meetings or by minute entry after Staff review without further order. (5-8-09)

**03. Motions With Regard to Tariffs Submitted Pursuant to Order.** If the Commission has approved tariffs, parties or persons contending that approved tariffs are inconsistent with the Commission's orders may file appropriate motions asking that approval be reviewed. (7-1-93)

**134. TARIFF ADVICES (RULE 134).**

**01. Tariff Advices Authorized.** Public utilities may file tariffs adding new or modifying existing services, providing for new or modified rules, or otherwise making minor changes to existing schedules by tariff advice. The tariff advice must include a letter of transmittal from the utility listing all tariff pages changed or added by the tariff advice and stating briefly the reason for filing the tariff advice. If existing tariffs are changed, the advice must contain two (2) copies of each changed page: one (1) showing all the changes with appropriate symbols for deletions, additions, etc., and one (1) showing the pages after the changes as they will appear in the proposed new tariffs. (7-1-93)

**02. Filing of Tariff Advice.** No tariff advice can be effective unless notice is given to the Commission and the public pursuant to Sections 61-307 and 61-622, Idaho Code. If the tariff advice proposes an effective date fewer than thirty (30) days after it is filed, the effective date of the tariff is delayed until thirty (30) days after the tariff advice is filed by operation of Sections 61-307 and 61-622, Idaho Code, unless the Commission by order approves an earlier effective date for good cause shown. In the absence of an order approving or suspending the tariff advice, the tariff advice not suspended or approved goes into effect thirty (30) days after filing or on the proposed effective date, whichever is later. If no effective date is proposed for the tariff advice, the tariff advice does not go into effect until approved by order or minute entry. If a tariff advice is suspended, the Commission will open a formal proceeding and treat the tariff advice as an application. (7-1-93)

**03. Ex Parte Action.** Ordinarily, the Commission acts upon tariff advices with the assistance of a

written ex parte recommendation of the Commission Staff. The Commission acts upon tariff advices at its open meetings. (5-8-09)

135. -- 140. (RESERVED)

**APPLICATIONS FOR APPROVAL TO ISSUE SECURITIES  
(Rules 141 -- 150)**

**141. FORM AND CONTENTS OF APPLICATION TO ISSUE SECURITIES (RULE 141).**

Except as provided in Rule 142, 147 or Section 61-909, Idaho Code, any utility applying to issue securities under Sections 61-901 through 61-904, Idaho Code, must submit an application with the following information: (4-5-00)

- 01. Description.** A general description of the applicant's field of operations. (7-1-93)
- 02. A Full Description of the Securities.** Including the proposed: (7-1-93)
  - a.** Amount; (7-1-93)
  - b.** Interest or dividend rates; (7-1-93)
  - c.** Date of issue (or statement that the securities will be a shelf registration); (7-1-93)
  - d.** Date of maturity; (7-1-93)
  - e.** Voting privileges; (7-1-93)
  - f.** Call or redemption provisions; and (7-1-93)
  - g.** Sinking fund or other provisions for securing payment. (7-1-93)
- 03. A Statement of the Proposed.** (7-1-93)
  - a.** Method of marketing; (7-1-93)
  - b.** Terms of sale; (7-1-93)
  - c.** Underwriting discounts or commissions; (7-1-93)
  - d.** Sale price; and (7-1-93)
  - e.** Net proceeds to the applicant, including itemized statements of all fees and expenses (estimated if not known) to be paid in connection with the proposed transaction. (7-1-93)
- 04. A Statement of the Purposes.** Statement of the purposes for which the proceeds from the securities will be used, including: (7-1-93)
  - a.** A description of the property to be acquired or constructed and a statement of its cost or value (estimated if not known); (7-1-93)
  - b.** A description of obligations to be refunded or expenditures for which reimbursement is intended; (7-1-93)
  - c.** Other information advising the Commission of the nature and purposes of the proposed transaction. (7-1-93)
- 05. Statement of Explanation.** A statement explaining why the proposed transaction is consistent with

the public interest and necessary or appropriate for or consistent with the applicant's proper performance of service as a public utility. (7-1-93)

**06. Financial Statement.** A financial statement showing the authorized and outstanding classes of the applicant's securities and certified copies of the resolutions of stockholders or directors authorizing the proposed transaction and other instruments relating to the transaction. (7-1-93)

**07. Proposed Order.** A proposed order granting the application, captioned proposed order of applicant, suitable for adoption by reference if the application is granted. (7-1-93)

**08. Statement of Public Notice Application.** A statement that notice of the application has been published in those newspapers in general circulation in the applicant's service area in Idaho or nearest applicant's service area in Idaho or will be published within seven (7) days of the application. These newspapers are: the Coeur d'Alene Press (Coeur d'Alene), the Idaho Business Review (Boise), the Idaho State Journal (Pocatello), the Idaho Statesman (Boise), the Lewiston Morning Tribune (Lewiston), the Post Register (Idaho Falls), the Preston Citizen (Preston), the Bonner County Daily Bee (Sandpoint), and the Times News (Twin Falls). The Commission may require the applicant to furnish further necessary information. (7-1-93)

**142. APPLICATIONS FILED WITH OTHER AGENCY (RULE 142).**

If the applicant files a similar application with any federal or other state agency, it may file a copy of the federal or other state application in lieu of the application required by this rule. The Commission may require the applicant to furnish further necessary information. (7-1-93)

**143. REPORTS (RULE 143).**

When the information becomes available, the applicant must file with the Commission a verified report or a copy of a verified report filed with another regulatory agency showing the amount realized by the applicant, including the itemized costs and expenses incurred in connection with the transaction. (7-1-93)

**144. HEARING -- MODIFIED PROCEDURE -- SUMMARY ACTION (RULE 144).**

The Commission may consider applications to issue securities without hearing, place the matter on modified procedure, or set the matter for formal hearing. (7-1-93)

**145. REQUESTS FOR EXPEDITIOUS ACTION (RULE 145).**

If a pleading requests the Commission to issue an order authorizing issuance of securities sooner than thirty (30) days after initial filing with the Commission, each copy of the pleading making that request must be accompanied by a cover letter stating the following:

ATTENTION COMMISSION SECRETARY AND HEAD LEGAL SECRETARY:

(Name of party) requests that the Commission issue an Order approving issuance of these securities on or before (date).

(4-5-00)

**146. FEES MUST BE PAID BEFORE ORDER ISSUED (RULE 146).**

No orders authorizing security issuances will be issued until fees required by Section 61-905, Idaho Code, are paid. (7-1-93)

**147. EXEMPTION (RULE 147).**

Pursuant to Section 61-909, Idaho Code, the Commission may, by order, exempt any security or a class of security or a class of public utility from the provisions of Sections 61-902 through 61-905, Idaho Code, if it finds the public interest will not be adversely affected. See Commission Order No. 26959. (4-5-00)

**148. -- 150. (RESERVED)**

**CABLE POLE ATTACHMENTS  
(Rules 151 -- 160)**

**151. TIMETABLE FOR DECISION -- CABLE POLE ATTACHMENT PROCEEDINGS (RULE 151).**

Whenever a public utility, as defined in Section 61-538, Idaho Code, and a cable television company, as defined in Section 61-538, Idaho Code, are unable to agree upon the rates, terms, or conditions for pole attachments or the terms, conditions, or cost of production of space needed for pole attachments, and either the public utility or the cable television company files an application, complaint, or petition asking the Commission to establish and regulate rates, terms, or conditions, the Commission shall decide the case within thirty (30) days; provided, the Commission shall have the right, upon reasonable notice, to enter upon a hearing concerning the propriety of such proposed rate, term, or condition and to extend its period for considering the application, complaint, or petition an additional thirty (30) days plus five (5) months and, for good cause shown on the record, an additional sixty (60) days. (7-1-93)

**152. RULES OF PROCEDURE TO BE USED (RULE 152).**

These Rules of Procedure apply to all proceedings concerning the rates, terms, or conditions for cable pole attachments, provided, that any such proceeding, whether denominated an application, complaint or petition, shall be processed according to the timetable of Rule 151. (7-1-93)

**153. -- 160. (RESERVED)**

**APPLICATIONS FOR INTERVENOR FUNDING  
(Rules 161 -- 170)**

**161. CASES IN WHICH INTERVENORS MAY APPLY FOR FUNDING (RULE 161).**

In any case involving regulated electric, gas, water or telephone utilities with gross Idaho intrastate annual revenues exceeding three million five hundred thousand dollars (\$3,500,000), intervenors may apply for intervenor funding. (3-16-04)

**162. FORM AND CONTENTS OF PETITION FOR INTERVENOR FUNDING (RULE 162).**

A petition for intervenor funding must contain the following: (2-15-14)

**01. Itemized List of Expenses.** An itemized list of expenses that the intervenor requests to recover broken down into categories such as legal fees, witness fees, or reproduction fees. Legal and witness fees shall, where applicable, indicate hourly rates. (4-5-00)

**02. Statement of Proposed Findings.** A statement of the intervenor's proposed finding or recommendation that the intervenor wishes the Commission to adopt. (7-1-93)

**03. Statement Showing Costs.** A statement showing that the costs that the intervenor proposes to recover are reasonable in amount. (7-1-93)

**04. Explanation of Cost Statement.** A statement explaining why the costs described in Rule 162.01 constitute a significant financial hardship for the intervenor. (4-5-00)

**05. Statement of Difference.** A statement showing how the intervenor's proposed finding or recommendation in the case differs materially from the testimony and exhibits of the Commission Staff. (4-5-00)

**06. Statement of Recommendation.** A statement showing how the intervenor's recommendation or position addressed issues of concern to the general body of utility users or consumers, and (7-1-93)

**07. Statement Showing Class of Customer.** A statement showing the class of customer on whose behalf the intervenor appeared. (7-1-93)

**163. PROHIBITION ON APPLICATION BY COMPETITOR (RULE 163).**

No intervenor in direct competition with a public utility involved in a proceeding is entitled to intervenor funding for that proceeding. (7-1-93)

**164. TIME TO APPLY (RULE 164).**

Unless otherwise provided by order, an intervenor requesting intervenor funding must apply no later than fourteen

(14) days after the last evidentiary hearing in a proceeding or the deadline for submitting briefs, proposed orders, or statements of position, whichever is last. Motions in opposition to intervenor funding must be filed within fourteen (14) days after the request for intervenor funding is filed. (7-1-93)

**165. AWARDS (RULE 165).**

**01. Order Awarding Intervenor Funding.** The Commission may by order award intervenor funding pursuant to Section 61-617A, Idaho Code. The total award for all intervening parties combined shall not exceed forty thousand dollars (\$40,000) in any proceeding. The Commission must find that: (3-16-04)

- a. The intervenor’s presentation materially contributed to the Commission’s decision, (7-1-93)
- b. The costs of intervention awarded are reasonable in amount, (7-1-93)
- c. The costs of intervention were a significant hardship for the intervenors, (7-1-93)
- d. The recommendations of the intervenor differed materially from the testimony and exhibits of the Commission Staff, and (7-1-93)
- e. The intervenor addressed issues of concern to the general body of users or consumers. (7-1-93)

**02. Payment of Awards.** Awards of intervenor funding must be paid within twenty-eight (28) days of the order of the Commission awarding intervenor funding, unless the order of the Commission is stayed. (7-1-93)

**03. Recovery of Awards of Intervenor Funding.** Awards of intervenor funding paid by electric, gas, water or telephone utilities will be an allowable business expense in the pending rate case or, if the proceeding is not a rate case, in the utility’s next rate case. Awards of intervenor funding shall be chargeable to the class of customers represented by the intervenors. (7-1-93)

**166. -- 200. (RESERVED)**

**PART 3 -- POST-PLEADING PROCEDURE**

**(Rules 201 -- 300)**

**MODIFIED PROCEDURE**

**(Rules 201 -- 210)**

**201. SCOPE OF MODIFIED PROCEDURE (RULE 201).**

The Commission may preliminarily find that the public interest may not require a hearing to consider the issues presented in a proceeding and that the proceeding may be processed under modified procedure, i.e., by written submissions rather than by hearing. (4-5-00)

**202. NOTICE OF MODIFIED PROCEDURE (RULE 202).**

**01. Notice of Modified Procedure.** When the Commission finds that it may not be in the public interest to hold a hearing in a matter, notice of modified procedure will be issued. It will: (7-1-93)

- a. Describe the issues presented in the proceeding; (7-1-93)
- b. Summarize the moving party’s justification for the proposed changes and its position; (7-1-93)
- c. State that the Commission finds that it may be in the public interest not to hold a hearing in the proceeding and will not do so unless it receives written protests or comments opposing the use of modified procedure and stating reasons why modified procedure should not be used; and (7-1-93)
- d. Establish the deadline for filing written protests or comments, and a reply by the moving party.

(5-8-09)

**02. Distribution of Notice.** Copies of the notice of modified procedure will be provided to all interested persons, including newspapers, municipalities, counties, and chambers of commerce located within the territorial scope of the application, petition or complaint whose readers, citizens or members may be affected by the proceedings and to all parties. Unless otherwise provided by the notice of modified procedure, all interested persons will have at least twenty-one (21) days from the date of the notice to file a written protest or comment. (4-5-00)

**203. PROTESTS AND COMMENTS (RULE 203).**

Any person affected by the proposal of the moving party may file a written protest, support or comment before the deadline of the notice of modified procedure. Protests, supports and comments must contain a statement of the reasons for the protest, support or comment, but need not ask for a hearing. Persons desiring a hearing must specifically request a hearing in their written protests or comments. A copy of the person's protest, support or comment must be served on the representative of the moving party. (4-5-00)

**204. ACTION BY COMMISSION (RULE 204).**

If no protests, supports or comments are received within the deadline, the Commission may consider the matter and enter its order without a hearing. If protests, supports, comments or a reply are filed within the deadlines, the Commission will consider them and may set the matter for hearing or may decide the matter and issue its order on the basis of the written positions before it. (5-8-09)

**205. -- 210. (RESERVED)**

**PREHEARING CONFERENCES**

**(Rules 211 -- 220)**

**211. PURPOSES OF PREHEARING CONFERENCES (RULE 211).**

The Commission may by order or notice issued to all parties and to all interested persons as defined in Rule 39 convene a prehearing conference for the purposes of formulating or simplifying the issues, obtaining concessions of fact or of identification documents to avoid unnecessary proof, scheduling discovery, arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, scheduling hearings, establishing procedure at the hearings, discussing settlement offers or making settlement offers, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. (7-1-93)

**212. NOTICE OF PREHEARING CONFERENCES (RULE 212).**

Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the conference, unless the Commission finds by order that the public necessity requires the conference to be held earlier. Notices for prehearing conferences must contain the same information as notices of hearing with regard to the Commission's obligations under the Americans with Disabilities Act. See Rule 242. (7-1-93)

**213. RECORD OF CONFERENCE (RULE 213).**

Prehearing conferences may be held formally (on the record) or informally (off the record) before or in the absence of a Commissioner or hearing examiner, according to order or notice. Agreements by the parties to the conference may be recorded by the reporter during formal conferences or may be reduced to writing and filed with the Commission Secretary after formal or informal conferences. (7-1-93)

**214. ORDERS RESULTING FROM PREHEARING CONFERENCES (RULE 214).**

The Commission may issue a prehearing order or notice based upon the results of the agreements reached at a prehearing conference. The order or notice will bind all persons who could have participated in the prehearing conference, but did not, and all those who later file untimely interventions. A prehearing order will control the course of subsequent proceedings unless modified by the Commission for good cause. (7-1-93)

**215. CONFERENCE PROCEEDINGS PRIVILEGED (RULE 215).**

Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in prehearing conferences are privileged and are not part of the record. Except by agreement, facts disclosed cannot be used against participating parties, before the Commission or elsewhere, unless proved by independent evidence. Offers made and



other aspects of negotiations or settlement other than a final agreement itself are privileged. (3-16-04)

**216. -- 220. (RESERVED)**

**DISCOVERY -- RELATED PREHEARING PROCEDURE  
(Rules 221 -- 240)**

**221. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 221).**

The kinds of discovery recognized and authorized by these rules are: (7-1-93)

**01. Depositions.** (7-1-93)

**02. Production Requests or Written Interrogatories.** (7-1-93)

**03. Requests for Admission.** (7-1-93)

**04. Subpoenas.** (7-1-93)

**05. Statutory Examination and Audit.** Unless otherwise provided by these rules, order, or notice, the scope and procedure of discovery, other than statutory examination and audit, is governed by the Idaho Rules of Civil Procedure. (See Idaho Rule of Civil Procedure 26(b)). (7-1-93)

**222. DISCOVERY AUTHORIZED (RULE 222).**

The Commission, individual Commissioners, and all parties to a proceeding have a right of discovery of all other parties to a proceeding. The Commission may by order authorize or compel necessary discovery not listed in these rules. (7-1-93)

**223. RIGHTS TO DISCOVERY RECIPROCAL (RULE 223).**

All parties to a proceeding and the Commission Staff have a right of discovery of all other parties to the proceeding and the Commission Staff according to these rules. The Commission may by order direct further discovery not provided by these rules. (7-1-93)

**224. DEPOSITIONS (RULE 224).**

Depositions may be taken in accordance with Section 61-605, Idaho Code, and the Idaho Rules of Civil Procedure for any purpose allowed by statute, Idaho Rule of Civil Procedure, rule of the Commission, order or notice. Depositions may be taken of expert witnesses notwithstanding contrary provisions of the Idaho Rules of Civil Procedure. Depositions rather than production requests or written interrogatories should be used to obtain statements of opinion or policy not previously written or published. Unless otherwise provided by order or notice or agreed to by the deponent or the deponent's attorney, notice of deposition must be given at least fourteen (14) days before deposition is taken. (7-1-93)

**225. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 225).**

**01. When Requests May Be Used.** Production requests or written interrogatories and requests for admission may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, Idaho Rule of Civil Procedure, rule of the Commission, order or notice, except: (7-1-93)

**a.** Production requests or written interrogatories should not be used to obtain statements of opinion or policy not previously written or published and may be objected to on that ground; and (7-1-93)

**b.** Requests for admission concerning a matter of opinion or policy or the application of law, order or rule to fact may be denied generally and the reasons for denial required to be discovered by deposition rather than by request for admission, but a request for admission on any matter of opinion or policy or application of law to fact on an uncontested matter must be answered. (7-1-93)

**02. Form of Requests.** The caption of a production request or written interrogatory and of a request for admission must identify the party making the request or interrogatory, the party to whom the request or interrogatory is directed, and the number of the request or interrogatory to that party. Separate questions within a production request or written interrogatory or within a request for admission must be numbered consecutively within the request or interrogatory and consecutively with earlier production requests or written interrogatories and requests for admission, respectively, from the same party submitting the questions to the same party answering them. For example, if the last question of the Third Production Request of the Commission Staff to XYZ Electric Company is numbered 33, the first question of the Fourth Production Request of the Commission Staff to XYZ Electric Company must be numbered 34. But, if the Staff's next production request is its first to intervenor ABC Company, that request must begin with question one (1) to that intervenor. (7-1-93)

**03. Time for Objection and Answer.** Unless otherwise provided by order, notice, or these rules, or pursuant to agreement with or acquiescence of the answering party, parties have at minimum fourteen (14) days to object or explain why a question cannot be answered according to this rule and twenty-one (21) days to answer. (5-8-09)

**04. Numbers of Requests.** The number of production requests or written interrogatories and of requests for admission and individual questions or subparts in them may be limited by order, notice or rule of the Commission, but are not limited by the provisions of the Idaho Rules of Civil Procedure. (7-1-93)

**226. SUBPOENAS (RULE 226).**

**01. Issuance of Subpoenas.** Upon a motion in writing, or upon a Commissioner's own initiative without motion, any Commissioner may issue subpoenas: (7-1-93)

**a.** Requiring the attendance of a witness from any place in Idaho; (7-1-93)

**b.** The production of documents from any place in Idaho; or (7-1-93)

**c.** The production of any books, accounts, papers or records of a utility or carrier kept within or without Idaho to any designated place of deposition, hearing or investigation for the purpose of taking testimony or examining documents before the Commission, a Commissioner or hearing examiner. (7-1-93)

**02. Witness or Travel Fees.** A party's motion to issue a subpoena must be accompanied by a statement that the party will tender to the subpoenaed person all fees required by statute and rules if the subpoena is issued. (7-1-93)

**03. Motions to Quash.** The Commission upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may: (7-1-93)

**a.** Quash the subpoena; or (7-1-93)

**b.** Condition denial of the motion to quash upon reasonable terms. (7-1-93)

**227. STATUTORY EXAMINATION AND AUDIT -- CONTRASTED WITH OTHER DISCOVERY (RULE 227).**

Statutory examination and audit refers to the right of the Commission, an individual Commissioner, or an authorized member of the Commission Staff to review and inspect the books, records and premises of regulated utilities and carriers pursuant to statute. This right of statutory examination and audit is independent of any right of discovery in formal proceedings and may be exercised whether or not a regulated utility or carrier is party to a formal proceeding before the Commission. Information obtained from statutory examination and audit may be used in formal proceedings or for any other regulatory purpose. The rights of deposition, production request or written interrogatory, request for admission, and subpoenas can be used by parties only in connection with formal proceedings before the Commission. (7-1-93)

**228. ANSWERS TO PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND TO REQUESTS FOR ADMISSION (RULE 228).**

**01. When Answers Not Filed.** Answers to production requests or written interrogatories and to requests for admission need not be filed and served in the following circumstances: (7-1-93)

**a.** Voluminous answers may be filed in a depository designated and agreed to by the parties or designated by the Commission, and an explanation notifying the parties of the availability of the answers at the depository must be filed and served in their stead. (7-1-93)

**b.** Answers involving data compiled by computer may be transmitted in computer-readable form (e.g., by disk or other mutually agreed means) to the party requesting them and to all other parties requesting them in similar computer-readable forms and an explanation notifying the parties of their distribution must be filed and served in their stead. (3-16-04)

**02. Filing of Answers.** Except as provided in Rule 228.01, answers to production requests or written interrogatories and to requests for admission must restate in full each question asked, then state in full the party's response to the question and the persons who will be able to answer questions about or sponsor the answer at hearing. Answers to production requests or interrogatories need not be separately answered under oath by each person preparing the party's response to the question or each witness who will be able to answer questions about or sponsor the answer, but instead can be generally subscribed by the party's representative. The restatement of the question and its accompanying answer must begin on a new page whenever the preceding answer refers to other documents or whenever the preceding question in the particular production request or written interrogatory is not answered in full in that document. (7-1-93)

**229. FILING AND SERVICE OF DISCOVERY AND RELATED DOCUMENTS (RULE 229).**

Notices of deposition, production requests or written interrogatories, requests for admission, answers to production requests or written interrogatories, answers to requests for admission, explanations in lieu of answers under Rule 228.01, and objections to discovery shall be filed with the Commission Secretary and copies served on all parties according to Rules 61, 62, 63, and 64. (5-8-09)

**230. EXHIBIT NUMBERS -- PREPARED TESTIMONY AND EXHIBITS (RULE 230).**

The Commission Secretary assigns exhibit numbers to each party. Applicants, petitioners, or complainants are assigned exhibit nos. 1-100. If the Commission is complainant, the Staff is assigned exhibit nos. 1-100. In all other cases, the Staff is assigned exhibit nos. 101-200. Respondents and intervenors are assigned exhibit nos. 201-300, 301-400, etc., as they make their first pleading, but the lower series are reserved first for respondents, then for intervenors. These assigned numbers should be used in all prepared testimony. (7-1-93)

**231. PREPARED TESTIMONY AND EXHIBITS (RULE 231).**

**01. Prepared Testimony May Be Required.** Order, notice or rule may require a party or parties to submit prepared testimony and exhibits to be presented at hearing. (7-1-93)

**02. Format for Prepared Testimony.** (7-1-93)

**a.** Prepared testimony and exhibits must be accompanied by a cover sheet showing the case caption and case title, the person testifying, the party for whom the testimony is offered, and the nature of the testimony (direct, rebuttal, etc.). (7-1-93)

**b.** The first page of prepared testimony should contain testimony only (i.e., it should begin with the first question to the witness and not repeat the information on the cover page). (7-1-93)

**c.** Prepared testimony must be submitted on white eight and one-half by eleven inch (8-1/2" x 11") paper, be double-spaced (except for quoted material and tables or other collections of numerical data), and contain no more than ten (10) characters per inch and no less than twenty-five (25) lines of double-spaced testimony or more than thirty (30) lines per page. Each page may be printed on the front and back (duplexed). (4-7-11)

**d.** Each line of prepared testimony must be numbered at the left margin (except single-spaced quotations or tables of numerical data, which may be numbered at the left margin as though they were double-

spaced). Each page of testimony must have a one and one-half (1-1/2) inch left margin that will allow the page to be bound on its left side without obscuring the printed material. Indentations for paragraphing and for “Q” and “A” must be seven (7) spaces. (7-1-93)

e. Each page of prepared testimony must be numbered at the lower right corner and must be blank in the center of the bottom margin to allow the reporter to insert transcript page numbers there. Each page of prepared testimony must have at least a one-inch (1”) top and bottom margin. (7-1-93)

f. Each page of prepared testimony must contain the witness’s surname followed by the designation “Di” (signifying direct testimony) or “Di-Reb” (signifying direct testimony on rebuttal) and the name of the party sponsoring the testimony printed in the lower right margin. For example, the marginal notation on page 5 of the testimony of the witness Lynn Accountant of ABC Company would be:

5	or	Accountant, Di 5
Accountant, Di		ABC Company
ABC Company		

(7-1-93)

**03. References to Exhibits.** All references to exhibits in prepared testimony must refer to the exhibits by their number as assigned by the Commission Secretary. Exhibits accompanying prepared testimony must be consecutively numbered from the first exhibit number assigned to the party by the Commission Secretary if the party has not previously identified exhibits, or from the highest exhibit number previously identified by that party. Exhibits must be filed on eight and one-half by eleven inch (8-1/2” x 11”) paper unless it is impractical to make them that size. Exhibits accompanying prepared testimony must comply with Rule 267. (7-1-93)

**04. Number of Copies -- Filing and Service.** Unless otherwise provided by order, notice or agreement of the parties, nine (9) legible copies of prepared testimony and exhibits must be filed with the Commission Secretary and copies filed on all parties pursuant to Rules 61, 62, 63 and 64 at least fourteen (14) days before the hearing at which they will be presented. The original, if there is an original, or one (1) of the copies, if there is not, must be specifically designated as the reporter’s copy by cover sheet, attached note or otherwise, and be included with the copies filed with the Commission Secretary. In special circumstances, notice or order may provide that the reporter’s copy of prepared testimony and exhibits be served directly on the reporter rather than the Commission Secretary. (7-1-93)

**05. Computer-Searchable Copies of Testimony.** In addition to the paper copies of prepared testimony, the Commission Secretary may also require or the parties may agree that some or all of the prepared testimony to be submitted to the Secretary, parties and the reporter in computer searchable CD-ROM without password protection. The CD-ROM shall be in Adobe Acrobat (PDF) or other searchable format agreed upon by the reporter and the parties. Each CD-ROM shall be labeled with the Commission’s case number, case name, the name of each witness and the sponsoring party. (4-7-11)

**232. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 232).**  
The Commission may impose all sanctions recognized by the Public Utilities Law for failure to comply with an order compelling discovery. (7-1-93)

**233. ASSERTIONS THAT DISCOVERED MATERIAL IS PROTECTED FROM PUBLIC INSPECTIONS -- PROCEDURES (RULE 233).**

**01. Assertion of Protection.** Whenever any party to a request for discovery believes that material otherwise discoverable is protected by statute or rule of law from inspection, examination or copying by the general public, the attorney for the party asserting the material is protected by law from inspection, examination or copying must state that the answer or some portion of it is protected, citing the specific statute or other legal authority for that position. The attorney’s assertion constitutes a representation that the attorney is familiar with the material claimed not to be available for public inspection, examination and copying and in good faith believes there is a basis in law for that claim. (4-5-00)

**02. Procedures.** When an answer contains material, some of which is protected by law from public

inspection, examination, and copying and some of which is not, the protected material must be reproduced on yellow paper and separated from material available for public review. Each page of the material exempt from public review must be marked “Trade Secrets” or “Confidential.” All material exempt from public review shall be filed with the Commission Secretary and served on all parties under seal pursuant to Rule 229. Material exempt from public review shall be separately stored in a secure location with limited access and safeguarded from unauthorized disclosure. All material for which no assertion of protection against public inspection, examination and copying is made will be placed in files available for public inspection. (5-8-09)

**234. ASSERTION OF RIGHT AGAINST SELF-INCRIMINATION DURING DISCOVERY -- IMMUNITY (RULE 234).**

**01. Assertion of Right.** During discovery any person may assert the right not to testify or not to produce documents upon the ground that the testimony or production of documents may tend to incriminate the person or subject him or her to penalty or forfeiture. (7-1-93)

**02. Granting of Immunity.** The Commission or any Commissioner may direct that person to testify or produce documents by written order or upon the record at hearing. In such case, that person shall not be prosecuted, punished or subjected to any forfeiture or penalty for or on account of any act, transaction, matter or thing concerning which he or she shall under oath have testified or produced documentary evidence: provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed in that testimony. (7-1-93)

**03. No Immunity Without Assertion of Right.** No immunity is granted under this rule or under Section 61-606, Idaho Code, in the absence of a specific assertion of the persons’ rights under Section 61-606, Idaho Code, and the Commission’s or a Commissioner’s written order or direction on the record at hearing compelling the person to testify or produce written documents and immunizing the person from prosecution, punishment, forfeiture or penalty according to this rule and Section 61-606, Idaho Code. No immunity granted under this rule or Section 61-606, Idaho Code, shall extend to any public utility. (7-1-93)

**235. -- 240. (RESERVED)**

**HEARINGS -- MISCELLANEOUS PROCEDURE  
(Rules 241 -- 260)**

**241. NOTICE OF HEARING (RULE 241).**

**01. Timing of Notice.** Notice of the place, date and hour of hearing will be served at least fourteen (14) days, or in the case of formal complaints, twenty-one (21) days, before the time set for hearing, unless the Commission finds by order that the public necessity requires the hearing to be held earlier. (7-1-93)

**02. Contents of Notice.** Notices must comply with Rule 242’s requirements. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number, and the name of the hearing officer who will conduct the hearing if the case will not be heard by one (1) or more Commissioners. If no document previously issued by the Commission has listed the legal authority of the Commission to conduct the hearing, the notice of hearing must do so. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy. (7-1-93)

**03. Locations of Hearing.** Hearings may be held in Boise, Idaho, or at other places designated by notice or order. (7-1-93)

**04. Types of Formal Hearings.** The Commission generally conducts two (2) types of formal public hearings. (5-8-09)

**a.** A technical hearing is a public hearing where parties present witnesses and their prepared testimony and exhibits. (5-8-09)

**b.** A customer hearing is a public hearing for customers, public officials, and other persons not related

to parties in the case to provide testimony. Unless otherwise ordered by the presiding officer, parties are prohibited from presenting evidence at the customer hearing. (5-8-09)

**242. FACILITIES AT OR FOR HEARING AND ADA REQUIREMENTS (RULE 242).**

All hearings must be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act (ADA). All notices of hearing must inform the parties that the hearing will be conducted in facilities meeting the accessibility requirements of the Americans with Disabilities Act. All notices of hearing must inform the parties and other persons notified that if they require assistance of the kind that the Commission is required to provide under the Americans with Disabilities Act (e.g., sign language interpreters, Braille copies of documents) in order to participate in or understand the hearing, the Commission will supply that assistance upon request made seven (7) days before hearing. (7-1-93)

**243. HOW HEARINGS ARE HELD (RULE 243).**

**01. All Hearings Presumed Open.** All hearings conducted by the Commission are open to the public except when a hearing may be partially closed to safeguard trade secrets or other confidential information protected from public disclosure. If parties intend to cross-examine or offer testimony that may necessitate the partial closure of a hearing, they shall advise the Commission or presiding officer at the beginning of the hearing or as soon as thereafter as practical. The Commission disfavors closed hearings and parties shall take all reasonable measures to avoid the need to close a public hearing. Such measures include: (4-5-00)

- a. Using references to page and line or column numbers; (4-5-00)
- b. Using summaries or generalizations; (4-5-00)
- c. Stipulating that the evidence be offered in the public hearing; or (4-5-00)
- d. Offering testimony in writing. (4-5-00)

**02. Methods of Conducting Hearings.** Hearings may be held in person or by telephone or television or other electronic means, if each participant to the hearing has an opportunity to participate in the entire proceeding while it is taking place. (4-5-00)

**244. CONDUCT AT HEARINGS (RULE 244).**

All persons attending a hearing must conduct themselves in a respectful and courteous manner. Persons disrupting the hearing shall be asked to leave by the presiding officer. See Rule 47 and Section 18-6409(1), Idaho Code. Smoking is not permitted at hearings. (5-8-09)

**245. CONFERENCE AT HEARING (RULE 245).**

In any proceeding the presiding officer may convene the parties before hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer will state the results of the conference on the record. (7-1-93)

**246. PRELIMINARY PROCEDURE AT HEARING (RULE 246).**

Before taking evidence the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements as necessary or appropriate to explain a party's presentation. (7-1-93)

**247. CONSOLIDATION OF PROCEEDINGS (RULE 247).**

The Commission may consolidate two (2) or more proceedings for hearing when it finds that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings the presiding officer determines the order of the proceeding. (7-1-93)

**248. STIPULATIONS (RULE 248).**

Parties may stipulate among themselves to any fact at issue by written statement filed with the Commission Secretary

or presented at hearing or by oral statement on the hearing record. A stipulation binds all parties agreeing to it only according to its terms. The Commission may regard a stipulation as evidence, but the Commission may require proof by evidence of the facts stipulated. The Commission is not bound to adopt a stipulation of the parties, but may by order do so. If the Commission rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. (7-1-93)

**249. ORDER OF PROCEDURE (RULE 249).**

**01. Order of Presentation of Evidence.** The parties' evidence will ordinarily be introduced in the following order: (7-1-93)

**a.** Upon applications: (7-1-93)

i. Applicant; (7-1-93)

ii. Intervenors; (7-1-93)

iii. Commission Staff; and (7-1-93)

iv. Rebuttal by applicant. (7-1-93)

**b.** Upon formal complaints or petitions (except when the Commission is complainant): (7-1-93)

i. Complainant or petitioner; (7-1-93)

ii. Intervenors; (7-1-93)

iii. Commission Staff; (7-1-93)

iv. Respondents; and (7-1-93)

v. Rebuttal by complainant or petitioner. (7-1-93)

**c.** Upon complaints by Commission: (7-1-93)

i. Commission Staff; (7-1-93)

ii. Intervenors; (7-1-93)

iii. Respondents; and (7-1-93)

iv. Rebuttal by Commission Staff. This order of presentation of evidence may be modified by the Commission or presiding officer. Additional evidence may be taken in the discretion of the Commission or presiding officer. Evidence of public witnesses may be taken at any time. (7-1-93)

**02. Order of Examination of Witnesses.** Witnesses will ordinarily be examined in the following order: (7-1-93)

**a.** Direct examination by sponsoring party or direct statement of public witness; (7-1-93)

**b.** Examination by applicants, petitioners or complainants; (7-1-93)

**c.** Examination by intervenors; (7-1-93)

**d.** Examination by respondents; (7-1-93)

- e. Examination by Commission Staff (except when the Staff acts as complainant); (7-1-93)
- f. Examination by Commissioners or hearing examiners; and (7-1-93)
- g. Redirect examination or rebuttal statement. The presiding officer may allow additional examination of witnesses or vary the order of examination of witnesses. The presiding officer may vary the order of examination of witnesses to allow parties with interests adverse to the witness to examine the witness after parties with interests similar to the witness. (7-1-93)

**250. TESTIMONY UNDER OATH (RULE 250).**

All testimony presented in formal hearings will be given under oath. Before testifying each witness must swear or affirm that the testimony the witness will give before the Commission is the truth, the whole truth, and nothing but the truth. (7-1-93)

**251. PARTIES AND PERSONS WITH SIMILAR INTERESTS (RULE 251).**

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. (7-1-93)

**252. CONTINUANCE OF HEARING (RULE 252).**

The Commission or presiding officer may continue proceedings for further hearing. When a hearing for an application described by Rule 121 is continued at the request of the applicant, the applicant may be required, as a condition of granting the motion for continuance, to consent to an order tolling the running of any suspension period if the Commission ultimately finds that a final order cannot be issued within the suspension period because the applicant's request for a continuance was granted. (7-1-93)

**253. RULINGS AT HEARINGS (RULE 253).**

The presiding officer rules on motions presented at hearing. The presiding officer's rulings may be reviewed by the full Commission in determining the matter on its merits. In extraordinary circumstances, the presiding officer may refer or defer these matters to the full Commission for determination. (7-1-93)

**254. ORAL ARGUMENT (RULE 254).**

The Commission may set and hear oral argument on any matter before it on reasonable notice according to the circumstances. (7-1-93)

**255. BRIEFS -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE COMMISSION (RULE 255).**

In any proceeding, any party may move to file briefs, memoranda, proposed orders of the parties or statements of position, and the Commission or presiding officer may request briefs, proposed orders of the parties, or statements of position. The Commission or presiding officer may issue a proposed order and ask the parties for comment upon the proposed order. (7-1-93)

**256. PROCEDURE ON MOTIONS (RULE 256).**

**01. Argument.** The Commission may consider and decide prehearing motions with or without oral argument or hearing. If oral argument or hearing on a motion is requested and denied, the Commission must state its grounds for denying the request. (7-1-93)

**02. Requirements for Motion for Expeditious Substantive Relief.** A motion requesting substantive relief on fewer than fourteen (14) days' notice will not be acted upon on fewer than fourteen (14) days' notice unless it states: (7-1-93)

- a. The facts supporting its request to act on shorter notice; and (7-1-93)
- b. 1) That at least one (1) representative of all parties has received actual notice of the motion, by telephone or personal delivery of the motion; or 2) stating the efforts made to reach representatives of those parties not contacted and what efforts will continue to be made to contact them. Except as otherwise provided in this



paragraph, the Commission will allow at least two (2) days (excluding Saturdays, Sundays and legal holidays) after notification by telephone or actual receipt of the motion for parties to inform the Commission Secretary, either in writing personally delivered to the Secretary or by telephone, whether they support or oppose the motion and whether they desire to be heard on the motion in person, in writing or by telephone. Except in extraordinary circumstances in which the Commission states good cause for ruling on a motion without allowing two (2) days for parties to state their positions or to present their position on the motion either in person, in writing or by telephone, the Commission will not rule on a substantive motion. Whenever an order is issued in such extraordinary circumstances, it will expire in no more than seven (7) days. (7-1-93)

**03. Motions for Procedural Relief.** A motion requesting procedural relief on fewer than fourteen (14) days' notice is properly filed if it complies with provisions of Rule 256.02.a. and 256.02.b. The Commission may act on such a motion without waiting for responses of other parties. (7-1-93)

**04. Support or Opposition to Prehearing Motion.** When a prehearing motion has been filed, all parties seeking similar substantive or procedural relief must join in the motion or file their own motions within seven (7) days after receiving the original motion. The party answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the last motion or joinder pursuant to the requirements of the previous sentence in which to respond, except as provided in Rule 256.02 and 256.03 of this rule. (7-1-93)

**257. JOINT HEARINGS (RULE 257).**

When the Commission participates jointly with a federal regulatory agency, the rules of practice and procedure of the federal agency govern. When the Commission participates jointly with an administrative body of another state or other states, the rules of the state where the hearing is held govern unless otherwise agreed upon by the participating agencies. Any person entitled to appear in a representative capacity for any of the agencies involved in a joint hearing may do so in such joint hearing. (7-1-93)

**258. COMMISSIONERS -- HEARING EXAMINERS -- PROCEDURE (RULE 258).**

**01. Officers Holding Hearings.** Hearings are held before one (1) or more Commissioners or one (1) or more hearing examiners appointed by the Commission. The presiding officer is designated by the Commission. Any Commissioner or hearing examiner may administer oaths. (7-1-93)

**02. Procedure When Hearing Examiner Holds Hearing.** When a hearing examiner hears a proceeding, the examiner must prepare and file recommended findings of fact with the Commission Secretary and serve copies of them on all parties of record within fourteen (14) days after receipt of the hearing record, unless the examiner's recommended findings are stated on the record at hearing. Unless otherwise provided by order or notice, the Commission will issue its decision based upon its independent review of the record and of the hearing examiner's recommended findings of fact. (7-1-93)

**259. ASSERTION OF RIGHT AGAINST SELF-INCRIMINATION AT HEARING -- IMMUNITY (RULE 259).**

**01. Assertion of Right.** At hearing any person may assert the right not to testify or not to produce documents upon the ground that the testimony or production of documents may tend to incriminate the person or subject him or her to penalty or forfeiture. (7-1-93)

**02. Granting of Immunity.** The Commission or any Commissioner may direct that person to testify or produce the document by written order or upon the record at hearing. In such case, that person shall not be prosecuted, punished or subjected to any forfeiture or penalty for or on account of any act, transaction, matter or thing concerning which the person shall under oath have testified or produced documentary evidence: provided, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her in that testimony. (7-1-93)

**03. No Immunity Without Assertion of Right.** No immunity is granted under this rule or under Section 61-606, Idaho Code, in the absence of a specific assertion of the person's rights under Section 61-606, Idaho Code, and the Commission's or a Commissioner's written order or direction on the record at hearing compelling the person to testify or produce written documents and immunizing the person from prosecution, punishment, forfeiture

or penalty according to this rule and Section 61-606, Idaho Code. No immunity granted under this rule or Section 61-606, Idaho Code, shall extend to any public utility. (7-1-93)

**260. SUMMARY OF POSITION(S) AND TESTIMONY (RULE 260).**

Each utility shall make available to the public at all Commission hearings a brief written summary of the utility's position(s) and testimony filed in the case under consideration except when the Commission has determined that a summary is not necessary. If the utility is requesting a rate increase, its summary shall address the utility's need for additional revenue, the total dollar amount requested, and the proposed percentage increase or decrease in rates for each major customer class. The Commission Staff and intervenors shall also provide a brief summary of their recommendations and the testimony filed in the case under consideration. These summaries and presentations are provided solely for the convenience of the public and will not be allowed as evidence or form the basis for cross-examination of any witness. (5-8-09)

**EVIDENCE  
(Rules 261 -- 270)**

**261. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 261).**

The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order made, approved or confirmed by the Commission. Rules as to the admissibility of evidence used by the district courts of Idaho in non-jury civil cases are generally followed, but evidence (including hearsay) not admissible in non-jury civil cases may be admitted to determine facts not reasonably susceptible of proof under the Idaho Rules of Evidence. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or inadmissible on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho, and order the presentation of such evidence to stop. All other evidence may be admitted if it is a type generally relied upon by prudent persons in the conduct of their affairs. The Commission's expertise, technical competence and special knowledge may be used in the evaluation of the evidence. (7-1-93)

**262. DOCUMENTARY EVIDENCE -- INTRODUCTION OF RECORDS IN THE COMMISSION SECRETARY'S OFFICIAL FILE (RULE 262).**

Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original if available. When a party offers in evidence any portion of a transcript, exhibit, or other record from any other proceeding before the Commission, the portion offered must be specifically described and, if admitted, will be made an exhibit. The party offering the exhibit must comply with Rule 267. (7-1-93)

**263. OFFICIAL NOTICE (RULE 263).**

**01. Matters That May Be Officially Noticed.** The Commission may officially note at hearing and in its orders: (7-1-93)

**a.** (1) Its own orders, notices, rules, certificates and permits, and (2) those of any other regulatory agency, state or federal; (7-1-93)

**b.** (1) matters of common knowledge, (2) technical, financial, or scientific facts established and published in accepted authorities or in the Commission's specialized knowledge, and (3) matters judicially noticeable; and (7-1-93)

**c.** Data contained in periodic reports of regulated utilities filed with the Commission or federal regulatory agencies. (4-5-00)

**02. Procedure for Taking Official Notice.** When officially noting on its own motion matters described in Rule 263.01.b.(2) or 263.01.c. or adjudicative facts under Rule 263.01.b.(3) of this rule, the Commission will give the parties appropriate opportunity to respond or refute such matters noticed. Unless otherwise agreed by the parties and approved by the presiding officer, parties requesting the Commission to take official notice of documents must submit those documents to the Commission in the manner prescribed for documents in Rule 262. (7-1-93)

**264. DEPOSITIONS (RULE 264).**

Depositions may be offered into evidence as allowed by Section 61-605, Idaho Code, and the Idaho Rules of Civil Procedure. (7-1-93)

**265. OBJECTIONS -- OFFERS OF PROOF (RULE 265).**

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection or the presiding officer may receive the evidence subject to the later ruling by the full Commission or refer to the matter to the full Commission. (7-1-93)

**266. PREPARED TESTIMONY (RULE 266).**

The presiding officer may order a witness's prepared testimony previously distributed to all parties to be incorporated in the transcript as if read if timely filed pursuant to an order, notice or rule requiring its filing before hearing. Without objection, the presiding officer may direct other prepared testimony to be incorporated in the transcript as if read. Admissibility of prepared testimony is subject to the Rule 261. (7-1-93)

**267. EXHIBITS (RULE 267).**

**01. Exhibit Numbers.** Exhibit numbers are assigned to the parties before hearing according to Rule 230. (7-1-93)

**02. Form of Exhibits.** Public exhibits offered at hearing must ordinarily be typed or printed on eight and one-half by eleven inch (8 1/2" x 11") white paper, except maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. Exhibits that are trade secrets, confidential information or otherwise exempt from public review shall be printed on yellow paper. A copy of each documentary exhibit must be furnished to each party present, to the reporter, and to each Commissioner or hearing examiner, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. (5-8-09)

**03. Timely Filing of Exhibits.** Exhibits offered as part of a party's direct case (except exhibits offered on redirect examination) must be timely filed. Exhibits filed pursuant to any order, notice or rule requiring their filing before hearing are timely filed. Otherwise, exhibits must be distributed or made available to all parties long enough before their introduction into evidence to allow the parties a reasonable opportunity to review them and to prepare to examine their substance, except those exhibits that update exhibits previously timely filed may be filed so long as fair opportunity is afforded other parties to examine the sponsoring witnesses about the updated material. (7-1-93)

**04. Objection -- Admission.** Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. (7-1-93)

**05. Labeling of Exhibits.** All exhibits accompanying prepared testimony, exhibits introduced during direct examination of a party's witnesses, and, to the extent practicable, all other exhibits introduced at hearing must label the exhibit number, case number, party and witness sponsoring the exhibit, and any subdivisions within the exhibit, such as separate schedules or charts. Examples of labeling required by this rule are:

Exhibit No. 101	Exhibit No. 507
Case No. XXX-X-XX-XX	Case No. XXX-X-XX-XX
P. Engineer, Staff L.Accountant, ABC Company	
Schedule 1, p. 1 of 3	

Exhibits prepared for the proceeding must contain this labeling on each page of the exhibit. Exhibits reproducing previously existing documents may contain a cover page with this labeling, but need not be labeled on each page. (7-1-93)

**06. Sources for Exhibits.** Exhibits prepared from data in workpapers, answers to discovery, periodicals, reports or other documentable sources of information must contain a statement of sources. Examples of the statements of sources required by this rule are: (7-1-93)

P. Engineer, Workpapers -- Answer of XYZ Utility  
to First Tab A, pages 1 - 47 Production Request of ABC  
Company, Question 13

Moody's Public Utility -- XYZ Utility,  
FERC Form 1 (1993)  
Manual p. 402a 1993 Vol. 1, p. 606

Exhibits especially prepared for introduction into evidence in a proceeding (i.e., exhibits not otherwise prepared or in existence) should be descriptively titled to show their contents and purpose. (7-1-93)

**07. Certain Exhibits Require Presiding Officer's Approval.** Neither motion pictures, slides, opaque projections, video tapes, audio tapes nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without prior approval of the presiding officer. Writing, sketching and drawing on blackboards or other similar surfaces by witnesses presenting testimony do not constitute an exhibit or evidence in the proceeding unless the writing, sketching or drawing is reproduced, photographed, or otherwise preserved for the record. (7-1-93)

**268. -- 270. (RESERVED)**

#### **SETTLEMENTS (Rules 271 -- 280)**

**271. PASSIVE SETTLEMENTS (RULE 271).**

Settlements in formal proceedings in which a party agrees to concur in, accept, or not to oppose another party's positions previously on record with the Commission are called passive settlements. Any party may reach a passive settlement with any other party on any issue without prior notification to the Commission or any other party. (7-1-93)

**272. PROCEDURES FOR ACTIVE SETTLEMENTS (RULE 272).**

Settlements in formal proceedings in which one (1) or more parties negotiate an agreement differing from positions of one (1) or more of the parties previously on record with the Commission are called active settlements. Any party other than the Commission Staff may enter into an active settlement with any party other than the Commission Staff without prior notification to the Commission or other parties. The Commission Staff, however, is precluded from entering into an active settlement without first notifying all other parties and the Commission that it intends to begin or has begun settlement negotiations. The Commission Staff must give all other parties an opportunity to participate in or be apprised of the course of the settlement negotiations before a final settlement agreement is reached. Settlement negotiations are confidential, unless all participants to the negotiation agree to the contrary. (5-8-09)

**273. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS (RULE 273).**

Through notice or order or on the record at prehearing conference or hearing, the Commission or an individual Commissioner may inquire of the parties in any proceeding whether settlement negotiations are in progress or contemplated or invite settlement of an entire proceeding or certain issues. In issuing such an invitation for settlement, the Commission or an individual Commissioner may indicate acceptable ranges of settlement, preclude certain issues from settlement, or otherwise inform the parties of his, her or their views on settlement in aid of securing a just, speedy and economical determination of the issues presented to the Commission. Neither the Commission nor individual Commissioners will indicate ex parte their views on the merits of any proposed settlement. (7-1-93)

**274. CONSIDERATION OF SETTLEMENTS (RULE 274).**

Settlements must be reviewed under this rule. When a settlement, be it active or passive, is presented to the Commission, the Commission will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the Commission may summarily accept settlement of an essentially private dispute that has

no significant implications for regulatory law or policy or for other utilities or customers upon the written request of the affected parties. On the other hand, when one (1) or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other utilities, other customers or the public interest, the Commission may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is just, fair, and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. (7-1-93)

**275. BURDENS OF PROOF (RULE 275).**

Proponents of a proposed settlement carry the burden of showing that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. In any instance in which parties or affected persons oppose the settlement, proponents of the settlement should be prepared to call witnesses and argue in favor of the settlement. Opponents of the settlement should be prepared to examine supporting witnesses, offer their own witnesses, or argue against the settlement. The Commission may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. (7-1-93)

**276. SETTLEMENT NOT BINDING (RULE 276).**

The Commission is not bound by settlements. It will independently review any settlement proposed to it to determine whether the settlement is just, fair and reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. When a settlement is presented for decision, the Commission may accept the settlement, reject the settlement, or state additional conditions under which the settlement will be accepted. In the last instance, the parties will have twenty-one (21) days to state their acceptance or rejection of the additional conditions imposed by the Commission. If the Commission rejects the settlement or if the Commission's conditional acceptance of a settlement is rejected by the parties to the settlement, the Commission will notify the parties of procedures to be followed to decide the issues for which settlement was rejected by the Commission. (7-1-93)

**277. CONSENT AGREEMENTS NOT SETTLEMENTS (RULE 277).**

Consent agreements proscribing or prescribing certain conduct under Rule 58 are not settlements under this rule. (7-1-93)

**278. -- 280. (RESERVED)**

**OFFICIAL RECORDS AND FILES**

**(Rules 281 -- 290)**

**281. RECORDS FOR DECISION -- RELATIONSHIP TO OFFICIAL FILE (RULE 281).**

The Commission bases its decisions and issues its orders on the hearing record (excluding exhibits denied admission), the Commissioners' record and items officially noted. The hearing record and the Commissioners' record are part of the Commission Secretary's official file. (7-1-93)

**282. THE COMMISSION SECRETARY'S OFFICIAL FILE (RULE 282).**

**01. Documents in File.** The Commission Secretary's official file for a proceeding is the public file maintained by the Commission Secretary. This file includes all documents filed with regard to a proceeding, whether filed by parties or other persons, and includes (but is not limited to) pleadings, discovery and related materials, briefs, proposed orders, statements of position, correspondence concerning the proceeding directed to the Commission, a Commissioner, or the Commission Secretary (whether by parties or persons not parties), prepared testimony and exhibits, workpapers, transcripts, exhibits presented at hearing, orders, notices, press releases, and other matters pertaining to or related to a proceeding and included in the public files of that proceeding by the Commission Secretary. (7-1-93)

**02. Public Records.** Except as provided in Rules 26, 67, 233, and 287, which refer to statutory exemptions from disclosure, all material in the Commission Secretary's Official File is subject to inspection, examination and copying under Section 74-102, Idaho Code. In particular, information obtained in an application for a certificate issued by this Commission inquiring into a person's fitness to be granted or to retain a certificate is not exempted from examination or copying under Sections 74-106(8) and 74-106(9), Idaho Code, but may be exempted under other statutes. (4-5-00)

**283. THE HEARING RECORD (RULE 283).**

The hearing record in a proceeding consists of all transcripts of hearings, conferences, arguments and other proceedings on the record and of all exhibits identified, offered, admitted or denied admission at hearing or prehearing conference. Workpapers, requests for discovery, answers to discovery and other documents filed with the Commission Secretary and served on the parties, whether or not discussed at hearing, are not part of the hearing records unless introduced as exhibits at hearing. The Commission or an individual Commissioner may add to the hearing record by reference to any document in the Commission Secretary's official file, but only after notifying the parties of that intention and giving them reasonable opportunity to object, review, examine, and rebut or contest the document. (7-1-93)

**284. THE COMMISSIONERS' RECORD (RULE 284).**

**01. Documents in File.** The Commissioners' record in a proceeding automatically includes all pleadings, orders, notices, briefs, proposed orders and position papers. The Commission may add documents officially noticed to the Commissioners' record. (7-1-93)

**02. Materials Available at Hearing.** The Commissioner(s) or hearing examiner(s) conducting a hearing will have the Commissioners' record and all prepared testimony and exhibits available at hearing. Parties desiring to refer to additional documents at hearing should notify the Commission Secretary and all other parties of their intention so that these other documents will be available to the Commissioner(s) or hearing examiner(s) at hearing or should themselves provide copies at hearing to all other parties and to the Commissioner(s) or hearing examiner(s). (7-1-93)

**285. THE REPORTER (RULE 285).**

The reporter at all hearings, conferences, arguments and other proceedings on the record must transcribe all oral proceedings on the record and collect all exhibits identified at hearing. Except as otherwise directed by the Commission, presiding officer at hearing, or the Commission Secretary, the reporter must file the complete hearing record of transcripts and exhibits with the Commission Secretary within fourteen (14) days of the close of hearing. (7-1-93)

**286. TRANSCRIPTS (RULE 286).**

**01. Form of Transcripts -- Cover Sheet.** Transcripts must be prepared on white eight and one-half by eleven inch (8 1/2" x 11") paper. The lines of each page shall be double-spaced with a minimum of twenty-five (25) lines and a maximum of thirty (30) lines per page. Quotations, citations and parenthetical notes may be single-spaced. Each line shall be numbered on the left margin. The cover page of each volume of transcript must show the title of the proceeding, the case number, the presiding officer, the time and place of hearing, and other information as shown in the following example:

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

(TITLE OF PROCEEDING) )  
CASE NO. XXX-X-XX-XX )  
 )  
 )  
(COMMISSIONER Able Baker, Presiding)  
  
(HEARING OFFICER Charlie Dog, Presiding)  
  
(Date, e.g., January 21, 1983)  
  
(Hearing Room, e.g., Commission Hearing Room)  
  
(Address, e.g., 472 West Washington, Boise, Idaho)

(4-7-11)

**02. Volumes of Transcript -- Indices to Volumes.** Each day of hearing must be transcribed in a volume or volumes separate from other days of hearing. Each volume of transcript must begin with a list of the parties who appeared that day and their representatives at hearing that day. This list must be followed with a list of all witnesses whose testimony is reported in that volume, showing the pages at which each witness's testimony begins, what party (if any) called the witness, the pages upon which each other party's examination begins, the pages upon which each Commissioner's or hearing examiner's examination begins, and the pages upon which redirect examination or any party's, Commissioner's or hearing examiner's re-examination begins. These lists must be followed with a list showing all exhibits identified in that volume of transcript (including exhibits accompanying prepared testimony), the pages upon which they are first identified, and, if any exhibits are denied admission, the pages upon which the exhibits are denied admission. (7-1-93)

**03. Matters Included in Transcript.** The transcript must contain all discussions on the record while the hearing is in order. Unless otherwise directed by the Commission, the presiding officer, or the Commission Secretary, prepared testimony must be included in the transcript without change or retyping. Witness's corrections to prepared testimony should be made by distributing replacement pages to the reporter and describing those corrections on the record and/or distributing an errata sheet; unless otherwise directed, no corrections other than replacement pages will be made in the prepared testimony before it is incorporated in the transcript, except the reporter may make minor corrections by interlineation in the prepared testimony. Witnesses may have seven (7) days after hearing to distribute replacement pages to all parties and to the reporter, unless the Commission, the presiding officer or the Commission Secretary otherwise directs. (7-1-93)

**04. Marginal Notes.** The testimony of all witnesses reported in the transcript must be designated in the lower right margin by the witness's surname and the party sponsoring the witness's testimony. Witnesses not sponsored by any party must be designated "Public." The type of testimony must be shown following the witness's surname as "Di" (direct or redirect), "X" (examination by any party not sponsoring the witness), or "Com" (examination by a Commissioner or hearing examiner). Examples of the designations required by this Rule follow:

Accountant, Di;	Accountant, Com; Ratepayer, X
ABC Company	ABC Company Public

Discussions on the record that are not testimony or examination may be labeled "argument," "decision," "colloquy," etc., to describe what is reported. (7-1-93)

**05. Volume Size -- Number of Pages.** Transcript volumes should not exceed three hundred (300) pages unless the transcript can be completed in three hundred fifty (350) pages or less. Transcript volumes and pages of all proceedings on the record, including prehearing conferences, hearings, arguments, and any other proceedings on the record, must be numbered consecutively. For example, if a prehearing conference on the record preceded a hearing, the transcript volume and page numbers of the hearing would be numbered consecutively with that of the prehearing conference. (3-16-04)

**06. Number of Copies -- Binding.** The reporter shall prepare an original and one (1) copy of the transcript for the Commission. The original of each transcript shall be filed with the Commission Secretary unbound but each volume shall be separated (if applicable). Copies of the transcript shall be fastened at the left margin in spiral or plastic-type binding, so as to open as flat as possible. (3-16-04)

**07. Compressed Transcript.** Any party may request a compressed transcript having no more than four (4) pages of regular transcript on a page. Each volume of compressed transcript shall contain no more than two hundred (200) pages unless the transcript can be completed in two hundred fifty (250) pages or less. A compressed transcript may be duplexed. The pagination shall be horizontal as follows:

1	2
3	4

(4-7-11)

**08. Computer-Searchable Transcript.** Any party may request a computer-searchable disk of the written transcript. The disk shall be in Adobe Acrobat (PDF) or other searchable format agreed upon by the reporter and the party ordering the disk. (4-7-11)

**09. Purchase of Transcript.** Any party or other person may request and pay for a copy of a transcript or portions of the transcript from the reporter. (3-16-04)

**287. SEALED TRANSCRIPTS (RULE 287).**

At the direction of the Commission or the presiding officer, the reporter shall prepare a separate transcript volume(s) of closed proceedings involving trade secrets, confidential information or other matters exempt from public disclosure. The reporter shall file the separate transcript volume(s) under seal. Sealed transcripts shall be separately stored in a secure location with limited access and safeguarded from unauthorized disclosure. (4-5-00)

**288. -- 300. (RESERVED)**

**PART 4 - ORDERS AND REVIEW OF ORDERS**

(Rules 301 -- 400)

**DEFAULTS**

(Rules 301 -- 310)

**301. FAILURE TO ANSWER OR APPEAR AT HEARING -- DEFAULTS (RULE 301).**

After an applicant's, petitioner's, complainant's or moving party's failure to appear at the time and place set for hearing, the Commission may dismiss the petition, application, complaint or motion. When a respondent that has been properly served fails to answer or appear at hearing, the Commission may order any relief against the respondent authorized by law. (7-1-93)

**302. -- 310. (RESERVED)**

**DECISIONS AND ORDERS**

(Rules 311 -- 320)

**311. SUBMISSION FOR DECISIONS (RULE 311).**

A proceeding is submitted for decision upon filing of the hearing record with the Commission Secretary, filing of timely briefs, filing of timely orders proposed by the parties and timely written comments or exceptions, oral argument, or receipt of recommended findings of fact of the hearing examiner, whichever is last, but no later than twenty-eight (28) days after hearing is closed when a hearing is held, except when all Commissioners participating in the decision have heard the case themselves, they need not await the filing of the hearing record to consider the case submitted for their decision. The Commission (or a hearing examiner presiding over an uncontested matter) may issue a final decision earlier or rule from the bench, but a bench ruling will be followed by written order. (7-1-93)

**312. PROPOSED ORDERS BY COMMISSION (RULE 312).**

The Commission may issue a proposed order in any proceeding. Any party may file exceptions and briefs to a proposed order within twenty-one (21) days from its date of service, unless a different time is designated by the Commission. Any party may file and serve answers and accompanying briefs to the exceptions within seven (7) days after service of the exceptions. The Commission may adopt or revise the proposed order in response and issue a final order accordingly. The proposed order is not an order of the Commission unless it is adopted by order. In that case, the order of adoption is the final order for all purposes. (7-1-93)

**313. -- 320. (RESERVED)**



**INTERLOCUTORY ORDERS -- FINAL ORDERS -- REVIEW OR STAY OF ORDERS  
(Rules 321 -- 330)**

**321. INTERLOCUTORY ORDERS (RULE 321).**

**01. Defined.** Interlocutory orders are orders that do not finally decide all previously undecided issues presented in a proceeding, except the Commission may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration and appeal, but is not final on other issues. Unless an order contains one (1) of the paragraphs set forth in Rule 323 or a paragraph substantially similar, the order is interlocutory. (7-1-93)

**02. Certain Orders Always Interlocutory.** The following orders are always interlocutory: orders suspending rates, fares, tolls, rentals, charges, classifications, contracts, practices, rules or regulations under Section 61-622, Idaho Code; orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, arguments or deadlines for written communications; orders proposing modified procedure; orders compelling or refusing to compel discovery. (7-1-93)

**03. Review of Interlocutory Orders.** Interlocutory orders may be reviewed pursuant to Rules 322, 324 and 325. (7-1-93)

**322. REVIEW OF INTERLOCUTORY ORDERS (RULE 322).**

Any person may petition to review any interlocutory order. The Commission may rescind, alter or amend any interlocutory order on its own motion, but will not on its own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. (7-1-93)

**323. FINAL ORDERS (RULE 323).**

**01. Paragraphs Designating Final Orders.** Final orders are all orders and only those orders containing one (1) of the following paragraphs or a paragraph substantially similar: (7-1-93)

**a.** THIS IS A FINAL ORDER. Any person interested in this Order (or in issues finally decided by this Order) or in interlocutory Orders previously issued in this Case No. xxx-x-xx-xx may petition for reconsideration within twenty-one (21) days of the service date of this Order with regard to any matter decided in this Order or in interlocutory Orders previously issued in this Case No. xxx-x-xx-xx. Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration in response to issues raised in the petition for reconsideration. See Section 61-626, Idaho Code; or (7-1-93)

**b.** THIS IS A FINAL ORDER on reconsideration (or denying reconsideration). Any party aggrieved by this Order or other final or interlocutory Orders previously issued in this Case No. xxx-x-xx-xx may appeal to the Supreme Court of Idaho pursuant to the Public Utilities Law and the Idaho Appellate Rules. See Section 61-627, Idaho Code. Orders may be final on some issues and interlocutory on others. If so, the orders will explicitly designate the issues upon which they are final. (7-1-93)

**02. Service of Final Orders.** The Commission Secretary must indicate on every order subject to petition for reconsideration the date upon which the order was served on the representatives of parties listed in Rule 41. The Commission Secretary must indicate on every order subject to appeal the date upon which the order was filed and the date upon which the order was served on the representatives of parties listed in Rule 41. (7-1-93)

**03. Petition to Designate Order as Final.** Whenever a party believes that an order not designated as a final order according to the terms of these rules should be a final order, the party may petition the Commission to designate the order as final. If an order is designated as final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. (7-1-93)

**04. Review of Final Orders.** Final orders may be reviewed pursuant to Rules 324, 325, 326, 331 and 341. (7-1-93)

**324. STAY OF ORDERS (RULE 324).**

Any person may petition the Commission to stay any order, whether interlocutory or final. Orders may be stayed by the judiciary according to statute. The Commission may stay any order on its own motion. (7-1-93)

**325. CLARIFICATION OF ORDERS (RULE 325).**

Any person may petition to clarify any order, whether interlocutory or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal a final order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration. The Commission may clarify any order on its own motion. (7-1-93)

**326. RESCISSION, ALTERATION OR AMENDMENT OF FINAL ORDERS (RULE 326).**

**01. Petition to Rescind, Alter or Amend a Final Order.** Any person may petition to rescind, alter or amend a final order pursuant to Section 61-624, Idaho Code. The petition to rescind, petition to alter, or petition to amend must state: (7-1-93)

**a.** That it is filed pursuant to Section 61-629, Idaho Code, after an order has been set aside or set aside in part on appeal, or (7-1-93)

**b.** That there have been changed circumstances or that new information has become available since the order was issued, or that there are other good and sufficient reasons for rescinding, altering, or amending the order. The Commission may dismiss as defective any such petition not complying with this rule and with Rule 53. (7-1-93)

**02. Rescission, Alteration or Amendment of Final Order on Commission's Own Motion.** The Commission on its own motion may propose to rescind, alter or amend any final order. The Commission will give all interested persons notice of its proposal to rescind, alter or amend the final order and appropriate opportunity to be heard by evidentiary hearing or written submission. (7-1-93)

**327. SUBSTANCE OF ORDERS (RULE 327).**

Unless prohibited by statute, the substance of orders and the relief provided by orders may differ from the relief requested or proposed by any party. The Commission's order may provide for any result supported by the record before the Commission without regard to whether each component of the order or any component of the order was specifically recommended by a party to the proceeding. (7-1-93)

**328. -- 330. (RESERVED)**

**RECONSIDERATION  
(Rules 331 -- 340)**

**331. PETITIONS AND CROSS-PETITIONS FOR RECONSIDERATION (RULE 331).**

**01. Petition for Reconsideration.** Within twenty-one (21) days after the service date of issuance of any final order, any person interested in a final order or any issue decided in a final order of the Commission may petition for reconsideration. Petitions for reconsideration must set forth specifically the ground or grounds why the petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument the petitioner will offer if reconsideration is granted. See Section 61-626, Idaho Code. (4-5-00)

**02. Cross-Petition for Reconsideration.** Within seven (7) days after any person has petitioned for reconsideration, any other person may cross-petition for reconsideration in response to any issues raised in the petition for reconsideration. Cross-petitions for reconsideration must set forth specifically the ground or grounds why the cross-petitioner contends that the order or any issue decided in the order is unreasonable, unlawful, erroneous or not in conformity with the law, and a statement of the nature and quantity of evidence or argument that the cross-petitioner will offer if reconsideration is granted. See Section 61-626, Idaho Code. (4-5-00)

**03. Methods of Reconsideration Requested.** The petition or cross-petition must state whether the petitioner or cross-petitioner requests reconsideration by evidentiary hearing, written briefs, comments, or interrogatories. (7-1-93)

**04. Timely Filing -- Mailbox Rules.** A petition for reconsideration is timely within the meaning of Section 61-626, Idaho Code, if it is filed with the Commission or postmarked no later than twenty-one (21) days after the date of service of the final order. Whenever a petition for reconsideration is mailed, rather than personally delivered, and it is not postmarked within eighteen (18) days from the date of service of the final order, the petitioner should notify the Commission Secretary and all other parties by telephone that the petition for reconsideration has been mailed. A cross-petition for reconsideration is timely filed within the meaning of Section 61-626, Idaho Code, if it is filed with the Commission or postmarked no later than seven (7) days after the petition for reconsideration to which it responds is received in the Office of the Commission Secretary. Whenever a cross-petition for reconsideration is mailed, rather than personally delivered, and is not postmarked within four (4) days from the date of receipt of the petition for reconsideration by the Commission Secretary, the cross-petitioner should notify the Commission Secretary and all other parties by telephone that the cross-petition for reconsideration has been mailed. (4-5-00)

**05. Answers to Petitions for Reconsideration.** Answers to petitions for reconsideration (pleadings that disagree with a petition for reconsideration, but do not ask for affirmative relief from the Commission's orders) must be filed according to the procedures for cross-petitions for reconsideration. (7-1-93)

**332. PROCEDURE AT RECONSIDERATION (RULE 332).**

The Commission may grant reconsideration upon petition of any interested person or upon its own motion. Prehearing conferences may be convened before reconsideration. Reconsiderations by rehearing are conducted in accordance with the procedure at other hearings, except that parties whose petitions are granted are treated as complainants or petitioners under Rule 249. When the order for reconsideration finds that the grounds upon which the petition is granted present only issues of law and not of fact or issues of fact not requiring hearings, the Commission may direct that these grounds be considered on reconsideration by submission of briefs, memoranda, written interrogatories or written statements and not by further submission of evidence at hearing. Grounds for reconsideration or issues on reconsideration that are not supported by specific explanation may be dismissed. Rule 311 determines when a matter that is reconsidered is finally submitted for purposes of Section 61-626, Idaho Code. (7-1-93)

**333. EFFECT OF FILING PETITION FOR RECONSIDERATION (RULE 333).**

Filing a petition for reconsideration does not excuse compliance with any order nor stay the effectiveness of any order, unless otherwise ordered. Petitions to stay may accompany or precede petitions for reconsideration. (7-1-93)

**334. -- 340. (RESERVED)**

**APPEAL  
(Rules 341 -- 350)**

**341. PERSONS WHO MAY APPEAL (RULE 341).**

**01. Parties Aggrieved by Order Following Petition for Reconsideration.** After a petition for reconsideration is denied, or, if the petition is granted, then after the rendition of the decision on reconsideration, the state of Idaho or any party aggrieved may appeal from any such order of the Commission by filing with the Commission Secretary a notice of appeal conforming to the requirements of the Idaho Appellate Rules within the time provided by the Idaho Appellate Rules. See Section 61-627, Idaho Code. (7-1-93)

**02. Parties Aggrieved by Denial of Petition for Reconsideration.** No person is a party aggrieved by an order denying reconsideration unless the person is a party that petitioned for reconsideration and presented the ground(s) and issue(s) on which it contends it was aggrieved by earlier orders of the Commission as issue(s) on reconsideration pursuant to Rule 331 and the Commission denied reconsideration on some or all of those issues. (7-1-93)

**03. Parties Aggrieved Following Reconsideration.** No party is aggrieved by an order issued on reconsideration unless: (7-1-93)

**a.** The party petitioned or cross-petitioned for reconsideration, its petition or cross-petition was granted, and the order issued on reconsideration did not grant the relief requested in the party's petition or cross-petition for reconsideration with regard to some or all of the grounds and issues on reconsideration presented in its petition or cross-petition; or (7-1-93)

**b.** The party did not petition or cross-petition for reconsideration, but stated on the record, by motion, or by brief that it opposed any alteration or change in the Commission's earlier order(s) on some or all of the grounds associated with issue(s) on reconsideration, and the order issued on reconsideration altered or changed the earlier order(s) with regard to some or all of the grounds or issues on reconsideration that the party opposed. (7-1-93)

**342. NOTICE OF APPEAL (RULE 342).**

The notice of appeal must be filed with the Commission Secretary as provided in the Idaho Appellate Rules. A notice of appeal is not considered filed for any purpose when it is mailed, but is only considered filed when it is received by the Commission Secretary. (7-1-93)

**343. PREPARATION OF APPELLATE RECORD (RULE 343).**

The Commission by order may correct the title of an appeal to properly designate all parties as appellants, cross-appellants, respondents, or cross-respondents and to omit those designations for parties before the Commission who are not parties on appeal. All requests for a transcript on appeal must be served on the reporter and on the Commission Secretary. Reporter's fees under Idaho Appellate Rule 24(c) should be paid directly to the reporter, not to the Commission Secretary. The Secretary's fees under Idaho Appellate Rule 27(b) for preparation of the agency's record are the same fees provided in that rule for the clerk of the district court to charge for preparation of the clerk's record. (4-5-00)

**344. -- 350. (RESERVED)**

**SETTLEMENT OF APPEAL FROM THE COMMISSION  
(Rules 351 -- 360)**

**351. DISMISSALS (RULE 351).**

Settlements in which appellants or cross-appellants from orders of the Commission agree to dismiss appeals, cross-appeals, or issues on appeal or cross-appeal without requiring the alteration, amendment or rescission of any Commission order are called dismissals. Any party may dismiss any appeal, cross-appeal, or issue on appeal or cross-appeal without any involvement of the Commission. Dismissals are governed solely by the procedures established by the Supreme Court of Idaho. (7-1-93)

**352. SETTLEMENTS CALLING FOR COMMISSION ACTION (RULE 352).**

Settlements in which one (1) or more parties agree to dismiss an appeal, cross-appeal, or issue on appeal or cross-appeal in conjunction with the alteration, amendment or rescission of a Commission order are called settlements calling for Commission action. If any party to an appeal wishes to attempt to negotiate a settlement calling for Commission action, it must notify the Commission and all other parties to the appeal of its intention to do so. If the Commission believes that settlement negotiations are in the public interest, it may authorize the Commission Staff to enter into settlement negotiations. In conducting those negotiations, the Staff must abide by Rule 272 with regard to active settlements of issues before the Commission. Settlement negotiations are confidential, unless all participants to the negotiation agree to the contrary. (7-1-93)

**353. SUGGESTION FOR INQUIRY ABOUT SETTLEMENTS (RULE 353).**

In authorizing the Staff to enter into settlement negotiations for a settlement calling for Commission action, the Commission may invite settlement of the entire appeal (including cross-appeals) or of certain issues. The authorization must be in writing and served upon all parties, but need not be done by notice or order. In authorizing negotiation for settlement calling for Commission action, the Commission or individual Commissioners may indicate acceptable ranges of settlement, preclude certain issues from settlement, or otherwise inform the parties of its views on settlement of an appeal calling for Commission action in aid of securing a just, speedy and economical settlement

negotiation. Neither the Commission nor individual Commissioners will indicate ex parte their views on the merits of any proposed settlement. (7-1-93)

**354. CONSIDERATION OF SETTLEMENT ON APPEAL (RULE 354).**

When a settlement of an appeal calling for Commission action is presented to the Commission, the Commission will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the Commission may accept settlement of essentially private disputes that have no significant implications for regulatory law or policy or for other utilities or customers summarily upon the written request of the affected parties. On the other hand, when one (1) or more parties to the appeal is not party to the settlement or when the settlement presents issues of significant implication for other utilities, other customers or the public interest, the Commission may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is in the public interest. In all cases, the Commission will follow the procedure established by Section 61-624, Idaho Code, with regard to alteration, amendment or rescission of any order affected by the settlement. (7-1-93)

**355. BURDENS OF PROOF (RULE 355).**

Proponents of a proposed settlement carry the burden of showing that the settlement is reasonable, in the public interest, or otherwise in accordance with law or regulatory policy. In any instance in which parties or affected persons oppose the settlement, proponents of the settlement should be prepared to call witnesses and argue in favor of the settlement. Opponents of the settlement should be prepared to examine supporting witnesses, offer opposing witnesses or argue against the settlement. The Commission may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. (7-1-93)

**356. SETTLEMENTS NOT BINDING (RULE 356).**

The Commission is not bound by settlement agreements. It will independently review any settlement proposed to it to determine whether the settlement is just, fair and reasonable, in the public interest or otherwise in accordance with law or regulatory policy. When a settlement agreement is presented to the Commission for its approval, the Commission may accept the settlement, reject the settlement, or state additional conditions under which the settlement will be accepted. In the last instance, the parties will have twenty-one (21) days to state their acceptance or rejection of the additional conditions imposed by the Commission. (7-1-93)

**357. -- 999. (RESERVED)**

**31.11.01 – SAFETY AND ACCIDENT REPORTING RULES FOR UTILITIES  
REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION**

**000. LEGAL AUTHORITY (RULE 0).**

These rules adopt by reference national safety codes and require the reporting of certain accidents under the general authority of the Public Utilities Law, Chapters 1 through 7, Title 61, Idaho Code, and under the specific authority of Sections 61-515 and 61-517, Idaho Code. (3-29-10)

**001. TITLE AND SCOPE (RULE 1).**

The name of this chapter is “Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission.” This chapter has the following scope: All electric and telephone corporations subject to the regulation of the Idaho Public Utilities Commission are required to abide by the safety regulations adopted in Rule 101; all gas and pipeline corporations are required to abide by the safety regulations adopted in Rules 201 through 203; and all electrical, gas, pipeline, telephone, and water corporations are required to abide by the safety and accident reporting requirements of Rules 301 and 302. (7-1-93)

**002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).**

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

**003. ADMINISTRATIVE APPEALS (RULE 3).**

Any person requesting a waiver from any provision of these safety rules or accident reporting rules may petition the Idaho Public Utilities Commission for a waiver pursuant to the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq. (4-1-98)

**004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).**

Notes of telephone reports required by Rule 301 and written reports required by Rule 302 are public records subject to inspection, examination and copying. Further investigative reports by the Commission or the Commission Staff are investigatory records exempt from disclosure. See Sections 74-101(6) and 74-105(1), Idaho Code. Reports required by these rules and the results of further investigations by the Commission are by statute prohibited from admission into evidence in any action for damages based on or arising out of the loss of life or injury to the person or property. See Section 61-517, Idaho Code. (3-29-10)

**005. DEFINITIONS (RULE 5).**

**01. Utilities.** The terms “electrical corporation,” “gas corporation,” “pipeline corporation,” “telephone corporation,” and “water corporation” have the meanings given to them by statute in Chapter 1, Title 61, Idaho Code; orders of the Idaho Public Utilities Commission; and decisions of the Idaho Supreme Court construing these statutes. (3-29-10)

**02. Serious Damage.** Damage to natural gas facilities caused by a natural disaster or terrorism that results in a loss of or reduction in pipeline throughput or storage deliverability. (4-2-08)

**03. Serious Interruption of Service.** Interruptions of natural gas pipeline service to communities, major governmental installations, and large industrial plants outside of communities or any other interruption that is significant in the judgment of the natural gas pipeline. Interruptions of less than three (3) hours or planned maintenance outages need not be reported. (4-2-08)

**006. -- 007. (RESERVED)**

**008. INCORPORATION BY REFERENCE – CODE OF FEDERAL REGULATIONS (RULE 8).**

Rules 101, 201, and 302 incorporate by reference various national safety codes and federal gas pipeline safety regulations. Each applicable rule identifies the issuing entity for each code or regulation and indicates where the incorporated materials may be obtained. Incorporated materials are also available for inspection and copying at the offices of the Idaho Public Utilities Commission and the Idaho State Law Library. (4-2-08)

**009. -- 100. (RESERVED)**

**ELECTRIC AND TELEPHONE UTILITIES**

**Rules 101 through 200**

**101. NATIONAL ELECTRICAL SAFETY CODE (NESC) (RULE 101).**

The Commission adopts by reference the American National Standards Institute (ANSI) C2-2017 National Electrical Safety Code (NESC), 2017 Edition. The National Electrical Safety Code, 2017 Edition, is published by the Institute of Electrical and Electronics Engineers, Inc., and is available from the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997 and may be ordered by calling 1-800-678-IEEE. All electrical and telephone corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of the NESC. (4-11-19)

**102. -- 200. (RESERVED)**

**TRANSPORTATION OF NATURAL GAS BY PIPELINES --  
LIQUEFIED NATURAL GAS FACILITIES -- TRANSPORTATION OF HAZARDOUS LIQUIDS  
BY PIPELINE -- INTERNATIONAL FUEL GAS CODE --  
INTERNATIONAL MECHANICAL CODE**

**(Rules 201 through 300)**

**201. FEDERAL NATURAL GAS SAFETY REGULATIONS (RULE 201).**

The Commission incorporates by reference Part 260.9, Title 18 (April 1, 2017) and Parts 191, 192, 193, 195, and 199, Title 49, the Code of Federal Regulations (October 1, 2017), except that federal accident reporting requirements contained in the rules adopted by reference in Rule 201 are replaced for state reporting purposes by orders of the Commission or rules of the Commission. These regulations are found in the Code of Federal Regulations, viewable online at [www.govinfo.gov/app/collection/cfr/2017](http://www.govinfo.gov/app/collection/cfr/2017). The incorporated CFR Parts are also available in electronic format at <https://www.gpo.gov/fdsys>. All gas and pipeline corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of these federal regulations adopted by reference. ( )

**202. -- 300. (RESERVED)**

**REPORTING OF ACCIDENTS AND SERVICE INTERRUPTIONS**

**(Rules 300 through 400)**

**301. IMMEDIATE REPORTING OF FATALITIES AND CERTAIN ACCIDENTS AND MAJOR NATURAL GAS INTERRUPTIONS (RULE 301).**

**01. Fatality and Hospitalization Reporting.** Whenever any employee of an electrical corporation, gas corporation, pipeline corporation, telephone corporation, or water corporation or any member of the public dies or requires in-patient hospitalization as a result of contact with or proximity to utility operating property, the utility must notify the Commission by telephone of the fatality or hospitalization no later than the first business day following discovery of the fatality or reporting of the hospitalization, except as provided in Subsection 31.11.01.301.02. Reports should be made to the Commission Secretary at (208) 334-0338. (3-29-10)

**02. Operating Property -- Motor Vehicle Accident Exception.** As used in this rule, operating property means electric plant as defined in Section 61-118, Idaho Code, gas plant as defined in Section 61-116, Idaho Code, pipelines as defined in Section 61-114, Idaho Code, telephone line as defined in Section 61-120, Idaho Code, or water systems as defined in Section 61-124, Idaho Code. This reporting rule does not apply to fatalities and hospitalizations arising out of motor vehicle accidents, even if the motor vehicle later comes into contact with utility plant. Office buildings or portions of office buildings not associated with the physical delivery of utility services or commodities are not considered operating property. (3-29-10)

**03. Major Service Interruptions or Damage to Natural Gas Pipelines.** The Commission incorporates by reference Section 260.9, Title 18, the Code of Federal Regulations (April 1, 2009), or at [www.govinfo.gov/app/collection/cfr/2009](http://www.govinfo.gov/app/collection/cfr/2009). Every natural gas corporation must report serious damage to natural gas facilities and serious interruptions of service to the Commission. Natural gas corporations should also report other serious damage not caused by natural disaster or terrorism if such damage prompts an evacuation and or creates the potential for serious delivery problems on its own system or the pipeline grid. ( )

**302. WRITTEN REPORTING OF ACCIDENTS AND NATURAL GAS INTERRUPTIONS (RULE 302).**

**01. Reporting Required.** In addition to any telephone reporting required under Rule 301, a written report shall be submitted for: (4-2-08)

- a. Every accident involving an employee of the utility or member of the public that results in a fatality or in-patient hospitalization; (4-2-08)
- b. Any other accident the utility finds significant; or (4-2-08)
- c. Serious damage or service interruption of natural gas pipelines. (4-2-08)

**02. Submitting the Written Report.** All written reports shall be submitted to the Commission Secretary within twenty one (21) days after the fatality or hospitalization is discovered. Reports regarding serious damage or service interruption shall be submitted at the earliest feasible time. Copies of such reports may also be provided by facsimile at (208) 334-3762 or by electronic mail at [secretary@puc.idaho.gov](mailto:secretary@puc.idaho.gov). ( )

**03. Contents of Written Accident Report.** There is no standard form for written reports prescribed by this rule. Gas companies may file copies of reports submitted to federal regulators under 49 C.F.R. Part 191. All reports submitted must include: ( )

- a. Name of person(s) involved in the accident; (7-1-93)
- b. Status of persons involved in the accident (e.g., employees, children, contractors, etc.); (7-1-93)
- c. Time of day, day of the week and month, and location of the accident or discovery of the accident; (4-2-08)
- d. Description of the accident and events leading up to the accident; and (4-2-08)
- e. The company name, contact person, e-mail address and direct telephone number of the reporting official. (3-29-10)

**04. Contents of Written Report Involving Damage or Interruption to Natural Gas Facilities.** All written reports shall provide the following information: (4-2-08)

- a. The location and cause of the service interruption or damage to natural gas pipeline or storage facilities; (4-2-08)
- b. The nature of the serious damage to pipeline or storage facility; (4-2-08)
- c. The specific identification and location of any facilities damaged; (4-2-08)
- d. The time the service interruption or damage to facilities occurred; (4-2-08)
- e. The customers affected by the interruption of service or damage to facilities; (4-2-08)
- f. A brief description of emergency actions taken to maintain service; (4-2-08)
- g. An estimate of the time (if available) when pipeline throughput or storage deliverables are expected to be restored; and (4-2-08)
- h. The company name, contact person, e-mail address and direct telephone number of the reporting official. (3-29-10)

**303. USE OF REPORTS (RULE 303).**

The Commission may find that reports required by Rules 301 and 302 constitute an adequate investigation of the



accident reported, may direct the utility to provide further information to the Commission, or may direct its Staff or others to conduct further investigations. Reports required by Rules 301 and 302 and the results of further investigations by the Commission are by statute prohibited from admission into evidence in any action for damages based on or arising out of the loss of life or injury to the person or property. See Section 61-517, Idaho Code.

(4-1-98)

**304. -- 999. (RESERVED)**

**31.12.01 – SYSTEMS OF ACCOUNTS FOR PUBLIC UTILITIES REGULATED  
BY THE IDAHO PUBLIC UTILITIES COMMISSION**

**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 specific legal authority of Section 61-524, Idaho Code. (7-1-93)

**001. TITLE AND SCOPE (RULE 1).**

The name of this chapter is “Systems of Accounts for Public Utilities Regulated by the Idaho Public Utilities Commission.” This chapter has the following scope: All Class A and B electric, gas, telephone, and water public utilities are required to maintain their books and records according to the systems of accounts adopted by this rule. (7-1-93)

**002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).**

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

**003. ADMINISTRATIVE APPEALS (RULE 3).**

Any person requesting a waiver from any provision of the Uniform Systems of Accounts pay petition the Idaho Public Utilities Commission for a waiver pursuant to the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq. (7-1-93)

**004. (RESERVED)**

**005. DEFINITIONS (RULE 5).**

The terms “electrical corporation,” “gas corporation,” “telephone corporation,” and “water corporation” have the meanings given to them by statute in Chapter 1, Title 61, Idaho Code and orders of the Idaho Public Utilities Commission and decisions of the Supreme Court of Idaho construing those statutes. (7-1-93)

**006. -- 007. (RESERVED)**

**008. INCORPORATION BY REFERENCE (RULE 8).**

Rule 101, 102, 103 and 104 incorporate by reference various federal accounting regulations and accounting standards issued by the National Association of Regulatory Utility Commissioners. Each applicable rule identifies the issuing entity for each regulation or standard and indicates where the incorporated materials may be obtained. Incorporated materials are also available for inspection and copying at the offices of the Idaho Public Utilities Commission and the Idaho State Law Library. (4-2-08)

**009. -- 100. (RESERVED)**

**UNIFORM SYSTEMS OF ACCOUNTS**

**Rules 101 through 200**

**101. UNIFORM SYSTEM OF ACCOUNTS FOR ELECTRIC UTILITIES (RULE 101).**

The Commission adopts by reference the Uniform System of Accounts for Major (previously Class A and B) Electric Utilities contained in the Code of Federal Regulations, Title 18, Part 101 (April 1, 2007), viewable online at [www.govinfo.gov/app/collection/cfr/2007](http://www.govinfo.gov/app/collection/cfr/2007). For payment by credit card, call toll-free 866-512-1800. The accounts adopted by reference are adopted for convenience of establishing uniform systems of accounts only for accounting and reporting and do not bind the Commission in any manner to any particular ratemaking treatment of items in those accounts. All Major electrical corporations subject to the regulatory authority of the Idaho Public Utilities Commission are required to maintain their regulatory books according to the system of accounts adopted by this rule. ( )

**102. UNIFORM SYSTEM OF ACCOUNTS FOR GAS UTILITIES (RULE 102).**

The Commission adopts by reference the Uniform System of Accounts for Major (previously Class A and B) Natural Gas Companies contained in the Code of Federal Regulations, Title 18, Part 201 (April 1, 2007), viewable online at [www.govinfo.gov/app/collection/cfr/2007](http://www.govinfo.gov/app/collection/cfr/2007). For payment by credit card, call toll-free 866-512-1800. The accounts adopted by reference are adopted for convenience of establishing uniform systems of accounts only for accounting and reporting and do not bind the Commission in any manner to any particular ratemaking treatment of items in those accounts. All Major gas corporations subject to the regulatory authority of the Idaho Public Utilities Commission are required to maintain their regulatory books according to the system of accounts adopted by this rule. ( )

**103. UNIFORM SYSTEM OF ACCOUNTS FOR TELEPHONE UTILITIES (RULE 103).**

The Commission adopts by reference the Uniform System of Accounts for Class A and B Telephone Utilities contained in the Code of Federal Regulations, Title 47, Part 32 (October 1, 2007), viewable online at [www.govinfo.gov/app/collection/cfr/2007](http://www.govinfo.gov/app/collection/cfr/2007). For payment by credit card, call toll-free 866-512-1800. The accounts adopted by reference are adopted for convenience of establishing uniform systems of accounts only and do not bind the Commission in any manner to any particular ratemaking treatment of items in those accounts. All Class A and B telephone corporations subject to the regulatory authority of the Idaho Public Utilities Commission are required to maintain their regulatory books according to the system of accounts adopted by this rule. ( )

**104. UNIFORM SYSTEM OF ACCOUNTS FOR WATER UTILITIES (RULE 104).**

The Commission adopts by reference the Uniform System of Accounts for Class A and B Water Utilities, 1996 Edition, published by the National Association of Regulatory Utility Commissioners (NARUC), available at [www.naruc.org/store](http://www.naruc.org/store). The accounts adopted by reference are adopted for the convenience of establishing uniform systems of accounts only and do not bind the Commission in any manner to any particular ratemaking treatment of items in these accounts. All Class A and B water corporations subject to the regulatory authority of the Idaho Public Utilities Commission are required to maintain their regulatory books according to the system of accounts adopted by this rule. ( )

**105. -- 999. (RESERVED)**

**31.21.01 – CUSTOMER RELATIONS RULES FOR GAS,  
ELECTRIC, AND WATER PUBLIC UTILITIES  
(THE UTILITY 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, Idaho Code, and the specific legal authority of Sections 61-301, 61-302, 61-303, 61-315, 61-503, 61-507, and 61-520, Idaho Code. (7-1-93)

**001. TITLE AND SCOPE (RULE 1).**

The name of this chapter is “Customer Relations Rules for Gas, Electric, and Water Public Utilities (the Utility Customer Relations Rules).” This chapter has the following scope: These rules provide a set of fair, just, reasonable, and non-discriminatory rules with regard to deposits, guarantees, billing, application for service, denial of service, termination of service and complaints to utilities. (3-29-10)

**002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).**

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

**003. ADMINISTRATIVE APPEALS (RULE 3).**

This rule governs formal complaints and requests for exemption under these rules. Any person requesting and receiving an informal staff determination with regard to a complaint may formally request the Commission to review the staff’s determination. If unusual hardships result from the application of any of these rules, any person 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. ( )

**004. (RESERVED)**

**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 group of rules to a particular class of service, “applicant” means any potential customer who applies for service from a utility. Utilities may require an adult or minor competent to contract to join a minor not competent to contract as an applicant. (3-20-04)

**02. Customer.** Unless restricted by definition within a rule or group of rules to a particular class of customer, “customer” means any person who has applied for, has been accepted by the utility, and is: (3-20-04)

**a.** Receiving service from a utility; or (7-1-93)

**b.** Has received service within the past ten (10) calendar days prior to termination by the utility; or (3-20-04)

**c.** Has assumed responsibility for payment of service provided to another or others. If the person receiving service is not the same person as the person assuming responsibility for payment of service, the latter is the customer for purposes of obtaining or terminating service, receiving refunds, or making changes to the account. (3-20-04)

**03. Utility.** Unless restricted by definition within a rule or group of rules, “utility” means any public utility providing gas, electric or water service subject by law to the Commission’s jurisdiction, whether previously certified or not. (7-1-93)

**006. -- 007. (RESERVED)**

**008. EXERCISE OF RIGHTS BY CUSTOMER (RULE 8).**

Utilities will not discriminate against or penalize a customer for exercising any right granted by these rules. ( )

**009. INFORMAL COMPLAINTS AND INTERPRETATION OF RULES (RULE 9).**

Commission staff may informally interpret these rules and utility tariffs and investigate complaints filed with this Commission. The Commission reserves the authority to issue orders interpreting these rules and utility tariffs, and resolving formal complaints. ( )

**010. CONFLICT WITH UTILITY TARIFFS (RULE 11).**

If a utility's tariff denies or restricts customer rights protected by these rules, these rules supercede the conflicting tariff provisions. ( )

**011 -- 099. (RESERVED)**

**RESIDENTIAL AND SMALL COMMERCIAL  
DEPOSITS**

**Rules 100 through 199**

**100. FURTHER DEFINITIONS (RULE 100).**

As used in Rules 101 through 109: (7-1-93)

**01. Applicant.** "Applicant" is restricted from its general definition to refer only to applicants for residential or small commercial service, unless further restricted by the rule. (7-1-93)

**02. Customer.** "Customer" is restricted from its general definition to refer to a residential or small commercial customer, unless further restricted by the rule. (7-1-93)

**03. Deposit.** "Deposit" means any payment held as security for future payment or performance that is reimbursable after the customer establishes good credit. (7-1-93)

**04. Residential and Small Commercial Classes.** The Commission will maintain on file a list of which customer classes of a given utility are residential and which are small commercial. (7-1-93)

**101. DEPOSIT REQUIREMENTS (RULE 101).**

**01. Residential Customers.** Utilities will not demand or hold a deposit from any current residential customer or applicant for residential service without proof that the customer or applicant is likely to be a credit risk or to damage the property of the utility. A lack of previous history with the utility does not, in itself, constitute such proof. Utilities will not demand or hold a deposit under this rule as a condition of service from a residential customer or applicant unless one or more of the following criteria applies: ( )

**a.** The customer or applicant has outstanding a prior residential service account with the utility that accrued within the last four (4) years and at the time of application for service remains unpaid and not in dispute. (5-3-03)

**b.** The customer's or applicant's service from the utility has been terminated within the last four (4) years for one (1) or more of the following reasons: (5-3-03)

**i.** Nonpayment of any undisputed delinquent bill; (7-1-93)

**ii.** Obtaining, diverting or using service without the utilities authorization or knowledge. ( )

**c.** The utility has determined that information provided by the applicant upon application for service is materially false or materially misrepresents the applicant's true status. ( )

**d.** The applicant has not had service with the utility for a period of at least twelve (12) consecutive months during the last four (4) years, and does not pass an objective credit screen. ( )

**e.** The applicant requests service at a residence where a former customer who owes a past due balance for service incurred at that location still resides. (5-3-03)

**f.** The utility has given the customer two (2) or more written final notices of termination within the last twelve (12) consecutive months. (5-3-03)

**02. Small Commercial Customers.** Utilities will not demand or hold a deposit as a condition of service from any current small commercial customer or applicant for small commercial service unless one or more of the following criteria apply: ( )

**a.** Any of the criteria listed in Rule Subsection 101.01 of this rule are present. (7-1-93)

**b.** The applicant has not had previous service with that utility. ( )

**03. Bankrupt Customers.** If an applicant for service or a customer, either residential or small commercial, 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 deposit may be demanded as allowed by the Federal Bankruptcy Laws. ( )

**102. OTHER DEPOSIT STANDARDS PROHIBITED -- RESIDENTIAL CUSTOMERS (RULE 102).**

Utilities will not require a deposit or other guarantee as a condition of new or continued residential utility 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 will be applied uniformly. ( )

**103. (RESERVED)**

**104. EXPLANATION FOR REQUIREMENT OF DEPOSIT (RULE 104).**

If the utility requires a cash deposit as a condition of providing service, then it will immediately notify the applicant or customer verbally or in writing why a deposit is required. The applicant or customer will have an opportunity to rebut those reasons. The notice will also advise the applicant or customer that if there is a dispute, an informal or formal complaint may be filed with the Commission. ( )

**105. AMOUNT OF DEPOSIT (RULE 105).**

**01. Amount of Deposit.** A deposit allowed pursuant to Rule 101 as a condition of service will not exceed one-sixth (1/6) the amount of reasonably estimated billing for one (1) year at rates then in effect. Where gas service is used for space heating purposes only, the deposit will not exceed the total of the two (2) highest months' bills during the previous twelve (12) consecutive months, adjusted for currently effective rates. Deposit amounts will be based upon the use of service at the premises during the prior year or upon the type and size of equipment using the utility's service. (4-2-08)

**02. Installment Payments of Deposit.** The utility will advise the applicant or customer that the deposit may be paid in two (2) installments. One-half (1/2) of the deposit amount is due immediately with the remaining installment payable in one (1) month. (4-2-08)

**106. INTEREST ON DEPOSITS (RULE 106).**

**01. Interest Payable.** Interest will be payable on all deposited amounts at the rate provided by Subsection 106.02 of this rule. Interest will accrue from the date the deposit or deposit installment is made until the deposit is refunded or applied to the customer's utility bill; however, interest will not accrue on a deposit or deposit installment if: (7-1-93)

**a.** Service is terminated temporarily at the request of a customer who leaves the deposit with the utility for future use as a deposit; or (7-1-93)

**b.** Service has been permanently terminated and the utility 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 utilities of its determination of this interest rate. That rate will be in

effect for the following calendar year for all deposits described in Rule Subsection 106.01 of this rule. (7-1-93)

**107. RETURN OF DEPOSIT (RULE 107).**

**01. Former Customers.** Upon termination of service, the utility will credit the deposit (with accrued interest) to the final bill and promptly return any remaining balance to the customer. ( )

**02. Existing Customers.** 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 utility will promptly return the deposit (with accrued interest) by either crediting the customer's current account or issuing a refund. (3-20-04)

**03. Retention During Dispute.** The utility may retain the deposit pending the resolution of a dispute over termination of service. If the deposit is later returned to the customer, the utility will 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 utility may refund a deposit plus accrued interest in whole or in part at any time before the time prescribed in this rule. (7-1-93)

**108. TRANSFER OF DEPOSIT (RULE 108).**

Deposits will not be transferred from one 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 utility's service area, the deposit (with accrued interest) will be either transferred to the account for the new location or credited to the customer's current account. (4-6-05)

**109. RECORDS OF DEPOSIT (RULE 109).**

**01. Records of Deposit.** Each customer paying a deposit or the initial installment on a deposit must be provided the following information in writing: ( )

a. Name of customer and service address for which deposit is held; (7-1-93)

b. Date of payment(s); (7-1-93)

c. Amount of payment(s); and (7-1-93)

d. Terms and conditions governing the return of deposits. ( )

**02. Retention of Records.** Each utility will 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 a record of the deposit. The utility will maintain a detailed record of all deposits received from customers, showing the name of each customer, the location of the premises occupied by the customer when the deposit is made and each successive location occupied by the customer while the deposit is retained, and the date(s) and amount(s) of the deposits or installments. The utility will retain records of deposits that have been refunded to customers for a period of three (3) years after the date of refund. The utility shall retain records of unclaimed deposits for seven (7) years as required by Section 14-531, Idaho Code. ( )

**03. Transfer of Records.** Upon the sale or transfer of any utility or any of its operating units, the seller will 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. UNCLAIMED DEPOSITS AND ADVANCE PAYMENTS (RULE 110).**

**01. Presumption of Abandonment.** Pursuant to Section 14-508, Idaho Code, any deposit or advance payment made to obtain or maintain utility service 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 utility 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 utility's low income and disadvantaged customers with payment of utility bills. The utility will 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. ( )

**111. -- 199. (RESERVED)**

**BILLING**  
**Rules 200 Through 299**

**200. FURTHER DEFINITION (RULE 200).**

As used in Rules 201 through 207, "bill" or "billing statement" refers to a written request for payment listing charges for services provided. An electronic billing statement may be provided upon customer request. Oral notice of the amount of charges pending is not a bill. ( )

**201. ISSUANCE OF BILLS -- CONTENTS OF BILLS (RULE 201).**

**01. Billing Statements.** Billing statements will be issued regularly and will contain the following information: ( )

- a.** The date the billing statement was issued. ( )
- b.** The time period covered by the billing statement. ( )
- c.** The beginning and ending meter readings and the quantity of service provided, if service is metered. The billing statement must be clearly marked as estimated if meter data is unavailable. ( )
- d.** The due date of the bill and, if automatic payment is authorized by the customer, the date funds will be withdrawn or the credit card charged. ( )
- e.** An itemization of all charges, both recurring and nonrecurring. ( )
- f.** Any amount transferred from another account. ( )
- g.** Any amount past due. ( )
- h.** Any payments or credits applied to the customer's account since the last billing statement. ( )
- i.** The total amount due. ( )
- j.** Contact information for the utility, including the toll-free telephone number(s) available to customers for answering billing inquiries. ( )

**02. Comparison of Consumption Data.** Billing statements for customers of gas, electric, and certain water utilities will also include the following information: ( )

**a.** Each gas and electric utility will compare on each customer's regular billing the customer's actual consumption of gas or electricity with the customer's actual consumption of gas or electricity for the corresponding billing period in the previous year. If the billing periods being compared contain a different number of days, the utility will adjust the data to take into account the different length of the billing periods and show the comparison as an absolute change in therm use or kilowatt hour use per day. Upon request, the utility must make degree day adjusted data available to be provided to customers for comparison. ( )

**b.** Each water utility with more than five thousand (5,000) customers will compare on each customer's regular billing the customer's actual consumption of water with the customer's actual consumption of water for the corresponding billing period in the previous year. The usage comparison will be expressed in gallons or



cubic feet based upon total consumption for each billing period or average consumption per day during each billing period. (3-29-10)

**202. DUE DATE OF BILLS -- DELINQUENT BILLS (RULE 202).**

**01. Ordinary Due Date.** The utility may require that bills for service be paid within a specified time after the billing date. The minimum specified time after the billing date is fifteen (15) days (or twelve (12) days after mailing or delivery, 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. (7-1-93)

**02. Hardship Exemption.** When a residential customer certifies in writing to the utility that payment by the ordinary due date creates a hardship due to the particular date when the customer receives funds, the utility will either extend the due date up to an additional fifteen (15) days or bill the customer in a cycle that corresponds to the customer's receipt of funds. ( )

**203. BILLING ERRORS, BILLING UNDER INCORRECT RATES, OR FAILURE TO BILL FOR SERVICE (RULE 203).**

**01. Billing Errors -- Failure to Bill.** Whenever the billing for utility service was not accurately determined for reasons such as a meter malfunction or failure, incorrect installation or programming of metering equipment, or errors in preparation of bills, the utility will prepare a corrected billing. If the utility has failed to bill a customer for service provided, the utility will prepare a bill for the period during which service was provided and the customer was not billed. At its discretion, the utility may waive rebilling for undercharges. ( )

**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 utility. If a customer is billed under an incorrect rate, the utility must recalculate the customer's past bills and correctly calculate future bills based on the appropriate rate. The utility is not required to adjust bills when it has acted in good faith based upon information provided by the customer. ( )

**03. Rebilling Time Period. (4-2-08)**

**a.** If the time when the 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 specific period, the corrected billings will not exceed the most recent six (6) months before the discovery of the billing problem. ( )

**b.** If the time when the billing problem began can be reasonably determined and the utility determines the customer was overcharged, the corrected billings will go back to that time, but not to exceed three (3) years from the time the billing problem occurred as provided by Section 61-642, Idaho Code. ( )

**c.** If the time when the billing problem can be reasonably determined and the utility determines the customer was undercharged, the utility 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. Utilities must implement procedures designed to monitor and identify customers who have not been billed or who have been inaccurately billed. ( )

**04. Refunds.** The utility will promptly recalculate the refund amounts overpaid by the customer and issue a credit within two (2) billing cycles. Any remaining credit balance will be credited against future bills unless the customer, after notice from the utility, requests a refund. The utility will advise the customer of the option to have any remaining credit balance exceeding twenty-five dollars (\$25) refunded. ( )

**05. Additional Payments.** The utility will promptly prepare a corrected billing for a customer who has been undercharged indicating the amount owed to the utility. An unbilled or undercharged customer must be given the opportunity to make payment arrangements under Rule 313 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. (4-2-08)

**204. -- 205. (RESERVED)**

**206. RESPONSIBILITY FOR PAYMENT OF BILLS -- RESIDENTIAL CUSTOMERS (RULE 206).**

**01. Customer Defined.** For purposes of this rule, “customer” means a customer whose name appears on the utility’s regular bill for residential service or who signed a written application for service or other document informing the customer that he or she was assuming an obligation for payment for service. (7-1-93)

**02. Customer’s Responsibility.** A utility will not hold a customer responsible for paying an amount owed by anyone who resides at the customer’s premises or is a member of the customer’s household, but whose name does not appear on the current bill or application for service, unless: ( )

**a.** The customer signs a written agreement to pay or otherwise expressly accepts responsibility for payment of the other person’s bill; or (3-20-04)

**b.** The customer has a legal obligation to pay the other person’s bill. (7-1-93)

**03. Customer Notice.** The utility will provide written notice of its intent to add to the customer’s bill for current service an amount owed for. The notice may be provided in an electronic format with the customer’s consent: ( )

**a.** Another person’s bill; or (3-20-04)

**b.** Service rendered at a former service location, provided that the lapse in service exceeds sixty (60) calendar days. (3-20-04)

**04. Contents of Notice.** The notice must include: (3-20-04)

**a.** The name of the customer of record who owes the bill amount; (7-1-93)

**b.** The service location involved; (7-1-93)

**c.** The time over which the bill amount was accumulated; (3-20-04)

**d.** The amount owed; (7-1-93)

**e.** The reason(s) for adding the bill amount to the customer’s bill statement; (3-20-04)

**f.** A statement that payment arrangements may be made on the amount owed; (7-1-93)

**g.** A statement that the customer has the right to contest the utility’s proposed action with the utility or the Commission; and (3-20-04)

**h.** The response deadline after which the bill amount will be added to the customer’s bill statement. (3-20-04)

**05. Opportunity to Respond.** The utility will give the customer at least seven (7) calendar days from the date of the proposed action to respond to the utility’s notice. ( )

**207. BILLING PROHIBITED (RULE 207).**

Utilities will not bill for non-utility 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 will be removed from the customer’s bill within two (2) billing cycles after the customer notifies the utility. A utility that unknowingly submits a bill containing charges for non-utility service(s) or merchandise not ordered or otherwise authorized by the customer of record will not have violated this rule if the disputed amounts are removed from the customer’s bill. ( )

208. -- 299. (RESERVED)

**DENIAL AND TERMINATION OF SERVICE AND PAYMENT ARRANGEMENT RULES  
FOR RESIDENTIAL AND SMALL COMMERCIAL CUSTOMERS  
Rules 300 Through 399**

**300. FURTHER DEFINITIONS (RULE 300).**

As used in Rules 301 through 313: (7-1-93)

**01. Applicant.** “Applicant” is restricted from its general definition to refer only to applicants for residential or small commercial service, unless further restricted by the rule. (7-1-93)

**02. Customer.** “Customer” is restricted from its general definition to refer only to residential or small commercial customers, unless further restricted by the rule. (7-1-93)

**03. Non-Utility Service.** “Non-utility service” means: (7-1-93)

**a.** Service for which the Commission does not regulate rates, charges, or availability of service; (7-1-93)

**b.** Service for which no rate or charge is contained in the utility’s tariffs; or (7-1-93)

**c.** Merchandise or equipment or charges for merchandise or equipment not required as a condition of receiving utility service. (7-1-93)

**04. Written Notice.** “Written notice” of the utility’s intent to deny or terminate service may be mailed or otherwise delivered to the applicant, resident, occupant, or customer. Written notice may be provided by electronic mail (i.e., e-mail) if the customer is billed electronically and separately consents in writing to “opt-in” to receiving electronic notification. (4-2-08)

**301. EXPLANATION FOR DENIAL OF SERVICE TO APPLICANT (RULE 301).**

**01. Explanation to Applicant.** If the utility intends to deny service to an applicant under Rule 302, the utility will notify the applicant verbally or in writing why the utility will deny service. The utility will advise the applicant what action(s) the applicant will take to receive service, and that if there is a dispute, the applicant may file an informal or formal complaint with the Commission. ( )

**02. Written Notice.** If service is currently being provided to the premises occupied by an applicant, the utility will provide written notice of its refusal to serve pursuant to Rule 312. (3-20-04)

**302. GROUNDS FOR DENIAL OR TERMINATION OF SERVICE WITH PRIOR NOTICE (RULE 302).**

**01. Reasons for Denial or Termination of Service.** A utility may deny or terminate 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: ( )

**a.** With respect to undisputed past due bills the customer or applicant: (3-20-04)

**i.** Failed to pay; (3-20-04)

**ii.** Paid with a dishonored check; or (3-20-04)

**iii.** Made an electronic payment drawn on an account with insufficient funds. (3-20-04)

- b.** The customer or applicant failed to make a security deposit or an installment payment on a deposit where it is required. ( )
- c.** The customer or applicant failed to abide by the terms of a payment arrangement. (3-30-01)
- d.** The utility has determined that information provided by the customer or applicant is materially false or materially misrepresents the customer's or applicant's true status. ( )
- e.** The customer or applicant denied or willfully prevented the utility's access to the meter. (7-1-93)
- f.** The utility determines that the customer is willfully wasting or interfering with service to the customer or other customers through improper equipment or otherwise. ( )
- g.** The applicant or customer is a minor not competent to contract as described in Sections 29-101 and 32-101, Idaho Code. (3-20-04)

**02. No Obligation to Connect Service.** Nothing in this rule requires the utility to connect service for a customer or applicant 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. ( )

**303. GROUNDS FOR DENIAL OR TERMINATION OF SERVICE WITHOUT PRIOR NOTICE (RULE 303).**

A utility may deny or terminate service without prior notice to the customer or applicant and without the customer's or applicant's permission for one (1) or more of the following reasons: (7-1-93)

**01. Dangerous Conditions.** A condition immediately dangerous or hazardous to life, physical safety, or property exists, or if necessary to prevent a violation of federal, state or local safety or health codes. (7-1-93)

**02. Order to Terminate Service.** The utility is ordered to terminate service by any court, the Commission, or any other duly authorized public authority. (7-1-93)

**03. Illegal Use of Service.** The service is obtained, diverted or used without the authorization or knowledge of the utility. (7-1-93)

**04. Unable to Contact Customer.** The utility has tried diligently to meet the notice requirements of Rule 304, but has been unsuccessful in its attempts to contact the customer affected. (7-1-93)

**304. REQUIREMENTS FOR NOTICE TO CUSTOMERS BEFORE TERMINATION OF SERVICE (RULE 304).**

**01. Initial Notice.** If the utility intends to terminate service to a customer under Rule 302, the utility will send to the customer written notice of termination mailed at least seven (7) calendar days before the proposed date of termination. Written notice may be provided by electronic mail (i.e. e-mail) if the customer is billed electronically and separately consents in writing to receiving electronic notification. This written notice will contain the information required by Rule 305. ( )

**02. Final Notice.** The utility may mail a final written notice to the customer at least three (3) calendar days, excluding weekends and holidays, before the proposed date of termination. Regardless of whether the utility elects to mail a written notice, at least twenty-four (24) hours before the proposed date of termination, the utility must diligently attempt to contact the customer affected, either in person or by telephone, to advise the customer of the proposed action and steps to take to avoid or delay termination. This final notice will contain the same information required by Rule 305. (3-20-04)

**03. Additional Notice.** If service is not terminated within twenty-one (21) calendar days after the proposed termination date as specified in a written notice the utility will again provide notice under Subsections 304.01 and 304.02 if it still intends to terminate service. (3-20-04)

**04. Failure to Pay.** No additional notice of termination is required if, upon receipt of a termination notice, the customer: (3-20-04)

- a. Makes a payment arrangement and subsequently fails to keep that arrangement; (3-20-04)
- b. Tenders payment with a dishonored check; or (3-20-04)
- c. Makes an electronic payment drawn on an account with insufficient funds. (3-20-04)

**305. CONTENTS OF NOTICE OF INTENT TO TERMINATE SERVICE (RULE 305).**

**01. Contents of Notice.** The written or oral notice of intent to terminate service required by Rule 304 will state: (4-11-06)

- a. The reason(s), citing these rules, why service will be terminated and the proposed date of termination; (4-11-06)
- b. Actions the customer may take to avoid termination of service; (4-11-06)
- c. That a certificate notifying the utility of a serious illness or medical emergency in the household may delay termination as prescribed by Rule 308; (4-11-06)
- d. That an informal or formal complaint concerning termination may be filed with the utility or the Commission, and that service will not be terminated on the ground relating to the dispute between the customer and the utility before resolution of the complaint (the Commission's address and telephone number will be given to the customer); and (4-11-06)

e. That the utility is willing to make payment arrangements (this statement will be in bold print on written notices). (4-11-06)

f. That for purposes of termination, partial payments will be applied toward utility service charges first, unless the customer requests otherwise, and that charges for non-utility services cannot be used as a basis for termination. (4-11-06)

**02. Additional Requirements for Gas and Electric Utilities.** During the months of November, December, January and February, oral and written notices provided by gas and electric utilities to residential customers will include or be accompanied by an explanation of restrictions on termination of service and the availability of the Winter Payment Plan described in Rule 306. (4-11-06)

**306. TERMINATION OF RESIDENTIAL GAS AND ELECTRIC SERVICE -- WINTER PAYMENT PLAN (RULE 306).**

**01. Restrictions on Termination of Service to Households with Children, Elderly, or Infirm.** Except as provided in Rule 303, no gas or electric utility may terminate service or threaten to terminate service during the months of December through February to any residential customer who declares that he or she is unable to pay in full for utility service at the primary household and whose primary household includes children, elderly or infirm persons. ( )

**02. Definitions for This Rule.** For purposes of this rule: (7-1-93)

a. "Children" means persons eighteen (18) years of age or younger, but customers who are emancipated minors are not children under this rule. (4-11-06)

b. "Elderly" means persons sixty two (62) years of age or older. (4-11-06)

c. "Infirm" means persons whose physical health or safety would be seriously impaired by termination of utility service. (4-11-06)

**03. Opportunity to Participate in Winter Payment Plan.** Any residential customer who declares that he or she is unable to pay in full for utility service and whose household includes children, elderly or infirm persons will be offered the opportunity to establish a Winter Payment Plan. However, no customer may be required to establish such a plan. Except as provided in Rule 303, no gas or electric utility may terminate service during the months of November through March to any customer who establishes a Winter Payment Plan before November 1. A customer may establish a Winter Payment Plan after November 1, but the extended protection from termination of service offered under such a plan will not begin until the date the plan is established. Failure of a participating customer to make payments as required will result in cancellation of the plan and elimination of the extended protection from termination of service offered under the plan. The customer may use any source of funds to satisfy the payment requirements of Winter Payment Plan. (4-11-06)

**04. Amount of Payments Under Winter Payment Plan.** Monthly payments under a Winter Payment Plan are equal to one-half (1/2) of the Level Pay Plan amount for that customer. The Level Payment Plan amount will be calculated according to Rule 313.06. (4-11-06)

**05. Payment Arrangements Following Winter Payment Plan.** If a customer who received the protection of this rule has an outstanding balance owed to the utility, the customer will either pay this balance or negotiate a new payment arrangement: (4-11-06)

**a.** On or after March 1, if the customer has not established a Winter Payment Plan; or (7-1-93)

**b.** On or after April 1, if the customer has established a Winter Payment plan. Failure of a customer to pay or make payment arrangements on or after these dates may result in termination of service. (7-1-93)

**06. Successive Participation in Winter Payment Plan.** A residential customer who participates in a Winter Payment Plan one (1) year will be allowed to participate in the succeeding year if the customer has honored the payment arrangements and the balance owing as of November 1 does not exceed seventy-five dollars (\$75) or the customer's utility bill for the previous thirty (30) days, whichever is greater. (4-11-06)

**07. Unoccupied Residences -- Failure or Refusal to Apply for Service.** Nothing in this rule prevents a gas or electric utility from terminating service to unoccupied residences or residences where the occupants have failed or refused to apply for utility service. (4-11-06)

**08. Customers Who Move.** During the months of December, January and February, a gas or electric utility will continue to provide service to any residential customer who made a declaration as provided for in Subsection 306.01 and subsequently moves to a new residence served by the same utility, regardless of any outstanding balance owed by the customer. If service is not connected at the new residence, service will be connected as soon as possible after the customer requests service at the new residence. (4-11-06)

**09. Applicants Previously Served.** During the months of December, January and February, a gas or electric utility will provide service to any residential applicant who made a declaration as provided for in Subsection 306.01 and within thirty (30) days of discontinuing service, subsequently applies for service at a new residence served by the same utility, regardless of any outstanding balance owed by the applicant. If service is not connected at the new residence, service will be connected as soon as possible after the applicant requests service at the new residence. (4-11-06)

**307. THIRD-PARTY NOTIFICATION -- RESIDENTIAL SERVICE (RULE 307).**

Each gas and electric utility must provide a program for its residential customers known as Third-Party Notification. Under this program, the utility will, at the request of the customer, notify orally or in writing a third-party designated by the customer of the utility's intention to terminate service. The third-party will be under no obligation to pay the bill, but as provided in Rule 313.08, no customer can be considered to have refused to enter a payment arrangement unless either the customer or the designated third-party has been given notice of the proposed termination of service and of the customer's opportunity to make payment arrangements. ( )

**308. SERIOUS ILLNESS OR MEDICAL EMERGENCY (RULE 308).**

**01. Medical Certificate -- Postponement of Termination of Service.** A utility will postpone termination of utility 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: (3-20-04)

**a.** A statement that the customer, a member of the customer's family, or other permanent resident of the premises where service is rendered is seriously ill or has a medical emergency or will become seriously ill or have a medical emergency because of termination of service, and that termination of utility service would adversely affect the health of that customer, member of the customer's family, or resident of the household. (3-20-04)

**b.** The name of the person whose serious illness or medical emergency would be adversely affected by termination and the relationship to the customer, and (3-20-04)

**c.** The name, title, and signature of the person certifying the serious illness or medical emergency. (3-20-04)

**02. Restoration of Service.** If service has already been terminated when the medical certificate is received, service will be restored as soon as possible, but no later than twenty-four (24) hours after receipt. The customer will receive service for thirty (30) calendar days from the utility's receipt of the certificate. (3-20-04)

**03. Second Postponement.** The utility may postpone termination of service upon receipt of a second certificate stating that the serious illness or medical emergency still exists. (7-1-93)

**04. Verification of Medical Certificate.** The utility may verify the authenticity of the certificate and may refuse to delay termination of service if it is determined that 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. (3-20-04)

**309. MEDICAL FACILITIES -- SHELTER CARE (RULE 309).**

Where service is provided to a customer known to the utility 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, a final notice of pending termination will be provided to the Commission 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 will be allowed so that action may be taken to protect the interests of the facility's residents. ( )

**310. INSUFFICIENT GROUNDS FOR TERMINATION OR DENIAL OF SERVICE (RULE 310).**

**01. Termination of Service.** Utilities will not terminate service or provide notice of intent to terminate service if the unpaid bill cited as grounds for termination is: ( )

**a.** Less than fifty dollars (\$50) or two (2) months' charges for service, whichever is less. ( )

**b.** For utility service to any other customer (unless that customer has a legal obligation to pay the other customer's bill) or for any other class of service. ( )

**c.** For the purchase of non-utility goods or services. ( )

**d.** For service provided four (4) or more years ago unless the customer has promised in writing to pay or made a payment on the bill within the last four (4) years. ( )

**e.** The subject of an informal or formal complaint filed with the Commission, except as provided for under Rule 401. ( )

**f.** At issue in a case pending before a court in the state of Idaho unless termination is authorized by court order. ( )

**02. Denial of Service.** A utility will not deny service, or notify an applicant that the utility will deny the applicant service if any of the criteria listed in Subsection 310.01.b. through 310.01.f. apply to the unpaid bill cited as grounds for denial of service. ( )

**311. TIMES WHEN SERVICE MAY BE TERMINATED -- OPPORTUNITY TO AVOID TERMINATION OF SERVICE (RULE 311).**

**01. When Termination of Service Is Prohibited.** Except as authorized by Rule 303 or this rule, service provided to a customer, applicant, resident or occupant shall not be terminated: (4-2-08)

**a.** On any Friday, Saturday, Sunday, legal holidays recognized by the state of Idaho, or on any day immediately preceding any legal holiday; or (4-2-08)

**b.** At any time when the utility is not open for business. (4-2-08)

**02. Times When Service May Be Terminated.** Service may be terminated: (4-2-08)

**a.** At any time when there is a dangerous condition pursuant to Rule 303.01 or the utility is ordered to do so pursuant to Rule 303.02; (4-2-08)

**b.** Between the hours of 8 a.m. and 5 p.m., Monday through Thursday, for any reason authorized by Rules 302 and 303; (4-2-08)

**c.** Between the hours of 8 a.m. and 5 p.m. on Friday for illegal use of service pursuant to Rule 303.03 or if the premises are unoccupied and service has been abandoned; or (4-2-08)

**d.** Between the hours of 5 p.m. and 9 p.m., Monday through Thursday, if the utility is unable to gain access to the meter during normal business hours or for illegal use of service pursuant to Rule 303.03. (4-2-08)

**03. Personnel to Authorize Reconnection.** Each utility shall have personnel available who are authorized to reconnect service if the conditions cited as grounds for termination are corrected to the utility's satisfaction. Service shall be reconnected as soon as possible, but no later than twenty-four (24) hours after the utility's conditions are satisfied and reconnection is requested. (4-2-08)

**04. Opportunity to Prevent Termination of Service During Premise Visit.** If a utility needs to visit a customer's premise to terminate service, the utilities employee may identify himself or herself to the customer or other responsible adult upon the premises and announce the purpose of the employee's visit. The employee may be authorized by the utility to accept full or partial payment and, in such case, the employee will not terminate service. Nothing in this rule prevents a utility from proceeding with termination of service if the customer or other responsible adult is not on the premises. ( )

**05. Notice of Procedure for Reconnecting Service.** During a premise visit the utility employee designated to terminate service may give to the customer or leave in a conspicuous location at the affected service address, a notice showing the time of and grounds for termination, steps to be taken to secure reconnection, and the telephone numbers of utility personnel or other authorized representatives who are available to authorize reconnection. ( )

**06. Applicant Without Service - Customer Requested Termination.** Nothing in this rule prohibits a utility from terminating service at any time pursuant to a customer's request. (4-2-08)

**312. DENIAL OR TERMINATION OF SERVICE TO MASTER-METERED ACCOUNTS AND RESIDENTS OR OCCUPANTS WHO ARE NOT CUSTOMERS (RULE 312).**

**01. Notice to Occupants or Residents Not Customers.** Except as provided in Rules 303.01 and 303.02, utilities will not deny or terminate service without providing written notice to the residents or occupants of: ( )



- a. A building or mobile home court where service is master-metered; (3-20-04)
- b. A residence where the customer billed for service is not a resident or occupant of the premises being served; or (3-20-04)
- c. Premises where service is being provided on an interim basis to a resident or occupant following a customer's request to terminate service. (3-20-04)

**02. Delivery and Contents of Notice.** The utility must notify the residents or occupants of its intent to deny or terminate service at least two (2) calendar days, excluding weekends and holidays, before the proposed date of termination. The notice should be delivered to the premises or, in the case of multi-occupant buildings or mobile home parks, posted in common areas or a conspicuous location. The notice will state: (3-20-04)

- a. The date of the notice; (7-1-93)
- b. The proposed denial or termination date; (3-20-04)
- c. The reason for denial or termination; (3-20-04)
- d. What action(s) the resident(s) or occupant(s) must take in order to obtain or retain service in the resident's(s') or occupant's(s') own name(s); and (3-20-04)
- e. That an informal or formal complaint concerning denial or termination of service may be filed with this Commission. (3-20-04)

**313. PAYMENT ARRANGEMENTS (RULE 313).**

**01. Arrangements Allowed.** When a customer cannot pay a bill in full, the utility will continue to serve the customer if the customer and the utility 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. For customers who are unable to come to the utility's local office to make payment arrangements, a gas or electric utility must, upon request by the customer, make payment arrangements over the telephone, by mail or at the customer's home. (7-1-93)

**02. Reasonableness.** In deciding on the reasonableness of a particular agreement, the utility will take into account the customer's ability to pay, the size of the unpaid balance, the customer's payment history, and the amount of time and reasons why the debt is outstanding. (7-1-93)

**03. Application of Payment.** Unless the customer designates otherwise, payments are to be first applied to the undisputed balance owed by the customer for utility services and associated installation charges, taxes, franchise fees and surcharges. (3-30-01)

**04. Second Arrangement.** If a customer fails to make the payment agreed upon by the date that it is due, the utility may, but is not obligated to, enter into a second such agreement. (7-1-93)

**05. When Arrangement Not Binding.** No payment arrangement binds a customer if it requires the customer to forego any right provided for in these rules. ( )

**06. Level Pay Plans Acceptable Payment Arrangement.** Payment arrangements may be in the form of a Level Pay Plan that will equalize monthly payments of all arrears, if any, and anticipated future bill amounts over a period of not less than one (1) year. No customer agreeing to a reasonable payment arrangement is required to choose this plan. (7-1-93)

**07. Third-Party Contact.** If a utility has been unable to contact a customer concerning termination, but has contacted the customer's third-party designated under Rule 307 and has failed to receive a response from the customer within seven (7) days after the third-party was contacted, the utility may treat the customer as one who has been contacted and has declined to enter into a reasonable payment arrangement. (7-1-93)

314. -- 399. (RESERVED)

**COMPLAINT PROCEDURE**  
**Rules 400 Through 499**

**400. COMPLAINT TO UTILITY (RULE 400).**

**01. Complaint.** A customer or applicant for service may complain at any time to the utility about any deposit or written guarantee required as a condition of service, billing, termination of service, quality or availability of service, or any other matter regarding utility services, policies and practices. The customer or applicant may request a conference with the utility, but this provision does not affect any statute of limitation that might otherwise apply. Complaints to the utility may be made orally or in writing. A complaint is considered filed upon receipt by the utility. In making a complaint or request for conference, the customer or applicant will state the customer's or applicant's name, service address, and the general nature of the complaint. ( )

**02. Investigation by Utility.** The utility will promptly, thoroughly and completely investigate the complaint, notify the customer or applicant of the results of the investigation, and make a good-faith attempt to resolve the complaint. The oral or written notification will advise the customer or applicant that the customer or applicant may request the Commission to review the utility's proposed disposition of the complaint. ( )

**03. Service Maintained.** The utility will 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)

**401. COMPLAINT TO COMMISSION (RULE 401).**

**01. Informal Complaint.** If a customer or applicant who has complained to a utility is dissatisfied with a utility's proposed disposition of the complaint, the customer or applicant may file an informal complaint with request the Commission. Customers and applicants are encouraged, but not required, to contact the utility before filing an informal complaint. ( )

**02. Termination of Service - Undisputed Bills.** Utility service must not be terminated nor termination threatened by notice or otherwise while the complaint is pending before the Commission. The utility may continue to issue bills and request payment from the customer of any undisputed amounts. ( )

**03. Customer's Rights Protected.** No customer or applicant will be denied the opportunity to file an informal or formal complaint with the Commission. ( )

**402. RECORD OF COMPLAINTS (RULE 402).**

**01. Recordkeeping.** Each utility must keep a written record of complaints made under Rules 400 and 401. These records must be retained for a minimum of one (1) year by the utility. These written records are to be readily available upon request by the concerned customer, the customer's agent possessing written authorization, or the Commission. ( )

**02. Reporting.** Each utility must, at the Commission's request, submit a report to the Commission that states and classifies the number of complaints made to the utility pursuant to Rules 400 and 401, and the general subject matter of the complaints. ( )

**403. UTILITY RESPONSE TO INFORMAL COMPLAINTS (RULE 403).**

**01. Response to Commission.** Within ten (10) business days of receiving notification that an informal complaint involving the utility has been filed with the Commission, the utility must respond verbally or in writing to the Commission. A utility 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. ( )

404. -- 599. (RESERVED)

**RULES FOR DEPOSIT, DENIAL, AND TERMINATION OF SERVICE  
FOR INDUSTRIAL, LARGE COMMERCIAL, AND IRRIGATION CUSTOMERS  
Rules 600 Through 699**

**600. DEFINITIONS (RULE 600).**

As used in Rules 601 through 605. (7-1-93)

**01. Advance Payment.** "Advance payment" means a payment made prior to receiving service that will be credited to the customer's account at a later date. (7-1-93)

**02. Applicant.** "Applicant" means an applicant for industrial, large commercial or irrigation service. (7-1-93)

**03. Customer.** "Customer" means an industrial, large commercial or irrigation customer, unless further restricted by the rule. The Commission will maintain on file a list of which customer classes of a given utility are industrial, large commercial, and irrigation. (7-1-93)

**04. Deposit.** "Deposit" means any payment held as security for future payment or performance that is reimbursable. (7-1-93)

**05. Written Notice.** "Written notice" of the utility's intent to deny or terminate service may be mailed or otherwise delivered to the applicant, occupant or customer. Written notice may be provided by electronic mail (i.e., e-mail) if the customer is billed electronically and separately consents in writing to "opt-in" to receiving electronic notification. (4-2-08)

**601. DEPOSIT REQUIREMENTS AND ADVANCE PAYMENTS (RULE 601).**

An applicant or customer may be required to pay a deposit or make an advance payment in accordance with the utility's tariff filed with the Commission. If an applicant or customer 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 Laws, or as directed by the state court. ( )

**602. GROUNDS FOR DENIAL OR TERMINATION OF SERVICE WITH PRIOR NOTICE (RULE 602).**

A utility may deny or terminate service to an industrial, large commercial or irrigation customer without its permission, but only after adequate notice has been given in accordance with these rules, for one (1) or more of the following reasons: (7-1-93)

**01. Any Reason Listed in Rule 302.01.a. Through 302.01.f.** ( )

**02. Failure to Make Advance Payment or Provide Guarantee.** The customer or applicant failed to make a required advance payment, pay a deposit or provide an acceptable guarantee, when required by the applicable tariff or contract. ( )

**03. Failure to Apply for Service.** The customer or applicant failed to apply for service with the utility. (7-1-93)

**603. REQUIREMENTS FOR AND CONTENTS OF NOTICE BEFORE TERMINATION OF SERVICE (RULE 603).**

**01. Initial Notice.** If the utility intends to terminate service under Rule 602, the utility will mail the customer written notice of termination at least seven (7) calendar days before the proposed termination date. The written notice of termination will state: ( )

**02. Final Notice.** The utility may mail a final written notice to customers at least three (3) calendar days, excluding weekends and holidays, before the proposed date of termination. Regardless of whether the utility elects to mail a written notice, at least twenty-four (24) hours prior to actual termination, the utility will diligently attempt to contact the customer affected, either in person or by telephone, to apprise the customer of the proposed action. This final notice will contain the same information required above for written notice. Each utility will maintain clear, written records of oral notices, showing dates and the utility employee giving the notices. (3-20-04)

**604. GROUNDS FOR TERMINATION OF SERVICE WITHOUT PRIOR NOTICE (RULE 604).**

A utility may terminate service without prior notice to the customer as specified in Rule 602 only: (7-1-93)

**01. Dangerous Conditions.** If a condition immediately dangerous or hazardous to life, physical safety, or property exists, or if necessary to prevent a violation of federal, state or local safety or health codes. (7-1-93)

**02. Order to Terminate.** Upon order by any court, the Commission, or any other duly authorized public authority. (7-1-93)

**03. Illegal Use of Utility.** If such service is obtained, diverted or used without the authorization or knowledge of the utility; or (7-1-93)

**04. Unable to Contact Customer.** If the utility has tried diligently to meet the notice requirements of Rule 602, but has been unsuccessful in its attempt to contact the customer. (7-1-93)

**605. NOTICE TO COMMISSION PRIOR TO TERMINATION (RULE 605).**

A utility will provide written notice to the Commission of its intent to terminate service to an industrial or large commercial customer at least seven (7) days before the scheduled termination date. The Commission may stay termination if it finds that the public interest requires service to be maintained to the customer. ( )

**606. -- 699. (RESERVED)**

**SUMMARY OF CUSTOMER RULES**  
**Rules 700 Through 799**

**700. INFORMATION TO CUSTOMERS (RULE 700).**

- 01. Required Information.** Each utility will provide the following information to its customers:( )
- a.** A summary of the terms and conditions under which service is provided, including the conditions under which the utility may request a deposit or deny or terminate service; ( )
  - b.** A statement that: ( )
    - i.** The utility is willing to make reasonable payment arrangements; ( )
    - ii.** The customer may file a complaint with the utility and the Commission and that termination of service is prohibited while a complaint is pending with the Commission or with a court in the state of Idaho; ( )
    - iii.** Termination of service may be postponed due to serious illness or medical emergency (residential customers only). ( )
  - c.** A clear and concise explanation of rate schedule(s) applicable to the customer's class of service. ( )
- 02. Information for Gas and Electric Customers.** Each gas or electric utility also will include an explanation of: ( )

**a.** Restrictions on termination of service and the availability of the Winter Payment Plan described in Rule 306 (residential customers only). ( )

**b.** The Third Party Notification Program described in Rule 307 (residential customers only); and ( )

**c.** The availability of the Level Pay Plan described in Rule 313. ( )

**03. When and How Information Provided.** Utilities will provide information to customers in writing annually and to new customers upon initiation of service. Information provided upon initiation of service may be separately mailed or included with a paper or electronic billing statement. Annual notices may be made by separate mailing, included with the paper or electronic billing statement or, with the customer's consent, by electronic notice with reference to information contained on the utility's website. ( )

**701. -- 999. (RESERVED)**

## 31.26.01 – MASTER-METERING RULES FOR ELECTRIC UTILITIES

### 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 specific authority of Sections 61-301, 61-302, 61-303, 61-315, 61-503, 61-507, and 61-520, Idaho Code, with regard to service. (7-1-93)

### 001. TITLE AND SCOPE (RULE 1).

The name of this chapter is “Master-Metering Rules for Electric Utilities.” This chapter has the following scope: All electric utilities are required to abide by these rules defining when and under what circumstances their customers may master-meter tenants of the customer. (7-1-93)

### 002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

### 003. ADMINISTRATIVE APPEALS (RULE 3).

There are no administrative appeals under these rules because they are not procedural rules. If an issue should arise calling for a proceeding to apply these rules, that proceeding would be conducted under the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq. (7-1-93)

### 004. (RESERVED)

### 005. DEFINITIONS (RULE 5).

As used in these rules: (7-1-93)

**01. Electric Utility.** Electric utility or utility means an “electrical corporation” as defined by statute in Chapter 1, Title 61, Idaho Code, and orders of the Idaho Public Utilities Commission and decisions of the Supreme Court of Idaho construing those statutes. (7-1-93)

**02. Tenant -- Mobile Home Park.** A tenant of a mobile home park is a person defined as a resident and not a transient by the Manufactured Home Residency Act, Section 55-2001 et seq., Idaho Code, and in particular by Section 55-2003(164) and 55-2003(195), Idaho Code. ( )

**03. Tenant -- Multi-Unit Residential or Commercial Building.** A tenant of a multi-unit residential building is a person who is not a transient and who intends to reside in or be a commercial tenant in one (1) of the building’s units for a period not less than one (1) month. (7-1-93)

**04. Master-Metering.** Provision of service to multiple tenants through one meter, which measures the aggregate usage of all tenants. Typically, the utility bills the property owner or landlord based on measurement by the master meter. ( )

### 006. -- 099. (RESERVED)

## MASTER-METERING RULES FOR ELECTRIC UTILITIES

### Rules 100 Through 199

### 100. MASTER-METERING AND INDIVIDUAL METERING IN MOBILE HOME PARKS (RULE 100).

**01. Master Metering Prohibited.** Master-metering, whether or not in conjunction with sub-metering of electric service by the park operator, is prohibited for any mobile home park connected for service by the utility after July 1, 1980. After that date, tenants (excluding transients) of mobile home parks must be individually metered and billed by the electric utility. ( )

**02. Exception for Sub-Metered Parks.** Any mobile home park connected for service on or before July 1, 1980 whose spaces for non-transient tenants are been fully sub-metered for electricity by the park owners need not be individually metered by the electric utility supplying the park. A mobile home park sub-metered by the park operator must charge each of their tenants the same rate for electric service that a residential customer of the utility serving the park would charge the tenant if the tenant were directly metered and billed by the utility. Upon request, the utility will provide written instruction on how to calculate bills for sub-metered tenants in conformance with the

utility's applicable rate schedule. ( )

**101. MASTER-METERING AND INDIVIDUAL METERING IN MULTI-OCCUPANT RESIDENTIAL BUILDINGS (RULE 101).**

Multi-occupant residential buildings connected for electric service after July 1, 1980, if the dwelling units for nontransient tenants contain an electric space heating, water heating, or air-conditioning (space cooling) unit that is not centrally controlled and for which the dwelling unit's tenants individually control electric usage. In such case, non-transient tenants will be individually metered and billed by the electric utility. ( )

**102. MASTER-METERING AND INDIVIDUAL METERING IN COMMERCIAL BUILDINGS AND SHOPPING CENTERS (RULE 102).**

Commercial buildings and shopping centers connected for electric service after July 1, 1980, may not be master metered if the units for non-transient tenants contain an electric space heating, water heating, or air-conditioning (space cooling) unit that is not centrally controlled and for which the unit's tenants individually control electric usage. Any non-transient tenants in otherwise master-metered buildings will be individually metered and billed by the utility if the tenant's electric load is significantly greater than that of other tenants in the building or shopping center or exceeds the individual metering threshold found in the utility's tariffs. ( )

**103. -- 999. (RESERVED)**

## 31.31.01 – GAS SERVICE 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 specific authority of Sections 61-301, 61-302, 61-303, 61-315, 61-503, 61-507, 61-515, and 61-520, Idaho Code, with regard to safety and service. (7-1-93)

### 001. TITLE AND SCOPE (RULE 1).

The name of this chapter is the “Gas Service Rules.” This chapter has the following scope: All gas utilities are required to abide by these rules in their provision of gas service. (7-1-93)

### 002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

### 003. ADMINISTRATIVE APPEALS (RULE 3).

There are no administrative appeals under these rules because they are not procedural rules. If an issue should arise calling for a proceeding to apply these rules, that proceeding would be conducted under the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq. (7-1-93)

### 004. (RESERVED)

### 005. DEFINITIONS (RULE 5).

As used in these rules, gas utility or gas corporation means a “gas corporation” as defined by statute in Chapter 1, Title 61, Idaho Code, and orders of the Idaho Public Utilities Commission and decisions of the Supreme Court of Idaho construing those statutes. (7-1-93)

### 006. -- 100. (RESERVED)

## CONSTRUCTION, OPERATION, AND MAINTENANCE OF FACILITIES FOR TRANSMISSION AND DISTRIBUTION OF GAS - RULES 101 THROUGH 200

### PRELIMINARIES FOR SERVICE - RULES 101 THROUGH 150

### 101. MAPS OF FACILITIES (RULE 101).

**01. Maps, Plans, and Records.** Gas corporations must maintain maps, plans, and records as prescribed by this rule. The gas corporation will keep in the principal office of each of its division or district a map or maps and information about the distribution system that will enable the local representatives to furnish information about the gas corporation regarding rendering of service to existing and prospective customers of the gas corporation. The maps will show the size, character, and location of each street main, district regulator, street valve and drip, and when practicable, each service connection in the corresponding territory served. In lieu of showing date of installation and service locations on maps, a card record or other suitable means may be used. ( )

**02. Maps of Manufacturing, Mixing, Compressor, and Storage Facilities.** Each gas manufacturing or mixing plant and each compressor station and storage facility shall be provided with an accurate ground plan drawn to a suitable scale, showing the entire layout of the plant or station, the location, size, and character of plant, equipment, major pipelines, connections, valves, and other facilities used for the production and delivery of gas, all properly identified. (7-1-93)

**03. Inspection of Facilities.** In determining whether these rules are being complied with, the Commission may inspect facilities and records as necessary, as provided in Section 61-521, Idaho Code. (7-1-93)

### 102. INSPECTION OF CUSTOMER'S FACILITIES (RULE 102).

The gas corporation shall inspect the customer’s installation before the connection of a meter to ascertain that the installation conforms to the provisions contained in the National Fuel Gas Code and the Uniform Mechanical Code, as adopted by the Commission. If the installation on the customer’s premises does not meet these requirements, the Company shall refuse to connect the meter and shall advise the customer in writing the reasons for such refusal. See Customer Relations Rule 301, IDAPA 31.21.01.301; see Safety and Accident Reporting Rules 201, IDAPA 31.11.01.201. (7-1-93)



103. -- 150. (RESERVED)

**STANDARDS FOR SERVICE - RULES 151 THROUGH 200**

**151. STANDARD FOR SERVICE (RULE 151).**

Service to the customer shall assure the customer of adequate pressure, a definite heat content, and accurate measurement of gas. (7-1-93)

**152. PERIODIC TESTS OF CUSTOMER METERS (RULE 152).**

**01. Testing of Smaller Capacity Meters.** All meters with capacities up to and including four hundred (400) cubic feet per hour (cfh) that have been in service ten (10) or more years as established by last set date shall be tested within a prescribed sample size as determined in accordance with ANSI/ASQ Z1.4 and Z1.9 2003 (R2018), which are incorporated by reference into these rules, which can be found at <https://webstore.ansi.org/Standards/ASQ/ANSIASQZ1SamplingProcedures>. ( )

**02. Testing of Larger Capacity Meters.** All meters from four hundred one (401) to three thousand (3,000) cfh that have been in service ten (10) years as established by last set date shall be replaced or field tested. (7-1-93)

**153. METER PROVING (RULE 153).**

**01. Meter Provers.** Each gas corporation shall own at least one (1) meter prover of a type approved by the Commission and shall maintain such equipment in proper adjustment and so calibrated that the error of indication shall not exceed one-half percent. No meter prover shall be so placed as to subject it to excessive temperature variation and each meter prover shall be equipped with suitable thermometers and other necessary accessories. Additional meter proving station shall be installed when and where found necessary by the Commission. ( )

**02. Testing Apparatus for Large Capacity Meters.** Each gas utility using orifice meters, high pressure meters, proportional meters, or other large capacity meters shall own and maintain testing apparatus of a type approved by the Commission. (7-1-93)

**03. Accuracy of Meter Provers and Testers.** The accuracy of all provers and methods of operation may be established from time to time by a representative of the Commission. Any alterations, accidents, or repairs that might affect the accuracy of any meter prover, or the method of operating it, shall be promptly reported in writing to the Commission. (7-1-93)

**154. CUSTOMER METER ACCURACY REQUIREMENTS (RULE 154).**

**01. Accuracy of Meters.** A new gas meter installed for the use of any customer shall not be more than two percent (2%) slow and not more than one percent (1%) fast. Every meter removed from service when opened for repairs shall be adjusted to be not more than two percent (2%) slow and not more than one percent (1%) fast before being reset; and if not opened for repairs may be reset without adjustment if found to be not more than two percent (2%) in error fast or slow, when passing as in both instances at the test rates provided for in Rule 155 (Customer Meter Test Loads). (7-1-93)

**02. Removal of Defective Meters From Service.** No meter that is mechanically defective shall be placed in service or allowed to remain in service after the defect has been discovered. When any gas meter is not connected in service, the inlet and outlet shall be capped to prevent the drying out of the diaphragms. (7-1-93)

**155. CUSTOMER METER TEST LOADS (RULE 155).**

**01. Testing of Meters.** All tests to determine the accuracy of registrations of gas service meters shall be made with a suitable meter prover or testing equipment. Unless exempted by order of the Commission, at least two (2) test runs shall be made on each bellows type displacement meter, the results of which shall agree with each other within one-half of one percent (.5%). (7-1-93)

**02. Gas Flows During Testing.** The rate of flow to be used in testing meters having capacities up to and including three thousand (3,000) cubic feet per hour shall be twenty percent (20%) and one hundred percent (100%) of the rated capacity. The one hundred percent (100%) capacity or open run test shall not be taken into consideration in arriving at the accuracy of these meters. Meters having capacities of above three thousand (3,000) cubic feet per hour, except orifice meters, shall be tested both at twenty percent (20%) and one hundred percent (100%) of their capacity. For the purpose of determining the accuracy of these meters, the average of twenty percent (20%) and one hundred percent (100%) tests shall be used. (7-1-93)

**156. CUSTOMER METER TEST RECORDS (RULE 156).**

**01. Records of Meter Tests.** Annually each gas utility will make tabulations of the results of all meter accuracy tests required by these rules and keep records of tests of the accuracy of each of its meters, until superseded by a later test, but not less than two (2) years. These records shall give: ( )

- a. Sufficient information to identify the meter; (7-1-93)
- b. The reason for the test; (7-1-93)
- c. The date of the test and reading of the meter; (7-1-93)
- d. The name of the person making the test; and (7-1-93)
- e. The accuracy as found and as left, together with enough of the data taken at the time of the test to permit the convenient checking of the methods employed and the calculations. (7-1-93)

**157. -- 999. (RESERVED)**

## 31.36.01 – POLICIES AND PRESUMPTIONS FOR SMALL WATER COMPANIES

### 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 specific authority of Sections 61-301, 61-302, 61-303, 61-315, 61-501, 61-502, 61-503, 61-507, 61-508, 61-515, 61-520, and 61-523, Idaho Code, with regard to valuation and service. (7-1-93)

### 001. TITLE AND SCOPE (RULE 1).

The name of this chapter is “Policies and Presumptions for Small Water Companies.” This chapter has the following scope: All small water companies created or certified after the effective date of these rules (November 1, 1987) are subject to the policies and presumptions of these rules. (7-1-93)

### 002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

### 003. ADMINISTRATIVE APPEALS (RULE 3).

There are no administrative appeals under these rules because they are not procedural rules. If an issue should arise calling for a proceeding to apply these rules, that proceeding would be conducted under the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq. (7-1-93)

### 004. (RESERVED)

### 005. DEFINITIONS (RULE 5).

As used in these rules, water utility, water company, or water corporation means a “water corporation” as defined by statute in Chapter 1, Title 61, Idaho Code, and orders of the Idaho Public Utilities Commission and decisions of the Supreme Court of Idaho construing those statutes. (7-1-93)

### 006. -- 100. (RESERVED)

### 101. SMALL WATER COMPANIES DEFINED (RULE 101).

Small water companies are water corporations as defined by the Public Utilities Law that: (7-1-93)

**01. Gross Revenue.** Have or anticipate not more than fifty thousand dollars (\$50,000) annual gross revenues from water operations, or (7-1-93)

**02. Customer Base.** Provide service to fewer than three hundred (300) customers or propose initially to provide service to fewer than three hundred (300) customers. (7-1-93)

### 102. PRESUMPTION OF CONTRIBUTED CAPITAL (RULE 103).

In issuing certificates for a small water company or in setting rates for a small water company, it will be presumed that the capital investment in plant associated with the system is contributed capital, i.e., that this capital investment will be excluded from rate base. (7-1-93)

### 104. -- 999. (RESERVED)

**31.41.01 – CUSTOMER RELATIONS RULES FOR TELEPHONE CORPORATIONS  
PROVIDING SERVICES IN IDAHO SUBJECT TO CUSTOMER SERVICE REGULATION  
BY THE IDAHO PUBLIC UTILITIES COMMISSION**

**(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, 62-616, and 62-622, Idaho Code, with regard to service. (3-29-10)

**001. TITLE AND SCOPE (RULE 1).**

The name of this chapter is the “Customer Relations Rules for Telephone Corporations Providing Services in Idaho Subject to Customer Service Regulation by the Idaho Public Utilities Commission,” (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 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. (3-29-10)

**002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).**

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

**003. ADMINISTRATIVE APPEALS (RULE 3).**

This rule governs formal complaints and requests for exemption under these rules. Any telephone company or customer requesting and receiving an informal staff determination with regard to a complaint may formally request the Commission to review the staff’s determination. If unusual 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. ( )

**004. (RESERVED)**

**005. DEFINITIONS (RULE 5).**

The following definitions are used in this title and chapter: (7-1-93)

**01. Customer.** 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. Any person whose service has been temporarily disconnected for non-payment will continue to be a “customer” for the purposes of these rules until such time as service is permanently disconnected. (3-29-10)

**02. Local Exchange Company (LEC).** “Local exchange company” (LEC) is a telephone company providing local exchange service to end-users. (3-29-10)

**03. 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. (3-29-10)

**04. Other Services.** “Other services” mean all services except local exchange and MTS services provided, billed, or collected by a telephone company. (1-1-95)

**05. Residential Service.** “Residential 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. (3-29-10)

**06. Small Business Service.** “Small business 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 which are billed to a single billing location, i.e., service provided to small business customers as defined in Section 62-603(11), Idaho Code. (3-29-10)

**07. 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 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) or the federal Telecommunications Act of 1996 (47 U.S.C. 151 et seq). (3-29-10)

**006. -- 007. (RESERVED)**

**008. EXERCISE OF RIGHTS BY CUSTOMER (RULE 8).**

Telephone company will not discriminate against or penalize a customer for exercising any right granted by these rules. ( )

**009. INFORMAL COMPLAINTS AND INTERPRETATION OF RULES (RULE 9).**

Commission staff may informally interpret these rules and tariffs or other filings of telephone companies and investigate complaints made to the Commission. The Commission may issue orders interpreting these rules, telephone company tariffs or similar filings, and resolving formal complaints. ( )

**010. CONFLICT WITH TELEPHONE TARIFFS OR PRICE LISTS (RULE 10).**

If a telephone company’s tariff or price list denies or restricts customer rights protected by these rules, these rules supersede conflicting tariff or price list provisions. ( )

**011. INCORPORATION BY REFERENCE -- CODE OF FEDERAL REGULATIONS (RULE 11).**

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. Incorporated materials are also available for inspection and copying at the offices of the Public Utilities Commission. (3-29-10)

**012. -- 099. (RESERVED)**

**RESIDENTIAL AND SMALL BUSINESS DEPOSIT**  
**Rules 100 through 199**

**100. DEPOSIT REQUIREMENTS -- LECS (RULE 100).**

**01. Residential Customers.** Telephone companies providing local exchange service will not demand or hold any deposit from any residential customer for service without proof that the customer is likely to be a credit risk or to damage the property of the local exchange company or 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 will not demand or hold a deposit under this rule as a condition of service from a residential customer unless one (1) or more of the following criteria applies: ( )

**a.** The customer has outstanding a prior residential service account and at the time of application for service remains unpaid and not in dispute. (3-29-10)

**b.** The customer’s service has been temporarily denied or terminated within the past four (4) years for one (1) or more of the following reasons: (3-29-10)

**i.** Non-payment of any undisputed delinquent bill; (7-1-93)

**ii.** Obtaining, diverting or using telephone service without the authorization or knowledge of the telephone company. (7-1-93)

**c.** The 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. (3-29-10)

**d.** The telephone company has determined that information provided by the customer is materially false or materially misrepresents the customer's true status. (3-29-10)

**e.** The 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. (3-29-10)

**02. Small Business Customers.** Telephone companies providing local exchange service will not demand or hold any deposit as a condition of service from any current small business customer for small business service unless one (1) or more of the following criteria apply: ( )

**a.** Any of the conditions listed in Rule 100.01 of this rule are present. (3-29-10)

**b.** The customer has not had previous service with that telephone company. (3-29-10)

**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 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 Laws. (3-29-10)

**101. OTHER DEPOSIT STANDARDS PROHIBITED (RULE 101).**

A local exchange company will 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 will be applied uniformly. If the customer, either residential or small business, selects another company to provide services and arranges to be billed directly by that company rather than through the local exchange company, no deposit may be collected by the local exchange company for the services provided by the other company. (3-29-10)

**102. EXPLANATION FOR DENIAL OF SERVICE OR REQUIREMENT OF DEPOSIT -- LECS (RULE 102).**

If the local exchange company requires a deposit as a condition of providing service, then it will immediately provide an explanation to the customer why a deposit is required. The customer will be given an opportunity to rebut these reasons. The notice will also advise the customer that if there is a dispute an informal or formal complaint may be filed with the Commission. ( )

**103. AMOUNT OF DEPOSIT -- LECS (RULE 103).**

A deposit allowed pursuant to Rule 100 as a condition of service by a local exchange company must 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. ( )

**104. INTEREST ON DEPOSITS (RULE 104).**

**01. Interest Payable.** Interest will be payable on the deposited amounts at the rate provided by Rule 104.02. 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: (3-29-10)

**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 104.01. (3-29-10)

**105. RETURN OF DEPOSIT -- LECS (RULE 105).**

**01. Former Customers.** Upon termination of service the telephone company will credit the deposit (with accrued interest), to the final bill then promptly return any remaining balance to the customer. ( )

**02. Existing Customers.** 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 will promptly return the deposit (with accrued interest) by crediting the customer's current account or issuing a refund. (3-29-10)

**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 will pay interest at the annual rates established in Rule 104 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)

**106. TRANSFER OF DEPOSIT (RULE 106).**

Deposits will 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 will be transferred to the account for the new location. (7-1-93)

**107. RECORDS OF DEPOSITS (RULE 107).**

**01. Receipts.** Each customer paying a deposit will be provided the following information: (3-29-10)

**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.** Terms and conditions governing the return of deposits. (3-29-10)

**02. Retention of Records.** Each telephone company will 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 will 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 will 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 will 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)

**108. UNCLAIMED DEPOSITS AND ADVANCE PAYMENTS (RULE 108).**

**01. Presumption of Abandonment.** Pursuant to Section 14-508, Idaho Code, any deposit or advance payment made to obtain or maintain local exchange service or other services that is unclaimed by the owner for more than one (1) year after termination of service is presumed abandoned. (3-29-10)

**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 will 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. ( )

**109. -- 199. (RESERVED)**

**BILLING**  
**Rules 200 through 299**

**200. FURTHER DEFINITION (RULE 200).**

As used in Rules 201 through 205, "bill" or "billing statement" refers to a written request for payment listing charges for goods and services 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. ( )

**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 will be regularly issued and must contain the following information: ( )

- a.** The date the billing statement is issued; (3-29-10)
- b.** The time period covered by the billing statement; (3-29-10)
- c.** The due date by which payment must be received, unless the customer has authorized automatic monthly payment. If automatic payment is authorized, the customer must be informed in writing when funds will be withdrawn from a bank account or charged to a credit card account. In addition, the billing statement must state the actual or earliest possible date that funds will be withdrawn or the credit card charged unless the customer consents otherwise in writing at the time automatic payment is authorized; (3-29-10)
- 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 all telephone companies or entities providing goods and services for which the customer is billed, sufficient information to readily identify the goods and services provided, and the amounts charged; (3-29-10)
- i.** The toll-free telephone number(s) available to customers for answering inquiries and resolving complaints about goods and services billed; (3-29-10)
- j.** An itemization of charges for goods and services provided to the customer and any associated fees, taxes, surcharges or subscriber line charges. Charges for each good or service provided as part of a package under a single price, or calling plans in which individual calls are billed at a flat rate regardless of usage need not be separately itemized. (3-29-10)

**02. MTS Bills.** In addition to the requirements of Rule 201.01, bills for MTS service must 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. (3-29-10)

**03. 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 provided by another telephone company unless the bill separately lists those services as required by this rule. (3-29-10)

**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. (3-29-10)

**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. 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. (3-29-10)

**203. BILLING ERRORS, BILLING UNDER INCORRECT RATES, OR FAILURE TO BILL (RULE 203).**

**01. Billing Errors -- 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 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. (3-29-10)

**03. Rebilling Time Period. (3-29-10)**

**a.** If the time when the 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 will not exceed the most recent six (6) months before the discovery of the billing problem. (3-29-10)

**b.** If the time when the billing problem began can be reasonably determined, and the telephone company determines the customer was overcharged, the corrected billings will go back to that time, but not to exceed three (3) years from the time the billing problem occurred as provided by Section 61-642, Idaho Code. (3-29-10)

**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. (3-29-10)

**04. Refunds.** The telephone company will promptly calculate refund amounts overpaid by the customer and issue a credit within two (2) billing cycles. Any remaining credit balance will 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 will advise the customer of the option to have any remaining credit balance exceeding twenty-five dollars (\$25) refunded. (3-29-10)

**05. Additional Payments.** The telephone company will promptly prepare a corrected billing for a customer who has been undercharged, indicating the amount owed to the company. An unbilled or undercharged customer will 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. (3-29-10)

**204. BILLING PROHIBITED -- BILLING DISPUTES (RULE 204).**

**01. Unauthorized Charges.** No telephone company will bill for unanswered or unaccepted telephone calls, telephone calls placed to a toll-free number, or telephone service or other goods and services not ordered or otherwise authorized by the customer of record. 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 services or goods not ordered or otherwise authorized by the customer of record shall be considered in violation of this rule unless the disputed amounts are removed from the customer's bill within two (2) billing cycles of the customer's notification to the company. (3-29-10)

**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. (3-29-10)

**205. RESPONSIBILITY FOR PAYMENT OF RESIDENTIAL SERVICE BILLS (RULE 205).**

**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 telephone company will not hold a customer responsible for paying 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: ( )

- 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 will 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. (3-29-10)

**04. Contents of Notice.** The notice must include: (3-29-10)

- 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 bill amount was accumulated; (3-29-10)
- d. The amount owed; (7-1-93)

- e. The reason(s) for adding the bill amount to the customer's billing statement; (3-29-10)
- 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 telephone company's proposed action by contacting the Commission; and (3-29-10)
- h. The response deadline after which the bill amount will be added to the customer's billing statement. (3-29-10)

**05. Opportunity to Respond.** The telephone company will give the customer at least seven (7) calendar days from the date of its proposed action to respond to the telephone company notice. ( )

**206. -- 299. (RESERVED)**

**DENIAL, RESTRICTION, AND TERMINATION OF SERVICE**  
**Rules 300 Through 399**

**300. EXPLANATION FOR DENIAL OF A SERVICE TO A CUSTOMER (RULE 300).**

If a telephone company intends to deny service to a customer under Rule 301, the telephone company will provide an explanation 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 will be advised that an informal or formal complaint concerning denial of service may be filed with the Commission. (3-29-10)

**301. GROUNDS FOR DENIAL OR TERMINATION OF LOCAL EXCHANGE SERVICE WITH PRIOR NOTICE (RULE 301).**

A telephone company may deny or terminate local exchange service to a customer without the customer's permission, but only after adequate notice has been given in accordance with these rules, for one (1) or more of the following reasons: (3-29-10)

**01. Customer Did Not Pay Undisputed Bills.** With respect to undisputed past due bills for local exchange service, the customer: (3-29-10)

- a. Failed to pay; (3-29-10)
- b. Paid with a dishonored check; or (3-29-10)
- c. Made an electronic payment drawn on an account with insufficient funds. (3-29-10)
- d. The customer failed to make a security deposit, when one is required. (3-29-10)
- e. The customer failed to abide by the terms of a payment arrangement. (3-29-10)
- f. The telephone company determines as prescribed by relevant state or other applicable standards that the customer is willfully wasting or interfering with service through improper equipment or otherwise. (3-29-10)
- g. The customer is a minor not competent to contract as described in Sections 29-101 and 32-101, Idaho Code. (3-29-10)

**02. No 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. ( )

**302. GROUNDS FOR DENIAL OR TERMINATION OF A SERVICE, WITHOUT PRIOR NOTICE (RULE 302).**

A telephone company may deny or terminate a service or all services without prior notice to the customer and without the customer's permission for any of the following reasons: (3-29-10)

**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. (3-1-93)

**03. Illegal Use of Services.** The service(s) was (were) obtained, diverted or used without the authorization or knowledge of the telephone company. (3-29-10)

**04. Customer Unable to Be Contacted.** The telephone company has tried diligently to meet the notice requirements of Rule 303, but has been unsuccessful in its attempt to contact the customer. (3-29-10)

**05. Misrepresentation.** The telephone company has determined that information provided by the customer is materially false or materially misrepresents the customer's true status. (3-29-10)

**303. REQUIREMENTS FOR NOTICE BEFORE TERMINATION OF LOCAL EXCHANGE SERVICE (RULE 303).**

**01. Initial Notice.** If the telephone company intends to terminate local exchange service under Rule 301, it will send to the customer written notice of termination mailed at least seven (7) calendar days before the proposed date of termination. Written notice may be provided by electronic mail (i.e. e-mail) if the customer is billed electronically and separately consents in writing to receiving electronic notification. This written notice will contain the information required by Rule 304. (3-29-10)

**02. Final Notice.** At least twenty-four (24) hours before actual termination, the telephone company will diligently attempt to contact the customer to apprise the customer of the proposed action and the steps the customer must take to avoid or delay termination. This oral notice will contain the same information required by Rule 304. (3-29-10)

**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 notice, the telephone company will again provide notice under Rules 303.01 and 303.02 if it still intends to terminate service. (3-29-10)

**04. Failure to Pay.** No additional notice of termination is required if, upon receipt of a termination notice: (3-29-10)

**a.** The customer makes a payment arrangement and subsequently fails to keep that arrangement; (3-29-10)

**b.** The customer tenders payment with a dishonored check; or (3-29-10)

**c.** Makes an electronic payment drawn on an account with insufficient funds. (3-29-10)

**304. CONTENTS OF NOTICE OF INTENT TO TERMINATE LOCAL EXCHANGE SERVICE (RULE 304).**

**01. Contents of Notice.** The written, electronic or oral notice of intent to terminate local exchange service required by Rule 303 will state: (3-29-10)

**a.** The reason(s), citing these rules, why service will be terminated and the proposed date of termination; (3-29-10)

**b.** Actions the customer may take to avoid termination; (3-29-10)

**c.** That a certificate notifying the local exchange company of a serious illness or medical emergency in the household may delay termination under Rule 306; (3-29-10)

**d.** 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); (3-29-10)

**e.** That the telephone company is willing to make payment arrangements (in a written notice this statement must be in bold print); and (3-29-10)

**f.** What amount must be paid in order to avoid termination of local exchange service and that partial payments will be applied toward past due charges for local exchange service first. (3-29-10)

**305. SERIOUS ILLNESS OR MEDICAL EMERGENCY (RULE 305).**

**01. Medical Certificate -- Postponement of Termination of Local Exchange or Long-Distance Services.** A telephone company offering local exchange or 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 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: (3-29-10)

**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. (3-29-10)

**b.** If the customer requests that termination of long-distance service be postponed, a statement that termination of long-distance service would impair the customer's ability to communicate with necessary medical facilities or services. (3-29-10)

**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 long-distance service has already been terminated when the medical certificate is received, the appropriate service will be restored as soon as possible, but no later than twenty-four (24) hours after receipt. The customer will receive local exchange and necessary long-distance services for thirty (30) calendar days from the telephone company's receipt of the certificate. (3-29-10)

**03. Second Postponement.** The telephone company may postpone termination of local exchange and necessary 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. (3-29-10)

**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)

**306. MEDICAL FACILITIES -- SHELTER CARE (RULE 306).**

Where local exchange or 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 will be provided to the Commission 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 will be allowed so that action may be taken to protect the interests of the facility's residents. ( )

**307. INSUFFICIENT GROUNDS FOR TERMINATION OF LOCAL EXCHANGE SERVICE (RULE 307).**

**01. Termination Prohibited.** Telephone companies will not terminate service or provide notice of intent to terminate service if the unpaid bill cited as grounds for termination is: ( )

**a.** Less than thirty (\$30) dollars; (3-29-10)

**b.** 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 a class of service (business or residential) other than the one to which the customer currently subscribes; (3-29-10)

**c.** For MTS or other goods and services provided by the telephone company or for which the telephone company bills; (3-29-10)

**d.** 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; (3-29-10)

**e.** The subject of an informal or formal complaint filed with the Commission; or (3-29-10)

**f.** Is at issue in a case pending before a court in the state of Idaho unless termination is authorized by court order. (3-29-10)

**308. RESTRICTIONS ON TERMINATION OF LOCAL EXCHANGE SERVICE -- OPPORTUNITY TO AVOID TERMINATION OF LOCAL EXCHANGE SERVICE (RULE 308).**

**01. When Termination Not Allowed.** Unless the customer affected has consented in writing, local exchange service will 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 302.01 and 302.02, or for non-residential customers, as authorized by any Subsection of Rule 302. Local exchange services may be terminated only between the hours of 8 a.m. and 4 p.m., except as authorized by Rules 302.01 and 302.02. (3-29-10)

**02. Personnel to Authorize Reconnection.** Each telephone company providing local exchange service will 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. (1-1-95)

**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, will 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 will not be terminated for failure to pay amounts in dispute while a complaint over that telephone service filed pursuant to Rule 401 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. (3-29-10)

**309. PAYMENT ARRANGEMENTS (RULE 309).**

**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. In discussing or negotiating payment arrangements, the telephone company shall advise the customer what amount of payment the customer must allocate to local exchange service or to long-distance service or other goods and services in order to retain those goods and services. (3-29-10)

**04. Second Arrangement.** If a customer fails to make the payment by the agreed due date, the telephone company may, but is not obligated to, enter into a second arrangement. (3-29-10)

**05. 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)

**310. DENIAL, RESTRICTION, MODIFICATION, OR TERMINATION OF LONG-DISTANCE SERVICE OR OTHER SERVICES (RULE 310).**

**01. Compliance.** Telephone companies regulated under Title 61, Idaho Code, providing long-distance or other services must comply with Rules 300, 302, 308.03, 308.04, and 309 in connection with denial, restriction, modification, or termination of those services. Telephone companies providing long-distance or other services must provide reasonable notice before terminating or restricting access to such services, except as provided by Rule 302. Telephone companies providing 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. (3-29-10)

**02. Failure to Pay.** A customer's failure to pay for undisputed long-distance charges billed by the local exchange company may result in loss of 0+ or 0- and 1+ dialing access to long-distance services until such time as the customer pays the undisputed charges and any applicable reconnection charges. (3-29-10)

**03. Loss of Services.** Customer failure to pay undisputed charges for other services may result in loss of those services. (1-1-95)

**311. CESSATION OF SERVICE IN A SERVICE AREA (RULE 311).**

**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: (3-29-10)

**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; (3-29-10)

**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. (3-29-10)

**c.** Include with its petition a copy of the notice to customers and the number of customers affected by the proposed cessation; (3-29-10)

**d.** Demonstrate that the termination will not deprive the public of necessary telephone services; (3-29-10)

**e.** Obtain Commission approval before transferring customers to other telecommunications providers.

(3-29-10)

**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: (3-29-10)

**a.** Provide notice to the Commission and each affected customer at least forty-five (45) days prior to the proposed termination of service; (3-29-10)

**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; (3-29-10)

**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: (3-29-10)

**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; (3-29-10)

**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. (3-29-10)

**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. (3-29-10)

**312. -- 399. (RESERVED)**

**COMPLAINT PROCEDURE**  
**Rules 400 through 499**

**400. COMPLAINT TO TELEPHONE COMPANY (RULE 400).**

**01. Compliant.** A customer 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, and other services. 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, the customer will state the customer's name, service address, telephone number and the general nature of the complaint. ( )

**02. Investigation by Utility.** The telephone company will promptly, thoroughly and completely investigate the complaint, notify the customer of the results of its investigation and make a good faith attempt to resolve the complaint. The oral or written notification will advise the customer that the customer may request the Commission to review the telephone company's proposed disposition of the complaint. ( )

**03. Service Maintained.** The telephone company will 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)

**401. COMPLAINT TO COMMISSION (RULE 401).**

**01. Informal Complaint.** 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 who has complained to a telephone company is dissatisfied with a telephone company's proposed disposition of the complaint, the customer 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 over which the Commission has authority. (3-29-10)

**02. Termination of Service - Undisputed Bills.** Telephone service will not be terminated nor shall termination be threatened by notice or otherwise while the complaint is pending before the Commission. The telephone company may continue to issue bills and request payment from the customer of any undisputed amounts. ( )

**03. Rights Protected.** No customer will be denied the opportunity to file an informal or formal complaint with the Commission. ( )

**402. RECORD OF COMPLAINTS (RULE 402).**

**01. Recordkeeping.** Each telephone company must keep a record of written complaints pursuant to Rules 400 and 401. These records must be retained for a minimum of one year by the telephone company where the complaints were received. These written records are to be readily available upon request by the complaining customer, the customer's agent possessing written authorization, or the Commission. ( )

**02. Reporting.** When previously 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 400 and 401 and the general subject matter of the complaints. (3-29-10)

**403. TELEPHONE COMPANY RESPONSE TO INFORMAL COMPLAINTS (RULE 403).**

Within ten (10) business days of receiving notification that an informal complaint involving the telephone company has been filed with the Commission, telephone companies must respond either 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. ( )

**404. -- 499. (RESERVED)**

**QUALITY OF SERVICE**  
**Rules 500 through 599**

**500. QUALITY OF SERVICE (RULE 500).**

**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: (3-29-10)

- 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 502. (3-27-13)

**501. RESPONSE TO SERVICE OUTAGE (RULE 501).**

**01. Receipt and Recording of Reports.** Each telephone company providing local exchange service will 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 will maintain an accurate record of trouble reports made by its customers. This record will include accurate identification of the affected customer or service, 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 will be available to the Commission or its authorized representatives upon request at any time within two (2) years of the date of the record. (3-29-10)

**02. Repair Commitments.** Commitments to customers for repair service will be set in accordance with Rule 502. Each telephone company will make every reasonable attempt to fulfill repair commitments to customers. Customers shall be timely notified of unavoidable changes. (3-27-13)

**502. REPAIR SERVICE STANDARDS (RULE 502).**

**01. Restoration of Service.** When a telephone company providing local exchange service is informed by a customer of a service outage as described in Rule 500.02, the telephone company will restore service within forty-eight (48) hours after the report of the outage, except: (3-27-13)

**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.** For outages reported on Friday, Saturday or Sunday, the company must restore service no later than the following Tuesday by 6 p.m. (3-27-13)

**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 required to use reasonable judgment and diligence to restore service, giving due regard for the needs of various customers. 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 meet the restoration timelines of Rule 502.01. (3-27-13)

**03. Compliance Standard.** Each month at least eighty percent (80%) of out-of-service trouble reports shall be cleared in accordance with Rules 502.01 and 502.02. (3-27-13)

**503. PAYTELEPHONE EMERGENCY ACCESS REQUIRED (RULE 503).**

**01. Access to Emergency Services.** All telephones connected to an OSP are required: ( )

**a.** To provide direct access to a local exchange company operator for access to emergency services by dialing "0" (except for OSP customers like hotels, motels, hospitals, dormitories, etc., that direct "0" calls to a person on the OSP customer's premises), and ( )

**b.** Where available, to provide direct access to emergency service providers by dialing "911", unless exempted by the Commission pursuant to Rule 102.02 of this rule. Unless exempted, access to the OSP network (other than the local exchange company's) may be made through any other access number or keypad symbol. Exempted providers are required to maintain current lists of local emergency numbers. ( )

**c.** Provide or pass through the information required by Enhanced 911 service providers, including but not limited to, signaling system seven ("SS7") and automatic number identification ("ANI"). ( )

**02. Emergency Dialing Instructions.** All pay telephones owned or controlled by the OSP customer must be posted with emergency dialing instructions. ( )

**03. Termination of Service for Violation of This Rule.** Consistent with this Commission's rules on termination of service (Telephone Customer Relations Rules 300-314, IDAPA 31.41.01.300 through 31.41.01.314 and Rule 213 of these rules), the LEC must terminate service to customers of record known to be in violation of Rule 102.01 that have not been granted an exemption under Rule 102.02. The Commission or its Staff shall notify the LEC in writing of customers it knows to be in violation and whose service should be terminated. ( )

**504. PAYTELEPHONE APPROVED INSTRUMENTS -- OPERATION OF INSTRUMENTS (RULE 504).**

**01. Registered or Exempt Instruments.** All PSPs connecting pay telephones to the network must connect pay telephone instruments that: ( )

**a.** Are registered under 47 CFR Part 68 of the Federal Communications Commission (FCC) Rules and Regulations (October 1, 2000) and comply with all Americans with Disabilities Act (ADA) requirements listed in the Code of Federal Regulations at 28 CFR Part 36 (July 1, 2000) and the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities ("ADAAG") (July 1, 2000). ( )

**b.** If not registered, are connected behind a protective coupler registered under Part 68 of the FCC Rules and Regulations; or ( )

**c.** Are exempted from registration by the FCC. See Title 47, Part 68.1 through 68.318 (October 1, 2000). ( )

**02. Instruments for the Hearing Impaired.** All owners of PSPs connecting pay telephones to the network must connect pay telephones that comply with the requirements of the Telecommunications for the Disabled Act of 1982 (January 3, 1983) and 47 CFR. Parts 68.112 and 68.316 (October 1, 2000) (which address access to the handicapped and hearing aid compatibility). ( )

**505. PAYTELEPHONE EMERGENCY NUMBERS (RULE 505).**

Pay telephones must allow coin-free operator and emergency 911 access in any exchange in which 911 service is available. Where 911 service is not available, instructions for completing coin-free emergency calls must be posted on the pay telephone instrument as required in Rule 207. ( )

**506. CONNECTION OF PAY TELEPHONES (RULE 506).**

Pay telephones shall be connected only to public access lines (PAL). Every LEC must offer a PAL tariff or price list. There must be one (1) PAL for each pay telephone instrument. ( )

**507. -- 599. (RESERVED)**

**MISCELLANEOUS PROVISIONS**  
**Rules 600 Through 699**

**600. INFORMATION TO CUSTOMERS (RULE 600).**

**01. Required Information.** Each telephone company providing local exchange service will make the following information available to its customers: (3-29-10)

**a.** A summary of the general terms and conditions under which service is provided, referring to these rules as appropriate; (3-29-10)

**b.** A clear and concise explanation of: (3-29-10)

**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; (3-29-10)

**ii.** All recurring charges associated with individual goods and services or package of goods and

services for which the customer is billed; (3-29-10)

iii. Any early termination fees that apply if the customer terminates service prior to the end of a service agreement or contract period; (3-29-10)

iv. The telephone company's dispute resolution procedures and a statement that an informal or formal complaint may be filed with the Commission; and (3-29-10)

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. (3-29-10)

**02. When and How Information Provided.** Information will 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. (3-29-10)

**601. ACCESS TO EMERGENCY SERVICES (RULE 601).**

In counties where consolidated emergency communications systems, as defined by Section 31-4802, Idaho Code, are established, the local exchange company will provide access to those services to all its customers. (7-1-99)

**602. REQUEST FOR TELEPHONE COMPANY RECORDS (RULE 602).**

**01. General Rule.** If any telephone company subject to these rules is directed by subpoena or court order to disclose customer records, as soon as practical, it will notify the customer what records were requested and of the company's response to the request. In no case will the reasonable period of time under this rule exceed two (2) business days after deciding to abide by that request. (3-29-10)

**02. Exceptions.** This rule does not apply if a judge of a court of competent jurisdiction has ordered a telephone company not to disclose that it has complied with a court order or subpoena to turn over a customer's telephone records. (3-29-10)

**603. AUTOMATIC RECORDING (RULE 603).**

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 will 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 of rate increases must be provided to individual customers at least ten (10) days before change is effective. (3-29-10)

**605. TELEPHONE SOLICITATIONS (RULE 605).**

Each telephone company providing local exchange service will 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: (3-29-10)

**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: (3-29-10)

**a.** The name of the telephone corporation and the business name of the telephone corporation if it does business under an assumed business name; (3-29-10)

**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; (3-29-10)

**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; (3-29-10)

**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; (3-29-10)

**e.** Address(es) and toll-free telephone number(s) for personnel responsible for handling consumer inquiries, complaints, etc., by the public; and (3-29-10)

**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. (3-29-10)

**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. (3-29-10)

**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: (3-29-10)

**a.** Contain a title page identifying the telephone corporation; (3-29-10)

**b.** Show on each page the name of the company, the date of issuance and an effective date for their rates; (3-29-10)

**c.** Contain a table of contents; (3-29-10)

**d.** Number pages and paragraphs describing the services; (3-29-10)

**e.** Show when pages or services have been cancelled or revised; and (3-29-10)

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. (3-29-10)

**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. (3-29-10)

**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. (3-29-10)

**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. (3-29-10)

**609. -- 699. (RESERVED)**

**SLAMMING PROVISIONS**  
**Rules 700 through 799**

**700. THE UNAUTHORIZED CHANGE OF A CUSTOMER'S TELEPHONE COMPANY (RULE 700).**

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)

**701. ADOPTION OF FEDERAL SLAMMING REGULATIONS (RULE 701).**

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). ( )

**702. STATE PROCEDURES (RULE 702).**

The federal slamming procedures incorporated by reference in Rule 701 are modified as follows: (3-29-10)

**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 to [secretary@puc.idaho.gov](mailto:secretary@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)

**703. -- 999. (RESERVED)**

## 31.46.01 – UNIVERSAL SERVICE FUND RULES

### 000. LEGAL AUTHORITY (RULE 0).

These rules are adopted under the general legal authority of the Telecommunications Act of 1988, Chapter 6, Title 62, Idaho Code, and the specific authority of Section 62-610, Idaho Code. (7-1-93)

### 001. TITLE AND SCOPE (RULE 1).

The title of these rules is "Universal Service Fund Rules." Their scope is that they apply to all telephone corporations' collection of and payment of monies to fund the Universal Service Fund, to all disbursements from the Universal Service Fund, to all actions by the Universal Service Fund Administrator, and to any other matter that may involve the Universal Service Fund. (7-1-93)

### 002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

### 003. ADMINISTRATIVE APPEALS (RULE 3).

Any telephone corporation aggrieved by any decision of the Universal Service Fund Administrator or the Commission Staff under these rules may petition the Commission to review the decision of the Administrator or the Commission Staff by filing a formal petition according to the Commission's Rules of Procedure, IDAPA 31.01.01.000, et seq. (7-1-93)

### 004. (RESERVED)

### 005. DEFINITIONS (RULE 5).

**01. Basic Local Exchange Service.** "Basic local exchange service" means the provision of access lines to residential and small business customers with the associated transmission of two-way interactive switched voice communication within a local exchange area. See Section 62-603(1), Idaho Code. (7-1-93)

**02. Basic Local Exchange Rate.** "Basic local exchange rate" means the monthly charge imposed by a telephone corporation for basic local exchange service, but does not include any charges resulting from action by a federal agency or taxes or surcharges imposed by a governmental body that are separately itemized and billed by a telephone corporation to its customers. See Section 62-603(2), Idaho Code. (7-1-93)

**03. Business Telephone Service.** "Business telephone service" means telecommunication service that is not residential telephone service. (7-1-93)

**04. Local Exchange Company (LEC).** "Local exchange company" (LEC) is a telephone corporation providing local exchange service to customers in Idaho. (7-1-93)

**05. Local Exchange Service.** "Local exchange service" means the provision of local exchange access lines to residential or business customers with the associated transmission of two-way interactive switched voice-grade transmission within a local exchange area. (7-1-93)

**06. Message Telecommunication Service (MTS).** "Message telecommunication service (MTS)" means the transmission of two-way interactive switched voice communication between local exchange areas for which charges are made on a per-unit basis, not including wide area telecommunications service (WATS), or its equivalent, or individually negotiated contracts for telecommunication services. See Section 62-603(6), Idaho Code. (7-1-93)

**07. MTS/WATS Company.** "MTS/WATS company" means a telephone corporation providing Idaho intrastate MTS or WATS services within the definition of Section 62-603(6), Idaho Code. (7-1-93)

**08. Residential Customer.** "Residential customer" means a person to whom telecommunication services are furnished at a dwelling and which are used for personal or domestic purposes and not for business, professional or institutional purposes. See Section 62-603(a), Idaho Code. (7-1-93)

**09. 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 a residential customer as defined in Section 62-603(7), Idaho Code. (7-1-93)



**10. Residual Revenue Requirement.** “Residual revenue requirement means a local exchange company’s revenue requirement as determined by the Commission less revenue generated by all intrastate telecommunication services, including local exchange services priced at one hundred twenty-five percent (125%) or more of the weighted statewide average and MTS/WATS access services priced at one hundred percent (100%) or more of the statewide average, less contributions from the federal universal service fund. See Section 62-610(4), Idaho Code. (7-1-93)

**11. Small Business Customer.** “Small business customer” means a business entity, whether an individual, partnership, corporation or any other business form, to whom telecommunication services are furnished for occupational, professional or institutional purposes, and whose business entity does not subscribe to more than five (5) access lines within a building. See Section 62-603(a), Idaho Code. (7-1-93)

**12. Telecommunication Service.** “Telecommunication Service” means the transmission of two-way interactive switched signs, signals, writing, images, sounds, messages, data, or other information of any nature by wire, radio, light waves, or other electromagnetic means (which includes message telecommunication service and access service), which originate and terminate in Idaho, and are offered to or for the public, or some portion thereof, for compensation. “Telecommunication Service” does not include the one-way transmission to subscribers of: (7-1-93)

**a.** Video programming; or (7-1-93)

**b.** Other programming service, and subscriber interaction, if any, which is required for the selection of such a video programming or other programming service, surveying, or the provision of radio paging, mobile radio telecommunication services, answering services (including computerized or otherwise automated answering or voice message services), and such services shall not be subject to the provisions of Title 61, Idaho Code, or Title 62, Idaho Code. See Section 62-603(9), Idaho Code. (7-1-93)

**13. Telephone Corporation.** “Telephone corporation” means every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, providing telecommunication services for compensation within Idaho. Telephone corporations providing radio paging, mobile radio telecommunications services, answering services (including computerized or otherwise automated answering or voice message services), or one-way transmission to subscribers of: (7-1-93)

**a.** Video programming; or (7-1-93)

**b.** Other programming service, and subscriber interaction, if any, which is required for the selection of such a video programming or other programming service or surveying are exempt from any requirement of Title 62 or Title 61, Idaho Code, in the provision of such services. See Section 62-603(10), Idaho Code. (7-1-93)

**14. WATS.** “WATS” means wide-area telecommunications service. (7-1-93)

**006. -- 100. (RESERVED)**

**GENERAL PROVISIONS**  
**Rules 101 through 200**

**101. ESTABLISHMENT AND PURPOSES (RULE 101).**

Section 62-610, Idaho Code, directs the Commission to establish a universal service fund (USF) for the purposes of maintaining universal availability of local exchange service at reasonable rates and to promote the availability of message telecommunication service (MTS) at reasonably comparable prices throughout the state of Idaho. The USF is established pursuant to this statute. Rules or orders issued by the Commission concerning administration of the USF supersede previous rules, orders or provisions of the contract between the Commission and the Universal Service Fund administrator. (7-1-93)

**102. ADMINISTRATOR OF THE USF (RULE 102).**

The Commission shall contract with an administrator of the universal service fund. The administrator of the USF

shall receive all monies surcharged by telephone corporations for payment into the USF, account for those monies pending their disbursement, disburse those monies to qualifying recipients according to the terms of the administrator's contract and the Commission's rules and orders, and comply with the other requirements of these rules or orders. The administrator shall have the authority to hire an attorney approved by the Commission to pursue enforcement action, including initiating civil proceedings, against telephone corporations that violate the USF rules. The Commission has a right to audit the books and records of the administrator of the USF. (4-26-95)

**103. STATEWIDE END-USER SURCHARGES (RULE 103).**

**01. Imposition of Surcharges.** Pursuant to 62-610(2), Idaho Code, the USF is funded by the imposition of statewide end-user surcharges on local exchange, MTS and wide-area telephone service (WATS) services in amounts to be determined by the Commission pursuant to Rule 104. (7-1-93)

**02. Local Exchange Surcharges.** The local exchange surcharges are imposed monthly as cents-per-line charges uniform throughout the state with the business-residential differential for the surcharges equal to the statewide average business-residential price ratio. (7-1-93)

**03. MTS/WATS Surcharges.** The MTS and WATS surcharges are imposed monthly on a uniform basis by: (7-1-93)

**a.** A uniform cents-per-minute surcharge applied to the monthly MTS and WATS bill of each end-user for all MTS/WATS companies using this option; or, alternatively, (7-1-93)

**b.** A company-specific percentage surcharge applied to the monthly MTS and WATS bill of each end-user. (7-1-93)

**04. Remittance of Surcharges.** Surcharges of a given level are authorized by order of the Commission and continue in effect until modified by subsequent order of the Commission. Surcharges on Title 62 services may be explicitly added to customers' bills in addition to charges that would otherwise be collected or may be implicitly included in customers' bills (and remitted by the telephone corporation) without increasing customers' bills. Unless otherwise provided by order of the Commission or letter from the Commission Staff or from the USF administrator issued pursuant to Rules 401 or 402, surcharges imposed by these rules are to be remitted monthly to the administrator pursuant to Rule 201. (7-1-93)

**104. THE COMMISSION'S DETERMINATION OF FUNDING LEVELS (RULE 104).**

**01. Issuance of Commission Order.** On or before September 1 of each year the Commission shall issue an order in response to the administrator's report, which will establish statewide end-user surcharges to be in effect for the twelve (12) months beginning October 1 following issuance of the order. (7-1-93)

**02. Findings and Directives of the Order Prescribing Statewide End-User Surcharges.** The order prescribing statewide end-user surcharges for the twelve months beginning October 1 shall contain the following: (7-1-93)

**a.** The Commission's finding of the funding target for the USF for the twelve (12) months beginning October 1, based upon the anticipated revenue requirement of the USF for those twelve (12) months (including certain or likely changes in the revenue requirement of the USF from that reported by the administrator) and prudent management of minimum fund balances; (7-1-93)

**b.** The Commission's finding of the fair, just, and reasonable contribution to this twelve (12) month funding target that should be made from local exchange and MTS/WATS surcharges; and (7-1-93)

**c.** The Commission's finding of the statewide end-user surcharges to be imposed for the twelve (12) months beginning October 1 to reach the funding target. (7-1-93)

**03. Calculation of Local Surcharges.** The surcharge imposed by Subsection 104.02.c. of this rule to be remitted by each LEC for residence and business local exchange service shall be calculated in the following

manner from the total funds that the Commission finds should be recovered from local exchange surcharges. The Commission may round the surcharges for local residence and business service to the nearest cent per month. The following is an example of calculation of local service surcharge: (7-1-93)

- a. Total dollars to be funded from local service surcharges -- twenty-four thousand dollars (\$24,000)/month. (7-1-93)
- b. Total local residence lines (as reported in Rule 302.02) -- four hundred fifty thousand (450,000) (7-1-93)
- c. Weighted, state-wide average one-party, single-line flat residence rate (as reported in Rule 302.03) -- ten dollars (\$10)/month (7-1-93)
- d. Hypothetical Residence revenues under statutory formula (line b x line c) -- four million five hundred thousand (\$4,500,000)/month (7-1-93)
- e. Total local business lines (as reported in Rule 302.02) -- fifty thousand (50,000) (7-1-93)
- f. Weighted, statewide average one-party, single-line flat business rate (as reported in Rule 302.03) -- thirty dollars (\$30)/month (7-1-93)
- g. Hypothetical business revenues under statutory formula (line e x line f) -- one million five hundred thousand dollars (\$1,500,000)/month (7-1-93)
- h. Total hypothetical revenue (line d + line g) -- six million dollars (\$6,000,000) (7-1-93)
- i. Residence relative responsibility (line d / line h) -- .7500 (7-1-93)
- j. Residence total responsibility -- eighteen thousand dollars (\$18,000) (7-1-93)
- k. Residence surcharge (line j / line b) -- four cents (\$.04)/month (7-1-93)
- l. Business relative responsibility (line g / line h) -- .2500 (7-1-93)
- m. Business total responsibility (line a x line l) -- six thousand dollars (\$6,000)/month (7-1-93)
- n. Business surcharge (line h /line e) -- twelve cents (\$.12)/month (7-1-93)

\* These hypothetical revenues from residence and business lines do not correspond to any actual revenues received by telephone corporations. Instead, they represent a calculation of revenues that would result if every residence and business line subscribed to one-party, single-line service at the weighted statewide average rate calculated for those services, which is the statutory formula underlying the calculation of the surcharges.

**04. Calculation of MTS/WATS Surcharges.** The surcharge imposed by Rule Subsection 104.02.c. of this rule to be remitted by each MTS/WATS company for MTS/WATS service shall be calculated in one (1) of two (2) alternative manners: (7-1-93)

a. A uniform cents per minute surcharge for all MTS/WATS companies using this option will be calculated by the Commission by dividing the total revenues to be recovered from toll surcharges from all companies by the total actual toll minutes reported for all companies under Rule 204; or, alternatively, (7-1-93)

b. A company-specific percentage surcharge will be calculated by the company (and reviewed by the administrator) by multiplying the individual MTS/WATS company's total toll minutes as reported in Rule 204 by the cents-per-minute surcharge calculated in a above, then dividing by the total toll revenues as reported for that company reported in Rule 204. (7-1-93)

**105. TELEPHONE CORPORATIONS' AUTHORIZATION TO IMPOSE SURCHARGES (RULE 105).**

**01. Local Exchange Companies.** All local exchange companies are authorized to impose a surcharge for residence and business local exchange service in the amounts set forth in the order issued pursuant to Rule 104.03. The LEC may impose surcharges on the service of any customer subscribing to local service on or after October 1 following issuance of the order and may prorate the surcharge in the same manner as the LEC prorates other flat monthly charges. (7-1-93)

**02. MTS/WATS Companies.** All MTS/WATS companies (except those exempted from remitting surcharges to the USF administrator pursuant to Rule 402) are authorized to impose a surcharge on Idaho intrastate MTS/WATS services in the amounts set forth in the order issued pursuant to Rule 104.04. The MTS/WATS surcharge may be imposed in two (2) different manners: (7-1-93)

**a.** The MTS/WATS company is authorized to impose beginning October 1 following issuance of the order an MTS/WATS surcharge per toll minute in the amount set forth in the order issued pursuant to the Rule 104.04.a.; or, alternatively, (7-1-93)

**b.** The MTS/WATS company is authorized to impose beginning October 1 following issuance of the order an MTS/WATS surcharge on a uniform percentage basis in the manner set forth in the order issued pursuant to Rule 104.04.b. Within fourteen (14) days after the Commission has issued its order pursuant to Rule 104 authorizing surcharges on MTS/WATS service, MTS/WATS companies authorized to impose surcharges under this paragraph must notify the administrator and the Commission in writing which option they choose for the twelve (12) months beginning October 1 following issuance of the order. (7-1-93)

**106. APPLICATIONS FOR FUNDS -- ORDERS FOR FUNDING (RULE 106).**

**01. Eligibility.** Pursuant to 62-610, Idaho Code, a telephone corporation that provides local exchange service and access service for MTS/WATS providers may apply for disbursement from the USF if: (7-1-93)

**a.** Its average residence and business rates for local exchange service for one-party, single-line services exceed one hundred twenty-five percent (125%) of the weighted statewide average rates for one-party, single-line services for residence and business lines, respectively; and (7-1-93)

**b.** Its average rates per minute for MTS/WATS access services exceed one hundred percent (100%) of the weighted statewide average rate for the same or similar MTS/WATS access services. (7-1-93)

**02. Continuation of Eligibility.** Each telephone company's average rate for one-party single-line residence and business service and for MTS/WATS access service shall be calculated individually and compared to the threshold rate based on the newly calculated statewide average as calculated annually by the Administrator pursuant to Rule 302. In order to continue receiving USF funding after the first year of eligibility, the rate shall be revised to equal or exceed the threshold rate, if a company's average for one-party single-line residence or business service or its rate for MTS/WATS access service is below the threshold rate and if: (4-5-00)

**a.** The difference in the company's current average rate and the statewide average threshold rate is greater than three percent (3%); and (4-26-95)

**b.** The difference in the annual revenue associated with the company's current rate and the revenue associated with the statewide average threshold rate is over six thousand dollars (\$6,000). (4-26-95)

**03. Form of Application.** An application for initial USF funding or changes in USF funding may be made in a general rate case or as otherwise allowed by the Commission. Applications must quantify the USF funding sought and the proposed rates to be charged for one-party, single-line residence and business services and for MTS/WATS access services, indicating how USF funding will benefit the rates for these services. Applications must comply with the Commission's Rules of Procedure, IDAPA 31.01.01.000 et seq. (4-26-95)

**04. Changes to Funding on Commission's Own Motion.** The Commission on its own motion may by order change a telephone company's funding from the USF: (4-26-95)

**a.** In connection with any proceeding affecting the telephone company's residual revenue requirement; (7-1-93)

**b.** In connection with a recalculation of the statewide average rates for one-party, single-line residence and business rates and MTS/WATS access services and those recalculations' effect on the threshold for eligibility for funding; (7-1-93)

**c.** In connection with redetermination of the percentage of the residual revenue requirement that should be met by the USF; or (7-1-93)

**d.** As otherwise provided by order. No order altering a telephone company's funding from the USF will be issued without notice that USF funding is at issue and appropriate opportunity to be heard in person or in writing. (7-1-93)

**05. Order for Disbursement.** If the Commission finds that an applicant is eligible for USF disbursements, it may issue an order directing the USF to meet between seventy-five percent (75%) and one hundred percent (100%) of the telephone corporation's residual revenue requirement as defined in Section 62-610(4), Idaho Code. See Rule 005.10. Disbursements from the USF shall be made monthly in one twelfth (1/12) of the annual disbursements ordered by the Commission. (4-26-95)

**107. -- 200. (RESERVED)**

**TELEPHONE CORPORATIONS' OBLIGATIONS**  
**Rules 201 through 300**

**201. TELEPHONE CORPORATIONS' MONTHLY REMITTANCES OF USF SURCHARGES (RULE 201).**

**01. Local Exchange Companies.** Unless otherwise provided by order, letter from the Commission Staff or from the USF administrator issued pursuant to Rule 401, all LECs providing local exchange service in Idaho shall remit the following funds to the administrator on or before the first day of the month: (7-1-93)

**a.** The number of local residence lines in service in Idaho on the first day of the preceding month multiplied by the monthly residence surcharge the companies are authorized to impose under Rules 104.03 and 105.01; and (7-1-93)

**b.** The number of local business lines in service in Idaho on the first day of the preceding month multiplied by the monthly business surcharge the companies are authorized to impose under Rules 104.03 and 105.01. The LEC's remittance shall be accompanied by a report on a form supplied by the administrator separately stating the number of local residence and business lines in service in Idaho for that LEC on the first day of the preceding month. This amount shall be remitted to the administrator without regard to whether the local exchange company has separately imposed the surcharge authorized by Rules 104.03 and 105.01. (7-1-93)

**02. MTS/WATS Companies.** Unless otherwise provided by Order of the Commission or letter from the Commission Staff or from the USF administrator issued pursuant to Rule 402, all MTS/WATS companies offering intrastate MTS or WATS services in Idaho shall remit the following funds to the administrator on or before the first day of the month: (7-1-93)

**a.** The number of actual toll minutes billed to customers in Idaho for intrastate MTS/WATS services in the last complete monthly billing cycle billed by the first day of the preceding calendar month multiplied by the surcharge per toll minute that the companies were authorized to impose under Rules 104.04.a and 105.02.a; or, alternatively; (7-1-93)

**b.** The percentage surcharge of revenues from all intrastate MTS/WATS services provided in last complete monthly billing cycle billed by the first day of the preceding calendar month that the companies are authorized to impose under Subsections 104.04.b. and 105.02.b. These MTS/WATS companies' remittances under

both a and b of this paragraph shall be accompanied by a report on a form supplied by the administrator separately stating the number of toll minutes billed and the revenues associated with the toll minutes and showing the calculation of the surcharge on those minutes for the period stated in this paragraph. These amounts shall be remitted to the administrator without regard to whether the MTS/WATS company has separately imposed the surcharge authorized by Subsections 104.04 and 105.02. (7-1-93)

**03. Failure to Comply.** A telephone corporation failing to comply with this rule is subject to all sanctions provided by Section 62-620, Idaho Code. (7-1-93)

**202. TELEPHONE CORPORATIONS' ANNUAL REPORTING TO ADMINISTRATOR (RULE 202).**

**01. Requirement to Report.** Unless otherwise provided by order of the Commission or letter from the Commission Staff or from the USF administrator issued pursuant to Rule 402, on or before May 30 of each year all telephone corporations providing local exchange service or MTS/WATS intrastate service in Idaho shall report to the administrator the information required by these rules. The administrator shall annually supply forms for these reports on or before May 1 to all telephone corporations for which the administrator has records showing that the telephone corporation provides one (1) or more of these services. The administrator's failure to supply forms does not relieve any such telephone corporation of its reporting requirements under these rules and statute. The reports that this rule requires to be filed with the administrator should not be filed with the Commission. (7-1-93)

**02. The Administrator's Compliance Report.** The administrator shall report to the Commission on or before June 15 whether all telephone corporations receiving the forms have complied with the reporting requirements of this Rule 202 and Rules 203 and 204, specifically identifying telephone corporations that have failed to report altogether, those that have incompletely reported, those that have reported late, and those that have failed to remit the monthly surcharges required by Rule 201. The report shall include a summary of the actions taken against the telephone corporations not complying with the USF rules. See Rule 303. (4-26-95)

**03. Failure to Comply.** A telephone corporation failing to comply with this rule is subject to all sanctions provided. (7-1-93)

**203. LOCAL EXCHANGE COMPANIES' (LECS') ANNUAL REPORTS TO THE ADMINISTRATOR (RULE 203).**

**01. Reporting of One-Party, Single-Line Residence and Business Lines and Rates.** The reports prescribed for LECs by this rule and Rule 202 must include the following information concerning the LEC's customer base and rates for each of the LEC's rate groups as of May 1 of that year: (7-1-93)

**a.** Rates for one-party, single-line, flat-rate residential service (inclusive of mandatory extended area service (EAS) surcharges) and the number of customers subscribing to the service in each rate group, unless exchanges within the rate group have different rates, in which case exchange-by-exchange reporting is required; (7-1-93)

**b.** Rates for one-party, single-line, flat-rate business service (inclusive of mandatory EAS surcharges) and the number of customers subscribing to the service in each rate group, unless exchanges within the rate group have different rates, in which case exchange-by-exchange reporting is required; and (7-1-93)

**c.** The company-wide, weighted average rate for residential and business services described in Rules 203.01.a. and 203.01.b. of this paragraph. Rural zone and mileage charges are excluded from the rates reported in this paragraph. (7-1-93)

**02. Inventories of Other Local Access Lines.** These reports must also include reporting for each rate group (or exchange if required by Subsection 203.01) the following inventories of customers and public network access lines of other local services as of May 1 of that year: (7-1-93)

**a.** Multi-party residence local service; (7-1-93)

**b.** Multi-party business local service; (7-1-93)

- c. Semi-public pay telephone service; (7-1-93)
- d. Public access line service for customer-owned pay telephones; (7-1-93)
- e. Centron, centrex or other central-office based telecommunication systems (including only the public network access lines to this kind of equipment, not the number of station lines behind the equipment); and (7-1-93)
- f. Local service trunks for private branch exchanges (PBXs). (7-1-93)

**03. MTS/WATS Actual Access Minutes and Revenues.** These reports must also include the following information: (7-1-93)

- a. Rates for access minutes associated with the provision of MTS/WATS services in effect on May 1 of that year; (7-1-93)
- b. Total minutes and revenues billed for MTS/WATS access services for the preceding calendar year; (7-1-93)
- c. Total revenues that would be obtained by billing the access minutes reported in Rule 203.03.b. at the rates reported in Rule 203.03.a.; and (7-1-93)
- d. Total revenues from billing and collection services for the preceding calendar year. If different exchanges have different rates, each rate must be reported as a separate line item, indicating the exchanges in which service is offered at each rate and total number of minutes billed to service at each rate. In making this report, telephone companies must include revenues associated with sale of intrastate access under feature groups A, B, C and D. (7-1-93)

**04. MTS/WATS Equivalent Access Minutes.** If the LEC provides MTS/WATS services in addition to basic exchange services, these reports must also include a conversion of the LEC's annual billed MTS/WATS minutes into "equivalent access minutes." The method used to convert billed toll minutes into equivalent access minutes must be shown with the number of toll minutes used in the calculation. Actual access minutes reported pursuant to Rule 203.03 of this rule must be separately stated from "equivalent access minutes" reported under this paragraph. The manner in which these data may be filed is shown in Rules 302.03.a. through 302.03.h. (7-1-93)

**204. MTS/WATS COMPANIES' ANNUAL REPORTS TO THE ADMINISTRATOR (RULE 204).**

The reports prescribed for telephone corporations offering intrastate MTS or WATS services (including those that are also LECs) by this rule and by Rule 202 must include the following information for the calendar year preceding the year in which the report is due: (7-1-93)

- 01. Total Intrastate MTS Minutes and Revenues.** (7-1-93)
- 02. Total Intrastate WATS Minutes and Revenues.** (7-1-93)

**205. -- 300. (RESERVED)**

**THE ADMINISTRATOR'S OBLIGATIONS**  
**Rules 301 through 400**

**301. THE ADMINISTRATOR'S QUARTERLY REPORT TO THE COMMISSION (RULE 301).**

On or before the fifteenth day after the close of each quarter, the administrator shall submit a report to the Commission providing the following information: (7-1-93)

- 01. List of Companies Receiving Disbursements.** A list of all companies receiving disbursements from the USF during the quarter, the individual disbursements for each company during the quarter, and the total disbursements to companies during the quarter; (7-1-93)

**02. Administrator Fees and Expenses.** The administrator’s fees and expenses for the quarter; (4-26-95)

**03. List of Companies Remitting Surcharges.** A list of all companies remitting surcharges to the USF during the quarter, indicating which companies remitted LEC surcharges, which companies remitted MTS/WATS surcharges, and which companies remitted both; (7-1-93)

**04. Aggregate Amount.** The aggregate amount of LEC surcharges remitted to the USF during the quarter, the aggregate amount of MTS/WATS surcharges remitted to the USF during the quarter, and the total of the two (2); (7-1-93)

**05. Interest Earned.** Interest earned during the quarter; and (7-1-93)

**06. Fund Balances.** Beginning, ending and monthly fund balances for the quarter, together with any other information that may be necessary to calculate beginning and ending balances for the quarter. (7-1-93)

**302. THE ADMINISTRATOR'S CALCULATIONS FROM THE ANNUAL REPORTS (RULE 302).**

**01. Weighted Statewide Average Rates for One-Party, Single-Line Residence and Business Services.** From the annual reports provided by LECs pursuant to Rule 203.01, the administrator shall calculate a weighted, state-wide average, one-party, single-line, flat residence rate and a weighted, state-wide average, one-party, single-line, flat business rate, including EAS surcharges. (7-1-93)

**02. Inventory of Local Service Lines.** From the annual reports of LECs provided pursuant to Rule 203.01 and 203.02, the administrator shall calculate the total number of local service lines in Idaho, with subtotals for residence and business service lines and for the categories of lines listed in Rule 203.02. (7-1-93)

**03. Statewide Weighted Average Rate for MTS/WATS Access Minute.** From the annual reports of LECs provided pursuant to Rule 203.03 and 203.04, the administrator shall calculate a statewide weighted average rate per MTS/WATS access minute in the manner shown in the following example :

<b>Example Using Three Companies</b>				
<b>a.</b>	Actual annual access minutes (as reported under Rule 203.03.b.)	500	500	1,000
<b>b.</b>	Annual pro forma actual access revenues (as reported under Rule 203.03.c.)	\$50	\$40	\$50
<b>c.</b>	Average pro forma revenue per actual access minute (line b/line a)	\$.10/min	\$.08/min	\$.05/min
<b>d.</b>	Calculated equivalent access minutes from MTS/WATS (as reported under Rule 203.04)	0	1,000	2,000
<b>e.</b>	Assigned average revenue (from line c)	\$.10/min	\$.08/min	\$.05/min
<b>f.</b>	Calculated equivalent access revenue (line d x line e)	\$0	\$80	\$100
<b>g.</b>	Total actual and equivalent access minutes (line a + line d)	500	1,500	3,000
<b>h.</b>	Total pro forma and equivalent access revenues (line b + line f)	\$50	\$120	\$150
<b>i.</b>	Average revenue per total actual and equivalent access minutes (line h /line g)	\$.10/min	\$.08/min	\$.05/min
<b>j.</b>	All companies' total actual and equivalent access minutes (sum of entries on line g)	---	5,000	---
<b>k.</b>	Company's ratio of total state access minutes (lineg/line j)	.1000	.3000	.6000



Example Using Three Companies			
I.	All companies' total actual and equivalent access revenues (sum of entries of line H)	---	\$320

(7-1-93)

**04. Access.** The figures for access minutes and access revenues on lines a, b and d include all access minutes and all access revenues from any access service reported pursuant to Rule 203.03 or 203.04, and all access under any feature group. (7-1-93)

**303. THE ADMINISTRATOR'S ANNUAL REPORT TO THE COMMISSION (RULE 303).**

**01. The Administrator's Compliance Report.** The administrator shall report to the Commission on or before June 15 whether all telephone corporations receiving the forms have complied with the reporting requirements of this Rule 303 and Rules 202, 203, and 204, specifically identifying telephone corporations that have failed to report altogether, those that have incompletely reported, those that have reported late, and those that have failed to remit the monthly surcharges required by Rule 201. The report shall include a summary of the actions taken against the telephone corporations not complying with the USF rules. (4-26-95)

**02. Report of Existing Conditions.** On or before July 15 of each year the administrator shall submit a report to the Commission providing the following information: (7-1-93)

**a.** Calculations of weighted statewide average rates required by Rule 302, providing workpapers showing each telephone corporation's contributions to the totals and averages contained in the administrator's calculation in Rule 302. (7-1-93)

**b.** Calculations of the USF's expected revenues under the status quo for the twelve (12) months beginning July 1 made by: (7-1-93)

**i.** Multiplying the existing local surcharge for residence service by the statewide total residence lines as of May 1; (7-1-93)

**ii.** Multiplying the existing local surcharge for business service by the statewide total business lines as of May 1; (7-1-93)

**iii.** Multiplying the total MTS/WATS access minutes for the previous calendar year by the existing MTS/WATS surcharge per access minute; and (7-1-93)

**iv.** Summing the three (3) products. (7-1-93)

**c.** Calculations of the expected revenue requirement of the USF under the status quo for the twelve (12) months beginning July 1 made by listing and summing the annualized rate of disbursement for every telephone corporation for which the Commission has ordered and authorized disbursements from the USF together with the administrator's annual budget for administration of the USF. (7-1-93)

**d.** Calculations of the expected revenue requirement of the USF as described in Rule 303.02.c. assuming that companies revise their rates pursuant to Rule 106.02 to maintain funding eligibility and that their USF funding is adjusted pursuant to Rule 106.04. (4-26-95)

**e.** Actual USF balances at the end of the quarters ending in June, September and December of the preceding year and of the quarters ending in March and June of the year of the report (or the estimated USF balance for the quarter ending June 30 if actual balances are not yet available). (4-26-95)

**03. Recommendation.** The administrator shall report the USF's expected surplus or deficit for the twelve (12) months beginning July 1 based upon the assumption that the USF surcharges will not be changed. The administrator shall also report whether this surplus or deficit will alter the expected fund balance during the twelve

(12) months beginning July 1 following the report significantly enough to recommend that USF surcharges be raised or lowered. If the administrator believes that the USF surcharges should be raised or lowered, the administrator shall recommend a target balance for the USF for the end of the twelve months beginning July 1 following this report and the amount by which USF collections would be increased or decreased beginning October 1 to meet this target.

(7-1-93)

**04. Review by Commission Staff.** On or before August 15 the Commission Staff shall review the calculations and recommendations of the administrator and call any errors or omissions to the attention of the administrator and the Commission.

(7-1-93)

**05. Report a Public Record--Workpapers Exempted Trade Secrets.** The report of the administrator showing statewide aggregate totals of local service and MTS/WATS revenues, inventories of services, and other information not identifying any telephone corporation or customer is a public record available for inspection, examination and copying under Section 74-102, Idaho Code. The workpapers accompanying the report showing individual telephone corporations' data for Title 62 services and individual telephone corporation's reports to the administrator showing data for Title 62 services, together with any data for Title 61 services protected from disclosure under applicable trade secret law, are trade secrets exempt from disclosure under Section 74-107(1), Idaho Code.

(4-5-00)

**304. -- 400. (RESERVED)**

**EXEMPTIONS FROM REPORTING AND REMITTANCES**  
**Rules 401 through 500**

**401. LECs' EXEMPTION FROM REPORTING AND REMITTANCES (RULE 401).**

**01. Criteria for Exemption.** Local exchange companies may be exempted from monthly remittances and monthly reporting to the USF administrator under Rule 201 by order of the Commission or letter from the Commission Staff or from the USF administrator upon the grounds that the LEC provides such a small number of local service lines in Idaho and generates such a small monthly surcharge that neither the practical administration of the USF nor the public interest requires monthly remittances and reporting.

(7-1-93)

**02. Action on Requests.** The order or letter excusing the LEC from monthly reporting shall specify quarterly, semiannual or annual remittances and reporting instead. The order or letter may be issued upon request of the LEC or upon the initiative of the Commission, the Commission Staff, or the USF administrator without a request from the LEC. No LEC will be excused from making remittances less often than annually nor from annual reporting under Rules 202 and 203.

(7-1-93)

**03. Requests of Exemptions.** This Commission Staff shall maintain a file of all exemptions under this rule and supply a copy to the Commission Secretary and to the USF administrator.

(7-1-93)

**04. Petition From Initial Denial by Commission Staff or Administrator.** If a request for a LEC's exemption is denied by the Commission Staff or the Administrator, the LEC may petition the Commission.

(7-1-93)

**402. MTS/WATS COMPANIES -- RESELLERS' EXEMPTION FROM REPORTING AND REMITTANCES (RULE 402).**

**01. Criterion for Exemption.** MTS/WATS companies may be exempted from monthly remittances and monthly reporting to the USF administrator under Rule 201 by Order of the Commission or letter from the Commission Staff or from the USF administrator upon the grounds that the MTS/WATS company is exclusively a reseller of MTS/WATS services from another MTS/WATS company that is already remitting the surcharge prescribed for MTS/WATS services for all of the reselling MTS/WATS company's MTS/WATS minutes.

(7-1-93)

**02. Requirements of Request for Exemption.** No exemption will be given under this rule unless the reselling MTS/WATS company has requested an exemption in writing. The request for exemption shall be directed to the Commission Secretary (or if received by the administrator or a member of the Commission Staff forwarded to the

Commission Secretary). The request for exemption must state that the MTS/WATS company is seeking a reseller's exemption, must name the reseller's underlying MTS/WATS carrier, must certify that the named underlying carrier carries all of the reseller's traffic in Idaho, and must be accompanied by a letter from the underlying carrier stating that the reselling carrier requesting the exemption is a customer of the underlying carrier, that the underlying carrier is remitting the surcharge to the USF for all minutes sold to the reselling carrier, and that the reseller will notify the Commission whenever one of its underlying carriers changes. (7-1-93)

**03. Action on Requests.** The Commission Staff or the USF administrator may grant a reseller an exemption from monthly remittances of USF surcharges and from monthly reporting of MTS/WATS use if the reseller has shown that another MTS/WATS company is remitting the surcharge for all of the reseller's minutes. The exemption shall require the reseller to report to the Commission Staff whenever it changes its underlying carrier. The exemption ordinarily excuses the reseller from annual reporting under Rules 202 and 203, but does not exempt the reseller from annual recertification upon request of the Commission Staff or the administrator of its continuing status as a reseller. However, the Commission Staff or the administrator may require an exempt reseller to file an annual report upon written notification that the Commission Staff or administrator requires an annual report for that year. (7-1-93)

**04. File of Exemptions.** The Commission Staff shall maintain a file of all exemptions under this rule and supply a copy to the Commission Secretary and to the USF administrator. (7-1-93)

**05. Petition From Initial Denial by the Commission Staff or Administrator.** If a request for a reseller's exemption is denied by the Commission or the Commission Staff or the Administrator, the company may petition to the Commission. The petition must contain a description of the telephone company's network connections. (7-1-93)

**403. -- 999. (RESERVED)**

## 31.46.02 – RULES FOR TELECOMMUNICATIONS RELAY SERVICES (TRS)

### 000. LEGAL AUTHORITY (RULE 0).

These rules are adopted under the general legal authority of Chapter 13, Title 62, Idaho Code, and the specific authority of Section 61-1306, Idaho Code. (7-1-93)

### 001. TITLE AND SCOPE (RULE 1).

The name of this chapter is “Rules for Telecommunications Relay Services (TRS).” This chapter has the following scope: It governs provision of telecommunications relay services (TRS) in Idaho. (7-1-93)

### 002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

### 003. ADMINISTRATIVE APPEALS (RULE 3).

Any telephone corporation aggrieved by any decision of the Universal Service Fund Administrator, the Telecommunications Relay System Administrator, or the Commission Staff that affects any of the telephone corporation’s interests under these rules may petition the Commission to review the decision of the Universal Service Fund Administrator, the Telecommunications Relay System Administrator, or the Commission Staff by filing a formal petition according to the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq. (7-1-93)

### 004. (RESERVED)

### 005. DEFINITIONS (RULE 5).

The definitions in Section 61-1302 apply to these rules. In addition, the following terms have the meanings set forth below: ( )

**01. American Sign Language (ASL).** “American sign language” means a visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body. See 47 C.F.R. 64.601(1). (7-1-93)

**02. ASCII.** “ASCII” is an acronym for American Standard Code for Information Interexchange, which employs an eight-bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher. ( )

**03. Baudot.** “Baudot” means a seven (7) bit code, only five (5) of which are information bits. Baudot was used by some text telephones to communicate with each other at a forty-five point five (45.5) baud rate. ( )

**04. Communications Assistant (CA).** “Communications assistant (CA)” means a person who transliterates conversation from text to voice and from voice to text between two (2) end users of TRS. CAs are also known by terms such as “TRS operator” or “TDD operator.” ( )

**05. Hearing Carry Over (HCO).** “Hearing carry over (HCO)” means a reduced form of TRS where the person with a speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation. ( )

**06. Telecommunications Relay Services (TRS).** “Telecommunications relay services (TRS)” is defined in Section 61-13028, Idaho Code, and includes services that enable two-way communication between an individual who uses a text telephone or other non-voice terminal device and an individual who does not use such a device. TRS supersedes the terms “dual party relay system,” “message relay services,” and “TDD relay.” See Section 61-1302(8), Idaho Code, and 47 C.F.R. 64.601(7). ( )

**07. Text Telephone (TT).** “Text telephone (TT)” means a machine that employs graphic communication in the transmission of coded signals through a wire or radio communications system. TT supersedes the term “TDD” or “telecommunications device for the deaf.” ( )

**08. Universal Service Fund (USF).** “Universal service fund (USF)” means the fund established by the Commission pursuant to Section 62-610, Idaho Code, and this Commission’s rules codified at IDAPA 31.46.01.000, et seq. The USF has an Administrator whose duties are set forth by this Commission’s rules and this Commission’s contract with the Administrator. See IDAPA 31.46.01.102. (7-1-93)

**09. Voice Carry Over (VCO).** “Voice carry over (VCO)” means a reduced form of TRS where the

person with the hearing disability is able to speak directly to the other end-user. The CA types responses back to the person with the hearing disability. The CA does not speak on behalf of the TT users. ( )

**006. -- 099. (RESERVED)**

**THE TRS PROGRAM, ADMINISTRATOR, AND PROVIDER**  
**Rules 101 through 200**

**100. REQUIREMENTS OF THE TRS PROGRAM (RULE 100).**

**01. Operational Requirements.** A TRS provider will comply with these operational requirements: ( )

**a.** TRS must be provided twenty-four (24) hours per day, seven (7) days per week, every day of the year. ( )

**b.** The TRS provider shall not refuse calls or limit the length of calls using TRS, except that providers of TRS may decline to complete a call because credit authorization has been denied. ( )

**c.** The TRS provider must be capable of communicating with text telephone users using either the ASCII or Baudot format, at any speed generally in use. ( )

**d.** Except during network failure, the TRS provider shall answer eighty-five percent (85%) of all calls within ten (10) seconds, and no more than thirty (30) seconds shall elapse between receipt of dialing information and the dialing of a requested number. The TRS provider shall include adequate staffing to provide callers with efficient access under projected calling volumes so that the probability of a busy response due to unavailability of communications assistants will be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network. ( )

**e.** The TRS provider shall give TRS users access through the TRS to their chosen inter-exchange carrier and to all other operator services to the same extent that such access is provided to voice users. ( )

**02. Communications Assistants' Handling of Calls.** TRS providers must require that communications assistants (CAs) be sufficiently trained to effectively meet the specialized communication needs of individuals with hearing and speech disabilities and that communications assistants have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. Communications assistants are prohibited from disclosing the content of any relayed conversation regardless of content and from keeping records of the content of any conversation beyond the duration of a call. Communications assistants are prohibited from intentionally altering a relayed conversation and must relay all conversations verbatim unless the relay user specifically requests summarization. Communications assistants must relay all messages promptly and accurately. ( )

**03. Rates.** The users of TRS shall pay rates no greater than the rates paid for functionally equivalent voice communication services with respect to such factors as the duration of the call, the time of day, and the distance from point of origination to the point of termination. In particular, this means that when a telephone call from one customer to another would not incur long-distance charges if the call were placed directly without use of the TRS system, then there will be no long-distance charge for that call when the TRS system is used, even if the TRS provider is located in a telephone exchange that would ordinarily require a long-distance call to reach the calling or answering party. ( )

**04. Other Standards and Services.** The standards and services required for TRS providers by this rule are minimum standards and services. The request for proposal for TRS services may require additional standards or services, or if the request for proposals does not, the selection of the TRS provider may take into account the ability of the TRS provider to meet standards or provide services in addition to the minimum standards or services required by this rule. (7-1-93)

**101. TRS ADMINISTRATOR (RULE 101).**

**01. Appointment and Contract.** The Commission shall appoint and contract with a qualified person to administer the TRS program in accordance with the requirements of state and federal law. The TRS Administrator is not an employee or officer of the state of Idaho, but is instead an independent contractor. The appointment and contract shall be for fixed terms, but the Commission may renew terms of appointment or contract. (7-1-93)

**02. Duties and Responsibilities of Administrator.** The Administrator shall: (7-1-93)

**a.** Consult with and receive recommendations from a telephone industry technical advisory committee (or its representatives) appointed by the Commission; (7-1-93)

**b.** Post a fidelity bond in the amount required by the contract with the Commission; (7-1-93)

**c.** Meet timetables necessary to secure certification of the TRS program by the Federal Communications Commission; (7-1-93)

**d.** Issue (upon such terms as the Commission finds reasonable) a request for proposals to providers of message relay services requesting responsive proposals to provide such services that may be necessary for the program; (7-1-93)

**e.** Evaluate responsive proposals to offer TRS services and recommend one (1) or more proposals to the Commission for its review and approval; (7-1-93)

**f.** Enter into a contract with the provider of TRS, which contract and provider have been approved by the Commission; (7-1-93)

**g.** Consult with the Idaho State Council for the Deaf and Hard of Hearing and the Idaho State Council on Developmental Disabilities concerning program design and delivery of message relay services to communications-impaired persons within the state of Idaho; and (7-1-93)

**h.** Perform other services concerning the program as may be deemed reasonable and necessary by the Commission or required by the Commission in its contract with the TRS Administrator. (7-1-93)

**03. Contributions, Gifts and Grants.** The Administrator may receive contributions, gifts and grants on behalf of and in aid of the TRS program. The contributions, gifts and grants shall be deposited in the Idaho Telecommunications Relay Services Fund. (7-1-93)

**102. ESTABLISHMENT OF TELEPHONE INDUSTRY ADVISORY COMMITTEE (RULE 102).**

**01. Establishment of Committee.** The Commission hereby establishes a telephone industry advisory committee with which the Administrator shall consult in the assessment of responses to the request for proposal (RFP), and review the services provided. The industry committee shall have three (3) members, who shall be representatives of: ( )

**a.** A large provider of local exchange and intraLATA Message Telecommunications (MTS) services in Idaho; ( )

**b.** An independent telephone company providing local exchange services and a member of the Idaho Telephone Association (the trade group that includes independent telephone companies in Idaho); and (3-29-17)

**c.** The Idaho State Council for the Deaf and Hard of Hearing, or the State Council on Developmental Disabilities. (3-29-17)

**103. CONSULTATION WITH REPRESENTATIVES OF THE HEARING-IMPAIRED AND THE SPEECH-IMPAIRED (RULE 103).**

The Administrator will consult with representatives of the Idaho State Council for the Deaf and Hard of Hearing and

of the Idaho State Council on Developmental Disabilities. ( )

**104. REQUEST FOR PROPOSALS (RFP) -- SELECTION OF TRS PROVIDER (RULE 104).**

**01. Formulation of RFP and Submission to the Commission.** The Administrator, shall formulate and submit a request for proposals (RFP) for the provision of TRS to the Commission. The Commission shall review the RFP and return it to the Administrator, with comments or changes that Commission finds appropriate, and direct the Administrator to issue the RFP. (3-29-17)

**02. Requirements of the RFP.** The RFP issued by the Administrator will request all companies responding to the RFP to comply with all requirements of state and federal law. See Rule 101. In addition, the RFP may require those responding to the RFP to meet additional requirements contained in the RFP or ask those responding to list additional standards they could meet or additional services that they could provide above the minimums required by state and federal law. (7-1-93)

**03. Timetable for Decision.** The Administrator shall develop a timetable for formulation of the RFP, its review by the Commission, advertisement of the RFP for response, review of proposals submitted in response to the RFP, and final decision selecting a TRS provider that will complete the process of selection of the TRS provider in sufficient time to maintain uninterrupted relay services. (3-29-17)

**105. RESOLUTION OF COMPLAINTS (RULE 105).**

The Idaho Public Utilities Commission hereby offers itself as a forum for resolution of customer complaints regarding TRS provided for Idaho intrastate services. Complaints can be filed and handled informally under Rules 401 et seq. of the Telephone Customer Relations Rules, IDAPA 31.41.01.400 et seq., or formally under the Commission's Rules of Practice and Procedure, IDAPA 31.01.01.000 et seq. The Commission commits to process these complaints within the one hundred eighty (180) day timetable set forth in 47 C.F.R. 64.604(c)(5)(i). (7-1-93)

**106. -- 199. (RESERVED)**

**TELECOMMUNICATIONS RELAY SERVICES FUND**  
**Rules 200 through 299**

**200. TELECOMMUNICATIONS RELAY SERVICES (TRS) FUND -- ESTABLISHMENT AND PURPOSE (RULE 200).**

Section 61-1304, Idaho Code, directs the TRS Administrator to establish a fund (the telecommunications relay services fund, or TRS fund) for the provision of telecommunications relay services. The TRS Administrator will deposit the fund in a depository approved by the Commission and to credit to that fund all monetary contributions, gifts and grants received by the Administrator and all charges billed and collected pursuant to Section 61-1305, Idaho Code, and these rules. No funds derived from monies billed and collected from telephone corporations pursuant to Section 61-1305, Idaho Code, and these rules shall be used to acquire end-user text telephones. All monies deposited in the TRS fund shall be spent for the purpose of defraying the expenses, debts and costs incurred in carrying out the provisions of the TRS program, or for defraying administrative expenses of the Administrator, including necessary expenses for consultants to the Administrator, expenses for travel, supplies and equipment and other expenses of the Administrator necessary for the implementation of the TRS program. All monies credited to the TRS fund may be spent by the Administrator at such times and in such manner as authorized by this Commission's rules, orders or contract with the Administrator. ( )

**201. THE COMMISSION'S DETERMINATION OF FUNDING LEVELS (RULE 201).**

**01. Issuance of Commission Order.** On or before March 1 of each succeeding year, the Commission shall issue an order in response to the Administrator's annual report that will establish funding levels to be in effect for the twelve months beginning April 1 following issuance of the order. The Commission may issue an order revising funding levels at other times in order to preserve the integrity of the fund. (3-29-17)

**02. Findings and Directives of the Order Prescribing Funding Levels.** Orders prescribing funding levels issued pursuant to Rule 202.01 shall contain the following: ( )

**a.** The Commission's finding of the funding target for the TRS program for the twelve (12) months beginning April 1 (or other appropriate time, if the order is not issued to be in effect for twelve (12) months beginning April 1), based upon anticipated expenses of operation of the TRS program for those twelve (12) months and prudent management of minimum fund balances; and (7-1-93)

**b.** The Commission's findings of the fair, just and reasonable allocations of the twelve (12) month funding target that will come from telephone corporations providing local exchange service and that will come from telephone corporations providing MTS/WATS services, respectively. (7-1-93)

**03. Calculation of Funding Levels.** Telephone corporations providing local exchange service in Idaho and telephone corporations providing intrastate Message Telecommunication Services/Wide Area Telecommunications Services (MTS/WATS) services in Idaho must contribute to the TRS fund as follows: ( )

**a.** Each telephone corporation providing local exchange service in Idaho shall file a monthly report, due on or before the first of each month, stating the number of local access lines it has for that month. The data used to determine a local exchange company's number of local access lines shall be the same as that used for monthly reporting to the Administrator of the Universal Service Fund (USF) for the monthly USF report. See USF Rule 201.01, IDAPA 31.46.01.201.01. (7-1-93)

**b.** Each telephone corporation providing intrastate MTS/WATS service in Idaho is required to contribute to TRS funding in proportion to the number of its intrastate MTS/WATS billed minutes, provided that those telephone corporations providing intrastate MTS/WATS service in Idaho that use the services of another telephone corporation for the actual transportation of calls and that have been granted exemptions from contributions to the USF by the Commission, the USF Administrator, or the Commission staff are also granted exemptions from contributions to the TRS fund by operation of this rule. The USF Administrator shall provide the TRS Administrator with a list of all telephone corporations exempted from contributing to the USF and all changes to that list whenever they are made. The data determining an MTS/WATS company's number of intrastate MTS/WATS billed minutes for a given monthly report due on or before the first of the month shall be the same provided to the Administrator of the USF for the USF report also due on or before the first of that month. See USF Rule 201.02, IDAPA 31.46.02.201.02. ( )

**202. TELEPHONE CORPORATIONS' MONTHLY REMITTANCES TO THE TRS ADMINISTRATOR (RULE 202).**

Unless otherwise provided by order of the Commission or written exemption of the USF Administrator or the Commission staff, on or before the first day of each month, all local exchange companies providing local exchange service in Idaho shall remit to the TRS Administrator the funds due under the Commission's order issued pursuant to Rule 202. Unless otherwise provided by order of the Commission or written exemption of the USF Administrator or the Commission staff, on or before the first day of each month all MTS/WATS companies providing intrastate MTS/WATS services shall remit to the Administrator the funds due under the Commission's order issued pursuant to Rule 202. (7-1-93)

**203. THE ADMINISTRATOR'S QUARTERLY REPORT TO THE COMMISSION (RULE 203).**

On or before the fifteenth day after the close of each quarter, the Administrator shall submit a report to the Commission providing the following information: (7-1-93)

**01. Administrator's Disbursements.** The Administrator's disbursements to the TRS provider for the quarter. (7-1-93)

**02. Administrator's Fees.** The Administrator's fees for the quarter. (7-1-93)

**03. List of All Companies.** A list of all companies remitting monies to the TRS fund during the quarter, indicating which companies have remitted funds for their provision of local exchange service, which companies have remitted funds for their provision of MTS/WATS services, and which companies have remitted both. (7-1-93)

**04. Total Amounts Remitted.** The total amounts remitted to the TRS fund by local exchange



companies during the quarter, the total amounts remitted by MTS/WATS companies during the quarter, and the sum of the two; (7-1-93)

**05. Total Number of Local Calls.** The total number of local calls handled by the TRS provider during the quarter, the total number of intrastate and interstate calls handled by the TRS provider during the quarter (keeping separate totals for each), and the total number of intrastate and interstate MTS/WATS minutes billed by the TRS provider during the quarter (keeping separate totals for each); (7-1-93)

**06. Interest, Contributions and Other Income.** Interest earned during the quarter, contributions received during the quarter, and any other income for the quarter; and (7-1-93)

**07. Fund Balances for the Quarter.** Beginning, ending and monthly fund balances for the quarter, together with any information that may be necessary to calculate beginning and ending balances for the quarter. (7-1-93)

**204. THE ADMINISTRATOR'S ANNUAL REPORT TO THE COMMISSION (RULE 204).**

**01. Report of Existing Financial Conditions.** On or before February 15 of each year, the Administrator shall submit a report to the Commission providing the following information: (3-29-17)

**a.** A statement of the TRS fund's income in the previous calendar year from remittances by local exchange companies and from remittances by MTS/WATS companies, and the total, and a statement of all other income (including interest), gifts, contributions, etc., for the calendar year; (7-1-93)

**b.** Actual TRS fund balances at the end of the quarters ending in March, June, September and December of the preceding calendar year; and (7-1-93)

**c.** The statewide line count for local service lines on January 1 of that year and January 1 of the previous year, and the total number of MTS/WATS minutes reported to the TRS Administrator for the year ending the previous December 31 and the year ending the December 31 before that. (3-29-17)

**02. Report on Use of the TRS Program.** The Administrator shall also report, based upon information to be supplied by the TRS provider, upon use of the TRS program in the previous calendar year. The Administrator's contract with the TRS provider shall require appropriate data collection by the TRS provider, including, but not limited to, the number of calls handled by the provider, with breakdown showing whether the calls are local or MTS, intrastate or interstate MTS, total intrastate and interstate MTS minutes, the hours when calls are made (e.g., from 8 a.m. to 5 p.m., from 5 p.m. to 11 p.m., from 11 p.m. to 8 a.m.), days of the week when calls are made, and patterns of increased or decreased usage of the TRS program from month to month for the previous calendar year. The TRS provider shall provide this information by month to the TRS Administrator on dates to be specified by the Administrator. (7-1-93)

**03. Recommendation.** The Administrator shall report the TRS fund's expected surplus or deficit for the twelve months beginning April 1 based upon the assumption that the TRS funding levels will not change. The Administrator shall also report whether this surplus or deficit will alter the expected fund balance during the twelve (12) months beginning April 1 following the report significantly enough to recommend that TRS funding levels be increased or decreased. If the Administrator believes that the TRS funding levels should be increased or decreased, the Administrator shall recommend a target balance for the TRS fund for the end of the twelve (12) months beginning April 1 following this report and the amount by which TRS fund remittances should be increased or decreased beginning April 1 to meet this target. (7-1-93)

**04. Review by Commission Staff.** On or before March 1 the Commission Staff shall review the Administrator's calculations and recommendations and call any errors or omissions to the attention of the Administrator and the Commission. ( )

**05. Report a Public Record -- Workpapers Exempted Trade Secrets.** The Administrator's report showing statewide totals for local service and MTS/WATS minutes, inventories of service lines, and other information not identifying a telephone corporation or a customer is a public record available for inspection,

examination and copying under Section 74-102, Idaho Code. Workpapers accompanying the report (including those produced by the USF Administrator) showing individual telephone corporation's data for Title 62 services and individual telephone corporation's reports to the TRS or USF Administrators showing data for their Title 62 services, together with any data for Title 61 services protected from disclosure under applicable Trade Secret Law, are trade secrets exempt from disclosure under Section 74-107(1), Idaho Code. ( )

**205. -- 299. (RESERVED)**

**PARTICIPATION IN THE TRS PROGRAM**  
**Rules 300 through 399**

**300. PARTICIPATION IN PROGRAM (RULE 300).**

All telephone corporations providing local exchange service within the state of Idaho and all telephone corporations providing intrastate MTS within the state of Idaho, including those otherwise exempt from the jurisdiction of the Commission pursuant to Section 61-104, Idaho Code, and those providing local exchange service or MTS/WATS pursuant to the Telecommunications Act of 1988, Sections 62-601 et seq., Idaho Code, are required to participate in the TRS program and to contribute to the TRS fund under these rules, except as provided by Rules 203 and 302.

(7-1-93)

**301. EXEMPTION FROM TRS PARTICIPATION AND FUNDING (RULE 301).**

The Commission may permit a telephone corporation that provides local exchange service in Idaho or intrastate MTS/WATS service in Idaho to provide TRS to its customers through a TRS provider other than the provider selected by the Commission and may waive the telephone corporation's obligation to participate in the program and to fund the program if the Commission finds, upon application by the telephone corporation, that:

(7-1-93)

**01. ADA.** The telephone corporation will meet its obligation to its Idaho customers in accordance with the standards set forth in the Americans with Disabilities Act.

(7-1-93)

**02. TRS Program.** The operation or provision of TRS under the program approved by the Commission will not be substantially impaired if that telephone corporation does not participate in or fund the TRS program.

(7-1-93)

**302. -- 999. (RESERVED)**

**31.61.01 – RULES FOR THE MEASUREMENT OF STRAY CURRENT OR VOLTAGE  
(THE STRAY VOLTAGE RULES)**

**GENERAL PROVISIONS  
Rules 0 through 11**

**000. LEGAL AUTHORITY (RULE 0).**

These rules are promulgated pursuant to the authority of the Idaho Public Utilities Law, Sections 61-515 and 61-520, Idaho Code, and the Stray Current and Voltage Remediation Act, Section 61-803, Idaho Code. (4-11-06)

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** The title of these rules is the IDAPA 31.61.01, “Rules for the Measurement of Stray Current or Voltage” (Stray Voltage Rules). (4-11-06)

**02. Scope.** These rules are applicable to dairy producers, public utilities and all persons or entities involved in any way in the measurement or remediation of stray current or voltage within Idaho. (4-11-06)

**002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).**

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

**003. ADMINISTRATIVE APPEALS (RULE 3).**

There are no provisions for administrative appeals within the Commission under these rules. (4-11-06)

**004. INCORPORATION BY REFERENCE – REFERENCE TO SAFETY CODES (RULE 4).**

**01. Safety Codes.** These rules reference two (2) national safety codes. (4-11-06)

**a.** The National Electrical Safety Code (NESC) is applicable to public utilities and is adopted by the Commission in IDAPA 31.11.01, “Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission.” (4-11-06)

**b.** The National Electrical Code (NEC) is applicable to the installation of wires and facilities used to convey electric current and to apparatus to be operated by such electric current. Adoption of the National Electrical Code is found at Section 54-1001, Idaho Code, and IDAPA 07.01.06, “Rules Governing the Use of National Electrical Code,” Section 011. (4-11-06)

**005. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 10).**

**01. Adequate Remediation.** Means corrective action taken by a utility which results in, and is reasonably likely to sustain, a reduction of stray current or voltage attributable to the utility’s distribution system to a measured level that is fifty percent (50%) or less of the preventive action level. (4-11-06)

**02. Ampere.** A unit of measure of current. A milliamperere is one-one thousandths (1/1,000) of an ampere. (4-11-06)

**03. Commission.** Means the Idaho Public Utilities Commission. (4-11-06)

**04. Cow Contact Points.** Means any two (2) points on electrically conductive materials in a dairy which a dairy cow may (in its normal environment on the dairy) unavoidably and simultaneously contact. Electrically conductive material may include the surface(s) that the cow is standing on as one (1) or both cow contact points. (4-11-06)

**05. Equipotential Plane (EPP).** Means an area where wire mesh or other conductive elements are imbedded in or placed under concrete, bonded to all metal structures and fixed nonelectrical equipment that may become energized, and connected to the electrical grounding system to prevent a difference in voltage from developing within the plane. (4-11-06)

**06. Preventive Action Level (PAL).** Stray current or voltage that, when correctly measured, is either:

(4-11-06)

**a.** A steady state, root mean square (rms) alternating current (AC) of two (2) milliamperes (mA) or more through a five hundred (500) ohm resistor (i.e., shunt resistor) connected between cow contact points, as measured by a true rms meter, or; (4-11-06)

**b.** Any steady state, rms AC voltage of one (1.0) volt or more across (in parallel with) a five hundred (500) ohm resistor (i.e., shunt resistor) connected between cow contact points, as measured by a true rms meter. (4-11-06)

**07. Primary System.** A term that describes the high voltage utility electrical system including the generation, transmission and distribution systems. It also refers to the high voltage side of a distribution transformer. (4-11-06)

**08. Secondary System.** Means the low-voltage utility electrical system on the secondary side of a distribution transformer. The dairy's on-farm system begins on the dairy's side of the metering points, except for dairies metered on the high voltage side of the transformer(s). In the case of dairies metered on the high voltage side, the on-farm system begins at the transformer's low-voltage lugs. (4-11-06)

**09. Service Provider.** Means any person, company or other legal entity providing stray voltage or current testing, consulting, measurements, analysis services, construction, or hardware. (4-11-06)

**10. Shunt Resistor.** A physical resistor or combination of resistors used to simulate a dairy cow during the measurement of cow contact voltage. As used in these rules, a shunt resistor shall be five hundred (500) ohm plus or minus two percent (+/- 2%). (4-11-06)

**11. Source Resistance.** Means that portion of resistance in the circuit, other than the resistance of the cow, when the cow is completing a circuit between contact points. Body-to-metal contact resistance and hoof-to-earth resistance may represent a portion of the source resistance. (4-11-06)

**12. Steady State.** The value of a current or voltage after an amount of time has passed where all transients have decayed to a negligible value. (4-11-06)

**13. Stray Current or Voltage.** Stray voltage or current is: (4-11-06)

**a.** Any steady state, sixty (60) hertz (Hz) (including harmonics thereof) root mean square (rms) alternating current (AC) less than twenty (20) milliamperes (mA) through a five hundred (500) ohm resistor (i.e., shunt resistor) connected between cow contact points, as measured by a true rms meter; or (4-11-06)

**b.** Any steady state, sixty (60) Hz (including harmonics thereof), rms AC voltage of less than ten (10) volts, across (in parallel with) a five hundred (500) ohm resistor (i.e., shunt resistor) connected between cow contact points, as measured by a true rms meter. (4-11-06)

**c.** Stray current and voltage is a normal, inherent and unavoidable result of electricity traveling through grounded electrical systems, including a dairy producer's on-farm system and a utility's distribution system. These systems are required by the National Electrical Code (NEC) and the National Electrical Safety Code (NESC) to be grounded to the earth to ensure safety and reliability. (4-11-06)

**d.** Unless the context otherwise requires, the term "stray voltage" shall mean stray current or stray voltage. (4-11-06)

**14. Tests, Measurements, Procedures and Analysis.** Means any or all of the stray voltage testing, measurement, work and work product defined in these rules. (4-11-06)

**15. Transient.** Transient or transient deviation means a non-steady state increase or spike in voltage or current. For the purpose of identifying and reporting transients in cow contact voltage (Vcc) or current (Icc), a transient occurs when the recorded maximum Vcc or Icc in a recording interval exceeds two hundred percent (200%)

of the steady state Vcc or Icc recorded during the same recording interval. (4-11-06)

**16. Utility.** Means a public electric utility as defined in Section 61-332A, Idaho Code. (4-11-06)

**011. PURPOSE OF RULES -- CONFORMANCE TO ELECTRICAL CODE (RULE 11).**

These rules standardize the measurement and testing procedures used to measure stray voltage and current. Standardization of testing will provide a consistent basis for determining the presence and level of stray voltage in a dairy and how to determine the source of that stray voltage or current. These rules do not replace existing safety standards embodied in electrical codes. Any conflict between these rules and the National Electrical Code or the National Electrical Safety Code shall be promptly brought to the attention of the Commission. Under these rules, testing is intended to determine: (4-11-06)

**01. Presence of Stray Voltage.** The presence and amount of any stray voltage or current within the dairy. (4-11-06)

**02. Sources of Stray Voltage.** The source(s) of any stray voltage or current detected. (4-11-06)

**03. Contributions to Stray Voltage.** The percent contribution from the utility side and the dairy side of the dairy service entrance to the total stray voltage or current measured on the dairy. (4-11-06)

**012. -- 020. (RESERVED)**

**APPLICABILITY AND ADMISSIBILITY**  
**Rules 21 through 30**

**021. UTILITY (RULE 21).**

A utility measuring or testing for stray voltage or current at the request of a dairy producer, as directed by the Commission or on its own initiative, shall conduct such measurements in accordance with these rules. (4-11-06)

**022. DAIRY PRODUCER (RULE 22).**

**01. Serving Notice on the Utility.** A dairy producer providing written notice to a utility pursuant to Section 61-804, Idaho Code, shall specify why the dairy producer believes its dairy cows are being affected by electrical energy attributable to the utility. A dairy producer may provide such notice with or without first having conducted tests or measurements of stray voltage. (4-11-06)

**02. Cooperation.** When a written notice is filed with the utility, the dairy is obligated to make any contact point(s), service panels, grounding rods or other electrical equipment at the dairy available to the utility for measuring and testing. The utility shall provide reasonable notice and cooperate with the dairy producer to establish an appropriate time to conduct the tests and measurements. The dairy shall cooperate with the utility so that all tests and measurements necessary to identify the existence and magnitude of stray current or voltage, if any, are completed within fourteen (14) days of the utility's receipt of such notice. (4-11-06)

**023. SERVICE PROVIDERS (RULE 23).**

Any person performing any stray voltage measurement or test on behalf of a utility or a dairy shall be deemed a service provider and shall follow these rules. (4-11-06)

**024. ADMISSIBILITY (RULE 24).**

Only tests and measurements made in compliance with these rules shall be admissible before the Commission or in any civil action. (4-11-06)

**025. -- 030. (RESERVED)**

**QUALIFICATIONS OF PERSONS PERFORMING AND ANALYZING**  
**RESULTS OF STRAY VOLTAGE TESTS**  
**Rules 31 through 40**

**031. PERFORMANCE OF TESTS AND MEASUREMENTS (RULE 31).**

Measuring and testing for stray voltage under these rules for consideration by the Commission shall be performed by a qualified testing professional. The following persons are presumed to be qualified testing professionals: (4-11-06)

**01. Professional Engineer.** A professional engineer, licensed in any state, who has completed no fewer than forty-eight (48) hours of Commission-approved stray voltage training and who has been involved in no fewer than five (5) prior investigations involving the measurement or testing of stray voltage. (4-11-06)

**02. Master Electrician.** A master electrician, licensed in any state, who has completed no fewer than forty-eight (48) hours of Commission-approved stray voltage training and who has been involved in no fewer than five (5) prior investigations involving the measurement or testing of stray voltage. (4-11-06)

**03. Technician.** A technician who, under the supervision of a person presumed qualified under Subsections 031.01 and 031.02, has completed no fewer than eight (8) hours of Commission-approved stray voltage training and who has been involved in no fewer than five (5) prior investigations involving the measurement or testing of stray voltage. (4-11-06)

**032. DATA ANALYSIS (RULE 32).**

Analysis of data under these rules, for consideration by the Commission, shall be performed by a qualified analyst. A professional engineer, licensed in any state, who has completed no fewer than forty-eight (48) hours of stray voltage training and who has been involved in no fewer than five (5) prior investigations involving measurement or testing of stray voltage shall be presumed to be a qualified analyst. (4-11-06)

**033. PERSONS OTHERWISE QUALIFIED (RULE 33).**

A person who does not satisfy the qualifications in Sections 031 and 032, may nonetheless be determined by the Commission to be a qualified testing professional or a qualified analyst if, on motion of any party, the Commission finds that person otherwise possesses the knowledge, skill, experience, training, or education that qualifies that person to offer expert testimony before the Commission. (4-11-06)

**034. -- 050. (RESERVED)**

**CALIBRATION OF AND EQUIPMENT USED FOR MEASURING  
AND RECORDING VOLTAGE, CURRENT AND RESISTANCE**  
**Rules 51 through 60**

**051. GENERAL REQUIREMENTS FOR STRAY VOLTAGE MEASURING AND RECORDING EQUIPMENT (RULE 51).**

Equipment used for the measurement or testing of stray voltage, current, and resistance shall meet the following criteria: (4-11-06)

**01. Resolution and Accuracy.** The accuracy and resolution of any instrument used to measure or record cow contact voltage or current, shall limit the error to five percent (5%) or less at one volt (1 V) or two milliamperes (2 mA). (4-11-06)

**02. Voltage Measurement.** Instruments used to measure cow contact voltage shall be capable of separating and independently measuring alternating current (AC) and direct current (DC) voltages. These instruments shall have a minimum internal impedance of ten thousand (10,000) ohm and shall be capable of measuring the true-rms voltage. (4-11-06)

**03. Current Measurement.** A clamp-on ammeter, a digital multi-meter (DMM) with clamp-on device, or an in-line ammeter shall be used to measure current between two (2) points. The meters shall be capable of separating and independently measuring alternating current (AC) and direct current (DC) and shall be capable of measuring the true-rms current. Care must be taken to assure that clamp-on ammeters used have the required resolution and accuracy. (4-11-06)

**04. Resistance Measurement.** Resistance shall be measured using either a volt ohmmeter (VOM) or a DMM. Resolution shall be to the level of one (1) ohm or less when measuring a resistance of less than one thousand

(1,000) ohm. Accuracy shall be within plus or minus five (+/-5) ohm for a five hundred (500) ohm resistance. (4-11-06)

**05. Resistance-to-Earth Measurement.** Grounding electrode resistance-to-earth measurements shall be made with a three- (3) point fall-of-potential instrument or a clamp-on resistance-to-earth tester. (4-11-06)

**052. CALIBRATION REQUIREMENTS (RULE 52).**

**01. Measuring Equipment Calibration.** All measuring equipment shall be calibrated according to the manufacturer's recommended calibration schedule, but no less than annually, to meet the manufacturer's specifications for the accuracy and resolution of the equipment. Measuring equipment shall not be used after its next "calibration due" date for measurements or tests conducted during a stray voltage investigation. Calibration shall be performed by either: (4-11-06)

**a.** The manufacturer of the equipment, who shall certify that the equipment meets the manufacturer's specifications for accuracy and resolution; or (4-11-06)

**b.** A laboratory currently certified as meeting all applicable Institute of Electrical and Electronic Engineers (IEEE) and International Organization for Standards (ISO) standards. (4-11-06)

**02. Calibration Certificates.** The service provider performing the tests and measurements shall maintain certificates from the manufacturer or the calibration laboratory demonstrating compliance with calibration requirements. (4-11-06)

**03. Field Check.** Before voltage or current measurement or testing is performed, the instrument shall be field-checked by comparing measurements to those of other instruments or against a known source. (4-11-06)

**053. REQUIREMENTS FOR MONITORING AND RECORDING DEVICES (RULE 53).**

Digital recording devices shall be used for the purpose of recording current and voltage for extended periods, such as the forty-eight (48) hour test. The recording devices shall have the same level of resolution and accuracy as the meters being used for the measurements. Monitoring systems, which combine measuring and recording functions in a single instrument, shall have the same level of resolution and accuracy as specified in Section 051. Recording devices and monitoring systems shall be capable of recording transient deviations of one-tenth (0.1) second or less in duration from the steady state. Digital recording devices, which have deviation settings, shall permit the deviation setting to be set "low" enough to meet the resolution and accuracy requirements in Subsection 051.01 of these rules. All recording devices shall be able to log the time and date of all data recorded and shall have their internal clocks synchronized. (4-11-06)

**054. REQUIREMENTS FOR LOAD BOXES (RULE 54).**

The load box shall meet the following criteria: (4-11-06)

**01. Volts.** A load box shall be a primarily non-inductive nominal two hundred forty (240) volt, resistance heating type load with a minimum nominal full load of eighteen (18) kilowatts (kW). (4-11-06)

**02. Split-Load.** A load box shall be capable of operating at two (2) or more load settings, including approximately fifty percent (50%) and one hundred percent (100%) of the load box's rated total load. (4-11-06)

**055. -- 070. (RESERVED)**

**TESTING AND MEASUREMENT PROCEDURES**  
**Rules 71 through 80**

**071. STRAY CURRENT OR VOLTAGE TESTS (RULE 71).**

Subject to Subsection 071.02, there are six (6) tests used to detect and measure stray current or voltage. (4-11-06)

**01. Scheduling of Stray Voltage Tests.** Efforts shall be made to perform the tests under conditions substantially similar to those conditions existing at the time(s) the dairy producer believes stray voltage to be a

- problem. (4-11-06)
- a. Test 1 - Cow Contact Test; (4-11-06)
  - b. Test 2 - Forty-Eight (48) Hour Test; (4-11-06)
  - c. Test 3 - Primary Profile Test; (4-11-06)
  - d. Test 4 - Secondary Neutral Voltage Drop Test; (4-11-06)
  - e. Test 5 - Load Box Test; and (4-11-06)
  - f. Test 6 - Signature Test. (4-11-06)

**02. Testing Sequence.** Test 1 shall be performed first. Tests 1 and 2 are used to determine the presence and level of stray voltage and shall be performed in all investigations, subject to the provisions of Subsection 071.03. Tests 3, 4, 5, and 6 may be performed in any order and may be performed without first determining that these tests are required under Paragraph 071.02.b. Tests 3, 4, 5, and 6 may be performed prior to starting the recording for Test 2 or while Test 2 is in progress. Test 2 may be interrupted as necessary to conduct Tests 4, 5, and 6, or for review and analysis of the data recorded up to that point. (4-11-06)

a. If the results from Tests 1 and 2 indicate that stray voltage does not exceed the preventive action level (PAL), the utility has no further testing or remediation obligations under these rules during this test cycle. (4-11-06)

b. If the PAL is exceeded, the utility shall perform the remaining four (4) tests except as provided in Subsection 071.03. The utility shall also perform analysis to determine whether the portion of the stray current or voltage attributable to an off-farm source exceeds fifty percent (50%) of the PAL. (4-11-06)

c. If the PAL is exceeded, and the portion of the stray current or voltage attributable to an off-farm source does not exceed fifty percent (50%) of the PAL, the utility has no further testing or remediation obligations. (4-11-06)

d. If the PAL is exceeded, and the portion of the stray current or voltage attributable to an off-farm source exceeds fifty percent (50%) of the PAL, the utility shall conduct remediation pursuant to Section 091. Under this condition, the forty-eight (48) hour recording of Test 2 may be reduced to no fewer than twenty-four (24) hours. (4-11-06)

e. For all testing conducted under these rules, the utility shall have a qualified analyst prepare a report pursuant to Section 082. (4-11-06)

**03. Suspended or Limited Testing.** With the written agreement of both the utility and the dairy producer, a stray voltage investigation may be suspended at any point in the investigation. With the written agreement of both the utility and the dairy producer, the utility may employ a limited set of tests or measurements on a dairy as part of an intentionally limited evaluation. If the utility proposes to suspend a stray voltage investigation or to conduct a limited evaluation, its reasons for doing so shall be set forth in the written agreement between the utility and the dairy producer. (4-11-06)

**072. PREPARATION FOR TESTING (RULE 72).**  
The person performing the tests shall perform the following: (4-11-06)

**01. Remote Reference Grounding Rod.** (4-11-06)

a. Remote reference grounding rod(s) shall be installed and penetrate moist soil to a depth of thirty (30) inches. When practicable, remote reference rods shall be installed at least twenty-five (25) feet away from the nearest underground conductive electrical equipment of any type or at a distance equal to three (3) to four (4) times the buried depth of any metallic structure connected to the service entrance neutral. The reference ground rod shall be



located not closer than twenty-five (25) feet from the centerline of a primary electrical conductor right-of-way. A reference rod shall be located not closer than one hundred (100) feet from the edge of a transmission line right-of-way. (4-11-06)

**b.** All remote reference grounding rods shall be checked for “remoteness” prior to their use for tests or measurements and if found to be insufficiently “remote,” a new location for that reference ground rod shall be found and retested for remoteness. Remoteness of the reference ground shall be determined by measuring the voltage from the transformer grounding electrode conductor to the remote reference ground. The resistance-to-earth of the transformer grounding electrode shall be measured. The grounding electrode current shall be measured. Remoteness is considered adequate if the measured voltage (transformer grounding conductor to reference ground,  $V_p$ ) is within twenty percent (20%) of the voltage calculated by multiplying the grounding electrode current by the grounding electrode resistance-to-earth. (4-11-06)

**c.** If the transformer grounding electrode is within twenty-five (25) feet of other primary or secondary grounding electrodes, this remoteness test shall be conducted at the first primary system grounding electrode upstream of the transformer that is greater than twenty-five (25) feet from other primary or secondary system grounding electrodes. (4-11-06)

**02. Inspecting the Transformer(s).** Prior to testing, the utility transformer shall be inspected, grounding electrode resistance measured, and any repairs necessary for safety be made and recorded. In the case of a customer-owned transformer, qualified personnel shall inspect the installation, measure grounding electrode resistance, and make and record any repairs necessary for safety. Measurements that require contact with utility or customer-owned primary wires or equipment shall be made by the utility or other qualified personnel. (4-11-06)

**03. In-Line Ammeters.** If in-line or series ammeters are used, they shall be installed under safe conditions in accordance with the National Electrical Safety Code and the National Electrical Code with the entire dairy system or the specific circuit to be tested de-energized. (4-11-06)

**04. Pre-Test Documentation.** (4-11-06)

- a.** All pre-test calibration requirements from Section 052 shall be completed and documented. (4-11-06)
- b.** A sketch or drawing of the dairy shall be prepared indicating: (4-11-06)
- i.** The location of the buildings; (4-11-06)
  - ii.** Secondary electrical service panels and secondary feeder systems serving cow contact areas; (4-11-06)
  - iii.** Transformer(s) and central distribution point; (4-11-06)
  - iv.** Existing grounding electrodes (if known); (4-11-06)
  - v.** The location of all cow contact points to be tested; (4-11-06)
  - vi.** All remote reference grounding rods; and (4-11-06)
  - vii.** All primary and secondary neutral test points used in conjunction with the remote reference grounding rod(s). (4-11-06)
- c.** A listing of planned test points shall be prepared using the applicable form prior to beginning each test. Each test shall be listed separately and specific reference numbers shall be given to each planned test point. (4-11-06)

**05. Safety.** (4-11-06)

a. If the service provider reasonably concludes that a dairy's noncompliance with the National Electrical Code poses a significant and immediate safety hazard which prevents completion of any test or measurement required by these rules, then the service provider's obligations to proceed under these rules shall be suspended until the hazard is eliminated. (4-11-06)

b. At the discretion of the service provider conducting the test, livestock shall be removed from any area where electrical equipment or wiring is examined or electrical measurements are taken. Testing may be suspended if the presence of cows or other animals creates a potential hazard to testing personnel. The locations of electric fences and other electrified cow control devices shall be noted and de-energized where practical. (4-11-06)

**073. TEST 1 -- COW CONTACT TEST (RULE 73).**

**01. Purpose.** The purpose of this test is to determine the location(s), if any, where stray current or voltage exceeds the preventive action level (PAL) and to identify the location(s) at which the cow contact voltage will be recorded in the forty-eight (48) hour test. (4-11-06)

**02. Selection of Cow Contact Points.** The selection of cow contact points to be tested shall include a sufficient number of locations reasonably likely to demonstrate the presence of stray voltage or current, if any. (4-11-06)

**03. Conducting the Test.** The voltage across the shunt resistor or current through the shunt resistor shall be measured between cow contact points as shown in Figure 1. The source resistance shall be calculated during analysis for all cow contact points.

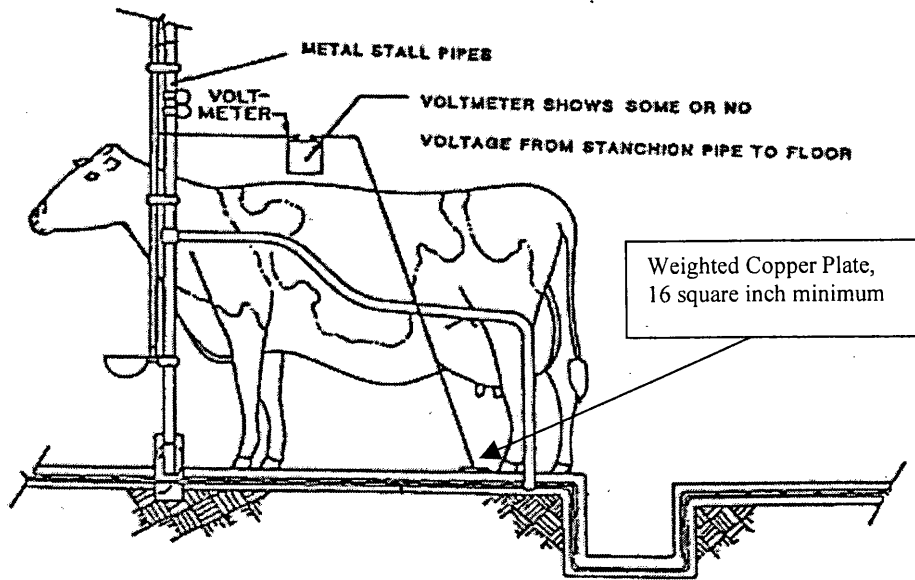


Figure 1, Cow Contact Test. (4-11-06)

a. When using a voltmeter to measure voltage between contact points where one (1) of those points is the floor surface, the equipment shall be arranged as shown in Figures 1 and 2, using a metal plate, which shall make a high quality conductive contact with the ground or floor. If the service provider is unsure of having a high quality conductive contact with the floor or ground, then the procedure described in Paragraph 073.03.c. shall be followed. If

necessary, corrosion shall be removed from the point(s) where test lead(s) make contact with metal equipment.

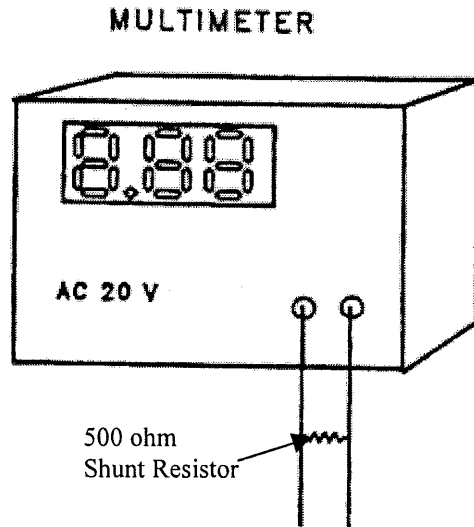


Figure 2, Cow Contact Voltage Measurement.

(4-11-06)

b. When using an in-line milliammeter or a clamp-around milliammeter to measure current between contact points and one (1) of those points is the floor surface or earth, the equipment shall be arranged as shown in Figure 3, using a metal plate which shall make high quality conductive contact with the ground or floor. If the service provider is unsure of having a high quality conductive contact with the floor or ground, then the procedures described in Paragraph 073.03.c. shall be followed. If necessary, corrosion shall be removed from the point(s) where test lead(s) make contact with metal equipment.

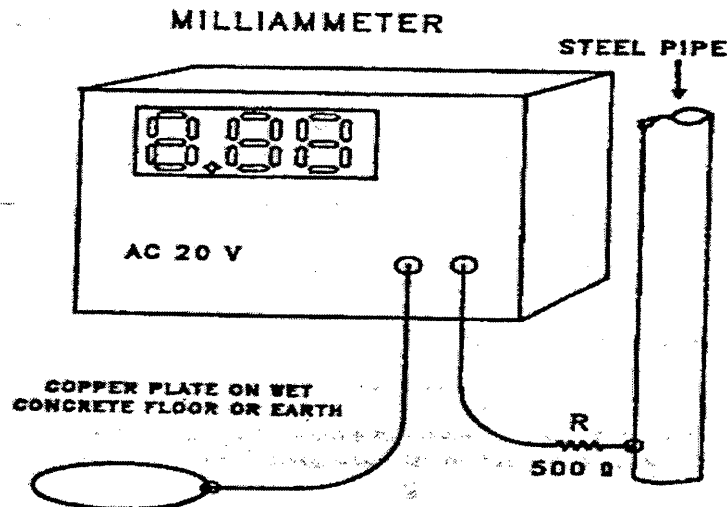


Figure 3, Set Up for Measuring Current Cow Contact Point to Ground (4-11-06)

c. A metal plate used to make an electrical contact with the earth or floor shall be of regular shape (square, rectangular or round), and shall have a surface area equal to or greater than sixteen (16) square inches (4 inches x 4 inches or equivalent). Place a weight not less than twenty (20) pounds on the metal plate. This weight shall be applied evenly across the metal plate and not to the adjacent concrete or earth. Place the metal plate a minimum distance of twelve (12) inches from any metal equipment making contact with the floor or earth. (4-11-06)

i. Where the metal plate is to be placed on a concrete floor, the surface shall be flat. Clean the floor surface with a wire brush to remove debris that may add excess resistance. Use water to clean the floor surface at the point where the metal plate will be placed. Place a paper towel or similar material soaked in saltwater between the metal plate and the concrete floor. (4-11-06)

ii. Where the metal plate is to be placed on the ground or earth surface, the surface shall be flat. Remove any debris and add water to the area, if necessary, to dampen the soil. The surface of the metal plate that will make contact with the earth shall be clean and free of corrosion before use. Remove any corrosion, if necessary. (4-11-06)

**04. Recording the Data.** The person conducting this test shall record the location of, and measured values at, each test point. At each cow contact location, an open circuit voltage reading ( $V_{oc}$ ) and a voltage with five hundred (500) ohm nominal shunt resistor placed across the input to the meter ( $V_{shunt}$ ) shall be taken. These readings shall be taken with ten (10) seconds or less time between each reading. Alternatively, a current measurement ( $I_{shunt}$ ) may be taken in place of the voltage reading ( $V_{shunt}$ ). Data for these test points shall be recorded on the form in Appendix 1. (4-11-06)

**05. Source Resistance Calculation.** The source resistance ( $R_{source}$ ) shall be calculated for each cow contact location measured and the value recorded in Appendix 1. The following formulas shall be used to calculate source resistance.

$$R_{source} = \frac{V_{oc} - V_{shunt}}{V_{shunt}} \times R_{shunt}$$

$$R_{\text{source}} = \frac{V_{\text{oc}}}{I_{\text{shunt}}} - R_{\text{shunt}} \quad (4-11-06)$$

**074. TEST 2 -- FORTY-EIGHT HOUR TEST (RULE 74).**

**01. Purpose.** The purpose of this test is to determine whether stray current or voltage exceeds the preventive action level (PAL) at selected location(s) over a forty-eight (48) hour period, subject to Subsection 074.06 and Paragraph 071.02.d. The test also demonstrates whether the primary or secondary sides of the system have a specific impact on the recorded current or voltage at specific times of day. (4-11-06)

**02. Setup.** A digitizing data recorder with averaging capability and capable of detecting and recording transient deviations of one-tenth (0.1) second or less in duration shall be used to record the following: (4-11-06)

- a.** Voltage from primary neutral at the transformer to remote reference ground,  $V_p$ . (4-11-06)
- b.** Voltage from secondary neutral in the service panel serving the area of the cow contact to remote reference ground,  $V_s$ . (4-11-06)
- c.** Voltage drops ( $V_p$ s) from primary neutral at the location of connection for  $V_p$  to secondary neutral at the location of the connection for  $V_s$ . (4-11-06)
- d.** Cow contact current through ( $I_{cc}$ ) or voltage across a five hundred (500) ohm resistor at the high voltage point(s) found in Test 1,  $V_{cc}$ . (4-11-06)

**03. Measurement Interval.** The results of the forty-eight (48) hour test may be highly indicative of the presence of stray voltage. A recording interval as high as ten (10) seconds may be used provided that transient deviations of voltage or current of one-tenth (0.1) second or less in duration of voltage or current are recorded to the maximum ability of the instrument. (4-11-06)

**04. Measurement at the Cow Contact Point(s).** Measurements to the earth or concrete surface shall be to a metal plate as described in Paragraph 073.03.c. When making measurements to metal objects, corrosion shall be removed to obtain a low resistance connection. (4-11-06)

**05. Recording the Data.** All of the data gathered by the recording equipment during the forty-eight (48) hour test including transients shall be downloaded and retained with the records of the investigation. In addition, the steady-state data shall be summarized in the investigation report. The recorded data shall be made available to the dairy producer or utility upon request. The person conducting this test shall record the location of, and measured values at, each test point. The identification of the cow contact point shall be recorded on the form in Appendix 2. Transient deviations shall be recorded on the supplemental data form, page 3 of 3 in Appendix 2. A plot of the voltage versus time may be substituted for the recording of measured values in Appendix 2. (4-11-06)

**06. Reduced Recording Period.** If a qualified analyst concludes that remediation by the utility is required under Paragraph 071.02.d. prior to the completion of a forty-eight (48) hour recording period, the recording period may be reduced to no fewer than twenty-four (24) hours. (4-11-06)

**075. TEST 3 -- PRIMARY PROFILE TEST (RULE 75).**

**01. Purpose.** The purpose of this test is to measure or calculate neutral-to-earth voltage (NEV) for a multi-grounded distribution system. (4-11-06)

**02. Conducting the Test.** The primary profile test requires concurrent measurement of the ground electrode resistance and current at all primary system ground points within three quarters (3/4) of a mile on either side of all primary service points serving the dairy, or to the end of the line if less than three quarters (3/4) of a mile. Alternatively, the voltage between a remote grounding rod and the primary ground point being tested may be measured. (4-11-06)

a. This test shall be conducted starting at one (1) end of the distribution system and working toward the other end along the main primary distribution system. Figure 4 below illustrates the procedure. (4-11-06)

i. Where the dairy is served by a dedicated tap of less than one-half (1/2) mile in length from a distribution line, the neutral-to-earth voltage shall be measured at each primary ground along the tap and along the distribution line to a distance of three-quarters (3/4) of a mile in each direction from the point of the tap; or (4-11-06)

ii. Where a dairy is served by a dedicated tap that extends more than one-half (1/2) mile from the distribution line, the neutral-to-earth voltage shall be measured at each primary grounding electrode along the tap and along the distribution line to a distance of one-half (1/2) mile in each direction from the point of the tap. (4-11-06)

03. **Recording the Data.** The person conducting this test shall record the location of, and measured values at, each test point. Data and calculation results for these test points shall be recorded on the form in Appendix 3.

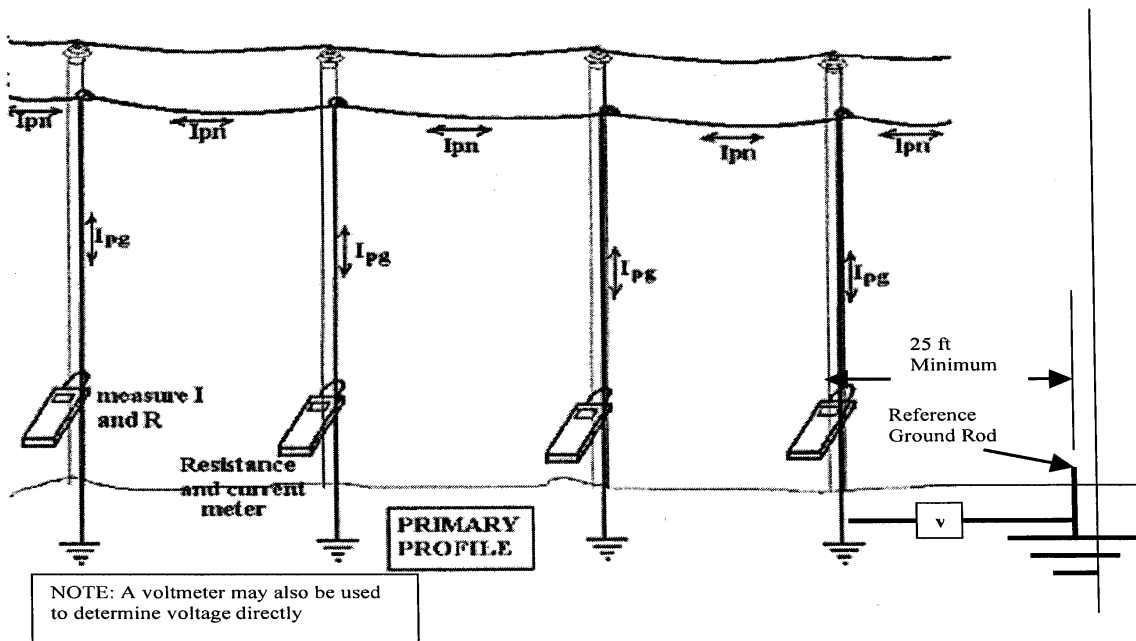


Figure 4, Primary Profile Test (4-11-06)

076. **TEST 4 -- SECONDARY NEUTRAL VOLTAGE DROP TEST (RULE 76).**

01. **Purpose.** This test is used to determine the impact of each secondary service on the neutral-to-earth (NEV) and cow contact voltages on the dairy under controlled conditions. (4-11-06)

02. **Conducting the Test.** This test shall be performed for all service entrances. A proxy load of known characteristics (such as a resistive load like a one hundred twenty (120) volt, fifteen hundred (1,500) watt hairdryer) is required for this test. The proxy load must create a known and stable current and subsequent voltage drop for each neutral serving a main panel, sub-panel or end-of-service area. All service entrances other than that being tested shall be turned "off" to perform this test. A diagram showing the connections and measurement points for this test is shown in Figure 5.

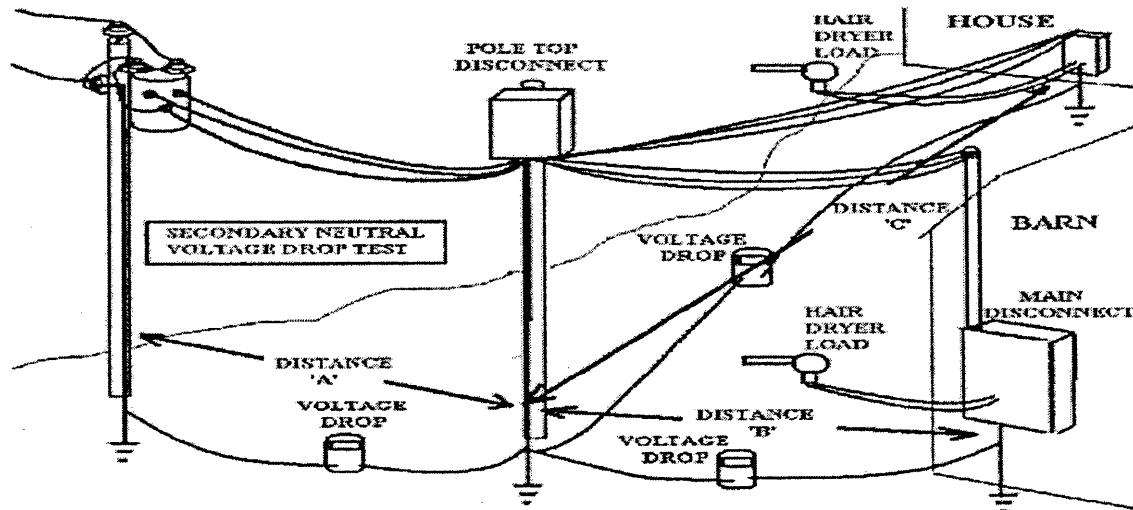


Figure 5, Secondary Neutral Voltage Drop Test Arrangement. (4-11-06)

- 03. Data Collection.** The following data shall be collected for each secondary neutral tested: (4-11-06)
- a. Gauge and type of neutral wire. (4-11-06)
  - b. Length of neutral wire. (4-11-06)
  - c. Neutral current,  $I_{sn}$ . (4-11-06)
  - d. Voltage drop ( $V_{DropM}$ ) between both ends of the secondary neutral being tested. (4-11-06)
  - e. Cow contact voltage ( $V_{cc}$ ) or current ( $I_{cc}$ ) at the same points used in the forty-eight (48) hour test. (4-11-06)
  - f. Primary neutral at the transformer to reference ground voltage,  $V_p$ . (4-11-06)
  - g. Secondary neutral to reference ground voltage,  $V_s$ . (4-11-06)

**04. Measurements.** The three (3) voltages ( $V_{cc}$ ,  $V_p$  and  $V_s$ ) shall be measured with the proxy load “off” and “on.” Calculated expected voltage drops ( $V_{DropC}$ ) (see Appendix 4) shall be compared with measured voltage drops ( $V_{DropM}$ ). If the measured and calculated voltage drops differ significantly, further investigation shall be undertaken to determine the source of additional voltage drop within the circuit. Neutral current shall be measured and recorded with the proxy load on ( $I_{sn}$ ). (4-11-06)

**05. Recording the Data.** Any person conducting this test shall record the location of, and measured values at, each test point. Data and calculation results for these test points shall be recorded on the form in Appendix 4. (4-11-06)

**077. TEST 5 -- THE LOAD BOX TEST (RULE 77).**

- 01. Purpose.** This test is used to determine the extent to which the primary system contributes to stray

current or voltage at cow contact points. For dairies with three (3) phase balanced primary service, the service provider shall perform Steps One and Two in Paragraph 077.02.b. below. (4-11-06)

**02. Conducting the Load Box Test.** This test shall be performed at the same time of day as the time(s) of highest cow contact voltage found in the forty-eight (48) hour test. During this test, voltage and current shall be measured and recorded at the points indicated in Figure 6.

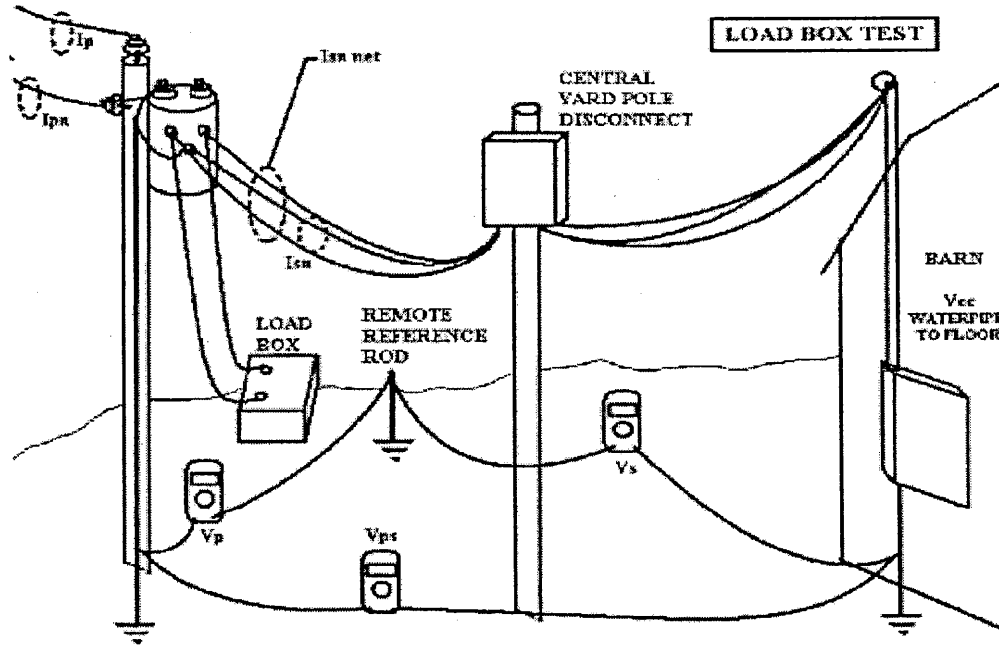


Figure 6, Load Box Test. (4-11-06)

- a. The load box test requires the recording of eight (8) data points during each of the five (5) test steps. The eight (8) data points that shall be measured or calculated and recorded for each step are: (4-11-06)
  - i. Primary line to neutral voltage,  $V_{pri}$ . (4-11-06)
  - ii. Load Box Current,  $I_{lb}$ . (4-11-06)
  - iii. Voltage at load box connection to secondary system,  $V_{lb}$ . (4-11-06)
  - iv. Calculate transformer current  $I_p$  using  $I_p = \frac{I_{lb} \times V_{lb}}{V_{pri}}$ . (4-11-06)
  - v. Voltage from primary neutral at the transformer to remote reference ground rod,  $V_p$ . (4-11-06)
  - vi. Voltage from secondary neutral in the service panel serving the area of the cow contact to remote reference ground rod,  $V_s$ . (4-11-06)
  - vii. Voltage from primary neutral at the transformer to secondary neutral at the service panel serving the area of cow contact,  $V_{ps}$ . (4-11-06)
  - viii. Cow contact voltage ( $V_{cc}$ ) or current ( $I_{cc}$ ) at the same point(s) used in the forty-eight (48) hour test. (4-11-06)



**b.** Except for dairies with three (3) phase balanced primary service, the following five (5) test steps shall each be conducted for at least two (2) minutes: (4-11-06)

i. Step One: The load box shall be de-energized, the dairy shall remain “on,” and the data shall be recorded. (4-11-06)

ii. Step Two: The load box shall be de-energized, the dairy shut “off,” and the data shall be recorded. (4-11-06)

iii. Step Three: The load box shall be set to half load, the dairy shut “off,” and the data shall be recorded. (4-11-06)

iv. Step Four: The load box shall be set to full load, the dairy shut “off,” and the data shall be recorded. (4-11-06)

v. Step Five: The load box shall be set to full load, the dairy shall be turned “on,” and the data shall be recorded. (4-11-06)

**03. Calculating the K Factor.** The K factor is a calculated ratio ( $V_{cc}/V_s$ ). The K factor should be less than one (1) because  $V_{cc}$  (cow contact voltage) should be less than  $V_s$  (the dairy ground to reference ground voltage). If the K factor is greater than one (1), then there is contribution to  $V_{cc}$  from sources other than  $V_s$ . (4-11-06)

**04. Recording the Data.** The person conducting this test shall record the location of, and measured values at, each test point. Data and calculation results for these test points shall be recorded on the form in Appendix 5. (4-11-06)

**078. TEST 6 -- SIGNATURE TEST (RULE 78).**

**01. Purpose.** This test is used to determine the contribution to stray current or voltage of individual pieces of equipment operating on the dairy. The test is best performed when there is minimal farm electrical activity. (4-11-06)

**02. Conducting the Signature Test.** During this test, individual pieces of major current drawing equipment shall be started and stopped. The effects of starting, operating, and stopping each piece of equipment shall be measured and recorded for a period of operation of at least fifteen (15) seconds. The person conducting the test shall identify and record the equipment being tested and record the specific times that the equipment was started and stopped. A digitizing data recorder with averaging capability shall be used to measure and record the required electrical data. These measurements shall be taken at the same locations at the dairy where measurements were taken for the purpose of the load box test and forty-eight (48) hour test. (4-11-06)

**a.** Voltage from primary neutral at the transformer to remote reference ground rod,  $V_p$ . (4-11-06)

**b.** Secondary neutral at the service panel serving the area of cow contact to remote reference ground voltage,  $V_s$ . (4-11-06)

**c.** Primary neutral voltage drop ( $V_{ps}$ ) from the location of connection for  $V_p$  to secondary neutral voltage at the location of the connection for  $V_s$ . (4-11-06)

**d.** Cow contact voltage ( $V_{cc}$ ) or current ( $I_{cc}$ ) at the preselected point. (4-11-06)

**03. Recording the Data.** All of the data gathered by the recording equipment during the signature test, including transients shall be downloaded and retained with the records of the investigation. In addition, the steady state data shall be summarized in the investigation report. The recorded data shall be made available to the dairy producer or utility upon request. The location of all test point(s) shall be recorded on the form in Appendix 6. A plot of the voltage versus time may be substituted for the recording of measured values on Appendix 6. (4-11-06)

**079. -- 080. (RESERVED)**

**ANALYSIS AND REPORTING THE DATA**  
**Rules 81 through 90**

**081. ANALYZING THE COLLECTED DATA (RULE 81).**

**01. Cow Contact Points.** Examine the data recorded for the forty-eight (48) hour test in Appendix 2 and determine the highest steady state value of cow contact voltage ( $V_{cc}$ ) or current ( $I_{cc}$ ). Determine the value of primary neutral to reference voltage ( $V_p$ ) that was present for the highest cow contact value. Record these values on the data sheet of Appendix 7. These values shall be identified as “test cow contact voltage or current” ( $V_{cc}$  48hr or  $I_{cc}$  48hr) and “primary neutral to reference voltage at time of maximum cow contact voltage or current” ( $V_p$  48hr). The three (3) data sets created from the values are: (4-11-06)

**a.** The primary to reference ground voltage and the cow contact voltage or current measured during the load box test (Appendix 5) with the farm power “off” and the load box “off” shall be recorded on the data sheet of Appendix 7 as  $V_p$  OFF and either  $V_{cc}$  OFF or  $I_{cc}$  OFF. (4-11-06)

**b.** The primary to reference ground voltage and the cow contact voltage or current measured with the load box set at one-half (1/2) load shall be recorded on the data sheet of Appendix 7 as  $V_p$  HALF LOAD and either  $V_{cc}$  HALF LOAD or  $I_{cc}$  HALF LOAD. (4-11-06)

**c.** The primary to reference ground voltage and the cow contact voltage or current measured with the load box at maximum shall be recorded on the data sheet of Appendix 7 as  $V_p$  FULL LOAD and either  $V_{cc}$  FULL LOAD or  $I_{cc}$  FULL LOAD. (4-11-06)

**02. Contributions to Stray Voltage or Current for Single Phase Dairies.** The utility contribution to cow contact voltage or current shall be determined using the following formula. Compare the values determined to the preventive action level (PAL).

Utility contribution to  
cow contact voltage = 
$$\frac{V_p 48 - V_p \text{ HALF}}{V_p \text{ FULL} - V_p \text{ HALF}} \times (V_{cc} \text{ FULL} - V_{cc} \text{ HALF}) + V_{cc} \text{ HALF}$$

or

Utility contribution to  
cow contact current = 
$$\frac{V_p 48 - V_p \text{ HALF}}{V_p \text{ FULL} - V_p \text{ HALF}} \times (I_{cc} \text{ FULL} - I_{cc} \text{ HALF}) + I_{cc} \text{ HALF}$$
 (4-11-06)

**03. Contributions to Stray Voltage or Current for Three Phase Dairies.** The utility contribution to cow contact voltage or current for dairies with three (3) phase balanced load service, shall be determined by directly using the results of the load box test results for Step 1 and Step 2 as specified in Paragraph 077.02.b. (4-11-06)

**a.** The  $V_{cc}$  measured during Step 1 of the load box with the load box “off” and the dairy “on” will be the total  $V_{cc}$ . (4-11-06)

**b.** The  $V_{cc}$  measured during Step 2 of the load box test with the load box “off” and the dairy “off” is the contribution to  $V_{cc}$  from the utility,  $V_{cc} \text{ utility}$ . (4-11-06)

**c.** The contribution to  $V_{cc}$  by the dairy is the difference between  $V_{cc}$  and  $V_{cc} \text{ utility}$ ,  $V_{cc} \text{ dairy} = V_{cc} - V_{cc} \text{ utility}$ . (4-11-06)

**082. REPORTING (RULE 82).**

Within a reasonable period of time after completion of any tests required to be performed by the utility under these rules, a qualified analyst shall prepare a written report. The report shall include a summary of the tests performed, a

copy of the sketch or drawing of the dairy prepared pursuant to Section 072, all of the data or results obtained from the tests, and an analysis of the data or results obtained from the tests. If remediation was required under these rules, the report shall specify the actions taken or to be taken. The utility shall provide a copy of the written report to the dairy producer. (4-11-06)

**083. -- 090. (RESERVED)**

**REMEDIAL ACTIONS AND COMMISSION PROCEEDINGS**  
**Rules 91 through 92**

**091. REMEDIATION (RULE 91).**

**01. Utility System.** If the utility is required to conduct remediation, it shall commence such remediation within five (5) business days. The utility shall diligently pursue to completion remedial procedures which shall reduce, and are reasonably likely to sustain, that portion of the stray current or voltage attributable to the utility’s distribution system to a level equal to or less than fifty percent (50%) of the preventive action level (PAL). This may include addressing other off-dairy sources. (4-11-06)

**02. Other Dairies, Farms and Industrial Sites.** If a utility’s contribution to stray voltage exceeds fifty percent (50%) of the preventive action level (PAL) and the utility determines that another customer is a significant contributing source of stray voltage, the utility shall notify both the dairy and the other customer in writing. (4-11-06)

**092. COMMISSION PROCEEDINGS (RULE 92).**

**01. Filing with the Commission.** All petitions seeking relief under Section 61-805, Idaho Code, shall be filed with the Commission Secretary pursuant to Section 005. Petitions shall conform to IDAPA 31.01.01, “Rules of Procedure of the Idaho Public Utilities Commission,” Section 053. The petitioner shall file an original and five (5) copies of the petition. (4-11-06)

**02. Contents of Petition.** The petition shall conform to IDAPA 31.01.01, “Rules of Procedure of the Idaho Public Utilities Commission,” Section 053. The petition shall contain background information, the date the notice was filed with the serving utility, a description of the alleged incident(s) of non-compliance with the Stray Current and Voltage Remediation Act, and the remediation actions (if any) undertaken by either the utility or the dairy. A copy of the utility’s entire stray voltage report shall accompany the petition. (4-11-06)

**093. -- 999. (RESERVED)**

**APPENDIX 1**  
**TEST 1 – COW CONTACT POINT DATA FORM**

Dairy Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 Dairy Location: \_\_\_\_\_  
 Shunt Resistor: \_\_\_\_\_ ohm ( Rshunt )

Item #	Contact Point Identifier	Contact Point Description	Voltage Measured w/o Shunt Resistor Voc	Voltage Current Measured w/Shunt Resistor Vcc	Source Resistance Calculated Rsource	Comments
1						
2						

**TEST 1 – COW CONTACT POINT DATA FORM INSTRUCTIONS**

1. The total information provided by the contact point identification, the contact point description, and the dairy sketch(es) shall be sufficient to allow a third party to accurately repeat the test locating the correct cow contact points for a specific contact voltage.
2. The voltages measured in this test shall be determined using the same instrument(s) for both data points. One reading shall be taken immediately following the other using the same meter.
3. The actual source resistance is calculated from the known shunt resistance and the measured voltage.
4. Record comments as appropriate or necessary.

$$R_{\text{source}} = \frac{V_{\text{oc}} - V_{\text{shunt}}}{V_{\text{shunt}}} \times R_{\text{shunt}}$$

or

$$R_{\text{source}} = \frac{V_{\text{oc}}}{I_{\text{shunt}}} - R_{\text{shunt}}$$

**APPENDIX 2**  
**TEST 2 – “48-HOUR” TEST REPORT FORM 1**

Customer Name: \_\_\_\_\_ Date: \_\_\_\_\_  
 Start Time: \_\_\_\_\_ Stop Time: \_\_\_\_\_  
 Contact Point Identifier Number \_\_\_\_\_

Hour	Time of Occurrence (Hr, Min) of Highest Steady State Vcc or Icc	Voltage Across (Current Thru) Rshunt Vcc or Icc	Primary Neutral to Referenced Ground Vp	Secondary Neutral to Reference Ground Vs	Primary to Secondary Voltage Drop Vps	Duration Steady State Vcc or Icc Exceeded PAL in One Hour Period
1						
2						

**TEST 2 - “48-HOUR” TEST REPORT FORM 1**  
**INSTRUCTIONS**

Record the following data with a long term digitizing data recorder or its equivalent for a minimum of 48 hours as specified in Rule 074:

- a. Voltage from primary neutral to remote reference ground, Vp, at transformer.
- b. Secondary neutral to remote reference ground voltage, Vs, at the electrical panel serving the area for the Vcc or Icc selected.
- c. Primary neutral to secondary neutral voltage, Vps, between points of connection for Vp and Vs.

**d.** Steady state cow contact voltage or current at the preselected point(s) with the highest cow contact voltage or current recorded in Test 1, Vcc or Icc.

Steady State Data:

Steady state data recorded during the 48-hour test shall be presented in tabular format on Form 1 as described below, or it shall be presented graphically. Graphical presentation shall include a time scale for the entire recording period and a clear indication of the steady state readings of Vcc or Icc, Vp, Vs and Vps for the recording intervals. The scale(s) shall be such that steady state cow contact voltages or currents at or above the PAL are easily identifiable.

If using tabular format, the analyst shall enter data in the table for each hour of the 48 hours of the test in chronological order. The data recorded in the table shall include: the specific time that the highest steady state value of Vcc or Icc was recorded in that hour; all four corresponding data points recorded at that time (Vp, Vs, Vps and Vcc or Icc), and the total time during the hour that the steady state Vcc or Icc exceeded the PAL.

**TEST 2 – REPORT FORM 2  
SUPPLEMENTAL DATA FOR FARM OWNER  
TRANSIENT DEVIATIONS FOUND DURING “48-HOUR” TEST**

Customer Name: \_\_\_\_\_ Date: \_\_\_\_\_  
Start Time: \_\_\_\_\_ Stop Time: \_\_\_\_\_  
Contact Point Identifier Number: \_\_\_\_\_

Hour	Time of Highest Peak Vcc (Icc)	Highest Voltage Recorded	Total Number Transient Deviations	No. Transient Deviations Exceeding 1.0 Volts with Peak Magnitude Greater than 1.0 Volts (2.0 milliamps)
1				
2				

Transient deviations occur due to electrical events such as motor starts. The PAL level is 1.0 volt for steady state voltages but PAL does not apply to transient voltage deviations.

**TEST 2 - “48-HOUR” TEST REPORT FORM 2  
INSTRUCTIONS**

Recording Transient Data:

For the purpose of identifying and reporting transient deviations, a transient deviation occurs when the recorded maximum Vcc or Icc in a recording interval exceeds two hundred percent (200%) of the steady state Vcc or Icc recording during the same recording interval.

Transient data recorded during the 48-hour test shall be presented in tabular format on the “48-hour Test – Transient Deviation Data” form as described below, or it shall be presented graphically. Graphical presentation shall include a time scale for the entire recording period and a clear indication of the maximum Vcc or Icc recorded for the recording intervals. The scale(s) shall be such that Vcc transient deviations at or above two (2.0) volts, or Icc transient deviations at or above four (4) milliamps, are easily identifiable.

If using a tabular format, the analyst shall enter data in the table for each hour of the 48 hours of the test in chronological order. The data recorded in the table shall include; the specific time during the hour that the transient deviation in Vcc or Icc with the largest peak magnitude occurred, the corresponding peak Vcc or Icc, the total number of transient deviations recorded in that hour, and the total number of transient deviations recorded in that hour with a peak magnitude of two (2) or more volts for Vcc or four (4) or more milliamps for Icc.

**APPENDIX 3**

**TEST 3 – PRIMARY PROFILE DATA FORM**

Dairy Name:

Dairy Location:

Date:

Item	Pole Location & Identification	Time	Current Primary Ground Ipg	Resistance Primary Ground Rpg	Calculated Voltage (primary neutral-to-earth) Vpne	Measured Voltage (primary neutral-to-earth) Vpne	
#			(mA)	(Ohm)	(V)	(V)	Notes
1							
2							

Note: If Vpne is measured it is not required to measure Ipg and Rpg for determination of the calculated Vpne. In cases where Vpne is calculated the following formula is used:

$$\text{Calculated Vpne} = (\text{Ipg} \times \text{Rpg}) / 1000$$

**APPENDIX 4**

**TEST 4 – SECONDARY NEUTRAL VOLTAGE DROP TEST**

Test Performed by:

Date:

Customer Name:

(All other farm loads must be off. Use only one load per circuit.)

	SITE:	1	2	3	4	5	
A	Site Location						Units
B	Circuit Neutral Wire Gauge						AWG
C	Circuit Neutral AL or CU						
D	Wire length (in 100's ft.)						100 ft.
E	Ω /100 ft.						Ω
F	Total Resistance (D times E)						Ω

G	Measured Neutral Current, $I_{sn}$						A
H	Calculated Voltage Drop, $V_{DropC}$ (F times G)						V
I	Measured Voltage Drop, $V_{DropM}$						V
J	Percent difference $[(H-I)/H]*100$						%
	$V_p$ load "off"						V
	$V_s$ load "off"						V
	$V_{cc}$ load "off"						V
	$I_{cc}$ load "off," if measured						
	$V_p$ load "on"						V
	$V_s$ load "on"						V
	$V_{cc}$ load "on"						V
	$I_{cc}$ load "on," if measured						

**TEST 4 – SECONDARY NEUTRAL VOLTAGE DROP TEST INSTRUCTIONS**

**ITEM EXPLANATION**

A-J Describe load site location, neutral wire gauge, neutral wire length (in 100s of feet), resistance per 100 feet (see table below), measured neutral current, measured voltage drop,  $V_p$ ,  $V_s$  and  $V_{cc}$  or  $I_{cc}$  for load "off" and load "on."

Voltage drop is measured from end-to-end of the secondary neutral being tested and the neutral bus of the building being tested. Electrical power to all buildings shall be turned-off during this test except at the building being tested. Locations of  $V_p$ ,  $V_s$  and  $V_{cc}$  or  $I_{cc}$  are the same as measured during the previous tests.

Calculate the total circuit resistance. Calculate using Ohm's Law, the expected neutral voltage drop. Calculate the absolute value of the difference and divide by the expected voltage drop. Express this as a percentage. If the two values (measured voltage drop and calculated voltage drop) do not agree, further investigation is warranted to discover the reason for the discrepancy.

**Resistance Chart (ohm per 100 feet)**

**Multi-conductor Cables at 68 Degrees F.**

<b>MATERIAL</b>
-----------------

GAUGE	AL	CU
14	0.423	0.257
12	0.265	0.162
10	0.166	0.102
8	0.104	0.064
6	0.066	0.040
4	0.042	0.025
2	0.026	0.016
1	0.021	0.013
1/0	0.016	0.010
2/0	0.013	0.008
3/0	0.010	0.007
4/0	0.008	0.005

**APPENDIX 5**  
**TEST 5 – LOAD BOX TEST**

Date: \_\_\_\_\_

Time: \_\_\_\_\_

Dairy: \_\_\_\_\_

	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5
	FARM ON	FARM OFF	FARM OFF	FARM OFF	FARM ON
Condition	Load Box Off	Load Box Off	Load Box Half On	Load Box Full On	Load Box Full On
Time:					
Vp	V	V	V	V	V
Vs	V	V	V	V	V
Vps	V	V	V	V	V
Vcc	V	V	V	V	V
Icc	A	A	A	A	A

Load Box Current (I<sub>lb</sub>):            Half Load            A    Full Load            A  
 Load Box Voltage (V<sub>lb</sub>):        Half Load            V    Full Load            V



Primary Nominal Voltage Phase to Neutral (Vpri): V  
Transformer Current Due Half Load A Full Load A  
to Load Box (IXFMR):

$$I_p = \frac{I_{lb} \times V_{lb}}{V_{pri}}$$

K-Factor for Cow Contact Point  $K = \frac{V_{cc}}{V_s}$

**TEST 5 - LOAD BOX TEST  
INSTRUCTIONS**

Note 1: Testing may be accomplished by a single 18/25 kW load box or a dual element 9/18 or 12.5/25 kW load box. The difference between full load and half load measurements is used in most calculations.

Note 2: If the dairy is found in an isolated condition, two load box tests must be performed: an isolated test and a non-isolated test.

Note 3: If the dairy is served by a three-phase system, measure and record only the dairy-off, load box off column and the dairy-on, load box off column or test only one phase of the three.

**ITEM EXPLANATION**  
#

- 1 Enter date and customer name.
- 2 Attach load box to the 240-volt secondary side of transformer. Turn on load box and measure current and voltage and record on data sheet, Appendix 5.
- 3 Conduct load box test and for each step measure and record Vp, Vs, Vps and Vcc or Icc. Each step shall be maintained for approximately two minutes with the highest reading during that time interval recorded.
  - Step 1 Farm power is “on” with load box “off”
  - Step 2 Farm power is “off” with load box “off”
  - Step 3 Farm power is “off” with load box “on” at half load
  - Step 4 Farm power is “off” with load box “on” at full load
  - Step 5 Farm power is “on” with load box “on” full load
- 4 Remove load box and restore normal power to the farm.

**APPENDIX 6**

**TEST 6 – EQUIPMENT SIGNATURE TEST FORM**

Dairy Name:

Date:

Location:

Descr. of Load	Location of Load	Load V	Load kW or HP	Load Phase 1 or 3	Load On						Load Off					
					Time	Vp	Vs	Vps	Vcc	Icc	Time	Vp	Vs	Vps	Vcc	Icc
1																
2																

**TEST 6 - EQUIPMENT SIGNATURE TEST FORM**  
**INSTRUCTIONS**

**ITEM INSTRUCTIONS**

- 1 Enter the date the test is performed.
- 2 Enter the name of the dairy.
- 3 Enter the description of the load for which the signature will be recorded.
- 4 Provide a complete description of the load. Provide voltage, horsepower or kilowatt rating, if known.
- 5 Note the time of turn-on and the time of turn-off. Equipment should be "on" for a period of not less than 15 seconds. If equipment is found in the "on" condition, turn it "off" then turn it back "on." If equipment cannot be manually cycled then record data at the next "on" – "off" cycle.
- 6 Repeat for all major circuits and pieces of equipment (both 120 volt and 240 volt). Some equipment may normally be operated in sequence. Start each piece of equipment at 15-second intervals until all are running, then turn off in reverse order at 15-second intervals.
- 7 If data is to be provided graphically, only load description and time are required to be provided on Test 6 data sheet. Operation of each piece of equipment shall be indicated on the graphical data sheet(s).

**APPENDIX 7**

**PREVENTIVE ACTION LEVEL RESULTS**

Enter the highest value of cow contact voltage or current that occurred during the 48-hour test from Appendix 2, and corresponding primary to reference ground voltage.

Vp48hr : \_\_\_\_\_ V    Vcc48hr : \_\_\_\_\_ V    or    Icc 48hr : \_\_\_\_\_ A

Enter the value of cow contact voltage or current and corresponding primary to reference ground voltage that was present during the load box test with the farm power off and the load box off.

Vp OFF : \_\_\_\_\_ V    Vcc OFF : \_\_\_\_\_ V    or    Icc OFF : \_\_\_\_\_ A

Enter the value of cow contact voltage or current and corresponding primary to reference ground voltage that was present during the load box test with the farm power off and the load box set at half load.

V<sub>p</sub> HALF LOAD : \_\_\_\_\_ V V<sub>cc</sub> HALF LOAD : \_\_\_\_\_ V or I<sub>cc</sub> HALF LOAD : \_\_\_\_\_ A

Enter the value of cow contact voltage or current and corresponding primary to reference ground voltage that was present during the load box test with the farm power off and the load box at maximum.

V<sub>p</sub> FULL LOAD : \_\_\_\_\_ V V<sub>cc</sub> FULL LOAD : \_\_\_\_\_ V or I<sub>cc</sub> FULL LOAD : \_\_\_\_\_ A

Calculations:

Utility Contribution to

$$\text{Cow Contact Voltage} = \frac{V_{p\ 48hr} - V_{p\ HALF}}{V_{p\ FULL} - V_{p\ HALF}} \times (V_{cc\ FULL} - V_{cc\ HALF}) + V_{cc\ HALF}$$

Utility contribution to cow contact voltage = \_\_\_\_\_ V

Utility contribution to cow contact voltage as a percentage of V<sub>cc</sub> 48hr = \_\_\_\_\_ %

Utility contribution to cow contact voltage as a percentage of PAL = \_\_\_\_\_ %

Utility Contribution to

$$\text{Cow Contact Current} = \frac{V_{p\ 48hr} - V_{p\ HALF}}{V_{p\ FULL} - V_{p\ HALF}} \times (I_{cc\ FULL} - I_{cc\ HALF}) + I_{cc\ HALF}$$

Utility contribution to cow contact current = \_\_\_\_\_ mA (milliamps)

Utility contribution to cow contact current as a percentage of I<sub>cc</sub> 48hr = \_\_\_\_\_ %

Utility contribution to cow contact current as a percentage of the PAL = \_\_\_\_\_ %

See Section 071.02 for required actions based on these results.

## 31.71.01 – RAILROAD SAFETY RULES

### 000. LEGAL AUTHORITY (RULE 0).

These rules are adopted under the general authority of the Idaho Public Utilities Law, Chapters 1-7, Title 61, Idaho Code, Chapter 3, Title 62, Idaho Code, and Chapter 12, Title 62, Idaho Code, and specific authority of Sections 61-110, 61-111, 61-129, 61-302, 61-501, 61-507, 61-510, 61-512, 61-515, 61-517, 62-301 through 62-308, and 62-1201 through 62-1207, Idaho Code. (7-1-93)

### 001. TITLE AND SCOPE (RULE 1).

The title of these rules is “Railroad Safety Rules.” The scope of these rules is that they determine railroad clearance standards for all railroad track located in Idaho, and set safety, and accident reporting standards for railroads operating in Idaho. ( )

### 002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

### 003. ADMINISTRATIVE APPEALS (RULE 3).

There are no administrative appeals under these rules. All requests for exemptions or waivers should be submitted directly to the Commission in accordance with the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq. (7-1-93)

### 004. (RESERVED)

### 005. DEFINITION (RULE 5).

**01. Height of a Freight Car.** “Height of a freight car” is the distance between the top of rail and the highest point of the car. (7-1-93)

**02. Icing Platform.** “Icing platform” includes structures used in performing the service of icing, cooling, heating, ventilating and servicing of cars used in the handling of commodities requiring these services. (7-1-93)

**03. Overhead Clearance.** “Overhead clearance” is that distance measured along a line which is perpendicular to and joins a horizontal plane passing through the top of the highest rail and the lowest point of the structure of obstruction overhead. (7-1-93)

**04. Side Clearance.** “Side clearance” is the shortest distance from centerline of track to a structure or obstruction at the side of the track. (7-1-93)

**05. Track Clearance.** “Track clearance” is the shortest horizontal distance between the centerlines of adjacent tracks. (7-1-93)

**06. Width of a Freight Car.** “Width of a freight car” is twice the distance from the center line of the car to its extreme outside part. (7-1-93)

### 006. (RESERVED)

### 007. INCORPORATION BY REFERENCE (RULE 007).

The Commission adopts, and incorporates by reference into these rules, the following national codes and standards: ( )

**01. Code of Federal Regulations.** Rules 700 and 701 reference the Code of Federal Regulations (CFR), and specifically 49 CFR Parts 107, 171, 172, 173, 174, 178, 179, 180, and 225 (October 1, 2014). The annual volumes of the CFR may be obtained on the web from the U.S. Government Bookstore, <http://bookstore.gpo.gov/> and click on “Code of Federal Regulations,” or by calling toll-free 866-512-1800. The full text of the CFR is also available in electronic format at <http://www.gpoaccess.gov/cfr/index.html>. The incorporated CFR Parts are also available for inspection and copying at the office of the Idaho Public Utilities Commission and the Idaho State Law Library. Whenever a federal regulation is adopted by reference in these rules, subsequent annual recom compilations are also adopted by reference, but subsequent amendments to the CFR are not adopted by reference. ( )

**02. National Electric Safety Code.** Rules 52 and 312 reference the American National Standards

Institute (ANSI) C2-2017 National Electrical Safety Code (NESC), 2017 Edition. The NESC is published by the Institute of Electrical and Electronics Engineers, Inc., and is available from the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997 and may be ordered by calling 1-800-678-IEEE. ( )

**008. WAIVERS (RULE 8).**

The Commission may waive the requirements of these rules. To request a waiver, a carriers or other interested persons will file an application that fully explains why the waiver is requested. A waiver is limited to the particular case covered by the application. ( )

**009. EMERGENCIES (RULE 9).**

A restricted clearance under these rules does not apply to: ( )

a. Falsework, shoo-fly tracks, or other temporary emergency conditions caused by derailments, wash-outs, slides, or other unavoidable accidents or disasters; ( )

b. Ballast, track material or construction material unloaded on and next to tracks for use there or in the immediate vicinity; or ( )

c. Falsework or temporary construction necessary on any construction project. ( )

**010. MODIFICATIONS (RULE 10).**

The Commission may permit deviation from these rules when it finds complying with them is impractical, unnecessary, or not in the public interest. ( )

**011. -- 050. (RESERVED)**

**APPLICABILITY OF CLEARANCES**  
**Rules 51 Through 100**

**051. OVERHEAD CLEARANCE -- APPLICABILITY (RULE 51).**

Overhead clearances authorized in these rules are applicable to tracks on which freight cars having a height from the top of the rail to the highest point of the car of fifteen feet six inches (15'6") or less are transported. In the case of cars or loads exceeding fifteen feet six inches (15'6"), the overhead clearance provisions and excess height provisions of Rules 501 through 502 and 601 through 607 must be complied with unless the railroad prohibits its personnel from occupying the top of freight cars in train service. (7-1-93)

**052. EXCEPTION TO OVERHEAD CLEARANCE RULES (RULE 52).**

Overhead impairments will be granted without application or a hearing upon consent of the operating railroad, provided that the NESC is not violated. Overhead impairments created by the railroad, not violating the NESC will not require a variance from this Commission. Notice of the impairment and condition must be given to the Commission by letter. ( )

**053. SIDE CLEARANCES (RULE 53).**

Side clearances authorized in these rules are applicable to tracks on which freight cars having an overall width not greater than ten feet ten inches (10'10") are transported. In the case of cars or loads exceeding ten feet ten inches (10'10"), Rules 501 through 502 and 601 through 607 must be complied with. (7-1-93)

**054. -- 100. (RESERVED)**

**SPECIAL PROVISIONS**  
**Rules 101 Through 200**

**101. FACILITIES EXISTING BEFORE APRIL 1, 1955 (RULE 101).**

Structures, operating appurtenances, pole lines, service facilities and track arrangements existing before April 1, 1955, are exempt from these rules except as provided by these rules. ( )

**102. CHANGES IN EXISTING TRACKS (RULE 102).**

No change in track location or elevation may reduce existing vertical or horizontal structural clearance below the minimums specified in these rules. ( )

**103. REPAIRS TO EXISTING STRUCTURES (RULE 103).**

No repair or maintenance work may be done on structures, operating appurtenances, pole lines, service facilities, or track arrangements if the repair or maintenance work would reduce existing vertical or horizontal structural clearance below the minimum specified in these rules. ( )

**104. EXISTING STRUCTURES NOT COMPLYING WITH THESE RULES (RULE 104).**

Where a structure existing before April 1, 1955, does not provide clearance equal to the minimum that is required by these rules, the portion of the structure producing the impaired clearance may be repaired and maintained by partial replacements. In no case shall the clearance available after April 1, 1955, be reduced. (7-1-93)

**105. REPLACEMENT OF STRUCTURES NOT COMPLYING WITH THESE RULES (RULE 105).**

When the owner replaces the part of a structure that violates the clearance standards of these rules, the replaced portion must satisfy the clearance standards unless otherwise ordered by the Commission. ( )

**106. EXISTING TRACKS (RULE 106).**

Existing tracks of all kinds may be maintained by reballasting, resurfacing and replacing rails and ties. Where existing yards are completely replaced or are partially replaced as a unit or section of a master plan, the arrangement must meet the provisions of these rules both as to track centers and clearance to structures and other facilities being built in connection with and as a part of such plan. Existing structures which are to remain and which do not provide the minimum clearance with respect to the proposed new tracks must be approved by the Commission for exemption from the terms of these rules. (7-1-93)

**107. EXISTING TRACKS NOT MEETING CLEARANCE STANDARDS (RULE 107).**

Tracks laid before April 1, 1955, having less vertical clearance than required by the rules may be maintained, but the top of rail may not be raised without raising the overhead structure an equal distance to maintain the existing available clearance. Tracks laid before April 1, 1955, having less horizontal clearance between them than required by these rules for new construction, or having less horizontal clearance to structures than required by these rules, may be maintained, but they may not be shifted horizontally to reduce either the existing track centers or the existing structural clearance. (7-1-93)

**108. ENGINE HOUSE AND SHOP FACILITIES (RULE 108).**

The clearances in these rules do not apply to railroad's engine houses, engine house facilities or shop buildings. ( )

**109. -- 200. (RESERVED)**

**OVERHEAD CLEARANCES**  
**Rules 201 Through 300**

**201. OVERHEAD CLEARANCE IN GENERAL (RULE 201).**

The allowable clearances are: (7-1-93)

**01. Begun, Installed or Constructed After April 1, 1955.** For structures, operating appurtenances, pole lines, service facilities and track arrangements begun, installed or constructed after April 1, 1955, and before September 1, 1980 twenty-two feet six inches (22'6"). (7-1-93)

**02. Begun, Installed or Constructed After September 1, 1980.** For structures, operating appurtenances, pole lines, service facilities and track arrangements begun, installed or constructed after September 1, 1980, the vertical clearance required by the owner of the railroad tracks or twenty-two feet six inches (22'6"), whichever is greater. (4-5-00)

**03. Structures on Main Lines.** For structures on main lines identified by railroad for possible electrification: (7-1-93)

- a. At twenty-five (25) kilovolts twenty-four feet three inches (24'3"); or (7-1-93)
- b. At fifty (50) kilovolts twenty-six (26') feet. (7-1-93)

**202. OVERHEAD CLEARANCE IN BUILDINGS (RULE 202).**

Overhead clearances in buildings must be at least eighteen (18') feet. The overhead clearance inside an entirely enclosed building may be reduced to eighteen (18') feet with respect to tracks ending within the building or in the immediate plant area if the track extends through an enclosed building. When an overhead clearance in the building is less than twenty-two feet six inches (22'6"), all cars, locomotives or other equipment will stop before entering the building. ( )

**203. OVERHEAD CLEARANCE IN TUNNELS AND BRIDGES (RULE 203).**

Minimum overhead clearance in tunnels and through bridges may be decreased to the extent defined by the half-circumference of a circle having a radius of eight (8') feet and tangent to a horizontal line twenty-two feet six inches (22'6") above top of rail at a point directly above the centerline of track. (7-1-93)

**204. DECREASES IN OVERHEAD CLEARANCES PRESCRIBED IN RULE 201 (RULE 204).**

Minimum overhead clearance as prescribed in Rule 201 may be decreased to the extent defined by the half-circumference of a circle having a radius of eight feet six inches (8'6") and tangent to a horizontal line at the height prescribed by Rule 201 above the top of rail at a point directly over the centerline of track. (7-1-93)

**205. -- 300. (RESERVED)**

**SIDE CLEARANCES**  
**Rules 301 Through 400**

**301. SIDE CLEARANCE IN GENERAL (RULE 301).**

The general rule is that side clearances must be at least eight feet six inches (8'6"). To further reduce operational hazards, it is recommended that, wherever practicable, all posts, pipes, warning signals and other small obstructions be given a side clearance of ten (10') feet. (7-1-93)

**302. SIDE CLEARANCE AT PLATFORMS (RULE 302).**

- 01. Eight Inches.** Eight (8") inches or less above top of rail -- four feet eight inches (4'8"). (7-1-93)
- 02. Four Feet.** Four (4') feet or less above top of rail -- seven feet three inches (7'3"). (7-1-93)

**03. Four Feet Six Inches.** Four feet six inches (4'6") or less above top of rail when used principally for loading or unloading refrigerator cars if constructed after April 1, 1955, but before September 1, 1980 -- eight (8) feet, if constructed after September 1, 1980 -- eight feet six inches (8'6"). (7-1-93)

**04. Platforms.** Platforms complying with Subsection 302.01 of this rule may be combined with those complying with Subsections 302.02 and 302.03, provided that the lower platform presents a level surface from a point not more than four feet eight inches (4'8") from centerline of track to the face of the wall of the platform with which it is combined. No other combinations will be permitted. (7-1-93)

**303. ICING PLATFORMS AND SUPPORTS (RULE 303).**

The minimum side clearance for icing platforms and supports is six feet eight inches (6'8"). The platform's six feet eight inch (6'8") side clearance is measured from eave height of car. The platform's supports must provide clearance of eight (8') feet if constructed after April 1, 1955, but before September 1, 1980, and eight feet six inches (8'6") if constructed after September 1, 1980. ( )

**304. PLATFORMS OTHER THAN ABOVE (RULE 304).**

The general rule is that platforms not listed in earlier rules must have side clearance of at least eight feet six inches (8'6"). Retractable platforms, either sliding or hinged, which are attached to a permanent structure must be so constructed that, when retracted or in nonworking position and firmly secured or anchored, the resulting clearance

shall not be less than the clearances provided in these rules. (7-1-93)

**305. EXTENSION OF EXISTING PLATFORMS (RULE 305).**

Platforms which were constructed at prevailing clearances or clearances then authorized by this Commission's rules may be extended at existing clearances. (7-1-93)

**306. SIDE CLEARANCE -- BRIDGES AND TUNNELS (RULE 306).**

The general rule is that side clearances for bridges and tunnels must be at least eight (8') feet. (7-1-93)

**307. BRIDGES AND TUNNELS -- UPPER SECTION (RULE 307).**

Side clearance in through bridges and tunnels may be decreased to the extent defined by the half circumference of a circle having a radius of eight (8') feet and tangent to a horizontal line twenty-two feet six inches (22'6") above top of rail directly above centerline of track. See Rule 203. (7-1-93)

**308. BRIDGES -- LOWER SECTION AND STRUCTURES FOUR FEET HIGH OR LESS -- GUARDS AND CATTLE CHUTES -- HAND RAILS ON BRIDGES AND TRESTLES -- OIL COLUMNS -- WATER BARRELS -- WATER COLUMNS (RULE 308).**

Through bridges supporting track affected, hand rails, water barrels and refuge platforms on bridges and trestles, water columns, oil columns, block signals, cattle guards and cattle chutes, or portions thereof, four (4') feet or less above top of rail, may have clearances decreased to the extent defined by a line extending diagonally upward from a point level with the top of rail and five (5') feet distance laterally from centerline of track to a point four (4) feet above top of rail and eight (8') feet distant laterally from centerline of track: Provided that the minimum clearance for hand rails and water barrels shall be seven feet six inches (7'6") and the minimum clearance for fences of cattle guards shall be five feet nine inches (5'9"). Unless previously approved, the clearances authorized in this rule, except as provided for hand rails and water barrels, are not permitted on through bridges where the work of trainmen or yardmen requires them to be upon the decks of such bridges for the purpose of coupling or uncoupling cars in the performance of switching service on a switching lead. (7-1-93)

**309. SIDE CLEARANCE INTERLOCKING MECHANISM SWITCH BOXES, ETC. (RULE 309).**

The minimum side clearance for interlocking mechanism switch boxes, etc., is three (3') feet. Switch boxes, switch operating mechanism necessary for the control and operation of signals and interlocks projecting four (4") inches or less above top of rail. (7-1-93)

**310. SIDE CLEARANCE -- MAIL CRANES AND TRAIN ORDER STANDS WHEN NOT IN OPERATIVE POSITION (RULE 310).**

The minimum side clearance for mail cranes and train order stands when not in operative condition is eight feet six inches (8'6"). (7-1-93)

**311. SIDE CLEARANCE -- POLES SUPPORTING TROLLEY CONTACT (RULE 311).**

The minimum side clearance for poles with conductors supplying motive power to track affected--of bracket construction is eight feet three inches (8'3"). (7-1-93)

**312. SIDE CLEARANCE -- POLES OTHER THAN TROLLEY POLES (RULE 312).**

The minimum side clearance for poles besides trolley poles is eight feet six inches (8'6"). The NESC governs the side clearance for poles besides trolley poles that are described in the NESC. ( )

**313. SIDE CLEARANCE SIGNALS AND SWITCH STANDS THREE FEET HIGH OR LESS ABOVE THE TOP OF THE RAIL (RULE 313).**

The minimum height of signals and switch stands when located between tracks where not practicable to provide clearances otherwise prescribed in these rules is at least six (6') feet. (7-1-93)

**314. SIDE CLEARANCE -- SIGNALS AND SWITCH STANDS OTHER THAN ABOVE (RULE 314).**

The minimum side clearance for signals and switch stands other than above is at least eight (8') feet. (7-1-93)

**315. SIDE CLEARANCE ON CURVED TRACK (RULE 315).**

Side clearances on all structures adjacent to curved track shall be increased as necessary to give the equivalent of tangent track clearances. As a general rule, the side clearance on curved track should be increased one and one-half



inches (1 1/2") for each degree of curvature. (7-1-93)

**316. SIDE CLEARANCES -- MATERIAL OR MERCHANDISE ADJACENT TO TRACKS (RULE 316).**  
No merchandise, material or other articles shall be placed or stored on the ground or platforms adjacent to any track at a distance less than eight feet six inches (8'6") from the centerline of track, except in cases of maintenance or emergency when such material is to be used within a reasonable period of time or where local conditions make compliance with this rule impossible. (7-1-93)

**317. -- 400. (RESERVED)**

**TRACK CLEARANCES**  
**Rules 401 Through 500**

**401. TRACK CLEARANCES -- IN GENERAL (RULE 401).**  
The minimum distance between the center line of parallel standard gauge railroad tracks, which are used or proposed to be used for transporting cars, engines, motors or like equipment, shall be fourteen (14') feet, except as otherwise prescribed in these rules. (7-1-93)

**402. TRACK CLEARANCES -- MAIN AND SUBSIDIARY TRACKS (RULE 402).**  
The centerline of any standard gauge track, except a main track or a passing track, parallel and adjacent to a main track or a passing track shall be at least fifteen (15') feet from the centerline of such main track or passing track; provided, however, that where a passing track is adjacent to and at least fifteen (15') feet distant from the main track, any other track may be constructed adjacent to such passing track with clearance prescribed in Rule 401. (7-1-93)

**403. TRACK CLEARANCES -- PARALLEL TEAM, HOUSE OR INDUSTRY TRACKS (RULE 403).**  
Minimum clearances between centerlines of parallel team, house or industry tracks shall be thirteen (13') feet. (7-1-93)

**404. TRACK CLEARANCES -- PARALLEL LADDER OR LADDER AND OTHER TRACK (RULE 404).**  
The centerline of any standard gauge ladder track, constructed parallel to any other track, shall have a clearance of not less than twenty (20') feet from the centerline of such other track. (7-1-93)

**405. TRACK CLEARANCES -- EXISTING TRACKS (RULE 405).**  
Existing tracks laid at prevailing clearances then authorized by this Commission's rules may be extended at these clearances. (7-1-93)

**406. -- 500. (RESERVED)**

**MARKING OF CARS**  
**Rules 501 Through 600**

**501. CARS EXCEEDING FIFTEEN FEET SIX INCHES IN HEIGHT (RULE 501).**  
Each car of a height exceeding fifteen feet six inches (15'6") from top of rail to the highest point of the car, the movement of which is authorized by these rules, shall be marked, stenciled or placarded, and such markings maintained in a legible condition to read:

**This Car**  
**EXCESS**  
**HEIGHT**

The words "EXCESS HEIGHT" must occupy the greater portion of a rectangular space seven by ten inches (7" x 10") enclosed within a three-quarter inch (3/4") solid border. The markings required shall be made permanent on owned cars before their use. Lettering and border of signs shall be of colors contrasting to that of the car body. All such required marking and placarding shall be placed on the side adjacent to the ladder or handholds near the floor line of the car at each of the four (4) corners. (7-1-93)

**502. CARS EXCEEDING TEN FEET TEN INCHES IN WIDTH (RULE 502).**

Each car of a width exceeding ten feet ten inches (10'10"), the movement of which is authorized by these rules, shall be marked, stenciled or placarded, and such markings maintained in a legible condition to read:

**This Car  
EXCESS  
WIDTH**

The words "EXCESS WIDTH" must occupy the greater portion of a rectangular space seven by ten inches (7" x 10") enclosed within a three-quarter inch (3/4") solid border. The markings required shall be made permanent on owned cars before their use. Lettering and border of signs shall be of colors contrasting to that of the car body. All such required marking and placarding shall be placed on the side or end adjacent to the ladder or handholds near the floor line of the car at each of the four (4) corners. (7-1-93)

**503. -- 600. (RESERVED)**

**OPERATIONS OF EXCESS DIMENSION LOADS  
RULES 601 THROUGH 700**

**601. CARS CONTAINING LADING IN EXCESS OF FIFTEEN FEET SIX INCHES HIGH AND/OR FIVE FEET FIVE INCHES FROM CENTERLINE OF CAR (RULE 601).**

Each open-top car containing lading of height exceeding fifteen feet six inches (15'6") above top of rail, or which extends laterally more than five feet five inches (5'5") from the centerline of the car, the movement of which is authorized by these rules, shall be marked, stenciled or placarded, and such marking maintained in a legible condition to read:

**This car  
EXCESS  
EXCESS  
HEIGHT**

**and/or**

**This car  
EXCESS  
EXCESS  
WIDTH**

The words "EXCESS HEIGHT" and/or "EXCESS WIDTH" must occupy the greater portion of a space seven by ten inches (7" x 10") enclosed within a three-quarter inch (3/4") solid border. Letters and border shall be of colors contrasting to the car body. These required markings and placarding shall be placed on the side or end adjacent to the ladder or handholds near the floor line of the car at each of the four (4) corners where practicable, and in addition one of these signs shall be placed on each side of the load in a conspicuous position before the car is used. (7-1-93)

**602. CARS CONTAINING LADING WHICH EXTENDS LATERALLY IN EXCESS OF FIVE FEET FIVE INCHES (RULE 602).**

The movement of open-top cars containing lading which extends laterally in excess of five feet five inches (5'5") is authorized if the lading is of such a nature that it cannot practically be reduced in dimensions. (7-1-93)

**603. MOVEMENT AND NOTICE OF EXCESS HEIGHT AND/OR EXCESS WIDTH CARS AND LOADS (RULE 603).**

The movement of all open-top cars having lading in excess of fifteen feet six (15'6") inches in height, or which extends laterally in excess of five feet five inches (5'5") from centerline of car, will be authorized by written notice to the train crew stating the total number of such cars, and specifying that no member of the train crew will ride on top of such high car or the side of any such wide car. (7-1-93)

**604. WRITTEN NOTICE OF EXCESS HEIGHT OR EXCESS WIDTH RULE 604).**

A written notice shall be delivered to every train containing any car, the lading of which extends laterally in excess of five feet five inches (5'5") from the centerline of the car or which is in excess of fifteen feet six inches (15'6") in height above top of rails, informing the crew of the train that the train includes such car or cars, stating the total number of these cars and advising that no member of the train crew will ride on the side of any such wide car or the top of any such high car. (7-1-93)

**605. NOTICE TO YARD SUPERVISORS (RULE 605).**

Yard supervisors shall be notified sufficiently in advance of the arrival of such wide loads as described in Rule 603 as to enable them to take necessary precautions to safeguard employees in yard. (7-1-93)

**606. LOADS WHICH CANNOT BE PASSED OVER BY EMPLOYEES (RULE 606).**

Open-top cars containing lading having an overall height in excess of fifteen feet six inches (15'6") above top of rail or a width which extends laterally in excess of five feet five inches (5'5"), if otherwise in compliance with these requirements, and the nature of which precludes the possibility of employees passing over the cars, are exempt from the provisions of Rules 603, 604 and 605, but written notice must be given to all members of the train crew informing them of the presence of such loads. (7-1-93)

**607. EXEMPTIONS (RULE 607).**

The common carrier railroads are authorized to move excess height loads and excess width loads, as described in Rule 601, over roads or portions thereof, without complying with the provisions of Rule 601, provided that clearances equivalent to the minimum prescribed by these rules for cars having a height of fifteen feet six inches (15'6") and width of ten feet ten inches (10'10") are maintained. (7-1-93)

**700. TRANSPORTATION OF HAZARDOUS MATERIAL BY RAIL (RULE 700).**

**01. Hazardous Material Defined.** "Hazardous material" means a substance or material which has been determined by the United States Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated by the Secretary of Transportation. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials as defined in 49 C.F.R. Section 171.8, materials designated as hazardous under the provisions of 49 C.F.R. Section 172.101, and materials that meet the defining criteria for hazardous classes and divisions in 49 C.F.R. Part 173. ( )

**02. Adoption of Federal Safety Regulations.** The Commission hereby adopts by reference 49 C.F.R. Parts 107, 171, 172, 173, 174, 178, 179, and 180 (October 1, 2014). All customers offering hazardous materials for shipment by rail and all railroads operating in Idaho that transport hazardous materials listed in, defined by, or regulated by the adopted federal safety regulations must comply with 49 C.F.R. Parts 107, 171, 172, 173, 174, 178, 179 and 180. ( )

**03. Recognition of Federal Exemptions.** Whenever a railroad or shipper has applied to a federal agency and has been granted an exemption from the transportation or packaging requirements of the federal safety regulations adopted in Subsection 103.02, the federal exemption will also be recognized under these rules. The Commission shall not administer a program to duplicate consideration or approval of federal exemptions on a state level. ( )

**701. REPORTING OF RAILROAD ACCIDENTS (RULE 701).**

The Commission incorporates by reference 49 C.F.R. Part 225 (October 1, 2014). Pursuant to 49 C.F.R. 225.1, all railroads that are required to file a copy of any accident/incident report with the Federal Railroad Administration shall also file a copy of such report with the Commission Secretary for accidents or incidents occurring in Idaho. Copies of accident or incident reports will be mailed to: the Commission Secretary. ( )

**702. -- 999. (RESERVED)**

## 31.81.01 – ENERGY CONSUMPTION REPORTING RULES

### GENERAL PROVISIONS Rules 0 Through 10

#### 000. LEGAL AUTHORITY (RULE 0).

These rules are promulgated pursuant to the authority of the Electric and Natural or Manufactured Gas Consumption from Ground Water Pumping Act (hereinafter the Energy Consumption Act), Chapter 13, Title 62, Idaho Code, and the Public Records Act, Section 74-107(13), Title 74, Idaho Code. (4-26-95)

#### 001. TITLE AND SCOPE (RULE 1).

The title of these rules is the “Energy Consumption Reporting Rules.” These rules apply to all suppliers of electricity, or natural or manufactured gas, including public utilities, municipal, mutual nonprofit, and cooperative corporations. These rules should be construed in connection with the Energy Consumption Act, the Public Utilities Law, the Public Records Law, and other applicable state laws. Procedures in these Energy Consumption Reporting Rules will be liberally interpreted to secure a just, speedy and economical determination of issues presented to the Commission. Unless prohibited by statute or rule of substantive law, the Commission may permit deviation from procedural rules in these rules when it finds compliance with them is impracticable, unnecessary or not in the public interest. (4-26-95)

#### 002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).

Written interpretations to these rules can be obtained from the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. ( )

#### 003. ADMINISTRATIVE APPEALS (RULE 3).

All administrative procedures under these rules are conducted under the Commission’s Rules of Procedure, IDAPA 31.01.01.000 et seq. (4-26-95)

#### 004. (RESERVED)

**01. Report Summaries.** The Department may make summaries of such reports available upon written request provided that the identity of individual customers or accounts is protected from public disclosure and cannot be ascertained from the summaries. (4-26-95)

**02. Consumption Reports.** The Department may release consumption reports to state and federal entities for research purposes provided the identity of individual customers or accounts is protected from public disclosure and cannot be ascertained from the reports. (4-26-95)

#### 005. DEFINITIONS (RULE 5).

Whenever any term used in these rules is defined or referred to in the Energy Consumption Act, that term takes its statutory definition in these rules. The following terms used in these rules are defined: (4-26-95)

**01. Commission.** The Idaho Public Utilities Commission. (4-26-95)

**02. Consumption Reports.** The reports created by the energy suppliers as authorized by these rules and submitted to the Department. (4-26-95)

**03. Department.** The Idaho Department of Water Resources. (4-26-95)

**04. Energy Suppliers.** All suppliers of electric power and natural or manufactured gas including all public utilities, municipal, mutual nonprofit, and cooperative corporations providing energy to an irrigation customer. (4-26-95)

**05. Geographic Areas.** Hydrological basins with boundaries determined by the Department. The geographic areas are depicted in the Appendix to these rules. (4-26-95)

**06. Irrigation Customer.** A customer pumping ground water that is: (4-26-95)

**a.** Receiving service from an energy supplier under an irrigation service tariff or rate schedule; or (4-26-95)

**b.** Irrigating three (3) or more acres if such information is known to the energy supplier. (4-26-95)

**07. Irrigation Season.** As used in these rules means the calendar period from March 1 through October 31 or the energy supplier's billing cycles that include the calendar period. (4-26-95)

**08. Service Location.** The geographic position of the irrigation customer's pumping location(s) by address, pole number, legal description, longitude-latitude designations, or other description of where the service is delivered, to the extent such information is readily available to the energy supplier. (4-26-95)

**006. (RESERVED)**

**007. FORMS (RULE 7).**

The Department may produce and distribute forms to carry out these rules. ( )

**008. CORRESPONDENCE -- CHANGE OF ADDRESS (RULE 8).**

**01. Department's Mailing Address.** All correspondence with the Department regarding these rules or energy consumption reports should be addressed to:

Water Allocation Bureau  
Idaho Department of Water Resources  
PO Box 83720  
Boise, ID 83720-0098

The street address is: 322 E. Front St., Boise, ID 83720-0098. (4-26-95)

**02. Supplier's Mailing Address Must be Provided to Department.** Each energy supplier will provide the Department with a name or department and its mailing address for the purpose of receiving notices and correspondence. Any change of address should be reported to the Department in writing. (4-26-95)

**009. -- 010. (RESERVED)**

**REPORTING RULES**  
**Rules 11 Through 20**

**011. REQUEST FOR REPORTS (RULE 11).**

No later than July 1 of each year, the Department may request consumption reports from energy suppliers for the current irrigation season. (4-26-95)

**01. Notification by Department.** The Department will notify energy suppliers serving specific geographic areas that consumption reports must be submitted. (4-26-95)

**02. Submission of Consumption Reports.** Once the Department requests the consumption reports, the energy supplier will prepare and submit the report to the Department as soon as possible following the close of the irrigation season but no later than January 5 of the following year. ( )

**012. CONTENTS OF CONSUMPTION REPORT (RULE 12).**

**01. Content of Consumption Reports.** Each consumption report will contain, to the extent available, the customer's full name, customer account number, service location, service location identification number, and the amount of energy consumed in kilowatt hours (KWH), or cubic feet of gas, or other applicable volume measurement for each service location. For each service location, the annual consumption report will state how much energy the customer consumed for each billing period during the irrigation season, and for the entire irrigation season. ( )

**02. Geographic Area(s) Covered in Consumption Report.** The energy supplier may file a consumption report covering the specific geographic area(s) set forth in the Department's notice or, at the discretion of the supplier, a report that encompasses a larger territory so long as the Department's designated areas are included. (4-26-95)

**013. REPORT FORMAT (RULE 13).**

Consumption reports will be forwarded to the Department in an electronic storage media in a format mutually acceptable to the Department and the energy supplier. If an agreement is not reached or if the supplier is unable to provide the consumption report in electronic media, the report will be submitted in writing. (4-26-95)

**014. -- 020. (RESERVED)**

**REIMBURSEMENT RULES**  
**Rules 21 Through 30**

**021. REIMBURSEMENT OF COSTS (RULE 21).**

Energy suppliers are entitled to reimbursement of the costs for preparing and submitting the consumption reports. Energy suppliers seeking reimbursement will itemize in sufficient detail their actual costs in preparing and submitting the data. Reimbursement is to be paid by the Department. ( )

**022. RESOLUTION OF REIMBURSEMENT DISPUTES (RULE 23).**

When an energy supplier and the Department are unable to resolve a reimbursement dispute, either party or both may seek informal dispute resolution with the Commission's staff. See IDAPA 31.01.01, "Rules of Procedure of the Idaho Public Utilities Commission," Sections 021 through 024. If the outcome of the informal proceeding is unsatisfactory to either party, the aggrieved party may file a formal complaint with the Commission. (See IDAPA 31.01.01, Sections 023 through 025, and 051 through 058.) The Commission decides formal complaints under its Rules of Procedure, 31.01.01.000 et seq. ( )

**023. -- 999. (RESERVED)**

## IDAPA 34 – OFFICE OF THE SECRETARY OF STATE

DOCKET NO. 34-0000-1900

### NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of 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 67-903(9) and 30-21-105, 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 34, rules of the Secretary of State:

#### **IDAPA 34**

- 34.02.02, *Rules Governing Complaint Process Under the Help America Vote Act*
- 34.03.01, *Rules Implementing the Sunshine Law*
- 34.04.02, *Rules Governing Business Entity Names*
- 34.05.05, *List of Federal Liens in Agricultural Crops*
- 34.06.01, *\*Rules Governing the Electronic Recording* (\*Note chapter name change)

This pending rule vacates the following proposed rule previously promulgated as part of the omnibus proposed rulemaking under IDAPA 34, rules of the Secretary of State:

- **(VACATED)** 34.06.02, *Rules Governing the Electronic Recording of Plats, Records of Survey, and Corner Records*

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), **Vol. 19-6SE, pages 5,339 through 5,361**. The rule making was prompted by the expiration of the rules. The Secretary of State considered the Red Tape Reduction Act and the continued efforts to clarify and streamline the rules. Minor housekeeping edits are intended to make the rules consistent with recent statutory changes, clarify and simplify existing language, and reduce or eliminate unnecessary restrictions. The former rule 34.06.02 Rules Governing the Electronic Recording of Plats, Records of Survey, and Corner Records has been combined into 34.06.01. The former rule 34.04.01 Corporate name reservation renewals has been combined into 34.04.02

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Chad Houck at (208) 334-2852.

Dated this 10th day of October, 2019.

Chad Houck, Deputy Secretary of State  
Administrative Division  
700 West Jefferson Street, Room E205  
P.O. Box 83720, Boise, ID 83720-0080

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 34-216, 42 U.S.C., 67-6603, 67-6607, 67-6608, 67-6610, 67-2211, 67-6612, 67-6614A, 67-6619, 67-6623, 67-903(9), Title 45 Chapter 2, Title 67 Chapter 52, 50-1304, 55-1606, and 55-1906, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 34, rules of the Secretary of State:

**IDAPA 34**

- 34.02.02, *Rules Governing Complaint Process Under the Help America Vote Act*
- 34.03.01, *Rules Implementing the Sunshine Law*
- 34.04.02, *Rules Governing Business Entity Names*
- 34.05.05, *List of Federal Liens in Agricultural Crops*
- 34.06.01, *Rules Governing the Electronic Recording of Real Property*
- 34.06.02, *Rules Governing the Electronic Recording of Plats, Records of Survey, and Corner Records*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. As these rules contain the definitions, processes, and restrictions for implementation of the existing statutes pertinent to the above sections, they are necessary for the continued recordation of citizen information, election transparency and reporting, and due process.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.



**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Chad Houck, Deputy Secretary of State at (208) 332-2862.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 34-0000-1900**

## IDAPA 34 – SECRETARY OF STATE

### 34.02.02 – RULES GOVERNING COMPLAINT PROCESS UNDER THE HELP AMERICA VOTE ACT

#### 000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Section 34-216, Idaho Code, and 42 U.S.C. Section 15512. Federal law requires the Secretary of State to establish an administrative complaint procedure to remedy grievances under the Help America Vote Act, 42 U.S.C. Section 15481, et seq. (3-20-04)

#### 001. TITLE AND SCOPE.

**01. Title.** The rules in this chapter shall be known as IDAPA 34.02.02, “Rules Governing Complaint Process Under the Help America Vote Act,” and may be cited as IDAPA 34.02.02. (3-20-04)

**02. Scope.** This chapter provides a uniform, nondiscriminatory procedure for the resolution of any complaint alleging a violation of any provision of Title III of the Help America Vote Act of 2002, 42 United States Code Sections 15481, et seq., including a violation that has occurred, is occurring, or is about to occur. The procedure set out in this chapter does not apply to an election recount under Sections 34-2301 et seq., Idaho Code, or to an election contest under Sections 34-2001 et seq., and 34-2101 et seq, Idaho Code. A Complainant who wishes to challenge the validity of any primary, general or special election, or to determine the validity of any ballot or vote must seek relief as otherwise provided by law. (3-20-04)

#### 002. -- 009. (RESERVED)

#### 010. DEFINITIONS.

In this chapter, the following terms have the meanings indicated. (3-20-04)

**01. Complainant.** Means the person who files a complaint with the Secretary of State under this rule; (3-20-04)

**02. Respondent.** Means any State or County election official whose actions are asserted, in a complaint under this subtitle, to be in violation of Title III; (3-20-04)

**03. Title III.** Means Title III of the Help America Vote Act of 2002, Public Law 107-252, 116 Stat. 1666 (2002), codified at 42 United States Code Sections 15481-15485. (3-20-04)

#### 011. WHO MAY FILE.

Any person who believes that there is a violation of any provision of Title III may file a complaint. (3-20-04)

#### 012. FORM OF COMPLAINT.

**01. Writing and Notarization.** A complaint shall be in writing and notarized, signed and sworn under oath by the Complainant. The complaint must identify the Complainant by name and mailing address. The complaint must identify the section of Title III for which a violation is alleged. The complaint must set out a clear and concise description of the claimed violation that is sufficiently detailed to apprise both the Respondent and the hearing officer or arbitrator of the claimed violation. The complaint procedure is limited to allegations of violations of Title III in a federal election. (3-20-04)

**02. Prescribed or Other Form.** The Complainant may use: (3-20-04)

**a.** The form prescribed by the Idaho Secretary of State, which is available from the Idaho Secretary of State Election Division, or which may be downloaded from the Idaho Secretary of State Election Division’s website at <http://www.sos.idaho.gov/>; or (3-20-04)

**b.** Any other form satisfying the requirements of Subsection 012.02.a. of this rule. (3-20-04)

#### 013. PLACE AND TIME FOR FILING, COPY FOR RESPONDENT.

**01. Place for Filing.** A complaint shall be filed with the Election Division, along with adequate proof of mailing or delivery of a copy of the complaint to each Respondent. (3-20-04)

**02. Time for Filing.** A complaint may be filed no later than ninety (90) days after the final certification of the federal election and at issue. A complaint may be filed anytime prior to an election. (3-20-04)

**03. Copy for Respondent.** The Complainant shall mail or deliver a copy of the complaint to each Respondent. (3-20-04)

**04. Rejection of Complaint.** The Election Division shall examine each complaint, and may reject it for filing if: (3-20-04)

- a. It is not signed and notarized under oath; (3-20-04)
- b. It does not identify the Complainant or include an adequate mailing address; (3-20-04)
- c. Does not, on its face, allege a violation of Title III with regard to a federal election; or (3-20-04)
- d. More than ninety (90) days have elapsed since the final certification of the federal election at issue. (3-20-04)

**014. PROCESSING OF COMPLAINT.**

**01. Consolidation.** The Secretary of State may consolidate complaints if they relate to the same actions or events, or if they raise common questions of law or fact. (3-20-04)

**02. Preparing the Complaint for Determination.** The Secretary of State shall take all necessary steps to prepare the complaint for determination under these rules. In the course of preparing the complaint for determination, the Secretary of State shall allow a party to proceed with the assistance of an English language interpreter if the Complainant is unable to proceed without assistance of an interpreter. It is the responsibility of the party who needs an interpreter to secure the services of the interpreter. The Secretary of State, in coordination with the parties, shall establish a schedule under which the Complainant and Respondent may file written submissions concerning the complaint, and under which the complaint shall be finally determined. (3-20-04)

**03. Record.** (3-20-04)

a. The Secretary of State shall compile and maintain an official record in connection with each complaint under this rule; (3-20-04)

b. The official record shall contain: (3-20-04)

i. A copy of the complaint including any amendments made with the permission of the Secretary of State; (3-20-04)

ii. A copy of any written submission by the Complainant; (3-20-04)

iii. A copy of any written response by any Respondent or other interested person; (3-20-04)

iv. A written report of any investigation conducted by employees of the Secretary of State or Office of Attorney General who shall not be directly involved in the actions or events complained of, and shall not directly supervise or be directly supervised by any Respondent; (3-20-04)

v. Copies of all notices and correspondence to or from the Secretary of State in connection with the complaint; (3-20-04)

vi. Originals or copies of any tangible evidence produced at any hearing conducted under Section 015; (3-20-04)

vii. The original tape recording produced at any hearing conducted under Subsection 015.07 of these

- rules, and a copy of any transcript obtained by any board or other party; and (3-20-04)
- viii. A copy of any final determination made under Sections 016 or 017. (3-20-04)

**015. HEARING.**

**01. Hearing on the Record.** At the request of the Complainant, the Secretary of State shall conduct a hearing on the record. (3-20-04)

**02. Time Frame for Hearing.** The hearing shall be conducted no sooner than ten (10) days and no later than thirty (30) days after the Secretary of State receives the complaint. The Secretary of State shall give at least ten (10) business days' advance notice of the date, time, and place of the hearing: (3-20-04)

**a.** By mail, to the Complainant, each named Respondent, and any other interested person who has asked in writing to be advised of the hearing; (3-20-04)

**b.** On the Election Division web site; and (3-20-04)

**c.** By posting in a prominent place, available to the general public, at the offices of the Election Division; (3-20-04)

**03. Hearing Officer.** The Secretary of State or his designee shall act as hearing officer. (3-20-04)

**04. Who May Appear.** The Complainant, any Respondent, or any other interested member of the public may appear at the hearing and testify or present tangible evidence in connection with the complaint. Each witness shall be sworn. The hearing officer may limit the testimony, if necessary, to ensure that all interested participants are able to present their views. The hearing officer may recess the hearing and reconvene at a later date, time, and place announced publicly at the hearing. (3-20-04)

**05. Representation by an Attorney Not Necessary.** A Complainant, Respondent, or other person who testifies or presents evidence at the hearing may, but need not be, represented by an attorney. (3-20-04)

**06. Written Presentation.** If a person has already testified or presented evidence at the hearing and wishes to contradict testimony or evidence subsequently presented, that person is not entitled to be heard again, but may make a written presentation to the hearing officer. (3-20-04)

**07. Tape Recording of Proceedings.** The proceedings shall be tape-recorded by and at the expense of the Election Division. The recording shall not be transcribed as a matter of course, but the Election Division, or any party may obtain a transcript at its own expense. If a party obtains a transcript, the party shall file a copy as part of the record, and any other interested person may examine the record copy. (3-20-04)

**08. Filing of Written Brief or Memorandum.** Any party to the proceedings may file a written brief or memorandum within five (5) business days after the conclusion of the hearing. No responsive or reply memoranda will be accepted except with the specific authorization of the hearing officer. (3-20-04)

**016. FINAL DETERMINATION.**

**01. If No Hearing is Held.** If there has been no hearing under Section 015, the Secretary of State or his designee shall review the record and determine whether, under a preponderance of the evidence standard, a violation of Title III has been established. (3-20-04)

**02. Determination of Violation.** At the conclusion of any hearing under Section 015, the hearing officer shall determine, under a preponderance of the evidence standard, whether a violation of Title III has been established. (3-20-04)

**03. Form of Determination.** (3-20-04)

**a.** If the Secretary of State or his designee, whether acting as hearing officer or otherwise, determines that a violation has occurred, the Secretary of State shall provide the appropriate remedy. The remedy shall be directed to the improvement of processes or procedures governed by Title III. The remedy so provided may include an order to any Respondent, commanding the Respondent to take specified action, or prohibiting the Respondent from taking specified action, with respect to a past or future election; however, the remedy may not include an award of money damages or attorney's fees. The remedy may not include the denial of certification or the invalidation of any primary, general or special election, or a determination of the validity of any ballot or vote. Remedies addressing the certification of an election, the validity of an election, or of any ballot or vote may be obtained only as otherwise provided by law; (3-20-04)

**b.** If the complaint is not timely or not in proper form, or if the Secretary of State or his designee, whether acting as hearing officer or otherwise, determines that a violation has not occurred, or that there is not sufficient evidence to establish a violation, the Secretary of State shall dismiss the complaint; (3-20-04)

**04. Explanation in Written Decision.** The Secretary of State or his designee shall explain in a written decision the reasons for the determination and for any remedy selected. (3-20-04)

**05. Issuance of Final Decision.** Except as specified in Section 017, the final determination of the Secretary of State shall be issued within ninety (90) days after the complaint was filed, unless the Complainant consents in writing to an extension. The final determination shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final determination. It shall also be published on the Division's website and made available on request to any interested person. If the Secretary of State cannot make a final determination within ninety (90) days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be referred for final resolution under Section 017. The record compiled under Section 014 of this rule shall be made available for use under Section 017. (3-20-04)

**017. ALTERNATE DISPUTE RESOLUTION.**

If, for any reason, the Secretary of State or his designee does not render a final determination within ninety (90) days after the complaint was filed, or within any extension to which the Complainant consents, the complaint shall be resolved under this Section 017. (3-20-04)

**01. Time Frames for Choosing and Arbitrator.** On or before the fifth business day after a final determination by the Secretary of State was due, the Secretary of State shall designate in writing to the Complainant a list of names of arbitrators who may resolve the complaint. Within three (3) business days after the Complainant receives this designation, the Complainant and the Secretary of State shall arrange to choose an arbitrator from this list by striking names from the list until an arbitrator acceptable to both parties is chosen. Within three (3) business days after the parties strike names, the Secretary of State shall contact the arbitrator chosen and arrange for the hearing by the arbitrator. (3-20-04)

**02. Information the Arbitrator May Review.** The arbitrator may review the record compiled in connection with the complaint, including the tape recording or any transcript of a hearing and any briefs or memoranda, but shall not receive additional testimony or evidence. In exceptional cases, the arbitrator may request that the parties present additional briefs or memoranda. (3-20-04)

**03. Resolution of Complaint.** The arbitrator shall determine the appropriate resolution of the complaint as set out in these rules. (3-20-04)

**04. Issuance of Written Resolution.** The arbitrator must issue a written resolution within sixty (60) days after the final determination of the Secretary of State was due under Section 016. This sixty (60) day period may not be extended. The final resolution of the arbitrator shall be transmitted to the Secretary of State and shall be the final resolution of the complaint. The final resolution shall be mailed to the Complainant, each Respondent, and any other interested person who has asked in writing to be advised of the final resolution. It shall be published on the Election Division website and made available on request to any interested person. (3-20-04)

**018. -- 999. (RESERVED)**

## 34.03.01 – RULES IMPLEMENTING THE SUNSHINE LAW

### 000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Chapter 66, Title 67, Idaho Code, specifically Sections 67-6603, 67-6607, 67-6608, 67-6610, 67-6611, 67-6612, 67-6614A, 67-6619, 67-6623, Idaho Code. (4-6-05)

### 001. TITLE AND SCOPE.

The rules in this Chapter shall be known as IDAPA 34.03.01, “Rules Implementing the Sunshine Law.” (4-6-05)

### 002. -- 010. (RESERVED)

### 011. FORMS.

**01. Form for Lobbyist Registration.** Pursuant to the authority of Section 23 of the Sunshine Law the official form for lobbyist registration as required by Section 17 is hereby adopted for use in reporting to the Secretary of State. This form shall be designated as “L-1” and shall be available online. The “L-1” form shall be accompanied by payment of a registration fee of ten dollars (\$10). (4-6-05)

**02. Annual Report Form.** The official form for the lobbyist annual report as required by Section 67-6619, Idaho Code is hereby adopted for use in reporting to the Secretary of State. This form shall be designated as “L-2” and shall be available online. (4-6-05)

**a.** Expenditures to be reported are those made or incurred by such lobbyist or on behalf of such lobbyist by the lobbyist’s employer either directly or indirectly for lobbying purposes. The total expenditures shall be cumulative for the calendar year covered by the report. Expenditure categories shall include entertainment, food and refreshment, advertising, living accommodations, travel, telephone, and other expenses or services. (4-6-05)

**b.** The annual report shall include the name and address of the lobbyist and the name and address of the lobbyist’s employer(s), and the subject matter or proposed legislation and the number of each senate or house bill, resolution, or other legislative activity which the lobbyist has been engaged in supporting or opposing during the reporting period; provided that in the case of appropriation bills the lobbyist shall enumerate the specific section or sections which he supported or opposed. (4-6-05)

**c.** The annual report shall be certified as a true, complete, and correct statement by the lobbyist and the lobbyist’s employer(s). (4-6-05)

**03. Monthly Report Form.** The official form for the lobbyist monthly report as required by Section 67-6619, Idaho Code is hereby adopted for use in reporting to the Secretary of State. This form shall be designated as “L-3” and shall be available online. (4-6-05)

**a.** Expenditures to be reported are those made or incurred by such lobbyist or on behalf of such lobbyist by the lobbyist’s employer either directly or indirectly for lobbying purposes. The expenditure totals in such reports shall not be cumulative throughout the year but rather shall reflect the total expenditures during the calendar month covered by the report. Expenditure categories shall include entertainment, food and refreshment; advertising; living accommodations; travel; telephone; and other expenses or services. (4-6-05)

**b.** The monthly periodic report shall include the name and address of the lobbyist and the name and address of the lobbyist’s employer; and the subject matter of proposed legislation and the number of each senate or house bill, resolution, or other legislative activity which the lobbyist has been engaged in supporting or opposing during the reporting period; provided that in the case of appropriation bills the lobbyist shall enumerate the specific section or sections which he supported or opposed. (7-1-93)

**c.** The monthly report shall be certified as a true, complete, and correct statement by the lobbyist. (4-6-05)

**04. Form for the Appointment and Certification of Political Treasurer.** The official form for the appointment and certification of a political treasurer as required by Section 67-6603, Idaho Code is hereby adopted for use in reporting to the Secretary of State. This form shall be numbered “C-1” designated as “Appointment and Certification of Political Treasurer for Candidates and Committees” and shall be available online. (4-6-05)

**05. Forms for the Disclosure of Campaign Finances by Candidates and Political Committees.** The official forms for the statement required by Sections 67-6607, 67-6608, and 67-6612, Idaho Code are hereby adopted for use in reporting to the Secretary of State. The form numbered “C-2” shall be designated “Campaign Financial

Disclosure Report” and shall be available online. The form numbers “C-2A” shall be designated “Contributions Pledged But Not Yet Received” and shall be available online. The form numbered “C-2B” shall be designated “Expenditures Incurred (Debts and Obligations) and Payments Made on Debt” and shall be available online. (4-6-05)

**06. Form for Report of Alleged Violation of Sunshine Law.** Pursuant to the authority of Section 67-6623(f), Idaho Code of the Sunshine Law the official form to be used in filing a complaint that a person has violated the Sunshine Law is hereby adopted for use in reporting to the Secretary of State. This form shall be designated as “L-5” and shall be available online. Any person may file a complaint against anyone covered by the Sunshine Law. Such complainant must submit form “L-5” to properly file his complaint. No other method of filing a complaint will be recognized. (4-6-05)

**012. DATE OF RECEIPT.**

When any application, report, statement, notice or any other document required to be filed by the provisions of Title 67, Chapter 66, Idaho Code has been deposited post paid in the United States mail properly addressed, it shall be deemed to have been received on the date of mailing. It shall be presumed that the date shown by the post office cancellation mark on the envelope is the date of mailing. (7-1-93)

**013. EXPENDITURES OTHER THAN CONTRIBUTIONS.**

**01. Reporting Periods.** Reporting periods for disclosing expenditures other than contributions. The reporting periods for the statements required by Section 67-6611, Idaho Code shall be as follows: (7-1-93)

**a.** The period covered by the Thirty (30) Day Post-Primary report shall be from the date of the first independent expenditure thru the twentieth (20th) day after the primary election. (7-1-93)

**b.** The period covered by the Thirty (30) Day Post-General report shall begin on the twenty-first day following the primary election and continue thru the twentieth (20th) day following the general election. (7-1-93)

**014. SOURCE OF CASH ON HAND.**

Newly certified committees must disclose source of cash on hand. Political committees and candidates which have cash on hand at the time of certification (which the committee or candidate anticipates using in an election) shall disclose on their first report the source(s) of these funds, including the information required by Section 67-6612, Idaho Code. Disclosure shall consist of reporting to the Secretary of State the name and address of each person who has contributed more than fifty dollars (\$50) to the committee in the current calendar year and the immediately preceding calendar year along with the aggregate amount contributed by each person. (7-1-93)

**015. ADVERTISING REGULATION EXEMPTION.**

Items exempt from advertising regulation. Campaign buttons, bumper strips, pins, pens and similar small items upon which a disclaimer cannot be conveniently printed are not deemed to be regulated by the provisions of Section 67-6614A, Idaho Code. (7-1-93)

**016. COMMUNITY PROPERTY CONTRIBUTIONS.**

**01. Contributions of Community Property -- How Treated.** A contribution of community property shall be deemed to be given one-half (1/2) by each spouse. To be treated as community property the contribution must be specifically identified as such. Moneys contributed from a joint account of husband and wife shall be deemed to be received one-half (1/2) from each spouse only if both spouses have signed the check. The following are examples of contributions: (7-1-93)

**a.** Husband contributes sixty dollars (\$60) by personal check to political treasurer X out of community funds. There is no specific designation that such sixty dollars (\$60) contribution is community property. X must treat the entire sixty dollars (\$60) contribution as coming from husband. (7-1-93)

**b.** Husband contributes by personal check sixty dollars (\$60) to a political treasurer X out of community funds. Accompanying such contribution is a statement certifying that such contribution is from the community funds of husband and wife. X must report husband and wife as each contributing thirty dollars (\$30). (7-1-93)

**c.** Wife contributes sixty dollars (\$60) to political treasurer X by personal check drawn on the joint account of husband and wife. Wife is the only spouse to sign the check. X must report the entire sixty dollars (\$60) as being contributed by wife. (7-1-93)

**d.** Husband and wife contribute sixty dollars (\$60) to political treasurer X by a check drawn on their joint account both husband and wife have signed the check. X should report husband and wife as each contributing thirty dollars (\$30). (7-1-93)

**e.** Assuming that after contributing as in the example in Subsection 016.01.d., husband contributes separately another twenty-five dollars (\$25) X should report husband aggregate total as fifty-five dollars (\$55) and pursuant to Section 67-6610 must list husband's name and address on the campaign financial disclosure report. (7-1-93)

**017. -- 999. (RESERVED)**



## 34.04.02 – RULES GOVERNING BUSINESS ENTITY NAMES

### 000. LEGAL AUTHORITY.

In accordance with Section 67-903(9), Idaho Code, the Secretary of State has authority to promulgate administrative rules in order to execute the duties of the office. (3-29-12)

### 001. TITLE AND SCOPE.

**01. Title.** These rules are titled IDAPA 34.04.02, “Rules Governing Business Entity Names,” IDAPA 34, Title 04, Chapter 02. ( )

**02. Scope.** These rules shall apply to business entity name registration and business entity name reservation as provided for in Title 30, Chapters 21, 22, 23, 24, 25, 27, 29, and 30, Idaho Code. ( )

### 002. -- 009. (RESERVED)

### 010. DEFINITIONS.

**01. Arabic Numerals.** 0, 1, 2, 3, 4, 5, 6, 7, 8, and 9. (3-29-12)

**02. Business Entity.** A formally organized or registered entity created pursuant to state or federal law and usually designated through the use of a business entity identifier. (3-29-12)

**03. Business Entity Identifiers.** Company, Corporation, Incorporated, Limited, Chartered, Professional Association, Professional Company, Limited Liability Company, Limited Liability Partnership, Professional Limited Liability Company, Limited Partnership, Limited Liability Limited Partnership, Registered Limited Liability Partnership, and the abbreviations, Co., Corp., Inc., Ltd., P.A., P.C., Chtd., L.L.C., L.L.P., P.L.L.C., L.P., R.L.L.P., and L.L.L.P. (3-29-12)

**04. English Alphabet.** Letters A through Z. (3-29-12)

**05. Internet Prefix.** Internet prefixes include “www” and any other Internet prefix used to identify a website. (3-29-12)

**06. Internet Suffix.** Internet suffixes include .com, .org, .net, .gov, .edu, .coop, and any other Internet suffixes approved by the Internet Corporation for Assigned Names and Numbers (ICANN). (3-29-12)

**07. Key Word.** Any word that is not an article, preposition, conjunction, or Business Entity Identifier. (3-29-12)

**08. Special Characters.** Any special characters, such as ! “ \$ % ( ) \* @ ? +, and -, that are readily available on a standard English language keyboard. (3-29-12)

### 011. -- 099. (RESERVED)

### 100. GENERAL INFORMATION.

**01. Determination by Secretary of State.** The Secretary of State shall determine whether a proposed business entity name is distinguishable on the records of the Secretary of State from the names of existing business entities by comparing the proposed business entity name to the names of existing business entity names. (3-29-12)

**02. Existing Business Entity Names Considered.** The names of business entities in good standing or business entities which have been administratively dissolved for less than six (6) months will be considered in determining whether a proposed business entity name is distinguishable on the records of the Secretary of State from existing business entity names. (3-29-12)

**03. Alphabet Names.** Where a name or a unit of a name consists of initials only or letters of the alphabet, the combination of initials will be considered as one (1) word for the purpose of determining if the business entity name is distinguishable.

EXAMPLE: The “words” AA – AAA – AAAA – A & B – AAB – AAC are different words and are distinguishable from one another. (3-29-12)

**04. Characters in Business Entity Names.** Business entity names shall consist of letters of the English Alphabet, Arabic Numerals, or Special Characters. (3-29-12)

**05. Foreign Words.** Although business entity names may include words in a foreign language, such words will not be translated for the purpose of determining if a business entity name is distinguishable. (3-29-12)

**06. Grossly Offensive Name.** The business entity name may not be one that is deemed to be grossly offensive. (3-29-12)

**07. Internet Prefixes and Suffixes.** Internet prefixes and suffixes shall not give any special weight or inference to the business entity name, nor shall they be interpreted for meaning or intent. (3-29-12)

**08. False Implication of Government Affiliation.** The corporate name may not be one that might falsely imply governmental affiliation. (3-29-12)

**101. -- 199. (RESERVED)**

**200. NOT DISTINGUISHABLE ON THE RECORD.**

The following do not make a name distinguishable on the record:

**01. Abbreviations.** The abbreviation of a word or Special Character is considered the equivalent of the complete word or Special Character.

EXAMPLE: DOE BROTHERS, LLC is not distinguishable from DOE BROS., LLC. ( )

**02. Business Entity Identifiers.** The addition, removal, or alteration of Business Entity Identifiers and their applicable abbreviations.

EXAMPLE: DOE BROTHERS CORPORATION is not distinguishable from DOE BROTHERS, INC. ( )

**03. Numbers.** The use of a word or Roman numeral for a number instead of the Arabic Numeral.

EXAMPLE: FOUR TURTLES, LLC is not distinguishable from 4 TURTLES, LLC, nor is it distinguishable from IV TURTLES, LLC. ( )

**04. Other Words.** The presence or absence of an article, preposition, conjunction, or pronoun.

EXAMPLE: THE DOE BROTHERS, LLC is not distinguishable from DOE BROTHERS, LLC. ( )

**05. Punctuation.** Differences in punctuation.

EXAMPLE: U.S.A. STEEL, LLC is not distinguishable from USA STEEL, LLC.  
EXAMPLE: PROWIDGETS.COM is not distinguishable from PRO.WIDGETS.COM. ( )

**06. Spaces.** Spaces, or the absence of spaces.

EXAMPLE: USA STEEL, LLC is not distinguishable from USASTEEL, LLC. ( )

**07. Special Characters.** Differences created by use of Special Characters.

EXAMPLE: AMERICAN PISTOLS, LLC is not distinguishable from AMER!CAN P!\$TOL\$, LLC. ( )

**08. The Letter "S".** The addition or removal of the letter "s" to make a word singular, plural, or possessive.

EXAMPLE: GOLDEN APPLE, LLC is not distinguishable from GOLDEN APPLES, LLC. ( )

**09. Typeface, Font, or Case.** The use of a different typeface, font, or case.

EXAMPLE: SISTERS' DINER is not distinguishable from Sisters' Diner. ( )

**201. -- 299. (RESERVED)**

**300. DISTINGUISHABLE ON THE RECORD.**

**01. Key Word Difference.** If one (1) of the Key Words is different, the name is distinguishable.

EXAMPLE: WIDGET WONDER, LLC is distinguishable from WIDGET ELITE, LLC. (3-29-12)

**02. Key Word Order.** If the Key Words are in a different order, the name is distinguishable.  
EXAMPLE: WIDGET WONDER, LLC is distinguishable from WONDER WIDGET, LLC. (3-29-12)

**03. Key Word Addition or Deletion.** The addition or deletion of one (1) or more Key Words shall make a name distinguishable.  
EXAMPLE: AMAZING WONDER WIDGET, INC. is distinguishable from WONDER WIDGET, INC. (3-29-12)

**04. Difference in Meaning.** If the Key Words are significantly different in meaning, and the Key Words are not identical, the name may be distinguishable.  
EXAMPLE: CAPITAL WIDGET, LLC is distinguishable from CAPITOL WIDGET, LLC. (3-29-12)

**05. Internet Prefix and Suffix Addition or Deletion.** The addition or deletion of an Internet prefix or suffix shall make a name distinguishable.  
EXAMPLE: PRECISE WIDGETS, LLC is distinguishable from PRECISEWIDGETS.COM, LLC which is distinguishable from PRECISEWIDGETS.NET.  
EXAMPLE: WWW.PROWIDGETS.COM is distinguishable from PRO.WIDGETS.COM. (3-29-12)

**301. -- 399. (RESERVED)**

**400. MATTERS NOT CONSIDERED.**

When determining whether a business entity name is distinguishable on the records of the Secretary of State from another business entity name, the following are among the matters not considered: (3-29-12)

**01. Purpose.** Whether the purpose of the proposed business entity is the same as or similar to the purpose of an existing business entity. (3-29-12)

**02. Location.** Whether the business entities will be carrying out activities in the same or nearby locations. (3-29-12)

**03. Prior Actions.** Whether an analogous situation has previously been acted on by the Secretary of State. (3-29-12)

**04. Activity.** Whether an existing business entity is actively engaged in business, or has a telephone listing, or a location of a place of business. (3-29-12)

**05. Intent.** Whether an existing business entity is about to change its name or be dissolved or merged out of existence. (3-29-12)

**06. Reliance.** Whether the applicant has ordered stationery, opened a bank account, signed a contract, or otherwise altered his position in the expectation, hope or belief that the proposed name would be available. (3-29-12)

**07. Influence.** Whether the applicant is more or less important, extensive, widely known, or influential than an existing business entity. (3-29-12)

**08. Common Law.** Whether infringement or unfair trade practice has occurred or might occur. (3-29-12)

**401. CORPORATE RESERVATION RENEWAL TERMS.**

A corporate name reservation may be renewed at or after the expiration of any four (4) month reservation period by filing a new name reservation in writing, along with the required fee; provided that at the end of any such reservation period there is not on file in the office of the Secretary of State a competing name reservation which is to take effect at the expiration of the existing reservation. Competing reservations will have priority in order of receipt. ( )

**402. -- 999. (RESERVED)**



## 34.05.05 – LIST OF FEDERAL LIENS IN AGRICULTURAL CROPS

### 000. LEGAL AUTHORITY AND REFERENCES.

01. Title 45, Chapter 2, Idaho Code. (7-1-93)

02. Title 67, Chapter 52, Idaho Code. (7-1-93)

03. IDAPA 34.05.02, “Rules Governing Liens in Crops, for Seed, and Farm Labor,” Office of the Secretary of State. (7-1-93)

### 001. -- 003. (RESERVED)

### 004. DEFINITIONS AND ABBREVIATIONS.

Where terms used in this rule are not defined herein, definitions and usage of terms from the references are applicable. (7-1-93)

01. IRS. United States Internal Revenue Service, as well as other federal entities which may file notices of federal lien pursuant to Title 45, Chapter 2, Idaho Code. (7-1-93)

02. SOS. Idaho Secretary of State. (7-1-93)

### 005. -- 010. (RESERVED)

### 011. NOTICE OF FEDERAL LIENS IN AGRICULTURAL CROPS

When the IRS files a notice of lien in personal property of an entity described in sub-paragraph (1), (2) or (3) of paragraph (c) of Section 45-202, Idaho Code, and the property includes agricultural crops, the IRS may identify the notice as pertaining to crops. The identification shall be by conspicuous notation on the face of the notice. (7-1-93)

### 012. COMPILATION AND DISTRIBUTION OF LIST.

01. **Content.** The SOS shall compile a list of effective notices of federal liens pertaining to agricultural crops, arranged alphabetically by lienee name. Each entry on the list will include; (7-1-93)

a. The name and address of the lienee(s); (7-1-93)

b. The name of the federal entity claiming the lien; (7-1-93)

c. The SOS document number; (7-1-93)

d. The date of attachment of the lien; and (7-1-93)

e. The date and time of filing of the notice. (7-1-93)

02. **Schedule.** The SOS will publish the list on the same schedule as the list of notices of claim of lien in crops for seed or farm labor, as prescribed in IDAPA 34.05.02, Section 015, “Rules Governing Liens in Crops, For Seed, and Farm Labor,” Office of the Secretary of State. (7-1-93)

03. **Recipients.** The SOS will distribute the list to persons who subscribe for the list of notices of claim of lien in crops pursuant to IDAPA 34.05.02, Section 014, “Rules Governing Liens in Crops, For Seed, and Farm Labor,” Office of the Secretary of State, at no additional charge. (7-1-93)

### 013. -- 999. (RESERVED)

## 34.06.01 – RULES GOVERNING THE ELECTRONIC RECORDING OF REAL PROPERTY

### 000. LEGAL AUTHORITY.

In accordance with Section 67-903(9), Idaho Code, the Secretary of State has authority to promulgate administrative rules in order to execute the Uniform Real Property Electronic Recording Act enacted as Title 31, Chapter 29, Idaho Code. (3-20-14)

### 001. TITLE AND SCOPE.

**01. Title.** These rules shall be cited as IDAPA 34.06.01, “Rules Governing the Electronic Recording of Real Property,” IDAPA 34, Title 06, Chapter 01. (3-20-14)

**02. Scope.** These rules shall govern the filing, acceptance, indexing and searching of real property records in the county recording offices under Title 31, Chapter 29, Idaho Code. (3-20-14)

### 002. INCORPORATION BY REFERENCE.

Data and document formats necessary for electronic recording are incorporated by reference. (3-20-14)

**01. PRIA Standards.** Electronic recording of real property documents shall meet technical standards for document formatting and document data fields and follow implementation guidelines as prescribed by the Property Records Industry Association (PRIA) which are hereby incorporated by reference, made a part of this rule, and listed below: (3-20-14)

- a. PRIA Request Version 2.4.2, August 2007; (3-20-14)
- b. PRIA Response Version 2.4.2, August 2007; (3-20-14)
- c. Document Version 2.4.1, October 2007; (3-20-14)
- d. Notary Version 2.4.1, October 2007; (3-20-14)
- e. eRecording XML Implementation Guide for Version 2.4.1, Revision 2, March 2007; (3-20-14)
- f. URPERA Enactment and eRecording Standards Implementation Guide, December 2005. (3-20-14)

**02. Standards Availability.** These standards are available from the Property Records Industry Association, 2501 Aerial Center Parkway, Ste. 103, Morrisville, NC 27560, and at <http://www.pria.us/>. (3-20-14)

### 003. -- 009. (RESERVED)

### 010. DEFINITIONS.

**01. Delivery Agent.** A party who has entered into an agreement with a Participating Recorder to deliver an Electronic Document from a Submitter to a Participating Recorder and to return the recorded Electronic Document to the Submitter. (3-20-14)

**02. Document.** The meaning shall be the same as provided in Section 31-2902, Idaho Code. (3-20-14)

**03. Electronic Document.** The meaning shall be the same as provided in Section 31-2902, Idaho Code. (3-20-14)

**04. Electronic Document Delivery System.** An automated system for the secure transmission of an Electronic Document between a Submitter and a Participating Recorder through the use of a Delivery Agent. (3-20-14)

**05. Electronic Recording.** The delivery and return of an Electronic Document, using an Electronic Document Delivery System, for the purpose of recording that document with the county records. (3-20-14)

**06. Electronic Signature.** The meaning shall be the same as provided in Section 31-2902, Idaho Code. (3-20-14)

**07. Participating Recorder.** A county recorder who has elected to accept Electronic Documents for recording. (3-20-14)

**08. PDF (Portable Document Format).** The file format originally created by Adobe Systems for document exchange allowing documents to be viewed as they were intended to appear. PDFs are a common format for image exchange or World Wide Web presentation. (3-20-14)

**09. Submitter.** A party who requests that an Electronic Document be recorded. (3-20-14)

**10. TIFF (Tagged Image File Format).** The variable-resolution bitmapped image format originally developed by the Aldus Corporation (now part of Adobe Systems) and published as ISO 12639:2004, Graphic technology-Prepress digital data exchange-Tag image file format for image technology (TIFF/IT). TIFF is a common format for high-quality black and white, gray-scaled, or color graphics of any resolution and is made up of individual dots or pixels. (3-20-14)

**11. XML (Extensible Markup Language).** An extensible document language for specifying document content. XML is not a predefined markup language but a metalanguage (a language for describing other languages) allowing the user to specify a document type definition (DTD) and design customized markup languages for different classes of documents. (3-20-14)

**011. -- 100. (RESERVED)**

**101. ELECTRONIC RECORDING MODELS.**

Electronic Documents shall conform to one of the following models: (3-20-14)

**01. Model 1.** Model 1, which utilizes scanned ink-signed Documents, transmitted without XML indexing data; (3-20-14)

**02. Model 2.** Model 2, which utilizes scanned ink-signed Documents or Documents that have been created and signed electronically, transmitted with XML indexing data; or (3-20-14)

**03. Model 3.** Model 3, which utilizes Documents that have been created and signed electronically, transmitted with embedded XML indexing data. (3-20-14)

**102. TRANSMITTED FILES.**

**01. Technical Standards for Transmitted Files.** The technical standards for document formatting and data fields for Electronic Recording are those in effect at the time of the Electronic Recording as prescribed by the Property Records Industry Association (PRIA) in the PRIA eRecording XML Standard Version 2.4, which includes PRIA Request Version 2.4.2 (August 2007); PRIA Response Version 2.4.2 (August 2007); Document Version 2.4.1 (October 2007); and Notary Version 2.4.1 (October 2007). (3-20-14)

**02. Guide to Be Consulted for Reference.** The PRIA eRecording XML Implementation Guide for Version 2.4.1, Revision 2 (March 2007) should be consulted for reference. (3-20-14)

**03. Storage Formats.** Electronic Documents shall be transmitted and stored as either TIFF or PDF files, in accordance with the TIFF 6.0 specification, published by the International Organization for Standardization as ISO 12639:2004, Graphic technology - Prepress digital data exchange - Tag image file format for image technology (TIFF/IT), or the PDF 1.7 specification, published by the International Organization for Standardization as ISO 32000-1:2008, Document management - Portable document format - Part 1: PDF 1.7. (3-20-14)

**103. DATA FORMATS.**

The data format for Electronic Recordings shall meet technical standards and data fields set forth by the Property Records Industry Association (PRIA) in the PRIA eRecording XML Standard Version 2.4, which includes PRIA Request Version 2.4.2 (August 2007); PRIA Response Version 2.4.2 (August 2007); Document Version 2.4.1 (October 2007); and Notary Version 2.4.1 (October 2007). The PRIA eRecording XML Implementation Guide for Version 2.4.1, Revision 2 (March 2007) should be consulted for reference. (3-20-14)

**104. PARTICIPATING RECORDER.**

**01. Documents Accepted.** A Participating Recorder is only required to accept Electronic Documents containing Electronic Signatures or notarizations that the Participating Recorder has the technology to support. (3-20-14)

**02. Authentication.** A Participating Recorder has no responsibility to authenticate Electronic Signatures or notarizations. (3-20-14)

**105. ELECTRONIC RECORDING PROCESSING REQUIREMENTS.**

**01. Notice Requirements.** A Participating Recorder shall provide appropriate notification to the Delivery Agent of the confirmation or rejection of an Electronic Recording through the Electronic Document Delivery System. (3-20-14)

**a.** A notice of confirmation shall identify and include recording information for the recorded Electronic Document. (3-20-14)

**b.** A notice of rejection shall identify the rejected Electronic Document and include a brief explanation of the reason for rejection. (3-20-14)

**c.** The Delivery Agent shall notify the Submitter of the confirmation or rejection of the Electronic Document. (3-20-14)

**d.** The failure of a Submitter to receive actual notice of confirmation or rejection of a recording shall not affect the validity of the confirmation or rejection. (3-20-14)

**02. Contact Information.** A Participating Recorder may contact a Submitter regarding an Electronic Document submitted for recording prior to sending a notice of confirmation or rejection. The Delivery Agent shall ensure that the Submitter includes telephone or email contact information with each Electronic Document submission. (3-20-14)

**03. Time of Receipt.** A Participating Recorder shall enter the time of receipt of Electronic Documents in accordance with Section 31-2410, Idaho Code. (3-20-14)

**106. SECURITY REQUIREMENTS.**

Procedures shall be implemented and maintained to ensure the security of the Electronic Document Delivery System, including the authenticity and integrity of the Electronic Documents maintained by the Participating Recorder. (3-20-14)

**01. Secure Method.** A Participating Recorder shall provide a secure method for accepting Documents through the Electronic Document Delivery System and for recording and maintaining Electronic Documents within the Participating Recorder's records. (3-20-14)

**02. Security Procedures.** A Delivery Agent shall implement and maintain security procedures for all electronic transmissions and shall be responsible for maintaining the security of the systems within their offices. (3-20-14)

**03. System and Security Failures.** Electronic Document Delivery Systems shall protect against system and security failures and, in addition, shall provide backup, disaster recovery and audit trail mechanisms. Delivery Agents shall provide audit trail information to Participating Recorders on request. (3-20-14)

**04. Unauthorized Party.** Electronic Document Delivery Systems shall not permit any unauthorized party to modify, manipulate, insert or delete information, without detection, in Electronic Documents or in the public record maintained by the Participating Recorder. (3-20-14)

**05. Notification of Breach.** If a breach in security is detected by the Participating Recorder, Delivery Agent or Submitter, the party discovering the breach shall notify the other parties immediately. All parties shall work



cooperatively to take remedial action and to resolve any issues related to a breach. (3-20-14)

**107. AGREEMENT AND PROCEDURES.**

**01. Participation Agreement.** The Delivery Agent and the Participating Recorder shall enter into an agreement specifying the requirements for Electronic Document recording with the county. At a minimum, the agreement shall address the following items: (3-20-14)

- a.** Accepted Electronic Recording models; (3-20-14)
- b.** Accepted Electronic Document types; (3-20-14)
- c.** Defined technical specifications for data formats, document formats, electronic transmissions and security; (3-20-14)
- d.** If used by the Participating Recorder, indexing fields required for each Electronic Document; (3-20-14)
- e.** Electronic Signature and notarization requirements; (3-20-14)
- f.** Payment options for recording fees and applicable taxes; (3-20-14)
- g.** Hours during which Electronic Documents will be accepted and processing schedules that affect order of acceptance; (3-20-14)
- h.** Electronic Document acceptance and rejection requirements and procedures; (3-20-14)
- i.** Responsibility of the Delivery Agent to review the qualifications of each potential Submitter and to approve the potential Submitter prior to granting access to the Electronic Document Delivery System; and (3-20-14)
- j.** Responsibility of the Delivery Agent to enter into an agreement with each approved Submitter, in which the Submitter agrees to submit Electronic Documents for recording in accordance with all applicable state statutes and rules and to maintain the security of the systems within the Submitter's offices. (3-20-14)

**02. Other Procedures and Requirements.** A Participating Recorder may include in the agreement other procedures and requirements needed in order to implement fully an Electronic Recording program. (3-20-14)

**03. Establishment and Posting of Procedures.** A Participating Recorder shall establish procedures for Electronic Recording in the municipality and shall post the procedures in the recorder's office, on the municipality's Internet website, if available, and through the Electronic Document Delivery System, and shall make a copy of the procedures available on request. The procedures shall cover, at a minimum, the items listed above in this subsection. (3-20-14)

**108. -- 999. (RESERVED)**

# IDAPA 38 – DEPARTMENT OF ADMINISTRATION

DOCKET NO. 38-0000-1900

## NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 67-5709, 67-1604, 67-9205(11), 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 38, rules of the Idaho Department of Administration:

### **IDAPA 38**

- 38.04.06, *Rules Governing Use of the Exterior of State Property in the Capitol Mall and other State Facilities*
- 38.04.07, *Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities*
- 38.04.08, *Rules Governing Use of Idaho State Capitol Exterior*
- 38.04.09, *Rules Governing Use of the Chinden Office Complex*
- 38.05.01, *Rules of the Division of Purchasing*

This pending rule vacates the following proposed rule previously promulgated under this docket number as part of the omnibus proposed rulemaking under IDAPA38, rules of the Idaho Department of Administration:

- **(VACATED)** 38.05.02, *Rules Governing Contested Case Hearing on Bid Appeals at the Division of Purchasing*

The June 19 submission included two separate chapters, 38.05.01 and 38.05.02 that have been condensed into a single chapter to eliminate redundant definitions and eliminate definitions separately included in statute. Deleting redundant definitions enhances usability and eliminates potential conflict between code and between chapters.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, **Vol. 19-6SE, pages 6203 – 6224**.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Keith Reynolds at (208) 332-1812.

Dated this 10th day of September, 2019.

Keith Reynolds, Deputy Director  
Department of Administration  
650 West state Street, Room 100  
P.O. Box 83720  
Boise, ID 83720-0004  
Phone: 208-332-1812  
Fax: 208-334-2307

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-5709, 67-1604, 16-9205(11), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 38, rules of the Idaho Department of Administration:

**IDAPA 38**

- 38.04.06, *Rules Governing Use of the Exterior of State Property in the Capitol Mall and other State Facilities*
- 38.04.07, *Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities*
- 38.04.08, *Rules Governing Use of Idaho State Capitol Exterior*
- 38.04.09, *Rules Governing Use of the Chinden Office Complex*
- 38.05.01, *Rules of the Division of Purchasing*
- 38.05.02, *Rules Governing Contested Case Hearing on Bid Appeals at the Division of Purchasing*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules contain provisions for use of the interior and exterior of the Capitol Mall Office Properties, the Capitol Annex, Other State Properties, and Multi-agency Facilities. Chapter 38.05.01 contains provisions set forth for the Division of Purchasing and identified state agencies to engage in competitive purchasing with state funds. Chapter 38.05.02 governs the process for Contested Case Hearings on Bid Appeals for state agencies and the Division of Purchasing.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Keith Reynolds at (208) 332-1812.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th of June, 2019.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 38-0000-1900**

**38.04.06 – RULES GOVERNING USE OF THE EXTERIOR OF STATE PROPERTY  
IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

**000. LEGAL AUTHORITY.**

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing the state properties in the Capitol Mall and other state facilities. (3-27-13)

**001. TITLE AND SCOPE.**

**01. Title.** These rules are titled IDAPA 38.04.06, “Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities.” (3-27-13)

**02. Scope.** These rules contain the provisions for use of the exterior of the Capitol Mall Office Properties, the Capitol Annex, the Parking Facilities, the Other State Properties, and the Multi-agency Facilities. Rules governing the interior of the Capitol Office Mall Properties, the Other State Properties, and the Multi-agency Facilities are codified under IDAPA 38.04.07, “Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities.” Rules governing the use of the exterior of the Capitol are codified under IDAPA 38.04.08, “Rules Governing Use of Idaho State Capitol Exterior.” Rules governing parking are codified under IDAPA 38.04.04, “Capitol Mall Parking Rules.” (3-27-13)

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

- 01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. (3-27-13)
- 02. Capitol Annex.** The grounds, exterior of buildings, exterior of improvements, and real property located at 514 West Jefferson Street, Boise, Idaho and occupying block 65 as shown on the Boise City original townsite plat filed in the Ada County Recorder’s office in Book 1 on page 1. (3-27-13)
- 03. Capitol Mall Office Properties.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 67-5709(2)(a) and (b), Idaho Code. The Capitol Mall Office Properties do not include the Idaho State Capitol or its grounds or the Capitol Mall Annex. (3-27-13)
- 04. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. (3-27-13)
- 05. Department.** The Department of Administration. (3-27-13)
- 06. Director.** The Director of the Department of Administration or his designee. (3-27-13)
- 07. Multi-Agency Facilities.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 102 of these rules. (3-27-13)
- 08. Other State Properties.** The grounds, exterior of buildings, exterior of improvements, and real property set forth in Section 101 of these rules. (3-27-13)
- 09. Parking Facilities.** The facilities, exterior of buildings, exterior of improvements, and real property set forth in Section 67-5709(2)(b), Idaho Code. (3-27-13)
- 10. Private Event or Private Exhibit.** Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. (3-27-13)
- 11. Public Use.** Use that is not: (3-18-14)
- a.** A State Event or Exhibit; (3-18-14)
  - b.** Use by a public officer, official, employee, contractor, agency, or board or commission for state of Idaho business; or (3-18-14)
  - c.** State Maintenance and Improvements. (3-18-14)

**12. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. (3-27-13)

**13. State Events and Exhibits.** All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (3-27-13)

**14. State Facilities.** The Capitol Mall Office Properties, the Capitol Annex, the Multi-agency Facilities, the Parking Facilities and the Other State Properties. Use of the phrase “at the State Facilities” includes the exterior of buildings, exterior of improvements and the grounds and real property comprising the State Facilities. (3-27-13)

**15. State Maintenance and Improvements.** Maintenance or improvement of the State Facilities by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, resodding, fertilizing and planting, and structural maintenance such as pressure washing, painting, window cleaning and re-glazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. (3-27-13)

**011. -- 100. (RESERVED)**

**101. OTHER STATE PROPERTIES.**

These rules apply to the following Other State Properties pursuant to the request of the state of Idaho public entity owning or controlling the property: (3-27-13)

**01. Idaho State Historical Society Properties.** (3-27-13)

**a.** The following properties owned or operated by the Idaho State Historical Society are Other Properties under these rules: (3-27-13)

i. Idaho State Historical Museum, located at 610 North Julia Davis Drive, Boise, Idaho. (3-27-13)

ii. Old U.S. Assay Office, located at 210 Main Street, Boise, Idaho. (3-27-13)

iii. Old Penitentiary site located in Boise, Idaho and defined in Section 58-337, Idaho Code. (3-27-13)

iv. Idaho History Center, located at 2205 Old Penitentiary Road, Boise, Idaho. (3-27-13)

v. Franklin Historic Properties, located in Franklin, Idaho. The Franklin Historic Properties include the Franklin Co-operative Mercantile Institution Building, the Hatch House, the Doney House, and the Relic Hall. (3-27-13)

vi. Pierce Courthouse, located in Pierce, Idaho. (3-27-13)

vii. Rock Creek Station and Stricker Homesite, located at 3715 Stricker Cabin Road, Hansen, Idaho. (3-27-13)

**b.** The following sections of these rules apply to the Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules only as modified by this Paragraph 101.01.b.: (3-27-13)

i. Subsection 010.06. “Director” means the Executive Director of the Idaho State Historical Society when these rules are applied to the Idaho State Historical Society Properties. (3-27-13)

ii. Subsection 200.01. “Authorized Uses by the Public” applies except that the Director may authorize Private Events or Exhibits and the exclusion of members of the public from attending Private Events and Exhibits. For the purpose of this subsection, the grant of a lease or a license is authorization to exclude members of the public

from a Private Event or Exhibit. (3-27-13)

iii. Section 302. “Maintenance and Improvements” applies as if the Idaho State Historical Properties were Capitol Mall Office Properties unless otherwise designated at the property, or posted on the Idaho State Historical Society website. (3-18-14)

iv. Subsection 305.02. “Domestic Animals” applies unless a sign at the property specifies that domestic animals are not permitted. (3-27-13)

c. The Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules may be licensed or leased and such license or lease may vary the provisions of these rules applicable to use of the property under this chapter, including but not limited to the following: commercial use; Public Use; Private Events or Exhibits; consumption and distribution of alcohol; affixing of materials to the Idaho State Historical Society Properties; use of sound amplification; fireworks displays; and, use of utilities. (3-18-14)

**102. MULTI-AGENCY FACILITIES.**

These rules apply to the following Multi-agency Facilities managed and administered by the Department. (3-27-13)

**01. Lewiston State Office Building.** Lewiston State Office Building, 1118 F Street, Lewiston, Idaho 83501. (3-27-13)

**02. Idaho Falls State Office Building.** Idaho Falls State Office Building, 150 Shoup Avenue, Idaho Falls, Idaho 83401. (3-27-13)

**103. -- 199. (RESERVED)**

**200. USE OF STATE FACILITIES.**

**01. Authorized Uses by the Public.** Except as provided otherwise in these rules, the State Facilities are available for Public Use. (3-18-14)

**02. Prohibited Uses.** The following uses are prohibited at the State Facilities: (3-27-13)

**a.** Commercial Activity. The State Facilities shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service at the State Facilities. The following are not commercial activity prohibited by this subsection: (3-27-13)

i. Meetings or conferences for public employees or their relatives describing employee benefits and approved by a state of Idaho agency. (3-27-13)

ii. Concessions authorized by law. (3-27-13)

iii. Vaccinations may be provided in exchange for a fee without the prior written permission of the Director where approved by a state of Idaho agency, board, commission or elected official. (3-27-13)

**b.** Camping. (3-27-13)

**c.** Private Events and Exhibits. (3-27-13)

**03. Priority of Uses.** State Maintenance and Improvements shall have priority over all other use of the State Facilities. (3-18-14)

**201. (RESERVED)**

**202. EQUIPMENT AND SUPPLIES.**

Except as provided in these rules, the Department will not provide equipment or supplies for use of the State Facilities. (3-27-13)

**203. ESTABLISHMENT OF PERIMETERS.**

Security Personnel and law enforcement may establish perimeters separating participants in Public Use of the State Facilities or State Events and Exhibits. Participants in and observers of any Public Use or State Events and Exhibits shall observe perimeters set pursuant to this section. (3-18-14)

**204. AREA CLOSURES.**

The Director may direct that any portion of the State Facilities be closed for Public Use upon a finding that the closed portion of the State Facilities has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the State Facilities closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion of the State Facilities. Circumstances presenting an imminent danger of damage to the State Facilities include, but are not limited to, the saturation of soil, turf, or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. (3-18-14)

**205. -- 299. (RESERVED)**

**300. RESTRICTIONS AND LIMITATIONS ON USE.**

The restrictions and limitations on use of the State Facilities set forth in Sections 301 through 399 of these rules shall apply to all Public Use of the State Facilities. (3-18-14)

**301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.**

**01. Interference with Primary Use of Facility or Real Property.** Public Use of the State Facilities shall not interfere with the primary use of the facility or real property adjoining the facility. The primary uses of the State Facilities include, but are not limited to, public meetings and hearings, court proceedings, and the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the affected facility or the real property adjoining the facility. (3-18-14)

**02. Interference with Access.** Public Use of the State Facilities shall not block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the State Facilities. (3-18-14)

**302. MAINTENANCE AND IMPROVEMENTS.**

Public Use shall not interfere with State Maintenance and Improvements. The Department will publish the regular maintenance and improvement schedule at the website address set forth in Section 005 of these rules. The regular maintenance and improvement schedule may be modified due to weather, staffing, emergency repairs, equipment failures, funding changes, contract modifications, State Events and Exhibits or other causes arising after the schedule's publication. (3-18-14)

**303. MOTORIZED VEHICLES.**

Motorized vehicles not owned or operated by the state of Idaho or law enforcement must remain on designated roadways and parking areas. Parking of motorized vehicles shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. (3-27-13)

**304. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

Bicycles, skates, skateboards, and scooters may not be used at the State Facilities. Users of all other non-motorized transportation must remain on designated pathways during use. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising a State Facility, users must store non-motorized transportation in a designated storage area on the exterior of a State Facility. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. (3-27-13)

**305. ANIMALS.**



The following shall apply to animals at the State Facilities: (3-27-13)

**01. Wildlife.** Unless authorized by the Director no person shall: (3-27-13)

**a.** Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot, or throw any object at a wild animal at the State Facilities. (3-27-13)

**b.** No person shall feed, give, or offer food or any noxious substance to a wild animal at the State Facilities. (3-27-13)

**02. Domestic Animals.** (3-27-13)

**a.** Domestic animals are not allowed at the State Facilities unless leashed and under the control of the person bringing the animal to the State Facility. (3-27-13)

**b.** The person bringing the animal to the State Facilities shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. (3-27-13)

**306. LANDSCAPING.**  
Unless authorized by the Director, no person shall: (3-27-13)

**01. Plants.** Damage, cut, carve, transplant or remove any plant, including but not limited to trees, at the State Facilities. (3-27-13)

**02. Grass.** Dig in or otherwise damage grass areas at the State Facilities. (3-27-13)

**03. Irrigation Equipment.** Interfere with, damage or remove irrigation equipment at the State Facilities. (3-27-13)

**04. Landscaping Materials.** Move or alter landscaping materials at the State Facilities including, but not limited to, rock, edging materials, and bark or mulch. (3-27-13)

**05. Climbing.** Climb or scale buildings, memorials, statues, trees, fences, or improvements at the State Facilities. (3-27-13)

**307. FOOD AND BEVERAGES.**  
Consumption of food and beverages at the State Facilities is subject to the following: (3-27-13)

**01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the State Facilities. (3-27-13)

**02. Alcohol.** Alcohol may not be consumed or distributed at the State Facilities. (3-27-13)

**308. SMOKING.**  
All persons shall observe the smoke free entrance notices and shall smoke only in designated exterior areas of the State Facilities. (3-27-13)

**309. FIRES, CANDLES, AND FLAMES.**  
No fires, candles, or other sources of open flame are permitted at the State Facilities. (3-27-13)

**310. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.**

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. (3-27-13)

**02. Railings and Stairways.** No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways. (3-27-13)

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of a facility to another level or to the ground. (3-27-13)

**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the State Facilities, or to restrict the follow of individuals using the facility, or to restrict emergency egress or ingress. (3-27-13)

**05. Attaching, Affixing, Leaning, or Propping Materials.** Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any exterior surface of the State Facilities not designed for that purpose or on any permanent Commemorative Installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the State Facilities or embedded into the ground, including, but not limited to, placement of a stake, post or rod into the ground to support materials. (3-27-13)

**06. Materials Causing Damage to Exterior Surface.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface at the State Facilities or any systems or utilities of the State Facilities including, but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. (3-27-13)

**07. Free Distribution of Literature and Printed Material.** All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the State Facilities that such material is not discarded outside of designated trash receptacles. (3-27-13)

**08. Surface Markings.** Users shall not use any material to mark on any surface of the State Facilities including chalk, paint, pens, ink, or dye. (3-27-13)

**311. ITEMS SUBJECT TO SEARCH.**

To enhance security and public safety, Security Personnel or law enforcement may inspect: (3-27-13)

**01. Packages and Bags.** Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (3-27-13)

**02. Items.** Items brought to the State Facilities, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property at the State Facilities. (3-27-13)

**312. PROHIBITED ITEMS.**

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Facilities: bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Facilities immediately remove from the State Facilities any club, bat, or other item that can be used to injure, damage, or harm persons or property. (3-27-13)

**313. RESERVED**

**314. UTILITY SERVICE.**

The public may not use the utility services of the State Facilities other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of Public Use authorized by these rules. Utility services include, but are not limited to, electrical, sewage, water, heating, and geothermal services. The Director may terminate the use of utilities if such use interferes with the utility services of the State Facilities or the equipment or apparatus using utility service fails to comply with applicable rules or codes. (3-18-14)

**315. LAW ENFORCEMENT AND FACILITY EXIGENCY.**

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, Security Personnel and state

employees or officials may direct all persons off of the State Facilities and delay or postpone any activity until the emergency or threat is abated. (3-18-14)

**316. COMPLIANCE WITH LAW.**

All use of the State Facilities shall comply with applicable law including, but not limited to, fire and safety codes. (3-27-13)

**317. HEALTH, SAFETY, AND MAINTENANCE OF STATE FACILITIES.**

**01. Clean Condition After Use.** Users shall leave the State Facilities in reasonably clean condition after use, including depositing all trash in designated receptacles. (3-27-13)

**02. Items Return to Proper Location.** Users shall return all items including, but not limited to, movable furniture and trash receptacles, to their location at the conclusion of the use. (3-18-14)

**03. Public Health.** No person shall excrete human waste at the State Facilities except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. (3-27-13)

**04. Fireworks.** No person shall possess or use fireworks at the State Facilities. (3-27-13)

**318. -- 399. (RESERVED)**

**400. LIABILITY AND INDEMNIFICATION.**

**01. State Liability.** Nothing in these rules shall extend the liability of the state of Idaho beyond that provided in the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code. (3-27-13)

**02. No Endorsement.** Action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in Public Use of the State Facilities. (3-18-14)

**401. -- 999. (RESERVED)**

**38.04.07 – RULES GOVERNING USE OF THE INTERIOR OF STATE PROPERTY  
IN THE CAPITOL MALL AND OTHER STATE FACILITIES**

**000. LEGAL AUTHORITY.**

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing the State Properties in the Capitol Mall and other state facilities. (4-4-13)

**001. TITLE AND SCOPE.**

**01. Title.** These rules are titled IDAPA 38.04.07, “Rules Governing Use of the Interior of State Property in the Capitol Mall and Other State Facilities.” (4-4-13)

**02. Scope.** These rules contain the provisions for use of the interior of the Capitol Mall Office Properties, the Parking Facilities, the Other State Properties, and the Multi-agency Facilities. The interiors of such facilities occupied by a tenant under lease may be subject to additional requirements imposed by the tenant. Rules governing the exterior of the Capitol Mall Properties, the Other State Properties, and the Multi-agency Facilities are codified under IDAPA 38.04.06, “Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities.” Rules governing the use of the exterior of the Idaho State Capitol are codified under IDAPA 38.04.08, “Rules Governing Use of Idaho State Capitol Exterior.” Rules governing parking are codified under IDAPA 38.04.04, “Capitol Mall Parking Rules.” (3-25-16)

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. (4-4-13)

**02. Capitol Annex.** The interior of improvements located at 514 West Jefferson Street, Boise, Idaho. (4-4-13)

**03. Capitol Mall Office Properties.** The interior of improvements set forth in Section 67-5709(2)(a) and (b), Idaho Code. The Capitol Mall Office Properties do not include the Idaho State Capitol or its grounds. (3-25-16)

**04. Common Space.** The portion of the Interior State Facility that is not Tenant Space. Common Space includes but is not limited to interior lobbies not within Tenant Space and restrooms not accessed through Tenant Space. Common Space does not include Tenant Space or any area marked “private,” “no admission,” “staff only,” or similarly designated as not open to the public. (4-4-13)

**05. Department.** The Department of Administration. (4-4-13)

**06. Director.** The Director of the Department of Administration or his designee. (4-4-13)

**07. Interior State Facilities.** The interior spaces within the Capitol Mall Office Properties, the Parking Facilities, the Multi-agency Facilities, and the Other State Properties. (3-25-16)

**08. Multi-Agency Facilities.** The interior of buildings and improvements set forth in Section 102 of these rules. (4-4-13)

**09. Other State Properties.** The interior of buildings and improvements set forth in Section 101 of these rules. (4-4-13)

**10. Parking Facilities.** The interior of improvements set forth in Section 67-5709(2)(b), Idaho Code. (4-4-13)

**11. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. (4-4-13)

**12. State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. (4-4-13)

**13. Tenant Space.** The portion of the Interior State Facilities occupied by a state of Idaho officer, official, agency, board or commission or leased to a public agency or a private individual or entity. (4-4-13)

**011. -- 100. (RESERVED)**

**101. OTHER STATE PROPERTIES.**

These rules apply to the following Other State Properties pursuant to the request of the state of Idaho public entity owning or controlling the property: (4-4-13)

**01. Idaho State Historical Society Properties. (4-4-13)**

**a.** The interior of the following properties owned or operated by the Idaho State Historical Society are Other Properties under these rules: (4-4-13)

i. Idaho State Historical Museum, located at 610 North Julia Davis Drive, Boise, Idaho. (4-4-13)

ii. Old U.S. Assay Office, located at 210 Main Street, Boise, Idaho. (4-4-13)

iii. Old Penitentiary site located in Boise, Idaho and defined in Section 58-337, Idaho Code. (4-4-13)

iv. Idaho History Center, located at 2205 Old Penitentiary Road, Boise, Idaho. (4-4-13)

v. Franklin Historic Properties, located in Franklin, Idaho. The Franklin Historic Properties include the Franklin Co-operative Mercantile Institution Building, the Hatch House, the Doney House, and the Relic Hall. (4-4-13)

vi. Pierce Courthouse, located in Pierce, Idaho. (4-4-13)

vii. Rock Creek Station and Stricker Homesite, located at 3715 Stricker Cabin Road, Hansen, Idaho. (4-4-13)

**b.** The following sections of these rules apply to the Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules only as modified by this Paragraph 101.01.b.: (4-4-13)

i. Subsection 010.06. “Director” means the Executive Director of the Idaho State Historical Society when these rules are applied to the Idaho State Historical Society Properties. (4-4-13)

ii. Subsection 200.01. “Authorized Uses by the Public” applies except that the Director may authorize public or private uses of the interior of the Idaho Historical Society Properties and the exclusion of members of the public from attending such events. For the purpose of this subsection, the grant of a lease or a license is authorization to exclude members of the public from the interior of the Idaho Historical Society Properties. (4-4-13)

iii. Section 302. “Hours and Locations of Use” applies as if the Idaho State Historical Properties were Capitol Mall Office Properties unless other hours of use or access restrictions are designated at the property, or posted on the Idaho State Historical Society website. (4-4-13)

**c.** The Idaho State Historical Society Properties set forth in Paragraph 101.01.a. of these rules may be licensed or leased and such license or lease may vary the provisions of these rules applicable to use of the property under this chapter, including but not limited to the following: hours of use; authorized uses; consumption and distribution of alcohol; affixing of materials to the Idaho State Historical Society Properties; use of sound amplification; and, use of utilities. (4-4-13)

**102. MULTI-AGENCY FACILITIES.**

These rules apply to the following Multi-agency Facilities managed and administered by the Department: (4-4-13)

**01. Lewiston State Office Building.** 1118 F Street, Lewiston, Idaho 83501. (4-4-13)

**02. Idaho Falls State Office Building.** 150 Shoup Avenue, Idaho Falls, Idaho 83401. (4-4-13)

**103. -- 199. (RESERVED)**

**200. USE OF INTERIOR STATE FACILITIES.**

**01. Authorized Uses by the Public.** Public access to the Interior State Facilities is limited to the conduct of business with a tenant. Public access to the Tenant Space is limited to the conduct of business with the tenant. (4-4-13)

**02. Prohibited Uses.** The following uses are prohibited at the Interior State Facilities: (4-4-13)

**a. Events.** The Interior State Facilities shall not be used by the public for press conferences, performances, ceremonies, presentations, meetings, rallies, receptions or gatherings. (4-4-13)

**b. Exhibits.** The Interior State Facilities shall not be used by the public for attended or unattended displays, including but not limited to equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. (4-4-13)

**c. Commercial Activity.** The Common Space shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service in the Common Space. (4-4-13)

**201. -- 299. (RESERVED)**

**300. RESTRICTIONS AND LIMITATIONS ON USE.**

Except as otherwise provided, the restrictions and limitations on use of the Interior State Facilities set forth in Sections 301 through 399 of these rules shall apply to all use of the Interior State Facilities. (4-4-13)

**301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.**

**01. Interference With Primary Use of Facility or Real Property.** No person shall interfere with the primary use of the Interior State Facilities. The primary uses of the Interior State Facilities include but are not limited to public meetings and hearings, court proceedings, and the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use Interior State Facilities and the conduct of business by a tenant of a state facility. (4-4-13)

**02. Interference With Access.** No person shall block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the Interior State Facilities. (4-4-13)

**302. HOURS AND LOCATIONS OF USE.**

**01. Capitol Mall Office Properties and Multi-Agency Facilities.** The hours for public access to the interior of the Capitol Mall Office Properties and the Multi-agency Facilities are 8 a.m. to 5 p.m. on State Business Days. (4-4-13)

**02. Parking Facilities.** The hours of use of the Parking Facilities shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." (4-4-13)

**303. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

Bicycles, skates, skateboards, scooters, and other non-motorized transportation may not be used in the Interior State Facilities. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising a state facility, users must store non-motorized transportation in a designated storage area on the exterior of a state facility. Child strollers and wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. (4-4-13)

**304. ANIMALS.**

Animals are not allowed at the Interior State Facilities unless the animal is a service animal necessary to assist persons with disabilities or an animal in the service of law enforcement. Service animals must be leashed and under the control of the person bringing the animal to the Interior State Facilities. The person bringing the animal to the Interior State Facilities shall have in his possession the equipment necessary to remove the animal's urine and fecal matter and shall immediately remove all urine and fecal matter deposited by the animal. (4-4-13)

**305. FOOD AND BEVERAGES.**

Consumption of food and beverages at the Interior State Facilities is subject to the following: (4-4-13)

**01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the Interior State Facilities. (4-4-13)

**02. Alcohol.** Alcohol may not be consumed or distributed in the Common Space. (4-4-13)

**306. SMOKING.**

Smoking is not allowed in the Interior State Facilities. (4-4-13)

**307. FIRES, CANDLES, AND FLAMES.**

No fires, candles or other sources of open flame are permitted in the Interior State Facilities. (4-4-13)

**308. LIMITS ON USE OF COMMON SPACE.**

The following provisions apply to the Common Space. (4-4-13)

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. (4-4-13)

**02. Railings and Stairways.** No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways. (4-4-13)

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of a facility to another level or to the ground. (4-4-13)

**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the Interior State Facilities, or to restrict the follow of individuals using the facility, or to restrict emergency egress or ingress. (4-4-13)

**05. Attaching, Affixing, Leaning or Propping Materials.** Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any interior surface of the Common Space not designed for that purpose. No items may be leaned or propped against any interior surface of the Common Space. (4-4-13)

**06. Materials Causing Damage to Interior Surface.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface in the Common Space or any systems or utilities of the Interior State Facilities, including but not limited to fire suppression systems, drains, ventilation systems, and lighting systems. (4-4-13)

**309. ITEMS SUBJECT TO SEARCH.**

To enhance security and public safety, Security Personnel and law enforcement may inspect: (4-4-13)

**01. Packages and Bags.** Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (4-4-13)

**02. Items.** Items brought to the Interior State Facilities, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property at the Interior State Facilities. (4-4-13)

**310. PROHIBITED ITEMS.**

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Facilities; bombs,

destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Facilities immediately remove from the State Facilities any club, bat or other item that can be used to injure, damage, or harm persons or property at the Interior State Facilities. (4-4-13)

**311. UTILITY SERVICE.**

The public may not use the utility services of the Interior State Facilities except restrooms. (4-4-13)

**312. LAW ENFORCEMENT AND FACILITY EXIGENCY.**

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, Security Personnel and state employees or officials may direct all persons out of the Interior State Facilities and delay or postpone any activity until the emergency or threat is abated. (4-4-13)

**313. COMPLIANCE WITH LAW.**

All use of the Interior State Facilities shall comply with applicable law, including but not limited to fire and safety codes. (4-4-13)

**314. MAINTENANCE OF INTERIOR STATE FACILITIES.**

**01. Clean Condition After Use.** Users shall leave the Interior State Facilities in reasonably clean condition after use, including depositing all trash in designated receptacles. (4-4-13)

**02. Items Return to Proper Location.** Users shall return all items, including but not limited to movable furniture and trash receptacles to their location at the conclusion of use. (4-4-13)

**315. -- 999. (RESERVED)**



## 38.04.08 – RULES GOVERNING USE OF IDAHO STATE CAPITOL EXTERIOR

### 000. LEGAL AUTHORITY.

Section 67-1604, Idaho Code, gives the Director of the Department of Administration authority to promulgate rules governing access to and use by the public of the capitol building and its grounds. Section 67-5709, Idaho Code, gives the Director authority to promulgate rules governing certain public facilities. (3-27-13)

### 001. TITLE AND SCOPE.

**01. Title.** These rules are titled IDAPA 38.04.08, “Rules Governing Use of Idaho State Capitol Exterior.” (3-27-13)

**02. Scope.** These rules contain the provisions for use of the exterior of the Idaho State Capitol. Rules governing the exterior of the other state facilities are codified under IDAPA 38.04.06, “Rules Governing Use of the Exterior of State Property in the Capitol Mall and Other State Facilities.” Rules governing the interior of the Capitol Mall properties, other state properties, and the multi-agency facilities are codified under IDAPA 38.04.07, “Rules Governing Use of Interior State Property in the Capitol Mall and Other State Facilities.” Rules governing parking are codified under IDAPA 38.04.04, “Capitol Mall Parking Rules.” (3-27-13)

### 002. -- 009. (RESERVED)

### 010. DEFINITIONS.

**01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. (3-27-13)

**02. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. (3-27-13)

**03. Department.** The Department of Administration. (3-27-13)

**04. Director.** The Director of the Department of Administration or his designee. (3-27-13)

**05. Jefferson Steps.** The building entrance at the second floor of the State Capitol, the steps extending from the entrance, and the hard surface extending between the steps and the public sidewalk along Jefferson Street. (3-27-13)

**06. Permit.** A written authorization issued by the Director allowing use of the State Capitol Exterior as set forth in the Permit. A Permit serves as a reservation to use a portion of the State Capitol Exterior with the priority for use set forth in Subsection 200.04 of these rules. (3-27-13)

**07. Private Event or Private Exhibit.** Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. (3-27-13)

**08. Public Use.** Use that is not: (3-18-14)

**a.** A State Event or Exhibit; (3-18-14)

**b.** Use by a public officer, official, employee, contractor, agency, or board or commission for state of Idaho business; or (3-18-14)

**c.** State Maintenance and Improvements. (3-18-14)

**09. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. (3-27-13)

**10. State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. (3-27-13)

**11. State Capitol Exterior.** The exterior of the Idaho State Capitol, the real property, the grounds, and the improvements on the exterior of the Idaho State Capitol or its grounds, all of which is located at capitol square as identified on the Boise City original townsite plat filed in the Ada County Recorder’s office in book 1 on page 1. The

State Capitol Exterior is bounded by the following streets: State Street, Sixth Street, Jefferson Street, and Eighth Street. (3-27-13)

**12. State Events and Exhibits.** All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (3-27-13)

**13. State Maintenance and Improvements.** Maintenance or improvement of the State Capitol Exterior by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, resodding, fertilizing and planting, and structural maintenance such as pressure washing, painting, window cleaning and re-glazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. (3-27-13)

**011. -- 199. (RESERVED)**

**200. USE OF STATE CAPITOL EXTERIOR.**

**01. Authorized Uses by the Public.** Except as provided otherwise in these rules, the State Capitol Exterior is available for Public Use. (3-18-14)

**02. Prohibited Uses.** The following uses are prohibited in the State Capitol Exterior: (3-27-13)

**a. Commercial Activity.** The State Capitol Exterior shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service on the State Capitol Exterior. (3-27-13)

**b. Camping.** (3-27-13)

**c. Private Events and Private Exhibits.** (3-27-13)

**03. Priority of Uses.** State Maintenance and Improvements shall have priority over all other use of the State Capitol Exterior. Public Use held under a Permit shall have priority over other Public Use. (3-18-14)

**201. (RESERVED)**

**202. EQUIPMENT AND SUPPLIES.**

Except as provided in these rules, the Department will not provide equipment or supplies for use on the State Capitol Exterior. Where requested in a Permit application for use of the Jefferson Street Steps, the Department may provide a podium and a public address system. (3-27-13)

**203. ESTABLISHMENT OF PERIMETERS.**

Security personnel and law enforcement may establish perimeters separating participants in Public Use of the State Capitol Exterior or State Events or Exhibits. Participants in and observers of any Public Use or State Events or Exhibits shall observe perimeters set pursuant to this section. (3-18-14)

**204. AREA CLOSURES.**

The Director may direct that any portion of the State Capitol Exterior be closed for Public Use upon a finding that the closed portion of the State Capitol Exterior has sustained damage or is in imminent danger of sustaining damage. The closure directive shall identify the portion of the State Capitol Exterior closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion of the State Capitol Exterior. Circumstances presenting an imminent danger of damage to the State Capitol Exterior include, but are not limited to, the saturation of soil, turf, or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. (3-18-14)

**205. -- 299. (RESERVED)**

**300. RESTRICTIONS AND LIMITATIONS ON USE.**

The restrictions and limitations on use of the State Capitol Exterior set forth in Sections 301 through 399 of these rules shall apply to all Public Use of the State Capitol Exterior. (3-18-14)

**301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.**

**01. Interference With Primary Use of State Capitol Exterior.** Events, exhibits, and Public Use of the State Capitol Exterior shall not interfere with the primary use of the Idaho State Capitol or the adjacent real property and improvements. The primary use of the Idaho State Capitol includes, but is not limited to, the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the Idaho State Capitol or the State Capitol Exterior. (3-18-14)

**02. Interference With Access.** Public Use of the State Capitol Exterior shall not block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the State Capitol Exterior. (3-18-14)

**302. LOCATIONS.**

**01. Locations.** In addition to limitations on the interference with access set forth in Section 301 of these rules and compliance with all fire and safety codes, Public Use on the State Capitol Exterior shall be: (3-18-14)

**a.** On the Jefferson Street Steps or on hard surfaces, including concrete and granite, on the State Capitol Exterior; and (3-18-14)

**b.** At least fifteen (15) feet from the exterior walls and windows of the Idaho State Capitol. (3-18-14)

**303. MAINTENANCE AND IMPROVEMENTS.**

Public Use shall not interfere with State Maintenance and Improvements. The Department will publish the regular maintenance and improvement schedule at the website address set forth in Section 005 of these rules. The regular maintenance and improvement schedule may be modified due to weather, staffing, emergency repairs, equipment failures, funding changes, contract modifications, State Events and Exhibits or other causes arising after the schedule's publication. (3-18-14)

**304. MOTORIZED VEHICLES.**

Motorized vehicles not owned or operated by the state of Idaho or law enforcement must remain on designated roadways and parking areas. Parking of motorized vehicles shall be governed by IDAPA 38.04.04, "Capitol Mall Parking Rules." Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. (3-27-13)

**305. BICYCLES, SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

Bicycles, skates, skateboards, and scooters may not be used on the State Capitol Exterior. Users of all other non-motorized transportation must remain on designated pathways during use. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising the State Capitol Exterior, users must store non-motorized transportation in a designated storage area on the State Capitol Exterior. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. (3-27-13)

**306. ANIMALS.**

The following shall apply to animals on the State Capitol Exterior: (3-27-13)

**01. Wildlife.** Unless authorized by the Director no person shall: (3-27-13)

**a.** Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot or throw any object at a wild animal on the State Capitol Exterior. (3-27-13)

**b.** No person shall feed, give or offer food or any noxious substance to a wild animal on the State Capitol Exterior. (3-27-13)

**02. Domestic Animals.** (3-27-13)

**a.** Domestic animals are not allowed on the State Capitol Exterior unless leashed and under the control of the person bringing the animal to the State Capitol Exterior. (3-27-13)

**b.** The person bringing the animal to the State Capitol Exterior shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. (3-27-13)

**307. LANDSCAPING.**

No person other than state employees or contractors designated by the Director shall: (3-27-13)

**01. Plants.** Damage, cut, carve, transplant or remove any plant including, but not limited to, trees, on the State Capitol Exterior. (3-27-13)

**02. Grass.** Dig in or otherwise damage grass areas on the State Capitol Exterior. (3-27-13)

**03. Irrigation Equipment.** Interfere with, damage or remove irrigation equipment on the State Capitol Exterior. (3-27-13)

**04. Landscaping Materials.** Move or alter landscaping materials on the State Capitol Exterior including, but not limited to, rock, edging materials, and bark or mulch. (3-27-13)

**05. Climbing.** Climb or scale buildings, Commemorative Installations, trees, fences, posts or other improvements on the State Capitol Exterior. (3-27-13)

**308. FOOD AND BEVERAGES.**

Consumption of food and beverages on the State Capitol Exterior is subject to the following: (3-27-13)

**01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the State Capitol Exterior. (3-27-13)

**02. Alcohol.** Alcohol may not be consumed or distributed on the State Capitol Exterior. (3-27-13)

**309. SMOKING.**

All persons shall observe the smoke free entrance notices and shall smoke only in designated areas of the State Capitol Exterior. (3-27-13)

**310. FIRES, CANDLES, AND FLAMES.**

No fires, candles or other sources of open flame are permitted on the State Capitol Exterior. (3-27-13)

**311. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.**

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. (3-27-13)

**02. Railings.** No items may be placed on railings and no persons shall sit or stand on railings. (3-27-13)

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of the Idaho State Capitol or improvements on the grounds of the State Capitol Exterior to another level or to the ground. (3-27-13)

**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the State Capitol Exterior, or to restrict the follow of individuals using the facility, or to restrict emergency egress or ingress. (3-27-13)

**05. Attaching, Affixing, Leaning or Propping Materials.** Posters, placards, banners, signs, and displays, including any printed materials, shall not be affixed on any exterior surface of the State Capitol Exterior or on any permanent Commemorative Installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the State Capitol Exterior or embedded into the ground including, but not limited to, placement of a stake, post or rod into the ground to support materials. (3-27-13)

**06. Materials Causing Damage to Surfaces.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface on the State Capitol Exterior or any systems or utilities of the State Capitol Exterior including, but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. (3-27-13)

**07. Free Distribution of Literature and Printed Material.** All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the State Capitol Exterior that such material is not discarded outside of designated trash receptacles. (3-27-13)

**08. Surface Markings.** Users shall not use any material to mark on any surface of the State Capitol Exterior including chalk, paint, pens, ink, or dye. (3-27-13)

**312. ITEMS SUBJECT TO SEARCH.**

To enhance security and public safety, Security Personnel and law enforcement may inspect: (3-27-13)

**01. Packages and Bags.** Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (3-27-13)

**02. Items.** Items brought onto the State Capitol Exterior, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property on the State Capitol Exterior. (3-27-13)

**313. PROHIBITED ITEMS.**

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the State Capitol Exterior: bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security Personnel or law enforcement may direct that any person at the State Capitol Exterior immediately remove from the State Capitol Exterior any club, bat, or other item that can be used to injure, damage, or harm persons or property. (3-27-13)

**314. UTILITY SERVICE.**

The public may not use the utility services of the State Capitol Exterior other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of Public Use authorized by these rules. Utility services include, but are not limited to, electrical, sewage, water, heating, and geothermal services. The Director may terminate the use of utilities if such use interferes with the utility services of the State Capitol Exterior or the equipment or apparatus using utility service fails to comply with applicable rules or codes. (3-18-14)

**315. LAW ENFORCEMENT AND FACILITY EXIGENCY.**

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, security personnel and state employees or officials may direct all persons off of the State Capitol Exterior and delay or postpone any activity until the emergency or threat is abated. (3-18-14)

**316. COMPLIANCE WITH LAW.**

All use of the State Capitol Exterior shall comply with applicable law including, but not limited to, fire and safety codes. (3-27-13)

**317. HEALTH, SAFETY AND MAINTENANCE OF STATE FACILITIES.**

**01. Clean Condition After Use.** Users shall leave the State Capitol Exterior in reasonably clean condition after use, including depositing all trash in designated receptacles. (3-27-13)

**02. Items Return to Proper Location.** Users shall return all items including, but not limited to, movable furniture and trash receptacles, to their location at the conclusion of the event or exhibit. (3-18-14)

**03. Public Health.** No person shall excrete human waste at the State Capitol Exterior except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. (3-27-13)

**04. Fireworks.** No person shall possess or use fireworks on the State Capitol Exterior. (3-27-13)

**318. -- 399. (RESERVED)**

**400. PERMITS.**

**01. Use Without a Permit.** A Permit grants a reservation providing priority for use of the area specified in the Permit as set forth in Subsection 200.04 of these rules. Applicants desiring to obtain a Permit for use of the State Capitol Exterior outside of the Permit areas, hours or duration or who have not submitted an application within the application period may use the State Capitol Exterior, subject to the provisions of these rules, on a first-come, first used basis. Permits will be issued to groups of two (2) or more people. (3-18-14)

**02. Permit Areas, Hours and Duration, and Number of Participants.** (3-18-14)

**a.** The Director will consider and grant Permits only for Public Use of the Jefferson Street Steps. (3-18-14)

**b.** The Director will issue Permits reserving use of the Jefferson Street Steps only for the period between the hours of 7 a.m. and 6 p.m. on State Business Days. (3-18-14)

**c.** The duration of a Permit will not exceed four (4) consecutive hours. (3-27-13)

**d.** The Director will issue a Permit only for Public Use involving two (2) or more persons. (3-18-14)

**03. Application Period.** Permit applications must be received and complete at least two (2) State Business Days prior to the requested date and time period of the Permit. The Department will not accept applications submitted more than six (6) months prior to the requested date of the Permit. (3-18-14)

**04. Validity.** Permits are valid only for the dates, times, and locations specified on the Permit as approved by the Director. (3-27-13)

**05. Distribution.** Permits shall be granted by the Director on a first-come, first-served basis, subject to Subsection 200.03 of these rules. Only one (1) Permit will be granted for the Jefferson Street Steps during any period of time. (3-27-13)

**06. Application Requirements.** Applications for a Permit shall be in writing on a form prescribed by the Director and available at the office of the Division of Public Works and the Department's website. The Director will only process applications that are complete and signed by the individual making a request or an authorized representative of the entity or organization making the request. The Director may make reasonable inquiry to confirm the accuracy of the application and the authority of the party signing the application. (3-27-13)

**07. Conditions.** The Director may impose reasonable conditions on the use of the State Capitol Exterior in the Permit for the purpose of protecting persons and property. Conditions may include the acquisition of

liability insurance and a bond as security for costs arising from the use. (3-27-13)

**08. Transferability.** Permits are non-transferable. (3-27-13)

**401. APPROVALS AND DENIALS OF A PERMIT APPLICATION.**

**01. Period for Approval or Denial.** The Department will approve or deny a complete application within two (2) State Business Days of the submission of the application. (3-18-14)

**02. Basis for Denial.** Permits may be denied for one (1) or more of the following: (3-27-13)

**a.** A Permit has been granted for all or part of the requested location during all or part of the requested time period. (3-27-13)

**b.** A public entity or official will be using all or part of the requested location during all or part of the requested time period. (3-27-13)

**c.** The requested use would violate any provision of these rules or applicable law. (3-27-13)

**d.** These rules do not authorize the use for the location or times requested or do not authorize the issuance of a Permit for the location requested. (3-27-13)

**e.** The Permit application is incomplete, contains a material falsehood, or contains a material misrepresentation. (3-27-13)

**f.** The Permit applicant has not certified that the applicant will comply with these rules or applicable law. (3-27-13)

**g.** The party signing the application is not legally competent to bind themselves or the organization or entity submitting the application. (3-27-13)

**h.** The individual, organization or entity submitting the application: (3-27-13)

i. Failed to pay costs or damages arising from an earlier use of any state facility; (3-27-13)

ii. Made a material misrepresentation regarding the nature or scope of the use on a prior Permit application; (3-27-13)

iii. Violated the terms of prior Permits issued to the individual, organization or entity; or (3-27-13)

iv. Violated any applicable law in the course of previous Public Use of state of Idaho facilities. (3-18-14)

**i.** The requested use would cause a clear and present danger to the orderly processes of state of Idaho government or to the use of the State Capitol Exterior due to advocacy of: (3-27-13)

i. The violent overthrow of the government of the United States, the state of Idaho, or any political subdivision thereof; (3-27-13)

ii. The willful damage or destruction, or seizure and subversion of public property; (3-27-13)

iii. The forcible disruption or impairment of or interference with the regularly schedule functions of the state of Idaho; (3-27-13)

iv. The physical harm, coercion, intimidation or other invasions of the lawful rights of public officials or the public; or (3-27-13)

- v. Other disorders of a violent nature. (3-27-13)

**402. REVOCATION OF A PERMIT.**

A Permit may be revoked by the Director for the violation of any term or condition of the Permit or the violation of law including, but not limited to, the violation of any provision of these rules. (3-27-13)

**403. APPEALS.**

**01. Time for Appeal.** The individual or the organization or entity submitting an application may request that the Department initiate a contested case within the period set forth below. The Department will not initiate a contested case after the following periods. (3-27-13)

- a. Seven (7) State Business Days following the written denial of an application for a Permit. (3-27-13)
- b. Seven (7) State Business Days following the revocation of a Permit. (3-27-13)
- c. Seven (7) State Business Days following the date the Department was required to approve or deny the application for a Permit pursuant to Subsection 401.01 of these rules. (3-27-13)

**02. Requesting an Appeal.** The individual or the organization or entity submitting an application shall request an appeal in writing, with a physical copy delivered to the Director at the address set forth in Section 005 of these rules. Electronic delivery shall not be deemed a physical copy. The written request shall contain the following: (3-27-13)

- a. The name, address, and contact information of the appellant; (3-27-13)
- b. A concise statement of the reason the appeal should be granted; (3-27-13)
- c. Whether the appellant requests informal disposition to expedite the contested case; and (3-27-13)
- d. A description of the Permit sought. (3-27-13)

**03. Informal Disposition.** If an appellant requests informal disposition, the Director will accept written evidence submitted within five (5) State Business Days of the appeal request, or as otherwise agreed by the Director and the appellant. The Director will issue a final written order affirming, reversing or modifying the denial or revocation of the Permit. (3-27-13)

**04. Contested Cases.** If an appellant does not request informal disposition, the Director will schedule a hearing and proceed as set forth in Title 67, Chapter 52, Idaho Code. Contested cases will be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-27-13)

**05. Judicial Review.** Judicial review of orders issued in an appeal is provided as set forth in Title 67, Chapter 52, Idaho Code. (3-27-13)

**404. -- 499. (RESERVED)**

**500. LIABILITY AND INDEMNIFICATION.**

**01. State Liability.** Nothing in these rules shall extend the liability of the state of Idaho beyond that provided in the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code. (3-27-13)

**02. No Endorsement.** The grant of a Permit and any action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in Public Use of the State Facilities. (3-18-14)

**501. -- 999. (RESERVED)**



## 38.04.09 – RULES GOVERNING USE OF THE CHINDEN OFFICE COMPLEX

### 000. LEGAL AUTHORITY.

Section 67-5709, Idaho Code, gives the Director of the Department of Administration authority to manage state facilities and to promulgate rules governing state facilities. (4-11-19)

### 001. TITLE AND SCOPE.

**01. Title.** These rules are titled IDAPA 38.04.09, “Rules Governing Use of the Chinden Office Complex.” (4-11-19)

**02. Scope.** These rules contain the provisions for use of the exterior and interior of the Chinden Office Complex. (4-11-19)

### 002. -- 009. (RESERVED)

### 010. DEFINITIONS.

**01. Camping.** Any activity prohibited under Section 67-1613, Idaho Code. (4-11-19)

**02. Chinden Office Complex.** The Chinden Office Complex is bounded to the north by West Chinden Boulevard, to the west by North Cloverdale Road, to the east by North Five Mile Road, and to the south by the Jones-Stiburek, Orchid Point, De Meyer Estates No. 7, Hickories No. 1, 9 and 12, Hickories East and EMS Avenue Subdivisions. The following buildings and the grounds adjacent to such buildings located in Boise, Idaho shall be the Chinden Office Complex under these rules: (4-11-19)

**a.** 11301 West Chinden Boulevard, identified as Building 1 of the Chinden Office Complex. (4-11-19)

**b.** 11311 West Chinden Boulevard, identified as Building 3 of the Chinden Office Complex. (4-11-19)

**c.** 11321 West Chinden Boulevard, identified as Building 2 of the Chinden Office Complex. (4-11-19)

**d.** 11331 West Chinden Boulevard, identified as Building 8 of the Chinden Office Complex. (4-11-19)

**e.** 11341 West Chinden Boulevard, identified as Building 4 of the Chinden Office Complex. (4-11-19)

**f.** 11351 West Chinden Boulevard, identified as Building 6 of the Chinden Office Complex. (4-11-19)

**g.** 11361 West Chinden Boulevard, identified as Building 7 of the Chinden Office Complex. (4-11-19)

**h.** 11371 West Chinden Boulevard, identified as Building 5 of the Chinden Office Complex. (4-11-19)

**03. Commemorative Installation.** Any statue, monument, sculpture, memorial or landscape feature designed to recognize a person, group, event or element of history. (4-11-19)

**04. Common Space.** The portion of the Chinden Office Complex that is not Tenant Space. Common Space includes but is not limited to interior lobbies not within Tenant Space and restrooms not accessed through Tenant Space. Common Space does not include Tenant Space or any area marked “private,” “no admission,” “staff only” or similarly designated as not open to the public. (4-11-19)

**05. Department.** The Department of Administration. (4-11-19)

**06. Director.** The Director of the Department of Administration or his designee. (4-11-19)

- 07. Private Event or Private Exhibit.** Any activity sponsored or initiated by a member of the public that is open only to invited or qualifying individuals or groups. Private Events and Private Exhibits include, but are not limited to, weddings, dinners, award ceremonies, memorials, and seminars. (4-11-19)
- 08. Public Use.** Use that is not: (4-11-19)
- a.** A State Event or Exhibit; (4-11-19)
  - b.** Use by a public officer, official, employee, contractor, agency, or board or commission for state of Idaho business; (4-11-19)
  - c.** State Maintenance and Improvements; or (4-11-19)
  - d.** Use by a Tenant. (4-11-19)
- 09. Recreational Facilities.** Facilities designated by the Director for Recreational Use. (4-11-19)
- 10. Recreational Use.** Use for leisure or athletic purposes such as picnicking and sports practices or informal sports games. (4-11-19)
- 11. Security Personnel.** A state of Idaho employee or a staff member of a state of Idaho contractor whose job duties include monitoring compliance with and enforcing these rules. (4-11-19)
- 12. State Business Day.** Monday through Friday, excluding the holidays set forth in Section 73-108, Idaho Code. (4-11-19)
- 13. State Events and Exhibits.** All functions initiated and controlled by any state of Idaho agency, board, commission, officer or elected official acting on behalf of the state of Idaho. (4-11-19)
- 14. State Maintenance and Improvements.** Maintenance or improvement of the Chinden Office Complex by the state of Idaho or its contractors. Maintenance for the purpose of this definition includes, but is not limited to, grounds maintenance such as mowing, watering, landscaping, aerating, turf installation and repair, fertilizing and planting, and structural maintenance such as pressure washing, painting, and window cleaning and reglazing. Improvement for the purpose of this definition includes, but is not limited to, the following: construction of new buildings or portions of buildings; renovations to existing buildings; the installation of permanent structures and equipment such as benches, sprinklers, flagpoles, monuments and memorials; and, the installation of temporary equipment and structures such as construction fencing, generators and portable buildings. (4-11-19)
- 15. Tenant.** A state of Idaho officer, official, agency, board or commission or a public agency or a private individual or entity with a license or lease to use the Chinden Office Complex. (4-11-19)
- 16. Tenant Space.** The portion of the exterior of the Chinden Office Complex licensed or leased to a private individual or entity and the portion of the interior of the Chinden Office Complex occupied by a state of Idaho officer, official, agency, board or commission or leased to a public agency or a private individual or entity. (4-11-19)
- 011. – 199. (RESERVED)**
- 200. USE OF THE CHINDEN OFFICE COMPLEX.**
- 01. Authorized Uses by the Public.** Except as provided otherwise in these rules, the Chinden Office Complex is available for Public Use. (4-11-19)
- 02. Prohibited Uses.** The following uses are prohibited at the Chinden Office Complex: (4-11-19)
- a.** Commercial Activity. The Chinden Office Complex shall not be used for any activity conducted for profit and no persons shall solicit to sell any merchandise or service at the Chinden Office Complex. The following are not commercial activity prohibited by this subsection: (4-11-19)

- i. Meetings or conferences for public employees or their relatives describing employee benefits and approved by a state of Idaho agency. (4-11-19)
- ii. Concessions authorized by law. (4-11-19)
- iii. Vaccinations may be provided in exchange for a fee without the prior written permission of the Director where approved by a state of Idaho agency, board, commission or elected official. (4-11-19)
- iv. The conduct of business by a Tenant. (4-11-19)
- b. Camping. (4-11-19)
- c. Private Events and Exhibits, except use of the Recreational Facilities as authorized by these rules. (4-11-19)
- d. Use by the public for press conferences, performances, ceremonies, presentations, meetings, rallies, receptions or gatherings. (4-11-19)
- e. Use by the public for attended or unattended displays, including but not limited to equipment, machines, vehicles, products, samples, paintings, sculptures, arts and crafts, photographs, signs, banners or other graphic displays. (4-11-19)

**03. Public Access to Interior.** Public access to the interior of the buildings at the Chinden Office Complex and to exterior Tenant Space at the Chinden Office Complex is limited to the conduct of business with the Tenant. (4-11-19)

**04. Priority of Uses.** State Maintenance and Improvements shall have priority over all other use of the Chinden Office Complex. (4-11-19)

**201. HOURS OF USE.**

**01. Hours for Use by the Public.** The hours for public access to the exterior of the Chinden Office Complex are from sunrise to sunset. The hours for public access to interior Common Space shall be as posted on the public entrance to each building at the Chinden Office Complex. (4-11-19)

**02. Public Parking Hours.** Unless approved by the Director, the public shall not park motorized vehicles overnight at the Chinden Office Complex. (4-11-19)

**202. USE OF RECREATIONAL FACILITIES.**

The Director may authorize reservation of Recreational Facilities under this subsection by a Tenant and the exclusion of members of the public from use of Recreational Facilities during reserved periods. Unless reserved by a Tenant, Recreational Facilities are available for Recreational Use by the public on a first-come, first-used basis from sunrise to sunset daily. (4-11-19)

**203. EQUIPMENT AND SUPPLIES.**

Except as provided in these rules, the Department will not provide equipment or supplies for use of the Chinden Office Complex. (4-11-19)

**204. ESTABLISHMENT OF PERIMETERS.**

Security personnel and law enforcement may establish perimeters separating participants in Public Use of the Chinden Office Complex or State Events and Exhibits. Participants in and observers of any Public Use or State Events and Exhibits shall observe perimeters set pursuant to this section. (4-11-19)

**205. AREA CLOSURES.**

The Director may direct that any portion of the Chinden Office Complex be closed for Public Use upon a finding that the closed portion of the Chinden Office Complex has sustained damage or is in imminent danger of sustaining

damage. The closure directive shall identify the portion of the Chinden Office Complex closed, the damage that has occurred or that will occur without closure, and the estimated period of closure to restore or prevent the damage. A notice of closure and information on how to obtain a copy of the closure directive shall be posted at the closed portion of the Chinden Office Complex. Circumstances presenting an imminent danger of damage to the Chinden Office Complex include, but are not limited to, the saturation of soil, turf or landscaped areas with water, excessive foot traffic over landscaped areas, preventing turf or plants from obtaining adequate sunlight, and the buildup of ice or snow on landscaped areas. (4-11-19)

**206. – 299. (RESERVED)**

**300. RESTRICTIONS AND LIMITATIONS ON USE.**

The restrictions and limitations on use of the Chinden Office Complex set forth in Sections 301 through 399 of these rules shall apply to all Public Use of the Chinden Office Complex. The lease or license of Tenant Space may vary these rules for use by the Tenant, its employees, and its invited guests. (4-11-19)

**301. USES INTERFERING WITH ACCESS OR USE OF FACILITY.**

**01. Interference with Primary Use of Facility or Real Property.** Public Use of the Chinden Office Complex shall not interfere with the primary use of the facility or real property adjoining the facility. The primary uses of the Chinden Office Complex include, but are not limited to, the conduct of business by private Tenants leasing or licensing a portion of the Chinden Office Complex, public meetings and hearings, court proceedings, and the conduct of public business by agencies or officials of the state of Idaho that normally occupy and use the affected facility or the real property adjoining the facility. (4-11-19)

**02. Interference with Access.** Public Use of the Chinden Office Complex shall not block fire hydrants, fire or emergency vehicle lanes, vehicular drives, pedestrian walkways, doorways, steps or similar access routes through, in or out of the Chinden Office Complex. (4-11-19)

**302. MAINTENANCE AND IMPROVEMENTS.**

Public Use shall not interfere with State Maintenance and Improvements. The Department will publish the regular maintenance and improvement schedule at the website address set forth in Section 005 of these rules. The regular maintenance and improvement schedule may be modified due to weather, staffing, emergency repairs, equipment failures, funding changes, contract modifications, State Events and Exhibits or other causes arising after the schedule's publication. (4-11-19)

**303. MOTORIZED VEHICLES.**

Motorized vehicles parked outside of designated parking areas may be towed without notice at the vehicle owner's expense. Public parking at the Chinden Office Complex is limited to the period the operator or passengers are using the Chinden Office Complex. Wheelchairs, motorized scooters, and other equipment providing individual mobility to the disabled are not motorized vehicles for the purposes of this section. (4-11-19)

**304. SKATES, SKATEBOARDS, SCOOTERS, AND OTHER NON-MOTORIZED TRANSPORTATION.**

Skates, skateboards, and scooters may not be used at the Chinden Office Complex. Users of all other non-motorized transportation must remain on roadways or designated pathways during use. Where indicated by a posted notice or where requested by Security Personnel, law enforcement or a state employee or agent supervising the Chinden Office Complex, users must store non-motorized transportation in a designated storage area on the exterior of the Chinden Office Complex. Wheelchairs and other equipment providing individual mobility to the disabled are not non-motorized transportation for the purposes of this section. (4-11-19)

**305. ANIMALS.**

The following shall apply to animals at the Chinden Office Complex: (4-11-19)

**01. Wildlife.** Unless authorized by the Director no person shall: (4-11-19)

**a.** Interfere with, hunt, molest, harm, frighten, kill, trap, chase, tease, annoy, shoot, or throw any object at a wild animal at the Chinden Office Complex. (4-11-19)

**b.** No person shall feed, give, or offer food or any noxious substance to a wild animal at the Chinden Office Complex. (4-11-19)

**02. Domestic Animals.** (4-11-19)

**a.** Domestic animals are not allowed at the Chinden Office Complex unless leashed and under the control of the person bringing the animal to the Chinden Office Complex. (4-11-19)

**b.** The person bringing the animal to the Chinden Office Complex shall have in his possession the equipment necessary to remove the animal's fecal matter and shall immediately remove all fecal matter deposited by the animal. (4-11-19)

**c.** Persons bringing domestic animals to the Chinden Office Complex shall not permit the animal to swim or wade in irrigation ponds or canals at the Chinden Office Complex. (4-11-19)

**306. LANDSCAPING.**  
Unless authorized by the Director, no person shall: (4-11-19)

**01. Plants.** Damage, cut, carve, transplant or remove any plant, including but not limited to trees, at the Chinden Office Complex. (4-11-19)

**02. Grass.** Dig in or otherwise damage grass areas at the Chinden Office Complex. (4-11-19)

**03. Irrigation Equipment.** Interfere with, damage or remove irrigation equipment at the Chinden Office Complex. (4-11-19)

**04. Landscaping Materials.** Move or alter landscaping materials at the Chinden Office Complex including, but not limited to, rock, edging materials, and bark or mulch. (4-11-19)

**05. Climbing.** Climb or scale buildings, memorials, statues, trees, fences, or improvements at the Chinden Office Complex. (4-11-19)

**307. FOOD AND BEVERAGES.**  
Consumption of food and beverages at the Chinden Office Complex is subject to the following: (4-11-19)

**01. Consumption May Be Prohibited.** The consumption of food and beverages may be prohibited by a notice posted at the entrance to all or a portion of the Chinden Office Complex. (4-11-19)

**02. Alcohol.** Alcohol may not be consumed or distributed in the Common Space. (4-11-19)

**308. SMOKING.**  
All persons shall observe the smoke free entrance notices and shall smoke only in designated exterior areas of the Chinden Office Complex. (4-11-19)

**309. FIRES, CANDLES, AND FLAMES.**  
Except in designated barbecue facilities, no fires, candles, or other sources of open flame are permitted at the Chinden Office Complex. (4-11-19)

**310. POSTERS, PLACARDS, BANNERS, SIGNS, EQUIPMENT, TABLES, MATERIALS, AND DISPLAYS.**

**01. Electrical Cords.** Electrical cords must be protected by cord covers or gaffers tape to prevent an electrical or trip hazard. (4-11-19)

**02. Railings and Stairways.** No items may be placed on railings or stairways and no persons shall sit or stand on railings or stairways. (4-11-19)

**03. Tossing or Dropping Items.** No items may be tossed or dropped over railings or from one level of a facility to another level or to the ground. (4-11-19)

**04. Ingress or Egress.** No item, including tables, chairs, exhibits, equipment, materials, and displays shall be located so as to block ingress or egress to any portion of the Chinden Office Complex, or to restrict the flow of individuals or motor vehicles using the facility, or to restrict emergency egress or ingress. (4-11-19)

**05. Attaching, Affixing, Leaning, or Propping Materials.** Materials, including posters, placards, banners, signs, displays, including any printed materials, ropes, and chains shall not be affixed on any exterior surface of the Chinden Office Complex not designed for that purpose or on any permanent commemorative installation, post, railing, fence or landscaping, including trees. All posters, placards, banners, signs, and displays must be free-standing or supported by individuals. No items may be leaned or propped against any exterior surface of the Chinden Office Complex or embedded into the ground, including, but not limited to, placement of a stake, post or rod into the ground to support materials. (4-11-19)

**06. Materials Causing Damage to Exterior Surface.** Stages, risers, chairs, tables, sound equipment, props, materials, displays, and similar items shall be constructed and used in a manner that will not damage, scratch, dent, dig or tear any surface at the Chinden Office Complex or any systems or utilities of the Chinden Office Complex including, but not limited to, fire suppression systems, storm drains, ventilation systems, and landscape watering systems. (4-11-19)

**07. Distribution of Literature and Printed Material.** All literature and printed material must be distributed at no charge. The party distributing literature and printed material shall ensure periodically and at the conclusion of its use of the Chinden Office Complex that such material is not discarded outside of designated trash receptacles. Literature and printed materials shall not be placed on parked vehicles at the Chinden Office Complex. (4-11-19)

**08. Surface Markings.** Users shall not use any material to mark on any surface of the Chinden Office Complex including chalk, paint, pens, ink, or dye. (4-11-19)

**09. Removal of Items.** All items brought to the Chinden Office Complex by the public shall be removed prior to the expiration of each day's hours of use by the public. Unless items are subject to report and transfer to the state treasurer as unclaimed property pursuant to Idaho law, the Director may authorize disposal of items left at the Chinden Office Complex. (4-11-19)

**311. ITEMS SUBJECT TO SEARCH.**

To enhance security and public safety, security personnel or law enforcement may inspect: (4-11-19)

**01. Packages and Bags.** Packages, backpacks, purses, bags, and briefcases reasonably suspected of concealing stolen items or items prohibited by these rules. (4-11-19)

**02. Items.** Items brought to the Chinden Office Complex, if there is a reasonable suspicion that an item may be capable of injuring, damaging or harming persons or property at the Chinden Office Complex. (4-11-19)

**312. PROHIBITED ITEMS.**

The following, as defined in Title 18, Chapter 33, Idaho Code, are not permitted at the Chinden Office Complex: bombs, destructive devices, shrapnel, weapons of mass destruction, biological weapons, and chemical weapons. Security personnel or law enforcement may direct that any person at the Chinden Office Complex immediately remove from the Chinden Office Complex any club, bat, or other item that can be used to injure, damage, or harm persons or property. (4-11-19)

**313. (RESERVED)**

**314. UTILITY SERVICE.**

The public may not use the utility services of the Chinden Office Complex other than restrooms; provided, however, the Director may authorize limited use of electrical service for the duration of Public Use authorized by these rules.

Utility services include, but are not limited to, electrical, sewage, water, and heating services. The Director may terminate the use of utilities if such use interferes with the utility services of the Chinden Office Complex or the equipment or apparatus using utility service fails to comply with applicable rules or codes. (4-11-19)

**315. LAW ENFORCEMENT AND FACILITY EXIGENCY.**

In case of a fire, bomb threat, utility malfunction, structural failure or other unforeseen emergency or threat endangering public safety or health, or endangering public property, law enforcement, security personnel and state employees or officials may direct all persons off of the Chinden Office Complex and delay or postpone any activity until the emergency or threat is abated. (4-11-19)

**316. COMPLIANCE WITH LAW.**

All use of the Chinden Office Complex shall comply with applicable law including, but not limited to, fire and safety codes. (4-11-19)

**317. HEALTH, SAFETY, AND MAINTENANCE OF CHINDEN OFFICE COMPLEX.**

**01. Clean Condition After Use.** Users shall leave the Chinden Office Complex in reasonably clean condition after use, including depositing all trash in designated receptacles. (4-11-19)

**02. Items Return to Proper Location.** Users shall return all items including, but not limited to, movable furniture and trash receptacles, to their location at the conclusion of the use. (4-11-19)

**03. Public Health.** No person shall excrete human waste at the Chinden Office Complex except in designated restroom facilities. For purposes of this section, excrete means the discharge of human waste from the body, including the acts of defecation and urination. For purposes of this section, human waste means human feces or human urine. (4-11-19)

**04. Fireworks.** No person shall possess or use fireworks at the Chinden Office Complex. (4-11-19)

**05. Use of Waterways.** No person shall swim, fish, or wade in waterways at the Chinden Office Complex. (4-11-19)

**318. -- 399. (RESERVED)**

**400. LIABILITY.**

**01. State Liability.** Nothing in these rules shall extend the liability of the state of Idaho beyond that provided in the Idaho Tort Claims Act, Title 6, Chapter 9, Idaho Code. (4-11-19)

**02. No Endorsement.** Action or inaction of the Department shall not imply endorsement or approval by the state of Idaho of the actions, objectives or views of participants in Public Use of the Chinden Office Complex. (4-11-19)

**401. -- 999. (RESERVED)**

## 38.05.01 – RULES OF THE DIVISION OF PURCHASING

### 000. LEGAL AUTHORITY.

The following rules are promulgated in accordance with Section 67-9205(11), Idaho Code, by the administrator of the division of purchasing. (4-7-11)

### 001. TITLE AND SCOPE.

**01. Title.** These rules are titled IDAPA 38.05.01, “Rules of the Division of Purchasing,” Department of Administration, IDAPA 38, Title 05, Chapter 01. (3-15-02)

**02. Scope.** These rules shall be utilized by any other state agency acquiring property under these rules or through delegated authority. These rules also govern the contested case hearing process. ( )

### 002. -- 010. (RESERVED)

### 011. DEFINITIONS.

Unless defined otherwise in these rules, the definitions set forth in Section 67-9203, Idaho Code, apply to this chapter. (3-29-17)

**01. Alternate.** Property or services that are not at least a functional equal in features, performance or use of the brand, model or specification designated as the standard. (3-15-02)

**02. Brand Name or Equal Specification.** A specification that uses a brand name to describe the standard of quality, performance or other characteristics being solicited and that invites the submission of equivalent products. (3-29-17)

**03. Brand Name Specification.** A specification calling for one (1) or more products by manufacturers’ names or catalogue numbers. (3-29-17)

**04. Buyer.** An employee of the division of purchasing designated as a buyer, contract-administrator, purchasing agent, contracting officer, or similar designation by the administrator, including, where appropriate, the administrator and other management personnel. The term also includes authorized employee(s) of a purchasing authority. (3-29-17)

**05. Competitive Negotiation.** Procedure by which the buyer negotiates with one (1) or more responsive offerors in accordance with the provisions of an invitation to negotiate. (3-20-19)

**06. Concession Services.** The granting by the purchasing authority of a right, franchise, authority, property interest or option to a contractor, regardless of whether an expenditure of state or other funds occurs. (3-29-17)

**07. Consultant Services.** Work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting and planning. The consultant’s services, opinions or recommendations will be performed according to the consultant’s methods without being subject to the control of the agency except as to the result of the work. (3-29-17)

**08. Contract Administration.** Actions taken related to changes to contracts, including amendments, renewals and extensions; as well as receipt, review and retaining of the contract and contract-related documents; and exercise of remedies. (3-29-17)

**09. Contract Management.** Actions taken to ensure that both the agency and contractor comply with the requirements of the contract. Includes some functions related to solicitation development and contract development and close-out; also includes, but is not limited to regular monitoring of the contractor’s day-to-day performance, evaluation of deliverables, invoice review, payment approval, progress tracking, regular status meetings, and management of state-owned property and other resources used in contract performance management. (3-29-17)

**10. Division.** The division of purchasing of the department of administration as established by Section 67-9204, Idaho Code. Whenever a purchase is made by the division on behalf of another agency, the division shall be



- deemed to be acting as the agent for such agency. (3-15-02)
11. **Document.** When used in these rules, may include electronic documents. (3-15-02)
12. **Equal.** Property that meets or exceeds the quality, performance and use of the brand, model or specifications in the invitation to bid, request for proposals or request for quote. (3-20-19)
13. **Formal Sealed Procedure.** Procedure by which the buyer solicits competitive sealed bids or competitive sealed proposals by means of an invitation to bid or request for proposals. (3-15-02)
14. **Informal Solicitation.** Procedure by which the buyer solicits informal competitive quotes by means of a request for quote. (3-29-17)
15. **Invitation to Bid.** All documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. (3-29-17)
16. **Invitation to Negotiate.** All documents, whether attached or incorporated by reference, utilized for soliciting proposals for a competitive negotiation. (3-20-19)
17. **Offeror.** A vendor who has submitted a response to a request for proposals or invitation to negotiate for property to be acquired by the state. (3-20-19)
18. **Professional Services.** Work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, actuarial, veterinarian, information technology and research. The knowledge is founded upon prolonged and specialized intellectual training that enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills. (3-29-17)
19. **Proposal.** A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which proposal is considered an offer to perform a contract in full response to the request for proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award. When used in conjunction with an invitation to negotiate, a proposal may or may not initially include pricing information, as provided in the solicitation. (3-20-19)
20. **Public Agency.** Has the meaning set forth in Section 67-2327, Idaho Code. (3-15-02)
21. **Purchase.** The act of acquiring or procuring property for state use or the result of an acquisition action. (3-15-02)
22. **Purchase Order.** Notification to the contractor to provide the stated property under the terms and conditions set forth in the purchase order. It may include the form of the state's acceptance of a vendor's quote, proposal or bid. See also definition of contract. (3-29-17)
23. **Purchasing Authority.** The division or an agency exercising authority based on a delegation of authority by the administrator to an individual or an agency; or as otherwise provided under these rules to engage in the conduct of purchasing. (3-29-17)
24. **Quote.** An offer to supply property in response to a request for quote and generally used for informal solicitation procedures. (3-29-17)
25. **Request for Proposals.** Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals as a component of the formal sealed procedure and is generally utilized in the acquisition of services or other complex purchases. (3-29-17)
26. **Request for Quote.** The document, form or method generally used for purchases solicited in

- accordance with informal solicitation procedures. (3-29-17)
- 27. Requisition.** A standard state or agency specific form that serves as a purchasing request and that requests that the purchasing authority acquire the property. (3-29-17)
- 28. Sealed.** Includes invitations to bid and requests for proposals electronically sealed and submitted in accordance with requirements or standards set by the division and bids and proposals manually sealed and submitted. (3-29-17)
- 29. Sealed Procedure Limit.** That dollar amount, as established by these rules, above which the formal sealed procedure will be used. The amount may be lowered by the administrator to maintain full disclosure or competitive purchasing or otherwise achieve overall state efficiency and economy. (3-29-17)
- 30. Small Purchase.** An acquisition that costs less than the sealed procedure limit. (3-15-02)
- 31. State.** The state of Idaho including each agency unless the context implies other states of the United States. (3-29-17)
- 32. Telecommunications.** All present and future forms of hardware, software or services used or required for transmitting voice, data, video or images. (3-29-17)
- 33. Written.** When used in these rules, may include an electronic writing. (3-15-02)

#### **SUBCHAPTER A - RULES GOVERNING PURCHASING**

##### **012. PRESERVATION OF RECORDS.**

Records of a purchasing authority, which are created or held pursuant to these rules, may be kept in such format as prescribed by the purchasing authority responsible for record retention; and otherwise in accordance with record preservation and retention policies established by the agency designated by the legislature for such purpose. (3-20-19)

##### **013. FORM OF COMMUNICATION.**

Any written communication authorized or required by these rules may be provided electronically, or in another format as designated by the administrator. (3-20-19)

##### **014. -- 020. (RESERVED)**

##### **021. DELEGATION OF AUTHORITY OF ADMINISTRATOR.**

Whenever a purchase is made by the division of purchasing on behalf of another agency, the division shall be deemed to be acting as the agent for such agency. The division shall administer the acquisition of all property for agencies except those for which the agencies have separate statutory purchasing authority. The administrator may delegate in writing such authority as deemed appropriate to employees of the division, an agency or employees of an agency. Such delegations shall remain in effect unless modified or until revoked in writing. All delegations must be given in writing prior to the acquisition of the property. All acquisitions under delegated authority must be made according to these purchasing rules, the policies developed by the division, and the conditions established by the administrator in the delegation. Delegations shall be subject to periodic reporting and review as directed by the administrator. (3-29-17)

**01. Manner of Submission.** Request for delegated purchasing authority must be submitted in writing, on a form and in a manner established by the administrator. (3-29-17)

**02. Accompaniments to Application.** Application for authority must be accompanied by the following: (3-29-17)

**a.** Documentation that the proposed designee demonstrates sufficient purchasing knowledge and ability to accommodate the agency's particular needs; (3-29-17)

- b. A demonstrated need for the dollar limit of authority requested; (3-29-17)
- c. An agency purchasing manual outlining internal operational processes and procedures related to the conduct of purchasing within the agency; and (3-29-17)
- d. A written plan for continual training for staff which includes routine participation in training sessions, workshops and conferences offered by the division. (3-29-17)

**03. Policy.** The administrator will establish a delegated purchasing authority policy applicable to all designees; and may place additional conditions on individual delegated authority, in order to ensure consistency in the procurement process as well as proper oversight and compliance with state purchasing code, rules and applicable policy. (3-29-17)

**04. Designee Responsibility.** Agency designee(s) are responsible for all procurement-related activities conducted for designee's agency under authority delegated by the administrator. (3-29-17)

**05. Sub-delegation.** Designees may sub-delegate purchasing authority within their respective agencies consistent with the designee's capacity to monitor and oversee such activity. (3-29-17)

**06. Authority Not Transferable.** Authority is not transferable and will automatically terminate when the designee leaves the employment of the requesting agency; however, an agency may apply to the administrator for the immediate designation of an interim designee to exercise delegated purchasing authority for a time period not exceeding ninety (90) days, subject to conditions outlined by the administrator, relative to the purchasing competency of the interim designee. (3-29-17)

**07. Quarterly Review.** The administrator will review the activities of a designee with delegated purchasing authority on no less than a quarterly basis. (3-29-17)

**08. Failure to Comply.** Failure to comply with the conditions included in the written authorization provided by the administrator may result in immediate rescission of authority, increased monitoring, reduction in authority level, additional training, or other action deemed appropriate by the administrator to ensure compliance with purchasing code, rules and applicable policy. (3-29-17)

**022. -- 030. (RESERVED)**

**031. COOPERATIVE PURCHASING POLITICAL SUBDIVISIONS.**

The various bid statutes relating to municipal corporations, school districts, and counties may authorize these political subdivisions to utilize any contract entered into by the state. A public agency may use open contracts as authorized by statute and the terms of the open contract; and the state may otherwise cooperate with political subdivisions in the acquisition of property. (3-29-17)

**032. ACQUISITION OF CONCESSION SERVICES.**

If there is no expenditure of state funds, the acquisition of concession services, including but not limited to, exclusive-rights contracts, franchises, vending services, options, pouring contracts, service contracts, advertising contracts, broadcast rights to sporting events or other similar types of property, may be conducted by each purchasing authority as it determines to be in its best interest; provided, however, concessions within the definition of a food service facility set forth in Section 67-6902, Idaho Code, shall comply with the provisions of Title 67, Chapter 69, Idaho Code. The purchasing authority is encouraged to utilize a competitive process if determined to be in its best interest. (3-29-17)

**033. PURCHASE OF TELECOMMUNICATIONS OR INFORMATION TECHNOLOGY PROPERTY.**

Unless otherwise exempted by statute or these rules, all agency requests exceeding the sealed procedure limit for telecommunications or information technology property must be reviewed and approved by the office of information technology services within the office of the governor before submission to the division. It is the requesting agency's responsibility to attach any approvals to any requisitions submitted to the division. Acquisitions of these types of property are subject to these rules and so agencies should plan in advance to allow for review by the office of

information technology services. All acquisitions of telecommunications and information technology property will conform to the guidelines and policies established or adopted by the governing or policy board or council created by statute or directive for the purpose of information technology oversight or review. (3-29-17)

**034. PUBLIC NOTICE.**

Public notice of all solicitations shall be made in accordance with Section 67-9208, Idaho Code. Notice of solicitations shall be posted electronically unless the administrator exempts the solicitation from the requirement to post to the state's electronic procurement (e-procurement) system, as provided in Section 044 of these rules. Notice of sole source acquisitions shall be posted electronically, and otherwise in accordance with Section 67-9221, Idaho Code. (3-29-17)

**035. -- 040. (RESERVED)**

**041. PROCEDURE FOLLOWED IN THE SOLICITATION OF BIDS AND PROPOSALS.**

Except as otherwise provided, the acquisition of property exceeding one hundred thousand dollars (\$100,000) (the sealed procedure limit) shall be by the formal sealed procedure. All vendors submitting responses to solicitations issued by the state must be qualified. All vendors are qualified unless disqualified as defined by Section 67-9217, Idaho Code. (4-7-11)

**042. EXCEPTIONS TO COMPETITION.**

Purchases meeting the following criteria need not be purchased by competitive solicitation, unless otherwise directed by the administrator: (3-29-17)

**01. Emergency Purchases.** Emergency purchases as authorized by Section 67-9221, Idaho Code, and Section 043 of these rules. (3-29-17)

**02. Sole Source Purchases.** Sole source purchases made through direct solicitation with documented source selection, in accordance with Section 67-9221, Idaho Code, and Section 045. (3-15-02)

**03. Reverse Auctions.** Purchases through reverse public auctions as authorized by Section 67-9221, Idaho Code. (3-15-02)

**04. Federal Government Acquisitions.** Acquisitions from the United States of America or any agency thereof. (3-15-02)

**05. Contracts with Other Public Agencies.** Contracts with other public agencies as defined in Section 67-2327, Idaho Code, and authorized by Section 67-2332, Idaho Code. (3-20-19)

**06. Rehabilitation Agency Acquisitions.** Acquisitions of property that is provided by non-profit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged and that is offered for sale at fair market price as determined by the administrator in accordance with these rules. (3-15-02)

**07. Correctional Industries.** Purchases of property marketed directly by Correctional Industries in accordance with Section 20-245, Idaho Code. (3-29-17)

**08. Purchases from General Services Administration Federal Supply Contractors.** Acquisitions of property may be made from General Services Administration federal supply contractors without the use of competitive bid upon written approval of the administrator. The administrator shall determine whether such property meets the requesting agency's requirements and whether the price of acquisition is advantageous to the state. The administrator shall commemorate the determination in a written statement that shall be incorporated in the applicable file. If the administrator determines that the acquisition of property from General Services Administration contractors is not advantageous to the state, the acquisition shall be in accordance with competitive solicitation procedures and requirements. (3-29-17)

**09. Existing Open Contracts.** Except as provided in these rules, property available under these contracts shall be purchased under such contracts in accordance with the provisions or requirements for use thereof. (3-29-17)

**10. Exempt Purchases.** By written policy the administrator may exempt from the formal sealed procedure or the requirement for competitive solicitation that property for which bidding is impractical, disadvantageous or unreasonable under the circumstances. (3-29-17)

- a.** Examples include, but are not limited to: (3-15-02)
  - i.** Special market conditions; (3-15-02)
  - ii.** Property requiring special contracting procedures due to uniqueness; (3-15-02)
  - iii.** Legal advertising, publication or placement of advertisements by state agency personnel directly with media sources; (3-29-17)
  - iv.** Property for which competitive solicitation procedures are impractical; (3-20-19)
  - v.** Used property; (3-20-19)
  - vi.** Ongoing maintenance, upgrades, support or additional licenses for software or other information technology solutions, including a change in the manner of solution delivery; which software or solution was originally acquired in compliance with the purchasing laws in effect at the time of acquisition; or (3-20-19)
  - vii.** Acquisition of property for direct resale. (3-20-19)
- b.** Such policy shall describe the property exempted, the duration of the exemption, and any other requirements or circumstances appropriate to the situation. (3-15-02)

**043. EMERGENCY PURCHASES.**

**01. Definition of Emergency Conditions.** An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures or other similar circumstances. The existence of such condition must create an immediate and serious need for property that cannot be met through normal acquisition methods. The buyer or the agency official responsible for purchasing shall make a written determination stating the basis for an emergency purchase and for the selection, if applicable, of the particular supplier. Such determination shall be sent promptly to the administrator for review and written approval that the purchase be undertaken as an emergency purchase. (3-15-02)

**02. Conditions.** Emergency purchases shall be limited to only that property necessary to meet the emergency. The director or administrator may delegate authority in writing to an agency or purchasing authority to make emergency purchases of up to an amount set forth in the delegation of authority. (3-29-17)

**044. SMALL PURCHASES.**

- 01. Small Purchase Categories.** (3-29-17)
  - a.** Exempt. Property expected to cost less than ten thousand dollars (\$10,000). (3-29-17)
  - b.** Informal. Purchase of any property expected to cost at least ten thousand dollars (\$10,000) and less than the sealed procedure limit. (3-29-17)
  - c.** Professional and consultant services. The acquisition of professional or consultant services expected to cost less than the sealed procedure limit, for projects limited to one (1) year in duration. (3-29-17)

**02. Procedure.** Agencies acquiring property under this rule are encouraged to work with legal counsel to develop solicitation and contract terms that serve the best interests of the state. The terms of procurements under this rule are subject to the provisions of Section 112 of these rules. (3-29-17)

**a.** Professional and consultant small purchases and exempt small purchases may be acquired as each agency sees fit, in accordance with good business practice and agency-established policy, in the best interest of the state, subject to the limitations in Subsection 044.03 of this rule. (3-29-17)

**b.** Informal small purchases may be made using informal solicitation procedures, subject to the limitations in Subsection 044.03 of this rule. Unless exempted by the administrator, informal solicitations shall be issued through the division's electronic procurement (e-procurement) system. The purchasing authority will establish the quoting time based on factors such as complexity, urgency, and the number and location of vendors, in an effort to allow vendors sufficient time to prepare and return a quote. Agencies procuring property under this rule shall maintain a purchasing file containing the following: (3-29-17)

**i.** The solicitation document posted and quotes received. If the acquisition was not publicly posted, the agency shall include a statement in the purchasing file describing the basis for determining posting was impractical or impossible, along with the administrator's authorization. (3-29-17)

**ii.** If not posted on the division's e-procurement system, the agency shall document the quotes received (or its attempt to obtain quotes) from at least three (3) vendors having a significant Idaho economic presence as defined in Section 67-2349, Idaho Code. (3-29-17)

**03. Limitations.** The following limitations apply to all small purchases: (3-29-17)

**a.** Property available under single agency or open contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator. (3-29-17)

**b.** Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies. (3-29-17)

**c.** Small purchases not issued for a fixed price shall include a not to exceed price of no more than the applicable sealed procedure limit. (3-29-17)

**045. SOLE SOURCE PURCHASES.**

**01. Only a Single Supplier.** Sole source purchase shall be used only if the required property is reasonably available from a single supplier. A requirement for a particular proprietary property item does not justify a sole source purchase if there is more than one (1) potential supplier that can provide the required property. (3-29-17)

**02. Examples of Sole Source.** Examples of circumstances that could necessitate a sole source purchase are: (3-15-02)

**a.** Where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration. (3-15-02)

**b.** Where a single supplier's property is needed for trial use or testing. (3-29-17)

**c.** Purchase of mass produced movie or video films or written publications distributed or sold primarily by the publisher. (3-15-02)

**d.** Purchase of property for which it is determined there is no functional equivalent. (3-15-02)

**03. Administrator Makes Determination.** The determination as to whether an acquisition shall be made as a sole source will be made by the administrator. Each request must be submitted in writing by the requesting agency. The administrator may specify the application of such determination and its duration, and may apply additional conditions to an approval. In cases of reasonable doubt, competition should be solicited. Any request by an agency that an acquisition be restricted to a single supplier shall include a justification for the property, as well as an explanation as to why no other supplier is acceptable. (3-29-17)

**04. Negotiation in Sole Source Purchase.** After receipt of authorization from the administrator for a

sole source purchase, the agency shall conduct negotiations, as appropriate, as to price, delivery and terms, in accordance with the authorization and in the best interest of the state. (3-29-17)

**046. DETERMINATION OF FAIR MARKET PRICE FOR REHABILITATION AGENCY ACQUISITIONS.**

Upon receipt of a rehabilitation agency proposal accompanied by detailed cost data, the administrator will conduct a survey of the market appropriate for the property being sought. The fair market price of a rehabilitation agency shall not be greater than one hundred twenty-five percent (125%) of the lowest price received during the survey. The administrator will notify by letter the rehabilitation agency concerned advising it as to whether it is offering property at fair market price. (3-29-17)

**047. -- 050. (RESERVED)**

**051. CONTENT OF SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.**

The following shall be included in an invitation to bid or a request for proposals: (3-29-17)

**01. Submission Information.** Information regarding the applicable closing date, time and location. (3-20-19)

**02. Specifications.** Specifications developed in accordance with Section 111 of these rules. (3-29-17)

**03. Contract Terms.** Terms and conditions applicable to the contract, subject to the provisions of Section 112 of these rules. (3-29-17)

**04. Evaluation Criteria.** Any evaluation criteria to be used in determining property acceptability. (3-15-02)

**05. Trade-In Property.** If trade-in property is to be included, a description of the property and location where it may be inspected. (3-15-02)

**06. Incorporation by Reference.** A brief description of any documents incorporated by reference that specifies where such documents can be obtained. (3-15-02)

**07. Pre-Proposal or Pre-Bid Conference.** The date, time and location of the conference must be included in the solicitation. (3-29-17)

**052. CHANGES TO INVITATION TO BID OR REQUEST FOR PROPOSALS.**

A solicitation issued under a formal sealed procedure may be changed by the buyer through issuance of an amendment, provided the change is issued in writing prior to the solicitation closing date and is made available to all vendors receiving the original solicitation. Any material information given or provided to a prospective vendor with regard to a solicitation shall be made available in writing by the buyer to all vendors receiving the original solicitation. Oral interpretations of specifications or contract terms and conditions shall not be binding on the state unless confirmed in writing by the buyer and acknowledged by the purchasing authority prior to the date of the closing. Changes to the solicitation shall be identified as such and shall require that the vendor acknowledge receipt of all amendments issued. The right is reserved to waive any informality. (3-29-17)

**053. -- 060. (RESERVED)**

**061. FORM OF SUBMISSION FOR SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.**

**01. Manual Submissions.** Unless otherwise provided in these rules, to receive consideration, in addition to any specific requirements set forth in the invitation to bid or request for proposals, bids or proposals submitted manually must be made on the form provided, which form must be properly completed and signed in ink or contain an electronic signature as defined in Section 28-50-102, Idaho Code. All changes or erasures on manual submissions shall be initialed in ink. Unsigned or improperly submitted bids or proposals will be rejected. The purchasing authority assumes no responsibility for failure of the United States Postal Service, any private or public

delivery service, or any computer or other equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation. (4-6-15)

**02. Electronic Submissions.** To receive consideration, in addition to any specific requirements set forth in the invitation to bid or request for proposals, bids or proposals submitted electronically must be submitted in accordance with and meet all applicable requirements of these rules and contain an electronic signature as defined in Section 28-50-102, Idaho Code. The purchasing authority assumes no responsibility for failure of any electronic submission process, including any computer or other equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation. (4-6-15)

**062. -- 069. (RESERVED)**

**070. PRE-PROPOSAL CONFERENCE.**

All request for proposals will have a pre-proposal conference for vendors and will be conducted by the procurement team and project personnel. The conference will consist of a general overview of the procurement process as well as the scope of work and requirements of the solicitation. The procurement team will allow attendees to submit written questions and may provide an opportunity for a verbal question and answer period, provided, however, that only questions submitted and answered in written form and posted to the state's e-procurement system as an amendment to the solicitation, will have any force or effect. (3-29-17)

**071. PRE-OPENING WITHDRAWAL OR MODIFICATION.**

Manual submissions may be withdrawn or modified only as follows: Bids or proposals may be withdrawn or modified prior to the closing by written communication signed in ink by the submitting vendor. Bids or proposals may be withdrawn prior to closing in person upon presentation of satisfactory evidence establishing the individual's authority to act on behalf of the submitting vendor. Bids or proposals may be withdrawn or modified by electronic communication provided the communication is received prior to the closing. The withdrawal or modification, if done via electronic communication, must be confirmed in a writing signed in ink or containing an electronic signature as defined in Section 28-50-102, Idaho Code. Any withdrawing or modifying communication, including an electronic communication, must clearly identify the solicitation. A modifying communication should be worded so as not to reveal the amount of the original bid or proposal. (4-6-15)

**072. LATE BIDS/PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS.**

Any bid or proposal, withdrawal, or modification received after the time and date set for closing at the place designated in the solicitation is late. No late bid or proposal, late modification or late withdrawal will be considered. All late bids and proposals, other than clearly marked "no bids", will be returned to the submitting vendor. Time of receipt will be determined by the official time stamp or receipt mechanism located at the designated place for receipt of responses. The purchasing authority assumes no responsibility for failure of the United Postal Service, any private or public delivery service, or any computer or other equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation. (3-29-17)

**073. RECEIPT, OPENING, AND RECORDING OF BIDS AND PROPOSALS.**

Upon receipt, all bids, proposals and modifications properly marked and identified will be time stamped, but not opened. They shall be stored in a secure place until the time specified for opening. Time stamping and storage may be through electronic means. Bids shall be opened publicly at the date and time specified in the invitation to bid. Proposals shall be opened publicly, identifying only the names of the offerors unless otherwise stated in the request for proposals. Bid and proposal openings may be electronic virtual openings. (3-29-17)

**074. MISTAKES.**

The following procedures are established relative to claims of a mistake. (3-15-02)

**01. Mistakes in Submission.** If a mistake is attributable to an error in judgment, the submission may not be corrected. Correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the administrator and to the extent it is not contrary to the interest of the state or the fair treatment of other submitting vendors. (3-29-17)

**02. Mistakes Discovered Before Opening.** Mistakes discovered by a vendor prior to closing may be corrected by the submitting vendor by submitting a timely modification or withdrawing the original submission and



submitting a corrected submission to the purchasing authority before the closing. Vendors who discover a mistake after closing but prior to opening may withdraw the submission by written notification to the purchasing authority and signed by an individual authorized to bind the vendor if such notification is received by the purchasing authority prior to opening. (4-6-15)

**03. Mistakes Discovered After Opening But Before Award.** This subsection sets forth procedures to be applied in three (3) situations described below in which mistakes are discovered after opening but before award. (3-15-02)

**a. Minor Informalities.** Minor informalities are matters of form rather than substance evident from the bid or proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other submitting vendors, that is, the effect of the mistake on price, quantity, quality, delivery or contractual conditions is not significant. The buyer may waive such informalities. Examples include the failure of a submitting vendor to: (3-15-02)

- i. Return the required number of signed submissions. (3-15-02)
- ii. Sign in ink or provide an electronic signature, but only if it is clear from the submission that the submitting vendor intended to be bound by its terms. (3-20-19)
- iii. Acknowledge the receipt of an amendment, but only if: (3-29-17)
  - (1) It is clear from the submission that the submitting vendor received the amendment and intended to be bound by its terms; or (3-29-17)
  - (2) The amendment involved had a negligible effect on price, quantity, quality or delivery. (3-29-17)

**b. Mistakes Where Intended Submission is Evident.** If the mistake and the intended submission are clearly evident on the face of the document, the submission shall be corrected to the intended submission and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the document are typographical errors, errors in extending unit prices (unit prices will always govern in event of conflict with extension), transposition errors and arithmetical errors. (3-15-02)

**c. Mistakes Where Intended Submission is not Evident.** A vendor may be permitted to withdraw a low bid if: (3-15-02)

- i. A mistake is clearly evident on the face of the submission document but the intended submission is not similarly evident; or (3-15-02)
- ii. The vendor submits timely proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made. (3-15-02)

**04. Mistakes Discovered After Award.** Mistakes shall not be corrected after award of the contract. (3-15-02)

**05. Written Approval or Denial Required.** In the event of a mistake discovered after the opening date, the administrator shall approve or deny, in writing, a request to correct or withdraw a submission. (3-15-02)

**075. -- 080. (RESERVED)**

**081. EVALUATION AND AWARD.** Any contract award shall comply with these provisions. (3-15-02)

**01. General.** The contract is to be awarded to the lowest responsible and responsive bidder or offeror (or for requests for quotes, vendor submitting a quote). The solicitation shall set forth the requirements and criteria that will be used to make the lowest responsive and responsible determination. (3-29-17)

**02. Standards of Responsibility.** Nothing herein shall prevent the buyer from establishing additional responsibility standards for a particular purchase. Factors to be considered in determining whether a vendor is responsible include, but are not limited to, whether the vendor has: (3-29-17)

- a. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements; (3-15-02)
- b. A satisfactory record of integrity; (3-15-02)
- c. Qualified legally to contract with the purchasing authority and qualified to do business in the state of Idaho; (3-29-17)
- d. Unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility; (3-15-02)
- e. Requisite experience; or (3-29-17)
- f. A satisfactory prior performance record, if applicable. (3-29-17)

**03. Information Pertaining to Responsibility.** A submitting vendor shall supply information requested by the buyer concerning its responsibility. If such submitting vendor fails to supply the requested information, the buyer shall base the determination of responsibility upon any available information or may find the submitting vendor nonresponsible if such failure is unreasonable. (3-15-02)

**04. Written Determination of Nonresponsibility Required.** If a submitting vendor that otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the buyer. (3-15-02)

**05. Extension of Time for Acceptance.** After opening, the buyer may request submitting vendors to extend the time during which their bids or proposals may be accepted. The reasons for requesting such extension shall be documented. (3-29-17)

**06. Partial Award.** A buyer shall have the discretion to award on an all or nothing basis or to accept any portion of a response to a solicitation, excluding other portions of a response and other offers, unless the vendor stipulates all or nothing in its response to the solicitation. (3-29-17)

**07. Only One Submission Received.** If only one (1) responsive submission is received in response to a solicitation, an award may be made to the single submitting vendor. In addition, the buyer may pursue negotiations in accordance with applicable conditions and restrictions of these rules. Otherwise, the solicitation may be canceled, and a new solicitation issued, as the purchasing authority determines to be in its best interest. (3-29-17)

**082. TIE RESPONSES.**

**01. Tie Responses -- Definition.** Tie responses are low responsive bids, proposals or quotes from responsible bidders or offerors (or for requests for quotes, from vendors submitting a quote) that are identical in price or score. Responsibility is determined based upon the standards of responsibility set forth in Section 081 of these rules. (3-29-17)

**02. Award.** Award shall not be made by drawing lots, except as set forth below, or by dividing business among tie responses. In the discretion of the buyer, award shall be made in any permissible manner that will resolve tie responses. Procedures that may be used to resolve tie responses include: (3-29-17)

- a. If price is considered excessive or for another reason such responses are unsatisfactory, reject all responses, resolicit and seek a more favorable contract in the open market or enter into negotiations pursuant to Section 084 of these rules; (3-29-17)

**b.** Award to an Idaho resident or an Idaho domiciled vendor or for Idaho produced property where other tie response(s) are from out of state or to a vendor submitting a domestic property where other tie responses are for foreign (external to Idaho) manufactured or supplied property; (3-29-17)

**c.** Where identical low responses include the cost of delivery, award the contract to the vendor located (or shipping from a point) farthest from the point of delivery; (3-29-17)

**d.** Award to the vendor with the earliest delivery date. (3-29-17)

**03. Drawing Lots.** If no permissible method will be effective in resolving tie responses and a written determination is made so stating, award may be made by drawing lots or tossing a coin in the presence of witnesses if there are only two (2) tie responses. (3-29-17)

**083. PROPOSAL DISCUSSION WITH INDIVIDUAL OFFERORS.**

**01. Classifying Proposals.** For the purpose of conducting proposal discussions under this rule, proposals shall be initially classified as: (3-15-02)

**a.** Acceptable; (3-15-02)

**b.** Potentially acceptable, that is reasonably susceptible of being made acceptable; or (3-15-02)

**c.** Unacceptable. (3-15-02)

**02. "Offerors" Defined.** For the purposes of this rule, the term "offerors" includes only those vendors submitting proposals that are acceptable or potentially acceptable. The term shall not include vendors that submitted unacceptable proposals. (3-29-17)

**03. Classification of Proposals.** For the purposes of this rule, the purchasing authority may establish criteria within the solicitation to classify proposals. (3-20-19)

**04. Purposes of Discussions.** Discussions are held to facilitate and encourage an adequate number of potential offerors to offer their best proposals, by amending their original offers, if needed. (3-15-02)

**05. Conduct of Discussions.** The solicitation document must provide for the possibility of discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The buyer should establish procedures and schedules for conducting discussions. If during discussions there is a need for clarification or change of the request for proposals, it shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror. (3-15-02)

**06. Best and Final Offer.** The buyer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the buyer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the purchasing authority's interest, and additional discussions will be conducted or the requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer. (3-29-17)

**07. Application to Other Solicitation Types.** The provisions of this Section 083 may be utilized in other types of solicitations, in addition to requests for proposals, so long as the solicitation document provides for the possibility of discussions and includes a reference to this section. (3-29-17)

**084. NEGOTIATIONS.**

In accordance with Section 67-9205(12), Idaho Code, the administrator may negotiate acquisitions as follows: (3-15-02)

**01. Use of Negotiations.** Negotiations may be used under these rules when the administrator determines in writing that negotiations may be in the best interest of the state including but not limited to the following circumstances: (3-20-19)

**a.** Negotiations undertaken pursuant to a solicitation for competitive negotiation, in accordance with the provisions of Section 094 of these rules. (3-20-19)

**b.** A competitive solicitation has been unsuccessful because, without limiting other possible reasons, all offers are unreasonable, noncompetitive or all offers exceed available funds and the available time and circumstances do not permit the delay required for resolicitation; (3-15-02)

**c.** There has been inadequate competition; (3-29-17)

**d.** During the evaluation process it is determined that more than one (1) vendor has submitted an acceptable proposal or bid and negotiations could secure advantageous terms or a reduced cost for the state; or (3-29-17)

**e.** During the evaluation process it is determined that all responsive offers exceed available funds and negotiations could modify the requirements of the solicitation to reduce the cost to available funds and avoid the extended time and expenditure of resources for a resolicitation. (3-29-17)

**02. Examples.** Examples of situations in which negotiations may be appropriate include but are not limited to: (3-29-17)

**a.** Ensuring that the offering vendor has a clear understanding of the scope of work required and the requirements that must be met; (3-15-02)

**b.** Ensuring that the offering vendor will make available the required personnel and facilities to satisfactorily perform the contract; or (3-15-02)

**c.** Agreeing to any clarifications regarding specifications or contract terms. (3-29-17)

**03. Conditions of Use.** Negotiations, as permitted by Paragraph 084.01.d. of this rule, are subject to the following: (3-20-19)

**a.** The solicitation must specifically allow for the possibility of negotiation and describe, with as much specificity as possible, how negotiations may be conducted; (3-15-02)

**b.** Submissions shall be evaluated and ranked based on the evaluation criteria in the solicitation; (3-15-02)

**c.** Only those vendors whose proposals or bids are determined to be acceptable, in accordance with criteria for negotiations set forth in the solicitation, shall be candidates for negotiations; (3-15-02)

**d.** Negotiations shall be conducted first with the vendor that is the apparent low responsive and responsible bidder, unless concurrent negotiations are permissible, in accordance with the terms of the solicitation; (3-20-19)

**e.** If one (1) or more responsive offers does not exceed available funds, negotiations shall be against the requirements of and criteria contained in the solicitation and shall not materially alter those criteria or the specifications; (3-29-17)

**f.** Auction techniques (revealing one vendor's price to another) and disclosure of information derived from competing proposals is prohibited; (3-15-02)

**g.** Any clarifications or changes resulting from negotiations shall be documented in writing;(3-15-02)

**h.** If the parties to negotiations are unable to agree, the administrator shall formally terminate negotiations and may undertake negotiations with the next ranked vendor; and (3-15-02)

**i.** If negotiations as provided for in this rule fail to result in a contract, as determined by the administrator, the solicitation may be canceled and the administrator may negotiate in the best interest of the state with any qualified vendor. (3-15-02)

**04. Timing of Use.** If conducted as part of a small purchase or under the formal sealed procedure, negotiations are the last step in the procurement process. Use of oral interviews or best and final procedures, as provided for in a solicitation, must precede negotiations as provided for in this rule, unless the administrator makes a written determination that it is in the state's best interest to proceed directly to negotiations in lieu of first conducting oral interviews and the best and final procedures. (3-20-19)

**05. Termination of Negotiations.** The purchasing authority may terminate negotiations at any time, in the best interest of the state. (3-20-19)

**085. PRICE AGREEMENTS.**

The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed in the best interest of the state. Price agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price agreements may be in the best interest of the state when: (3-29-17)

**01. Dollar Value.** The dollar value of individual procurements of property is less than the maximum dollar value of an exempt small purchase under Section 044 of these rules and multiple individual procurements are anticipated within a state of Idaho fiscal year; (3-29-17)

**02. Property.** The property may not be conducive to standard competitive bidding procedures; (3-29-17)

**03. Multiple Agreements.** There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or (3-29-17)

**04. Non-exclusive Agreements.** Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms. (3-29-17)

**086. -- 090. (RESERVED)**

**091. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS.**

Prior to the issuance of a contract, the administrator shall have the right to accept or reject all or any part of a bid or proposal or any and all bids or proposals when: (3-29-17)

**01. Best Interest.** It is in the best interests of the state of Idaho; (3-15-02)

**02. Does Not Meet Specifications.** The submission does not meet the minimum specifications; (3-15-02)

**03. Not Lowest Responsible Bid.** The submission is not the lowest responsible submission; (3-15-02)

**04. Bidder Is Not Responsible.** A finding is made based upon available evidence that a submitting vendor is not responsible or otherwise capable of currently meeting specifications or assurance of ability to fulfill contract performance; or (3-15-02)

**05. Deviations.** The item offered deviates to a major degree from the specifications, as determined by the administrator (minor deviations, as determined by the administrator, may be accepted as substantially meeting the requirements of the state of Idaho). Deviations will be considered major when such deviations appear to frustrate the

competitive process or provides a submitting vendor an unfair advantage. (3-15-02)

**092. CANCELLATION OF SOLICITATION.**

Prior to the issuance of a contract, the purchasing authority reserves the right to reject all bids, proposals or quotes or to cancel a solicitation. In the event of the cancellation of an invitation to bid or request for proposals, all submitting vendors will be notified. Examples of reasons for cancellation are: (3-29-17)

**01. Inadequate or Ambiguous Specifications.** (3-15-02)

**02. Specifications Have Been Revised.** (3-15-02)

**03. Cancellation Is in the Best Interest of the State.** (3-29-17)

**093. NOTICE OF REJECTION.**

Bidders or offerors whose bids or proposals are rejected as non-responsive will be notified in writing of the reasons for such rejection. (3-15-02)

**094. COMPETITIVE NEGOTIATIONS.**

Notwithstanding the provisions of Section 041 of these rules applicable to the formal sealed procedure, the administrator may authorize the use of competitive negotiations when it is determined that the use of negotiations may enable the state to more effectively identify and refine potential solutions, especially where the business need is complex or requires innovation. (3-20-19)

**01. Written Authorization.** The administrator shall establish guidelines on how and when agencies may request to use competitive negotiations. Requests for authorization to utilize competitive negotiations must be provided in writing, in a format designated by the administrator. The request must provide the reasons that a formal sealed procedure is not practicable; as well as support for the use of competitive negotiations in order to meet a complex business need, solicit innovative solutions, enable the state to keep within approved program budgets, or to otherwise facilitate the receipt of the most cost-effective solution. Written authorization must be provided by the administrator in order for a purchasing authority to use competitive negotiations under this rule. (3-20-19)

**02. Form of Solicitation.** Proposals under this rule shall be solicited pursuant to an invitation to negotiate. (3-20-19)

**03. Applicability of Other Rules.** An invitation to negotiate shall be subject to the rules applicable to a request for proposals, except as otherwise provided. Modifications under Section 072 of these rules will be allowed after closing to the extent authorized within the invitation to negotiate. Section 083 of these rules, proposal discussion with individual offerors, shall not apply to an invitation to negotiate. (3-20-19)

**04. Content of Solicitation for Competitive Negotiation.** Notwithstanding Section 051 of these rules, the following shall be included in an invitation to negotiate: (3-20-19)

**a. Submission Information.** Information regarding the applicable closing date, time and location. (3-20-19)

**b. Solicitation Procedure.** An outline of the invitation to negotiate process. (3-20-19)

**c. Specifications.** Specifications developed in accordance with Section 111 of these rules, to the extent the purchasing authority determines adequate to inform interested vendors of the desired result. (3-20-19)

**d. Contract Terms.** Terms and conditions applicable to the contract, subject to the provisions of Section 112 of these rules. (3-20-19)

**e. Trade-In Property.** If trade-in property is to be included, a description of the property and location where it may be inspected. (3-20-19)

**f. Incorporation by Reference.** A brief description of any documents incorporated by reference that

specifies where such documents can be obtained. (3-20-19)

**g.** Pre-Proposal or Pre-Bid Conference. The date, time and location of the conference must be included in the solicitation. (3-20-19)

**h.** Evaluation and Award Criteria. A summary of evaluation criteria to be used in determining property acceptability; evaluation criteria to classify proposals and determine the competitive threshold for negotiations; as well as the criteria that will be used to make the lowest responsive and responsible determination. (3-20-19)

**05. Cost.** The buyer may request cost proposals at any time during the invitation to negotiate process; and may elect to request cost proposals only from those offerors determined to be in the competitive range for award (“finalists”), in accordance with the instructions contained within the solicitation. (3-20-19)

**06. Conduct of Negotiations.** Negotiations shall be conducted in accordance with the procedure outlined in the invitation to negotiate, which may include multiple iterations of submissions and discussions in order to classify proposals; allow for revisions to the solicitation proposal(s), including any requirements, terms, conditions or specifications; and to determine finalists. The negotiation process ends upon submission of the best and final offer(s) from the finalists, after which time vendors shall not be allowed to make further modifications to their proposal(s). (3-20-19)

**095. -- 100. (RESERVED)**

**101. LEASES.**

**01. Lease for Personal Property.** A lease for personal property may be entered into provided the lease is subject to the same requirements of competition that govern the purchase of property. Leases for periods exceeding one (1) year specifically require the approval of the administrator. (3-15-02)

**02. Lease Purchase Option.** Unless a specific exemption is granted by the administrator or unless otherwise exempt by these rules, a lease purchase option may be exercised only if the lease containing the purchase option was awarded using the competitive process. Before exercising such an option, the buyer shall meet all applicable requirements of Section 67-9222, Idaho Code, including providing notice of the exercise of option as a sole source or competitively bidding the property by soliciting bids for new or used property. (3-15-02)

**102. -- 110. (RESERVED)**

**111. SPECIFICATIONS -- POLICIES AND DEVELOPMENT.**

**01. Purpose.** Unless exempted by these rules or by the administrator, all solicitations require specifications. Specifications set forth the characteristics of the property to be acquired. Specifications serve as the basis for obtaining property adequate and suitable for the using agency’s needs in a cost effective manner, taking into account the costs of ownership and operation as well as initial acquisition costs. Specifications shall be drafted clearly to describe the agency’s needs and to enable the vendors to determine and understand the agency’s requirements. Specifications shall, as much as practical, be nonrestrictive to provide an equal basis for participation by an optimum number of vendors and to encourage competition. This information may be in the form of a description of the physical, functional or performance characteristics, a reference brand name or both. It may include a description of any required inspection, testing or preparation or delivery. Specifications may be incorporated by reference or contained in an attachment. (3-29-17)

**02. Use of Functional or Performance Descriptions.** Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the agency. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of purchase requisitions their principal functional or performance needs. (3-15-02)

**03. Preference for Commercially Available Products.** Requirements shall be satisfied by standard commercial products whenever practicable. (3-15-02)

**04. Brand Name or Equal Specification. (3-15-02)**

**a.** A brand name or equal specifications may be used when the buyer determines that such a specification is in the agency's best interest. (3-15-02)

**b.** A brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" and shall state that products substantially equivalent to those designated will be considered for award. (3-15-02)

**c.** Unless the buyer authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design and functional or performance characteristics required. (3-15-02)

**d.** Where a brand name or equal specification is used, the document shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to restrict competition. (3-15-02)

**05. Brand Name Specification. (3-15-02)**

**a.** Since use of a brand name specification is restrictive, such a specification may only be used when the administrator or designee makes a written determination. Such determination may be in any form, such as a purchase evaluation or a statement of single manufacturer justification. The written statement must state specific reasons for use of the brand name specification. (3-15-02)

**b.** The administrator shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one (1) source can supply the requirement, the acquisition shall be made under Section 67-9221, Idaho Code. (3-15-02)

**06. Specification of Alternates May Be Included.** A specification may provide alternate descriptions of property where two (2) or more design, functional or performance criteria will satisfactorily meet the agency's requirements. (3-15-02)

**112. CONTRACT TERMS - POLICIES AND LIMITATIONS.**

**01. Prohibited Terms.** Purchasing authorities do not have the authority to bind the state of Idaho or an agency to the following terms. If a contract contains such a term, the term shall be void pursuant to Section 67-9213, Idaho Code. (4-6-15)

**a.** Terms waiving the sovereign immunity of the state of Idaho. (4-6-15)

**b.** Terms subjecting the state of Idaho or its agencies to the jurisdiction of the courts of other states. (4-6-15)

**c.** Terms limiting the time in which the state of Idaho or its agencies may bring a legal claim under the contract to a period shorter than that provided in Idaho law. (4-6-15)

**d.** Terms imposing a payment obligation, including a rate of interest for late payments, less favorable than the obligations set forth in Section 67-2302, Idaho Code. (4-6-15)

**02. Terms Requiring Special Consideration. (4-6-15)**

**a.** Unless specifically authorized by the Idaho legislature, terms requiring an agency or the state of Idaho indemnify a vendor shall be subject to the provisions of Section 59-1015, Idaho Code, and require an appropriation by the Idaho legislature. Indemnification terms not specifically authorized by the Idaho legislature or



subject to appropriation shall be void pursuant to Section 67-9213, Idaho Code, and Section 59-1016, Idaho Code. (4-6-15)

**b.** Purchasing authorities shall consult with legal counsel prior to accepting terms submitting the contract to arbitration or waiving the state of Idaho's right to a jury trial. (4-6-15)

**113. CONTRACT OVERSIGHT.**

**01. Contract Management and Contract Administration.** (3-29-17)

**a.** Agencies which issue their own contracts pursuant to their delegated authority (or as otherwise exempt from the requirements of these rules) will be responsible for all aspects of contract management and contract administration, as those terms are defined in Section 011 of these rules. (3-29-17)

**b.** When the division of purchasing issues a contract on behalf of an agency, in its role as the state's contracting agent, the division of purchasing is responsible for contract administration and the agency is responsible for contract management. (3-29-17)

**02. Contract Management.** Each state agency which manages one (1) or more contracts, whether entered into directly by the agency or by the division of purchasing acting as the statutory purchasing agency for the agency, will perform the following minimum contract management functions at a level consistent with the dollar value, complexity, and risk associated with each contract (3-29-17)

**a.** Designate a competent contract manager as the single point of contact for each agency contract; (3-29-17)

**b.** Document the contract manager's responsibilities and reporting requirements relative to the contract, including activities such as management of the invoice and payment process, budget tracking, and invoice review and reconciliation with contract requirements and deliverables, to ensure compliance; (3-29-17)

**c.** Document a communication and escalation plan, as between the contract manager, identified agency personnel and the contract administrator, designed to ensure timely and effective contract monitoring and issue resolution (the communication and escalation plan must include the division of purchasing for contracts for which the division of purchasing is acting as the statutory purchasing agent for the agency); (3-29-17)

**d.** Develop and implement internal contract monitoring tools, including a reporting structure, based on the dollar value and/or potential risk associated with contract failure; and (3-29-17)

**e.** Close out each contract, including, but not limited to documenting receipt of goods or services in compliance with contract requirements as well as a review of vendor performance and lessons learned. (3-29-17)

**03. Service Contracts Exceeding \$1,500,000 in Total Value.** For each contract which is valued at more than one million five hundred thousand dollars (\$1,500,000) over the duration of the contract and which consists primarily of the purchases of services, the agency responsible for contract management must develop and implement contract reporting requirements that capture, at a minimum, information on compliance with financial provisions and delivery schedules; the status of any corrective action plans; as well as any liquidated damages assessed or collected under the contract during the current reporting period. Reports will be submitted to the designated agency purchasing representative as well as the division of purchasing on no less than a biannual basis, with a schedule for each contract determined by the contract manager in consultation with the agency purchasing representative and the division of purchasing. (3-29-17)

**114. INFORMATION TECHNOLOGY RESALE.**

**01. Purpose.** The use of resellers is common in the acquisition of information technology; however, the use of a reseller to acquire information technology attempts to separate the application of the State Procurement Act from the contract terms required by the information technology owner for use of the information technology. The requirements of this rule are in place to apply Idaho law to the contract terms required by the information technology owner, when information technology is acquired through a reseller. (3-20-19)

**02. Terms.** All license, sale, or use terms imposed by the information technology owner shall be subject to the following: (3-20-19)

**a.** Licensing, sale, or use terms required by a third party owner of information technology sold through a reseller shall be subject to these rules, specifically including Subsection 112.01 and Paragraph 112.02.a. of these rules. If a contract contains a term prohibited by Section 112 of these rules, the term shall be void pursuant to Section 67-9213, Idaho Code. (3-20-19)

**115. -- 199. (RESERVED)**

**SUBCHAPTER B - RULES GOVERNING CONTESTED CASE HEARINGS ON  
BID APPEALS AT THE DIVISION OF PURCHASING**

**200. FILING OF APPEAL.**

The notice of appeal must be filed in accordance with Section 67-9232(3)(a)(iii), Idaho Code. ( )

**201. NOTICE OF CONTESTED CASE HEARING.**

A notice of a contested case hearing shall be provided to the bidder, giving at least ten (10) days' advance notice of the contested case hearing. The contested case hearing will be held in Ada County, at such place as may be designated in the hearing notice. Upon concurrence of the parties and the determinations officer, contested case hearings may be conducted telephonically. ( )

**202. BRIEFS AND MEMORANDA.**

Any party may make a request in writing to the determinations officer to file briefs, memoranda, proposed orders or statements of position and the determinations officer shall grant or deny such request as the determinations officer deems appropriate under the circumstances of a particular case. The determinations officer may request briefs, memoranda, proposed orders, or statements of position. ( )

**203. RULES OF EVIDENCE.**

The determinations officer shall control the hearing and direct the order or presentation. A party shall be entitled to introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceedings. ( )

**204. ADMISSION OF EVIDENCE.**

The admission of evidence at contested case hearings shall be governed by IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 600 through 609. ( )

**205. TESTIMONY.**

Testimony to be considered by the determinations officer in the hearing shall be by sworn testimony, except for matters noticed or entered by stipulation. ( )

**206. DISCOVERY.**

Discovery may be conducted in the manner and to the extent allowed by the Idaho Rules of Civil Procedure only if first formally agreed to by the parties, or by order of the determinations officer after an application has been filed and a showing that discovery is required to clarify issues, identify witnesses, or preserve testimony. The order may limit the scope of discovery and the method of discovery as the determinations officer deems appropriate under the circumstances of a particular case. ( )

**207. RECORDING AND TRANSCRIPTION.**

The hearing will be recorded by electrical device. A written transcript will be produced by the department upon request of either party. A bidder requesting such transcript shall be responsible for the cost of the transcript. Any party wishing to have the hearing recorded by a qualified court reporter must request such no less than five (5) business days in advance of the date set for hearing. The requesting party shall pay the cost of the reporter's fees and shall provide a copy to the determinations officer. The non-requesting party may pay for an additional copy for its own use. ( )

**208. WITNESSES AND EVIDENCE.**

The determination officer, on his own or upon application of the bidder or the Department of Administration, may issue subpoenas for the attendance of witnesses and production of documents. ( )

**209. FINDINGS OF FACT AND CONCLUSIONS OF LAW.**

Once the matter is fully submitted, the determinations officer shall issue findings of fact, conclusions of law and preliminary order. Copies shall be provided to all parties. ( )

**210. FINAL ORDER.**

Upon receipt of the determination officer's preliminary order, the director shall issue a final order affirming, modifying, or reversing the original selection determination. Copies shall be provided to all parties. ( )

**211. MOTIONS FOR RECONSIDERATION.**

Motions for reconsideration of the determination officer's preliminary order or of the Director's final order are not allowed. ( )

**212. APPEALS.**

Appeals from the final order shall be taken in accordance with Section 67-5270, Idaho Code. ( )

**213. -- 999. (RESERVED)**

## IDAPA 40 – COMMISSION ON THE ARTS

DOCKET NO. 40-0101-1900

### NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of 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 67-5605, 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter under IDAPA 40, rules of the Commission on the Arts:

**IDAPA 40**

- 40.01.01, *Rules of the Idaho Commission on the Arts*

The rulemaking was prompted by the expiration of the rules. The Idaho Commission on the Arts needs these rules to implement grants and awards under the programs of the Commission. The Board of the Commission promulgated a subsequent rulemaking under docket no. 40-0101-1901. Negotiated rulemaking was conducted and a proposed rule published in the October 2, 2019 Administrative Bulletin. There were four public negotiated rulemaking meetings held around state. The proposed rule under docket no. 40-0101-1901 has been combined with this rulemaking as the efforts of the Board of Commissioners to simplify the rules under the Red Tape Reduction Act were duplicative. This combined rulemaking significantly shortens the rules of the Idaho Commission on the Arts, which govern the grant-making function of the agency. Additionally, minor housekeeping edits have been made to the rules.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Michael Faison, (208) 334-2119.

Dated this 29th day of October, 2019.

Michael Faison  
Executive Director  
Idaho Commission on the Arts  
The Warden's Residence  
2410 Old Penitentiary Road  
P. O. Box 83720  
Boise, ID 83720-0008  
Phone: 208-334-2119  
Fax: 208-334-2488

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5224 and 67-5291, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 40, rules of the Commission on the Arts:

**IDAPA 40**

- 40.01.01, *Rules of the Idaho Commission on the Arts*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

The Idaho Commission on the Arts needs these temporary rules to implement grants and awards under the programs of the Commission.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

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

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Michael Faison, Executive Director, at (208) 334-2119.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 8th day of May, 2019.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 40-0101-1900**

## 40.01.01 – RULES OF THE IDAHO COMMISSION ON THE ARTS

### 000. LEGAL AUTHORITY.

Section 67-5605, Idaho Code gives the Commission authority to promulgate rules necessary to the discharge of the Commission's duties. (4-6-05)

### 001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 40, Title 01, Chapter 01, "Rules of the Idaho Commission on the Arts," IDAPA 40.01.01. (4-6-05)

02. **Scope.** These rules contain the provisions for consideration for a grant or an award under the Commission's programs. (4-6-05)

### 002. (RESERVED)

### 003. ADMINISTRATIVE APPEALS.

This chapter does not provide for appeal of the administrative requirements for applicants under the Commission's programs as contested cases pursuant to the provisions of Title 67, Chapter 52, Idaho Code. The Commission provides for internal requests for reconsideration of applications under as described in these rules and program guidelines. ( )

### 004. -- 099. (RESERVED)

### 100. DEFINITIONS.

01. **Applicant.** An individual or organization meeting the criteria set forth in Section 202 of these rules, which has submitted an application for a program offered by the Commission. (4-6-05)

02. **Commission.** The Idaho Commission on the Arts. (4-6-05)

03. **Program.** The categories for the award or grant of funds or recognition by the Commission described in the program guidelines. ( )

04. **Program Guidelines.** The application, review, award, and use criteria for a program approved by the Commission. ( )

05. **Recipient.** An applicant receiving an award or grant under a Commission program. (4-6-05)

### 101. -- 199. (RESERVED)

### 200. PROGRAMS.

The Commission offers programs to stimulate and encourage the study and presentation of the arts. Provisions governing program applications, review, award, and use are set forth in these rules and in the program guidelines located on the Commission's website at <https://arts.idaho.gov/>. ( )

### 201. – 299. (RESERVED)

### 300. GENERAL PROGRAM REQUIREMENTS.

The provisions of Sections 301 through 308, of these rules, apply to each program offered by the Commission. (4-6-05)

### 301. 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 following are excluded from consideration for a grant or award: ( )

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, vocational, or religious; ( )
- k.** Projects restricted to an organization's membership; (4-6-05)
- l.** Costs for 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; (3-29-10)
- 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)

**302. 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 302.02, 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 302.03 of this rule. (4-6-05)
  - c.** A collaboration of individual artists represented by an 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 302.02 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. (4-11-19)

**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 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. (3-29-10)

**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.** The program guidelines may include a limit on the number of program applications, the amount of funding, or both for applicants and recipients of grants and awards. ( )

### **303. APPLICATIONS.**

**01. Application Forms and Contents.** The program guidelines will include the application format, length, contents, work samples, and supporting materials required by the Commission for the applicable program. The Commission may reject applications not satisfying the program guidelines. ( )

**02. Submission.** Applications shall be delivered to the Commission by the method and due date specified in the program guidelines. ( )

**03. Ownership and Return of Applications.** Upon submission, applications shall become the property of the Commission. The return of work samples is at the risk and expense of the applicant. The Commission may require pre-payment of packing and shipping costs for the return of work samples. (5-8-09)

### **304. DISQUALIFICATION.**

The Commission may disqualify an applicant for any one (1) of the following: (4-6-05)

**01. Non-Compliance with Rules or Program Guidelines.** Failure to satisfy the requirements of these rules or the requirements in the program guidelines. ( )

**02. Application Information, Samples, and Supporting Materials.** Failure to provide information requested on the application form, to submit work samples or other supporting materials required by these rules or

program guidelines, or to sign the application. ( )

**03. Prior Non-Compliance.** Failure to comply with the terms and conditions of a prior grant or award to the applicant by the Commission. ( )

**305. PROGRAM GRANTS AND AWARD AMOUNTS.**

Program grants and awards are subject to funds availability and may be awarded in any amount at the discretion of the Commission. The Commission may decline to accept applications or to issue an award or grant for any program due to a lack of funding. At the discretion of the Commission, a recipient may receive travel expense reimbursement. (4-6-05)

**306. FINAL REPORTS.**

Recipients must submit a final report to the Commission as specified in the program guidelines. ( )

**307. DELEGATION.**

The Commission may delegate its roles, responsibilities, or duties under these rules to Commission staff, artists, or community volunteers including, but not limited to, the review of program applications. (4-6-05)

**308. RECONSIDERATION OF APPLICATIONS.**

Applicants may request reconsideration of an application within thirty (30) days of a program grant or award notification issued by the Commission. Requests for reconsideration must be in writing and filed with the executive director of the Commission at the Commission's offices. The Commission considers requests for reconsideration where the applicant demonstrates a misinterpretation or misunderstanding of the application, work samples, or supporting materials. The Commission will not consider a request for reconsideration based upon incomplete or incorrect applications, work samples, or supporting materials. (4-6-05)

**309. -- 999. (RESERVED)**

## IDAPA 45 – IDAHO HUMAN RIGHTS COMMISSION

DOCKET NO. 45-0101-1900

### NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of 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 45-616, 67-5996(12), and 44-1703(2), 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapter under IDAPA 45, Rules of the Idaho Human Rights Commission:

#### **IDAPA 45**

- 45.01.01, *Rules of the Idaho Human Rights Commission*

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin, **Vol. 19-6SE, pages 6,531-6,539**. These rules cover practice before the Idaho Human Rights Commission regarding alleged discrimination or harassment as prohibited by the Idaho Human Rights Act (I.C. § 67-59), and the Discriminatory Wage Rates Based Upon Sex Act (I.C. § 44-17). These rules explain the scope of the Idaho Human Rights Commission, as well as the details of a complaint of discrimination: the parties involved, contents, issues of timing, and process. It describes reasons for dismissal, options for mediation, and potential outcomes of complainants of discrimination. Changes have been made to reduce and clarify language throughout. Unnecessary selected portions of the Americans with Disabilities Act, as amended, which are already referenced in Section 45.012, Idaho Code have been eliminated.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Lindsay Glick (208) 334-2873 x3435, [RulesReview@ihrc.idaho.gov](mailto:RulesReview@ihrc.idaho.gov).

Dated this 22nd day of October, 2019.

Brian Scigliano  
Idaho Human Rights Commission President  
317 W. Main St.  
Boise, ID 83735  
Phone: (208) 334-2873  
Fax: (208) 334-2664  
Website: <https://humanrights.idaho.gov/>

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-5996(12) Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 45, Rules of the Idaho Human Rights Commission.

**IDAPA 45**

- 45.01.01, *Rules of the Idaho Human Rights Commission* – with modifications.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rules is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rules, call Lindsay Glick at (208) 332-3570 ext. 3435.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 45-0101-1900**

**45.01.01 – RULES OF THE IDAHO HUMAN RIGHTS COMMISSION**

**000. LEGAL AUTHORITY.**

These rules are promulgated under Sections 67-5906(12) and 44-1703(2), Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title.** IDAPA 45.01.01, “Rules of the Idaho Human Rights Commission.” ( )

**02. Scope.** These rules cover practice before the Idaho Human Rights Commission (“Commission”) pertaining to alleged violations of the Idaho Human Rights Act, Title 67, Chapter 59, Idaho Code, and the Discriminatory Wage Rates Based Upon Sex Act, Title 44, Chapter 17, Idaho Code. ( )

**002. ADMINISTRATIVE APPEAL.**

There is no administrative appeal from any proceedings brought pursuant to this chapter. ( )

**003. LIBERAL CONSTRUCTION – NO CONTESTED CASES.**

These rules will be liberally construed to secure just, speedy and economical determination of all issues presented to the Commission. Unless prohibited by statute, the Commission may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. The Commission specifically does not adopt the Attorney General’s rules regarding Contested Case Proceedings. By statutory authority, the Commission does not conduct contested case proceedings. ( )

**004. DECLARATORY RULINGS.**

Any individual who petitions for a declaratory ruling on the applicability of a statute or rule administered by the Commission must substantially comply with this rule. The petition addressed to the Administrator will: ( )

**01. Identify.** Identify the petitioner and state the petitioner’s interest in the matter; (7-1-93)

**02. State.** State the declaratory ruling that the petitioner seeks; and (7-1-93)

**03. Cite.** Cite the statute, rule, or other controlling law and the factual allegations upon which the petitioner relies to support the petition. (3-29-12)

**005. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Act.** The Idaho Human Rights Act, Title 67, Chapter 59, Idaho Code. ( )

**02. Commission.** The Idaho Human Rights Commission. ( )

**03. Complainant.** Any individual who files a complaint with the Commission pursuant to the Act. (3-29-12)

**04. Complaint.** A written statement signed under oath and filed with the Commission alleging an unlawful practice under the Act. ( )

**05. EEOC.** The United States Equal Employment Opportunity Commission or any of its designated representatives. (3-29-12)

**06. Party or Parties.** The Complainant, the Respondent, the Commission, and any other individual or entity authorized by the Commission to intervene in any proceeding. (3-29-12)

**07. Respondent.** The party against whom a complaint is filed in accordance with the Act and these rules. (3-29-12)

**011. REPRESENTATION OF PARTIES.**

In proceedings before the Commission, Complainants, Respondents, witnesses and any other individuals or entities authorized by the Commission to intervene must be represented as follows: (3-29-12)

**01. An Individual.** By himself or herself, an attorney, or a family member. ( )

**02. A Partnership or limited liability company.** By a partner, member, a duly authorized employee, or an attorney. ( )

**03. A Corporation.** By an officer, a duly authorized employee, or an attorney. ( )

**04. Other Entity.** A municipal corporation, state, or local government agency, or entity, incorporated association, or non-profit organization must be represented by an officer, a duly authorized employee or an attorney. ( )

**012. INTERPRETATION OF STATE LAW.**

The Commission will interpret and construe the Act in a manner consistent with its stated purposes, Section 67-5901, Idaho Code, and the federal anti-discrimination laws described in those purposes. ( )

**013. -- 299. (RESERVED)**

**300. COMPLAINTS.**

**01. Who May File.** A complaint may be filed under the Act by a person as defined by the Act or a member of the Commission alleging an act, pattern, or practice of unlawful discrimination, or an unlawful reprisal. ( )

**02. Commission Assistance.** A Commissioner, the Administrator, or staff member may assist any Complainant in filing a complaint. The Commission reserves the right to refuse to accept a complaint for filing if, in the opinion of the Administrator, there is no reason to suspect that illegal discrimination may have occurred, or if the action is barred by the terms of Subsection 300.06.a. ( )

**03. Contents of Complaint.** A complaint should contain the following: (7-1-93)

**a.** The full name, mailing address, and telephone number (if any and if known) of the Complainant or Complainants and Respondent or Respondents; ( )

**b.** A brief written statement sufficiently clear to identify the practices and describe generally the action or practice alleged to be unlawful; (7-1-98)

**c.** The date or dates on which the alleged unlawful discriminatory practices occurred and, if the alleged unlawful practice is of a continuous nature, the dates between which said continuing practices are alleged to have occurred; (7-1-93)

**d.** A statement as to any other action which has been instituted in any other forum or agency based on the same grievance as is alleged in the complaint. (7-1-93)

**04. Medical Documentation.** Individuals filing disability discrimination complaints may need to furnish the Commission with opinions or records from duly licensed health professionals regarding (a) the nature of their disabilities, and (b) any limitations, including work restrictions, caused by the disability. Failure to provide medical reports within a reasonable period of time may be cause for dismissal of a complaint. ( )

**05. Method of Filing.** A complaint may be filed by personal delivery, mail, email, or facsimile delivered to the Commission office in Boise. (3-29-12)

**06. Time for Filing.** A complaint must be filed within one (1) year of the alleged unlawful discrimination. If the alleged unlawful practice is of a continuing nature, the date of the occurrence of said unlawful practice will be deemed to be any date subsequent to the commencement of the unlawful practice up to and including the date on which the complaint is filed if the alleged unlawful discrimination continues. ( )

**a.** The date a signed complaint is received at the Commission's office will be noted on the complaint. For purposes of compliance with Section 67-5908(4), Idaho Code, the date of notation will be the date of filing. ( )

**07. Complaints Deferred by EEOC.** Any complaint deferred to the Commission by the EEOC will be

treated, for purposes of filing requirements, according to the rules stated above. (3-29-12)

**08. Amended Complaints.** A complaint may be amended, before the determination by the Commission and at the discretion of the Administrator, to cure technical defects or omissions, or to clarify or amplify allegations by the Complainant. (3-29-12)

**09. Supplemental Complaint.** The Complainant may file a supplemental complaint setting forth actions that have allegedly occurred subsequent to the date of the original or amended complaint, and said supplemental complaint, if timely filed, will be considered together in the same proceeding with the original or amended complaint whenever practicable. (3-29-12)

**10. Withdrawal of Complaint.** Using a form provided by the Administrator, the Complainant may request that a complaint, or any part thereof, be withdrawn. A withdrawal may be granted at the Administrator's discretion, and both parties will be notified in writing. ( )

**11. Initial Actions.** When filed, a complaint will be docketed, assigned a complaint number, and assigned to the staff for mediation or investigation. (3-29-12)

**12. Service on Respondent.** The Commission will promptly serve a copy of the complaint on the Respondent by personal delivery, mail, email, or facsimile. ( )

**13. Mediation.** Upon the filing of a complaint, the Commission or its delegated staff member will endeavor to resolve the matter by informal means. Such informal means may include a mediation conference at a time and place acceptable to all participants, to clarify the positions of the parties to the complaint and explore any bases for no-fault settlement. A mediation conference is not a contested case hearing under Section 67-5209, Idaho Code. ( )

**14. Settlement.** Terms of any settlement agreed to by the parties at any time prior to a determination by the Commission on the merits of the charge will be reduced to writing in a Settlement Agreement. Upon the signing of a Settlement Agreement by all parties, the Administrator will close the case. (3-29-12)

**15. Answers.** The Respondent must answer or otherwise respond to the complaint in writing within thirty (30) days of service. A copy of Respondent's answer, including any attachments submitted, will be sent by the Commission staff to the Complainant. Upon application, the Commission may for good cause extend the time within which the answer may be filed. The answer should be fully responsive to the allegation contained in the complaint, and may provide supporting documentation and witness statements. The Commission may act on the complaint based on the information provided by the Complainant and other evidence before it if the Respondent fails to timely answer or otherwise respond. Upon application, the Commission may for good cause shown permit the Respondent to amend its answer to the complaint. Any amendments to the complaint, or any supplemental complaint, will be served upon the Respondent as promptly as possible. Answers to amended or supplemental complaints, if necessary, must be submitted within ten (10) working days of service. Time for submitting such answers may be extended by the Commission to thirty (30) days for good cause. ( )

**16. Requests for Information, Answers, and Narrative Statements.** At any time after the filing of a complaint, the Commission staff may issue to either party requests for information regarding any matter that is not privileged and that is relevant to the subject matter involved. Commission staff will determine the time allotted for answers to request for information. ( )

**17. File Briefs.** Any party to a complaint filed with the Commission may file briefs or other written memoranda setting out their position or interpretation of the law. ( )

**18. Summary of Investigation.** At the completion of the investigation, Commission staff will prepare a report containing a summary of the investigation and submit it to the Administrator to review. ( )

**19. Administrative Closure.** At any point during the handling of a particular case, the Administrator may close the case for administrative reasons that include, but are not limited to: (3-29-12)



- a. Failure of the Complainant to accept a full relief settlement offer; (7-1-93)
- b. Failure of the Complainant to cooperate with the Commission in the processing of the case, including failure to answer requests for information or failure to provide medical information as requested; (3-29-12)
- c. Inability to locate the Complainant; (7-1-93)
- d. Lack of Commission jurisdiction; ( )
- e. Filing of suit by Complainant in either state or federal court alleging the same unlawful practices as the complaint. ( )
- 20. Notification of Closure.** The Administrator will notify the parties of an administrative closure, including the grounds for the decision, as promptly as possible. (3-29-12)
- 21. Decision on the Merits.** Following approval of the summary by the Administrator, the Commission or a designated panel of at least three (3) Commissioners will determine whether probable cause (reasonable grounds) exist to believe that the Respondent has been or continues to be engaged in any unlawful discrimination as defined in the Act. ( )
- 22. No Probable Cause.** If the Commission or designated panel finds no probable cause supporting the allegations of the complaint, the investigative summary, written decision, and order of dismissal will be issued by the Administrator and sent to Complainant and Respondent, thereby closing the case. ( )
- 23. Probable Cause.** If the Commission or designated panel finds probable cause to believe unlawful discrimination has occurred, its written decision and investigative summary will be issued and served upon Complainant and Respondent. ( )
- 24. Conciliation.** After a Commission finding of probable cause, the Commission staff will endeavor through conference with the parties to redress and eliminate the possible unlawful discrimination by conciliation. ( )
- 25. Conciliation Agreement.** If conciliation is successful, a written Conciliation Agreement will be prepared that states all measures to be taken by any party, and, if appropriate, compliance provisions. When a Conciliation Agreement signed by the parties is received, the Administrator will close the case. ( )
- 26. Failure of Conciliation; Commission Court Actions.** If a Conciliation Agreement cannot be reached, the Commission, at its discretion, will determine whether to file a court action in the name of the Commission on behalf of Complainant. If it determines not to file such an action, the Administrator will close the case and notify Complainant and Respondent. ( )
- 27. Notice of Right to Sue.** When a case is closed, the Administrator will issue a notice of administrative dismissal notifying the Complainant of such dismissal and of their right to file a court action within ninety (90) days. ( )
- 28. Confidentiality of Records.** The records of the Commission are confidential according to Section 74-105(8), Idaho Code. The Commission and its employees will not reveal information about a case to nonparties except as may be necessary to conduct a full and fair investigation, or as required by law. All filings will be recorded at the Commission office where records are kept. The Administrator is the custodian of records for the Commission. ( )
- 29. Document Destruction.** The Commission may retain closed investigatory files for three (3) years from the date of closure at which time these documents may be destroyed at the discretion of the Administrator. (3-29-12)
- 301. -- 999. (RESERVED)**

## IDAPA 54 – OFFICE OF THE STATE TREASURER

DOCKET NO. 54-0000-1900

### NOTICE OF OMNIBUS RULEMAKING – ADOPTION OF PENDING RULE

[LINK: LSO Rules Analysis Memo](#)

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and full force and effect upon adoption of 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 14-532(2), 14-532(3), 14-539, and 33-5402(1), 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:

This pending rule adopts and re-publishes the following existing and previously approved and codified chapters under:

**IDAPA 54**

- 54.02.01, *Rules Governing the College Savings Program*
- 54.03.01, *Idaho Unclaimed Property Administrative Rules*

The rule making was prompted by the expiration of the rules. The Treasurer and the College Savings Program Board considered the Red Tape Reduction Act and the continued efforts to clarify and streamline the rules. Minor housekeeping edits are intended to make the rules consistent with recent statutory changes, clarify and simplify existing language, and reduce or eliminate unnecessary restrictions.

Any amendments to the text of the pending rule have been made in accordance with Section 67-5227, Idaho Code. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), [Vol. 19-6SE, pages 6674 – 6682](#).

**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:

This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Lincoln Smyser at (208) 332-2996.

Dated this 23rd day of September, 2019.

Julie A. Ellsworth, State Treasurer  
Office of the State Treasurer  
Office Hours 8 AM to 5 PM  
700 W. Jefferson, Ste. 126  
P.O. Box 83720  
Boise, ID 83720-0091  
Phone (208) 334-3200  
Fax (208) 3323-2959

**THE FOLLOWING NOTICE PUBLISHED WITH  
THE TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 14-532(2), 14-532(3), 14-539, and 33-5402(1), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**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 temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 54, rules of the Office of the State Treasurer:

**IDAPA 54**

- 54.02.01, *Rules Governing the College Savings Program*
- 54.03.01, *Idaho Unclaimed Property Administrative Rules*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. These rules provide the necessary guidance and clarification to carry out the provisions and purposes of the College Savings Program and to comply with Idaho's unclaimed property laws.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Laura Steffler at (208) 334-3200.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 54-0000-1900**

# IDAPA 54 – OFFICE OF THE STATE TREASURER

## 54.02.01 – RULES GOVERNING THE COLLEGE SAVINGS PROGRAM

### 000. LEGAL AUTHORITY.

Section 33-5402(1), Idaho Code, authorizes the State College Savings Program Board to interpret Title 33, Chapter 54, Idaho Code, in rule as may be necessary or appropriate to carry out the provisions and purposes of the College Savings Program. (4-2-08)

### 001. TITLE AND SCOPE.

01. **Title.** These rules are titled IDAPA 54.02.01, “Rules Governing the College Savings Program.” ( )

02. **Scope.** These rules interpret Title 33, Chapter 54, Idaho Code, and prescribe the conditions and standards for the Program required to be specified in rule under the provisions of Title 33, Chapter 54, Idaho Code. (4-2-08)

### 002. -- 009. (RESERVED)

### 010. DEFINITIONS.

Except where supplemented by the definitions in Section 010 of these rules, the definitions in Section 33-5401, Idaho Code, apply to terms used in these rules. (4-2-08)

01. **Account Balance Limit on Contributions.** The maximum total balance amount for all accounts established under the Program for the benefit of the same designated beneficiary as established by the State College Savings Program Board from time to time and set forth in the Program Documents, but in no event more than the amount permitted under 26 U.S.C. Section 529. (4-2-08)

02. **Account Owner.** The individual, trust, estate, partnership, association, or corporation identified as the Account Owner in the Program Documents. (4-2-08)

03. **Earnings.** The total account balance on a particular date minus the deposits to the account as of that date. (4-2-08)

04. **Program.** The College Savings Program and the Idaho College Savings Trust established under Title 33, Chapter 54, Idaho Code. (4-2-08)

05. **Program Documents.** Written documents governing the agreement between the Account Owner and the Program, including the following: the written description of terms, policies, and procedures applicable to the Program; the Program application signed by the Account Owner; the participation agreement signed by the Account Owner; and, any form provided by the Program and signed by the Account Owner. (4-2-08)

06. **Rollover Distribution.** Has the meaning set forth in 26 U.S.C. Section 529(c)(3)(C)(i). (5-3-03)

### 011. -- 029. (RESERVED)

### 030. WITHDRAWALS.

01. **Minimum Deposit Period.** Account Owners may request withdrawal of all or part of the balance in an account if the amount requested has been on deposit in the account for ten (10) days or longer. (4-2-08)

02. **Determination of Qualified and Non-Qualified Withdrawals.** The Account Owner is responsible for satisfying requirements of the United States Internal Revenue Service and the Idaho Tax Commission concerning proof that a withdrawal is a qualified withdrawal. (4-2-08)

### 031. -- 039. (RESERVED)

### 040. ACCOUNT BALANCE LIMIT ON CONTRIBUTIONS.

That portion of a deposit to an account that causes the total balance of the account, together with other accounts

established under the Program for the benefit of the same designated beneficiary, to exceed the Account Balance Limit on Contributions shall be rejected. Accounts that have reached the Account Balance Limit on Contributions may continue to accrue Earnings, and no withdrawal or Rollover Distribution will be required as the result of such accrual. In determining an account's balance for purposes of the Account Balance Limit on Contributions, only balances in accounts established under the Program shall be included. (4-2-08)

**041. -- 999. (RESERVED)**

## 54.03.01 – IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES

### 000. LEGAL AUTHORITY (RULE 000).

In accordance with Sections 14-532(2), 14-532(3), and 14-539, Idaho Code, the State Treasurer has authority to promulgate rules implementing the provisions of the Idaho Unclaimed Property Act. Section 14-501(1), Idaho Code, provides that the State Treasurer, or his or her duly authorized agent(s) or employee(s), is the administrator of the Idaho Unclaimed Property Act. ( )

### 001. TITLE AND SCOPE (RULE 001).

These rules are titled IDAPA 54.03.01, "Idaho Unclaimed Property Administrative Rules." These rules shall be construed to reach the full jurisdictional extent of the state of Idaho's authority to take custody of any unclaimed property pursuant to Section 14-503(3)(b), Idaho Code. ( )

### 002. OFFICE – OFFICE HOURS – STREET AND MAILING ADDRESSES – WEB SITE ADDRESS – PHONE AND FACSIMILE NUMBERS – E-MAIL ADDRESS (RULE 005).

**01. Main Office.** The State Treasurer's main office is located at 700 West Jefferson Street, Boise, Idaho 83702. The correspondence mailing address is P.O. Box 83720, Boise, Idaho 83720-0091. The State Treasurer's Website is <https://sto.idaho.gov>. The telephone number is (208) 334-3200 and the facsimile number is (208) 332-2959. The State Treasurer's offices are open from 8 a.m. to 5 p.m. Monday through Friday except for legal holidays. (4-11-06)

**02. Unclaimed Property's Address and Phone Numbers.** The Unclaimed Property office is located at 304 North 8th Street, Boise, Idaho 83702. The correspondence mailing address is P.O. Box 83720, Boise, Idaho 83720-9101. The telephone number is (208) 332-2942, or toll free at 1-877-388-2942. The facsimile number is (208) 332-2970. The e-mail address for the Unclaimed Property office is [UPCGeneralQuestions@sto.idaho.gov](mailto:UPCGeneralQuestions@sto.idaho.gov). (4-11-06)

### 003. UNCLAIMED EXPENSES AND CHECKS (RULE 006).

Intangible property required to be reported and delivered to the state includes outstanding or unclaimed expense and vendor checks, payroll checks, claim checks or drafts or other miscellaneous checks and drafts. The term "check" also includes items referred to as "warrants." The term "payroll" includes commissions and any other form of monetary payment to an employee in exchange for services. If the payee has disclaimed ownership, the holder must retain a confirmation letter signed by the payee stating that the amount the holder is showing for them is not due and owing and is to remain on the books of the holder for audit purposes. (4-4-13)

**01. Confirmation.** A confirmation letter by the payee which claims that the amount is due and owing to the payee should be accompanied by a facsimile instrument issued by the holder in payment of the amount due and owing before the account will be considered not abandoned. (8-24-94)

**02. Clearance.** A confirmation letter signed by the payee which states that the amount is not due and owing to the payee will be deemed sufficient to relieve the holder of the liability even if the check with which the holder paid the liability has not yet cleared the holder's bank. (7-1-98)

### 004. -- 009. (RESERVED)

### 010. DEFINITIONS (RULE 010).

The definitions in Section 14-501, Idaho Code, and the following apply to terms used in these rules: ( )

**01. Credit Memo.** Credit Memo shall include all types of refunds and credit balances unless specified elsewhere in Title 14, Chapter 5, Idaho Code. (7-1-93)

**02. Return and Tax.** Section 14-532, Idaho Code, incorporates several statutes from Title 63, Chapter 30, Idaho Code, into the Unclaimed Property Act. The words "return" and "tax" from Title 63, Chapter 30, Idaho Code, when applied to the Unclaimed Property Act are defined as follows: (4-2-08)

**a.** The word "return" means the report required by Section 14-517, Idaho Code. (4-2-08)

**b.** The word "tax" means property presumed abandoned as described by Section 14-502, Idaho Code. (4-2-08)

### 011. PROPERTY PRESUMED ABANDONED GENERAL RULE (RULE 011).

An owner's interest may be converted only with the owner's consent or by operation of law. (7-1-93)

**01. Books of Holder.** Property presumed abandoned includes items that have been converted to income, reversed back to the account upon which the check or draft was drawn or any other method used to convert the unclaimed property to an asset of the holder. The books and records of the holder shall provide presumptive evidence of the existence of such intangible property. Evidence which may rebut any presumption arising from the books and records of the holder may include stop payment orders or items that can be verified as accounting errors or which establish that the original check or draft was issued in error or reissued to the original payee. (8-24-94)

**02. Holding Period Determined by Type of Liability.** The allowable holding period shall be determined by the type of liability, or property payable, not the method of payment. For example, an uncleared cashier's check that paid wages would be reportable after one (1) year. (8-24-94)

**03. Notice.** (7-1-98)

**a.** A notice must be mailed by a holder pursuant to Section 14-517, Idaho Code, to an owner at the last known address, according to the records of the holder. (7-1-98)

**b.** Return of the notice by the Postal Service or other delivery service for any reason will create a presumption of abandonment. To overcome the presumption, the apparent owner must provide to the holder a statement that meets the requirements of Section 14-517, Idaho Code. (7-1-98)

**c.** A notice that has been signed by the apparent owner and returned to the holder shall be retained by the holder for seven (7) years after the year in which the property would have become reportable. (7-1-98)

**012. GENERAL RULES FOR TAKING CUSTODY OF UNCLAIMED PROPERTY (RULE 012).**

**01. In General.** Under the rule established by the United States Supreme Court in *Texas v. New Jersey*, 379 U.S. 674 (1965), a holder of unclaimed property must report and remit that property to the state of the owner's last known address as shown in the holder's books and records. If the holder does not have a last known address for the owner, then the holder must report and remit the property to the state where the holder is incorporated. The unclaimed property laws of the state where the property is reportable govern the holding period and what is reportable. (7-1-98)

**02. Reciprocity Agreements.** A holder located in Idaho may report and remit property reportable to another state to the administrator of the Idaho Unclaimed Property Act if there are ten (10) or fewer properties to report with a value of one thousand dollars (\$1,000) or less, and the other state allows for reciprocity. If property reportable to another state is reported and remitted to the administrator, that property will be transferred to the other state in accordance with the reciprocity agreement. (4-4-13)

**013. SERVICE CHARGES AND INTEREST (RULE 013).**

**01. Service Charges.** Funds which are reportable to the administrator are required by the act to be transmitted to the administrator. Deductions for service charges incurred after the report date are contrary to the statute requiring delivery of all reportable amounts. Holders deducting such charges will be subject to proceedings to collect the deficiency and any applicable penalty and interest. (7-1-93)

**02. Interest.** Interest accruing on reportable amounts is payable in addition to the reportable amounts, unless the holder and owner have a contract, meeting the criteria of the act and providing for cessation of interest. Funds which are received as non-interest bearing as a result of such contracts will be non-interest bearing when claimed by the owner. (7-1-93)

**03. Burden of Proof.** The burden of proof of proper notice is on the holder. The holder shall maintain a record of any notice of charges imposed or interest cessation. (7-1-93)

**04. Holding Period.** Communication from an owner of a dormant savings account stating his desire to maintain the account will restart the allowable holding period. The notice must be from the owner or the owner's duly authorized agent, provided that the agent is not also the holder. (7-1-93)



**014. CONTENTS OF SAFE DEPOSIT BOX OR OTHER SAFEKEEPING REPOSITORY (RULE 014).**

All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, which remains unclaimed by the owner for the period allowed in Section 14-516, Idaho Code, is presumed abandoned. Safekeeping repositories include boxes, lockers, and safes made available by hospitals, hotels, and transportation companies. (7-1-93)

**015. REPORT OF ABANDONED PROPERTY (RULE 015).**

**01. Incomplete Report.** A report filed with the office of the State Treasurer must meet the requirements of a valid tax return as set out in Section 14-517, Idaho Code. A report that does not meet the statutory requirements may be returned to the holder as incomplete. Any report returned to the holder as incomplete will not be treated as filed in compliance with Section 14-517, Idaho Code. (5-8-09)

**02. Voluntary Payments of Unclaimed Property.** A holder who voluntarily reports and remits any intangible property, as defined in Section 14-501, Idaho Code, with a total value of fifty dollars (\$50) or less to the administrator is relieved of all liability in accordance with Section 14-520, Idaho Code, as long as the owner name or other identifying information about the rightful owner is included in the report. Aggregate amounts of unclaimed property will not be accepted. The administrator will remit the funds to the appropriate state. (4-4-13)

**03. Underlying Shares and Cumulative Dividends.** The holder must report and remit total cumulative dividends to date, together with the stock certificate or the electronic equivalent of the stock certificate, when the certificate or equivalent is in the holder's possession, if the value of total cumulative dividends plus the value of the underlying shares belonging to the apparent owner is more than fifty dollars (\$50). (4-11-06)

**016. FILING A CLAIM WITH ADMINISTRATOR (RULE 016).**

**01. Interest.** Interest on interest bearing items will accrue from March 31, 1980, or date received, whichever is later, for a maximum of ten (10) years. No interest will be paid on items that are reported as interest bearing, unless the holder reports the rate of interest. (7-1-98)

**02. Payment of Claims - Claims Process.** (8-24-94)

**a.** Warrants will be authorized and payment made: (8-24-94)

**i.** In the name of, and mailed to, the established owner; or (8-24-94)

**ii.** To the court appointed estate administrator, administratrix, executor, executrix, or personal representative; or (8-24-94)

**iii.** To the court appointed guardian; or (8-24-94)

**iv.** In accordance with a court decree of distribution; or (8-24-94)

**v.** To an heir for distribution to other heirs; if any. (8-24-94)

**b.** Owner, Cashier's Checks: (8-24-94)

**i.** The owner of a cashier's check is presumed to be the payee unless the remitter has in his possession the cashier's check. (8-24-94)

**ii.** A payee is presumed to have received payment for a cashier's check or other instrument, and the payee must establish that the check was not cashed and that the owner is not, in fact, a holder in due course. (8-24-94)

**c.** It is the responsibility of the payee to disburse any funds or property in accordance with any existing contract or agreement. (8-24-94)

**d.** When one (1) claimant, who has proven that he has an interest in the unclaimed property, has been paid the full amount of unclaimed property held by the office of the State Treasurer, there is no requirement that the office of the State Treasurer pay other subsequent claimants. The office of the State Treasurer is not required to locate all heirs of owners of unclaimed property. (7-1-98)

**e.** If there are two (2) or more owners of unclaimed property, or the reported account is in the name of the tenants in common, or the holder report does not specify the percentage or share of co-owners, the office of the State Treasurer will pay each owner an equal share of the account. (7-1-98)

**f.** Approved utility deposit claim forms and proof of payment to the claimant shall be retained by the utility company for a period of seven (7) years from the date the claim is paid. (7-1-98)

**g.** The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the claim. (4-11-06)

**017. ADDITIONS AND PENALTIES (RULE 017).**

Penalties and interest may be applied on all delinquent amounts reported or resulting from an audit. These additions and penalties are applicable, even though the delinquent account may be remitted directly from the holder to the owner. Interest is to be computed from the date that the property should have been reported regardless of any extension of time to file granted by the administrator under Section 14-517(4), Idaho Code. A penalty may be imposed if the report is filed after the approved extension date. In the appropriate circumstances, the office of the State Treasurer may waive penalties imposed. (5-8-09)

**018. AGREEMENT TO LOCATE REPORTED PROPERTY (RULE 018).**

An approved claim for an account that the state has held less than twenty-four (24) months shall be remitted directly to the owner. (7-1-93)

**019. PAYMENT OF ABANDONED PROPERTY (RULE 019).**

All payments of abandoned property to the administrator must be paid by electronic funds transfer whenever the amount due is one hundred thousand dollars (\$100,000) or greater, in accordance with Sections 67-2026 and 67-2026A, Idaho Code. (4-5-00)

**020. WELFARE AND PENSION PLANS COVERED UNDER ERISA (RULE 020).**

**01. In General.** An obligation to pay a benefit under a welfare benefit plan normally does not arise until a demand is made by the participant (or beneficiary) which is honored (or required to be honored) by the plan administrator. With respect to pension benefit plans, an obligation to pay a benefit normally does not become fixed and certain until payment of the benefit is required under ERISA or under the plan, whichever is earlier. (7-1-98)

**02. Special Rule Relating to Unclaimed Pension Benefits.** Account balances otherwise payable to a participant or beneficiary under a qualified retirement plan are not required to be reported to or paid over to the state of Idaho if the participant or beneficiary cannot be located and the plan document provides for the treatment of the unclaimed account balance. For example, an ERISA covered pension benefit plan or trust subject to, and in compliance with, the anti-forfeiture provisions of Section 411(a), Internal Revenue Code, is not required to report or pay over to Idaho any accrued benefit that is not payable to the participant or beneficiary under a plan provision that qualifies as a "permitted forfeiture" under Section 411(a)(3), Internal Revenue Code, and Treasury Regulation Section 1.411(a)-4(b). (7-1-98)

**021. PROPERTY HELD FOR DECEASED OWNERS (RULE 021).**

If the listed owner is deceased, the claimant must provide a copy of the death certificate. Other required documentation includes, but is not limited to: (4-6-05)

**01. Property Valued at Five Thousand Dollars or More.** For property valued at five thousand dollars (\$5,000) or more, a certified copy of letters of administration or letters testamentary naming claimant as the personal representative of the listed owner, or a certified copy of the decree of distribution of the estate of the listed owner, determining claimant's entitlement to receive unclaimed property. If a court did not order the distribution of the estate,

the administrator will consider other documentation provided it is sufficient to establish the identity of the claimant as the rightful heir of the owner. (4-6-05)

**02. Property Valued at Less than Five Thousand Dollars.** For property valued at less than five thousand dollars (\$5,000), a signed affidavit executed by the claimant, stating that: (4-6-05)

**a.** The claimant is entitled to receive unclaimed property; (4-6-05)

**b.** The reason for entitlement to such property; i.e., the exact relationship with the listed owner and the basis of the entitlement; (4-6-05)

**c.** That there has been no probate of the estate of the deceased owner; (4-6-05)

**d.** That no such probate is contemplated; and (4-6-05)

**e.** That claimant will indemnify the state for any loss, including attorney fees, should another claimant assert a prior right to the property. (4-6-05)

**022. -- 999. (RESERVED)**