

# IDAHO ADMINISTRATIVE BULLETIN

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May 2, 2001 -- Volume 01-5

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# Preface

*The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.*

*State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of a rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Legal Notice. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rulemaking activities.*

## **CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN**

*The Bulletin is cited by year and issue number. For example, Bulletin 00-1 refers to the first Bulletin issued in calendar year 2000, Bulletin 01-1 refers to the first Bulletin issued in calendar year 2001, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. Example: The Bulletin published in January of 2001 is cited as Volume 01-1, the December 1999 Bulletin is cited as Volume 99-12. The March 2000 Bulletin is cited as Volume 00-3.*

## **RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE**

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

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

## **TYPES OF RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN**

*The state of Idaho administrative rulemaking process comprises five distinct activities; Proposed, Negotiated, Temporary, Pending, and Final rulemaking. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking. The following is a brief explanation of each type of administrative rule.*

### **NEGOTIATED RULE**

*Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the content of the rule. Agencies are encouraged to proceed through this informal rulemaking whenever it is feasible to do so. Publication of the text in the Administrative Bulletin by the agency is optional. This process should lead the*

rulemaking to the temporary and/or proposed rule stage.

### PROPOSED RULE

*A proposed rulemaking is an action by an agency in which the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a notice of proposed rulemaking in the Bulletin. The notice of proposed rulemaking must include:*

- a) the specific statutory authority for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation; and*
- g) the deadline for public (written) comments on the proposed rule.*

*As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule docket. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.*

### TEMPORARY RULE

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

- a) the protection of the public health, safety, or welfare; or*
- b) compliance with deadlines in amendments to governing law or federal programs; or*
- c) conferring a benefit.*

*If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule.*

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

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

*An agency may rescind a temporary rule that has been adopted and is in effect if the rule is being replaced by a new temporary rule or has been published concurrently with a proposed rulemaking that is being vacated.*

### **PENDING RULE**

*A pending rule is a rule that has been adopted by an agency under the regular rulemaking process and remains subject to legislative review before it becomes a final, enforceable rule.*

*When a pending rule is published in the Bulletin, the agency is required to include certain information in the Notice of Pending Rule. This includes:*

- a) the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective; and*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

*Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the Notice of Pending Rule is published.*

### **FINAL RULE**

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

*No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that the agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution will be adopted rejecting, amending, or modifying the rule or any part thereof. A Notice of Final Rule must be published in the Idaho Administrative Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule that has been reviewed by the legislature and has not been rejected, amended, or modified will become final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule which is final and effective may be applied retroactively, as provided in the rule.*

### **AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN**

*The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls and Twin Falls, the Lewiston City Library, East Bonner County Library, Eastern Idaho Technical College Library, Ricks College Library, and Northwest Nazarene College Library.*

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## SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone (208) 332-1820.

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

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

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

*Internet Access* - The Administrative Code and Administrative Bulletin, as well as individual chapters and dockets, are available on the Internet at the following address: <http://www2.state.id.us/adm/adminrules/>

**EDITOR'S NOTE:** All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 332-1820.

## HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

Rulemaking documents produced by state agencies and published in the *Idaho Administrative Bulletin* are organized by a numbering system. Each state agency has a two-digit identification code number known as the "IDAPA" number. (The "IDAPA" Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit "TITLE" number is assigned. There are "CHAPTER" numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:

### **IDAPA 38.05.01.060.02.c.ii.**

"IDAPA" refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.

"IDAPA 38." refers to the Idaho Department of Administration.

"05." refers to Title 05 which is the Department of Administration's Division of Purchasing.

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

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Paragraph 060.02.c.

"ii." refers to Subparagraph 060.02.c.ii.

## DOCKET NUMBERING SYSTEM

*Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0101). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:*

### "DOCKET NO. 38-0501-0101"

*"38-" denotes the agency's IDAPA number; in this case the Department of Administration.*

*"0501-" refers to the TITLE AND CHAPTER numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE 05), "Rules of the Division of Purchasing" (Chapter 01).*

*"0101" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rulemaking action of the chapter published in calendar year 2001.*

*Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:*

### "(BREAK IN CONTINUITY OF SECTIONS)"

## INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

*When making a citation to another Section or Subsection that is part of the same rule, a typical internal citation may appear as follows:*

*"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."*

*It may also be cited to include the IDAPA, Title, and Chapter number also, as follows:*

*"...in accordance with IDAPA 38.05.01.201."*

*"38" denotes the IDAPA number of the agency.*

*"05" denotes the TITLE number of the agency rule.*

*"01" denotes the Chapter number of the agency rule.*

*"201" references the main Section number of the rule that is being cited.*

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

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

## BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2001

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
01-1	January, 2001	<b>*November 15, 2000</b>	January 3, 2001	January 24, 2001
01-2	February, 2001	December 20, 2000	February 7, 2001	February 28, 2001
01-3	March, 2001	January 24, 2001	March 7, 2001	March 28, 2001
01-4	April, 2001	February 21, 2001	April 4, 2001	April 25, 2001
01-5	May, 2001	March 21, 2001	May 2, 2001	May 23, 2001
01-6	June, 2001	April 18, 2001	June 6, 2001	June 27, 2001
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01-8	August, 2001	June 20, 2001	August 1, 2001	August 22, 2001
01-9	September, 2001	July 18, 2001	September 5, 2001	September 27, 2001
01-10	October, 2001	<b>**August 22, 2001</b>	October 3, 2001	October 24, 2001
01-11	November, 2001	September 19, 2001	November 7, 2001	November 28, 2001
01-12	December, 2001	October 24, 2001	December 5, 2001	December 26, 2001

## BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2002

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
02-1	January, 2002	<b>*November 14, 2001</b>	January 2, 2002	January 23, 2002
02-2	February, 2002	December 19, 2001	February 6, 2002	February 27, 2002
02-3	March, 2002	January 23, 2002	March 6, 2002	March 27, 2002
02-4	April, 2002	February 20, 2002	April 3, 2002	April 24, 2002
02-5	May, 2002	March 20, 2002	May 1, 2002	May 22, 2002
02-6	June, 2002	April 17, 2002	June 5, 2002	June 26, 2002
02-7	July, 2002	May 22, 2002	July 3, 2002	July 24, 2002
02-8	August, 2002	June 19, 2002	August 7, 2002	August 28, 2002
02-9	September, 2002	July 24, 2002	September 4, 2002	September 25, 2002
02-10	October, 2002	<b>**August 21, 2002</b>	October 2, 2002	October 23, 2002
02-11	November, 2002	September 18, 2002	November 6, 2002	November 27, 2002
02-12	December, 2002	October 23, 2002	December 4, 2002	December 25, 2002

*\*Last day to submit proposed rulemaking before moratorium begins and last day to submit pending rules to be reviewed by the legislature.*

*\*\*Last day to submit proposed rules in order to complete rulemaking for review by legislature.*

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

**RULES APPROVED AND EXTENDED BY THE FIFTY-SIXTH LEGISLATURE  
FIRST REGULAR SESSION - 2001**

**NOTICE OF LEGISLATIVE APPROVAL OF FINAL RULES  
AND EXTENSION OF TEMPORARY RULES**

**OMNIBUS NOTICE OF LEGISLATIVE ACTION ON ADMINISTRATIVE RULES**

**AUTHORITY:** In compliance with Sections 67-5224(7), 67-5226(3), and 67-5291, Idaho Code, notice is hereby given by the Office of the Administrative Rules Coordinator that the Fifty-sixth Legislature in the First Regular Session - 2001, has approved final rules and extended temporary rules. The docket numbers of the affected rulemakings and their effective dates are listed below.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance of the notice:

The following lists of final and temporary rules include those rules which were reviewed during the 2001 first regular session of the fifty-sixth legislature of the state of Idaho. The final rules were approved by the legislature and the temporary rules were extended by the adoption of Senate Concurrent Resolution 118. Pending fee rules were approved by the adoption of Senate Concurrent Resolution 117. The lists include the docket number of the rulemaking, the volume of the Idaho Administrative Bulletin in which the text was published, and the final or temporary effective date of the rule. Those final rules acted on by concurrent resolution list the number of the concurrent resolution affecting that rulemaking.

<b>FINAL RULES</b>				
<b>Docket Number</b>	<b>Pending Rule Bulletin Publication</b>	<b>Proposed Rule Bulletin Publication</b>	<b>Effective Date</b>	<b>Action Taken By Concurrent Resolution</b>
01-0101-0001	Vol. 00-9	Vol. 00-6	3-30-01	
02-0202-9901	Vol. 01-1	Vol. 99-11	3-30-01	
02-0216-0001	Vol. 01-1	Vol. 00-1	3-30-01	Approved by SCR 117
02-0301-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
02-0303-0001	Vol. 01-1	Vol. 00-10	3-30-01	Approved by SCR 117
02-0415-0001	Vol. 01-1	Vol. 00-10	3-16-01	Partially rejected by HCR 25
02-0612-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
02-0612-0002 (Rewrite)	Vol. 01-1	Vol. 00-10	3-30-01	
02-0614-9901	Vol. 01-1	Vol. 99-11	3-30-01	
02-0617-9901	Vol. 01-1	Vol. 99-12	3-30-01	
02-0622-0001	Vol. 01-1	Vol. 00-10	3-30-01	
02-0633-9901 (Repeal)	Vol. 01-1	Vol. 99-12	3-30-01	

<b>FINAL RULES</b>				
<b>Docket Number</b>	<b>Pending Rule Bulletin Publication</b>	<b>Proposed Rule Bulletin Publication</b>	<b>Effective Date</b>	<b>Action Taken By Concurrent Resolution</b>
02-0635-9901	Vol. 01-1	Vol. 99-11	3-30-01	
02-0640-9901	Vol. 01-1	Vol. 99-12	3-30-01	Approved by SCR 117
07-0104-0001	Vol. 01-1	Vol. 00-10	3-30-01	
07-0106-0001	Vol. 01-1	Vol. 00-9	3-30-01	
07-0109-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
07-0111-0001	Vol. 01-1	Vol. 00-9	3-30-01	
07-0311-0001	Vol. 00-12	Vol. 00-9	3-30-01	
08-0102-0001 (Repeal)	Vol. 01-1	Vol. 00-10	7-1-01	
08-0103-0001 (Repeal)	Vol. 01-1	Vol. 00-10	7-1-01	
08-0104-0001	Vol. 01-1	Vol. 00-10	3-30-01	
08-0109-0001 (Repeal)	Vol. 01-1	Vol. 00-10	7-1-01	
08-0111-0001	Vol. 01-1	Vol. 00-1	3-30-01	
08-0202-0001	Vol. 01-1	Vol. 00-10	3-30-01	
08-0202-0002	Vol. 01-1	Vol. 00-10	3-30-01	
08-0203-0001	Vol. 00-12	Vol. 00-7	3-30-01	
08-0203-0002	Vol. 01-1	Vol. 00-10	3-13-01	Partially rejected by HCR 27
09-0130-0001	Vol. 00-12	Vol. 00-9	3-30-01	
09-0135-0001	Vol. 00-12	Vol. 00-9	3-30-01	
09-0150-0001	Vol. 00-12	Vol. 00-9	3-30-01	
10-0101-0001	Vol. 00-11	Vol. 00-9	3-30-01	
10-0102-0001	Vol. 00-11	Vol. 00-9	3-30-01	
10-0103-0001	Vol. 00-11	Vol. 00-9	3-30-01	
10-0104-0001	Vol. 00-11	Vol. 00-9	3-30-01	
11-0201-0001	Vol. 00-12	Vol. 00-9	3-30-01	Approved by SCR 117
11-0501-0001	Vol. 00-12	Vol. 00-9	2-20-01	Partially rejected by HCR 11
11-1001-0001	Vol. 00-9	Vol. 00-6	3-30-01	

<b>FINAL RULES</b>				
<b>Docket Number</b>	<b>Pending Rule Bulletin Publication</b>	<b>Proposed Rule Bulletin Publication</b>	<b>Effective Date</b>	<b>Action Taken By Concurrent Resolution</b>
11-1001-0002	Vol. 00-9	Vol. 00-6	3-30-01	Approved by SCR 117
11-1001-0003	Vol. 00-12	Vol. 00-9	3-30-01	Approved by SCR 117
11-1002-0001	Vol. 00-12	Vol. 00-9	3-30-01	Approved by SCR 117
11-1101-9902	Vol. 00-5	Vol. 99-12	3-30-01	
11-1102-0001	Vol. 00-12	Vol. 00-10	3-30-01	
12-0108-0001	Vol. 00-9	Vol. 00-1	3-30-01	
13-0104-0001	Vol. 01-1	Vol. 00-10	3-30-01	
13-0104-0002	Vol. 01-1	Vol. 00-10	3-30-01	
13-0108-0001	Vol. 01-1	Vol. 00-10	3-30-01	
13-0109-0001	Vol. 01-1	Vol. 00-10	3-30-01	
13-0111-0001	Vol. 01-1	Vol. 00-10	3-30-01	
13-0115-0001	Vol. 01-1	Vol. 00-10	3-30-01	
13-0115-0002	Vol. 01-1	Vol. 00-11	3-30-01	
13-0116-0001	Vol. 01-1	Vol. 00-10	3-30-01	
13-0117-0001	Vol. 01-1	Vol. 00-10	3-30-01	
13-0119-0001	Vol. 01-1	Vol. 00-10	3-30-01	
15-0101-0001	Vol. 00-10	Vol. 00-1	3-30-01	
15-0101-0002	Vol. 01-1	Vol. 00-10	3-30-01	
15-0102-9902	Vol. 01-1	Vol. 00-10	3-30-01	
15-0102-0001	Vol. 01-1	Vol. 00-10	3-30-01	
15-0103-0001	Vol. 01-1	Vol. 00-9	3-30-01	
15-0120-0001	Vol. 01-1	Vol. 00-10	3-30-01	
15-0401-0001	Vol. 01-1	Vol. 00-10	3-30-01	
16-0203-0001	Vol. 01-1	Vol. 00-10	3-30-01	
16-0208-0001	Vol. 01-1	Vol. 00-9	3-30-01	
16-0301-0001	Vol. 00-4	Vol. 00-1	3-30-01	
16-0301-0002	Vol. 01-1	Vol. 00-10	3-30-01	
16-0303-0001	Vol. 00-4	Vol. 00-1	3-30-01	
16-0304-0001	Vol. 00-12	Vol. 00-9	3-30-01	
16-0304-0002	Vol. 01-1	Vol. 00-10	3-30-01	

<b>FINAL RULES</b>				
<b>Docket Number</b>	<b>Pending Rule Bulletin Publication</b>	<b>Proposed Rule Bulletin Publication</b>	<b>Effective Date</b>	<b>Action Taken By Concurrent Resolution</b>
16-0305-0001	Vol. 00-4	Vol. 00-1	3-30-01	
16-0305-0002	Vol. 01-1	Vol. 00-10	3-30-01	
16-0306-0001	Vol. 00-11	Vol. 00-8	3-30-01	
16-0308-0001	Vol. 00-4	Vol. 00-1	3-30-01	
16-0308-0002	Vol. 00-11	Vol. 00-8	3-30-01	
16-0309-9911	Vol. 00-3	Vol. 99-10	3-30-01	
16-0309-0001	Vol. 00-9	Vol. 00-6	3-30-01	
16-0309-0002	Vol. 00-12	Vol. 00-6	3-30-01	
16-0309-0003	Vol. 00-9	Vol. 00-6	3-30-01	
16-0309-0004	Vol. 00-9	Vol. 00-6	3-30-01	
16-0309-0005	Vol. 00-12	Vol. 00-8	3-30-01	
16-0309-0006	Vol. 00-12	Vol. 00-9	3-30-01	
16-0309-0007	Vol. 00-12	Vol. 00-9	3-30-01	
16-0309-0008	Vol. 01-1	Vol. 00-10	3-30-01	
16-0309-0009	Vol. 01-1	Vol. 00-10	3-30-01	
16-0309-0010	Vol. 01-1	Vol. 00-10	3-30-01	
16-0309-0012	Vol. 01-1	Vol. 00-10	3-30-01	
16-0310-0001	Vol. 00-12	Vol. 00-6	3-30-01	
16-0405-0001 (Repeal)	Vol. 00-10	Vol. 00-7	3-30-01	
16-0409-0001 (Repeal)	Vol. 00-10	Vol. 00-7	3-30-01	
16-0410-0001	Vol. 01-1	Vol. 00-10	3-30-01	
16-0410-0002	Vol. 01-1	Vol. 00-10	3-30-01	
16-0411-9801	Vol. 00-4	Vol. 99-10	3-30-01	
16-0411-9901	Vol. 00-8	Vol. 99-11	3-30-01	
16-0412-0001	Vol. 01-1	Vol. 00-9	3-30-01	
16-0414-0001	Vol. 01-1	Vol. 00-10	3-30-01	
16-0503-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
16-0503-0002 (Rewrite)	Vol. 01-1	Vol. 00-10	3-30-01	
16-0601-0001	Vol. 01-1	Vol. 00-8	3-30-01	

<b>FINAL RULES</b>				
<b>Docket Number</b>	<b>Pending Rule Bulletin Publication</b>	<b>Proposed Rule Bulletin Publication</b>	<b>Effective Date</b>	<b>Action Taken By Concurrent Resolution</b>
16-0602-0001 (Rewrite)	Vol. 01-1	Vol. 00-9	3-30-01	
16-0602-0002 (Repeal)	Vol. 01-1	Vol. 00-9	3-30-01	
17-0405-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
17-0701-0001	Vol. 01-1	Vol. 00-10	3-30-01	
17-0702-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
17-0703-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
17-0704-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
18-0130-0001	Vol. 01-1	Vol. 00-10	3-30-01	
18-0130-0002 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
18-0144-0001	Vol. 01-1	Vol. 00-10	7-1-01	Partially rejected by SCR 117
18-0147-9901	Vol. 00-9	Vol. 99-12	3-30-01	
18-0160-0001	Vol. 01-1	Vol. 00-10	3-30-01	
21-0101-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
21-0101-0002 (Rewrite)	Vol. 01-1	Vol. 00-10	3-30-01	
21-0102-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
21-0102-0002 (Rewrite)	Vol. 01-1	Vol. 00-10	3-30-01	
21-0103-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
21-0103-0002 (Rewrite)	Vol. 01-1	Vol. 00-10	3-30-01	
21-0104-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
22-0101-0001	Vol. 01-1	Vol. 00-10	3-30-01	
22-0107-0001 (Repeal)	Vol. 00-11	Vol. 00-8	3-30-01	

<b>FINAL RULES</b>				
<b>Docket Number</b>	<b>Pending Rule Bulletin Publication</b>	<b>Proposed Rule Bulletin Publication</b>	<b>Effective Date</b>	<b>Action Taken By Concurrent Resolution</b>
22-0107-0002 (Rewrite)	Vol. 00-11	Vol. 00-8	3-30-01	
22-0114-0001	Vol. 00-11	Vol. 00-8	3-30-01	
23-0101-0001	Vol. 00-12	Vol. 00-10	3-30-01	Approved by SCR 117
24-0101-0001	Vol. 00-12	Vol. 00-10	3-30-01	
24-0301-0001	Vol. 00-12	Vol. 00-10	3-30-01	Approved by SCR 117
24-0401-0001	Vol. 01-1	Vol. 00-10	3-30-01	
24-0401-0002	Vol. 01-1	Vol. 00-10	3-30-01	
24-0501-0001	Vol. 00-12	Vol. 00-10	3-30-01	Approved by SCR 117
24-1001-0001	Vol. 00-12	Vol. 00-10	3-30-01	Approved by SCR 117
24-1501-0001	Vol. 00-12	Vol. 00-10	3-30-01	
24-1701-0001	Vol. 00-12	Vol. 00-10	3-30-01	Approved by SCR 117
24-1801-0001	Vol. 00-12	Vol. 00-10	3-30-01	Approved by SCR 117
25-0101-0001	Vol. 00-12	Vol. 00-9	3-30-01	Partially rejected by SCR 117
26-0120-0001	Vol. 01-1	Vol. 00-10	3-30-01	
26-0130-0001	Vol. 01-1	Vol. 00-10	3-30-01	
27-0101-0001	Vol. 00-10	Vol. 00-6	3-30-01	
27-0101-0002	Vol. 01-1	Vol. 00-10	3-30-01	
27-0101-0003	Vol. 01-1	Vol. 00-10	2-27-01	Rejected by SCR 103
29-0102-0001	Vol. 00-8	Vol. 00-6	3-30-01	
31-0101-0001	Vol. 00-12	Vol. 00-10	3-30-01	
31-1101-0001	Vol. 01-1	Vol. 00-10	3-30-01	
31-2101-0001	Vol. 01-1	Vol. 00-10	3-30-01	
31-4101-0001	Vol. 01-1	Vol. 00-10	3-30-01	
31-7103-0001	Vol. 00-12	Vol. 00-9	3-30-01	
33-0101-0001 (Repeal)	Vol. 00-12	Vol. 00-6	3-30-01	

<b>FINAL RULES</b>				
<b>Docket Number</b>	<b>Pending Rule Bulletin Publication</b>	<b>Proposed Rule Bulletin Publication</b>	<b>Effective Date</b>	<b>Action Taken By Concurrent Resolution</b>
33-0101-0002 (Rewrite)	Vol. 00-12	Vol. 00-6	3-30-01	
33-0101-0003	Vol. 00-12	Vol. 00-10	3-30-01	
33-0101-0004	Vol. 00-12	Vol. 00-10	3-30-01	Approved by SCR 117
35-0101-0001	Vol. 00-12	Vol. 00-10	3-30-01	
35-0102-0001	Vol. 00-12	Vol. 00-10	3-30-01	
35-0103-0001	Vol. 00-12	Vol. 00-9	3-30-01	
35-0103-0002	Vol. 00-12	Vol. 00-9	3-30-01	
35-0103-0003	Vol. 00-12	Vol. 00-9	3-30-01	
35-0103-0004	Vol. 00-12	Vol. 00-9	3-30-01	
35-0104-0001	Vol. 00-12	Vol. 00-10	3-30-01	
35-0105-0001	Vol. 00-12	Vol. 00-10	3-30-01	
35-0108-0001	Vol. 00-12	Vol. 00-10	3-30-01	
35-0201-0001	Vol. 00-12	Vol. 00-10	2-23-01	Approved by SCR 104
36-0101-0001	Vol. 00-12	Vol. 00-9	3-30-01	
39-0104-0001 (Repeal)	Vol. 01-1	Vol. 00-10	3-30-01	
39-0202-0001	Vol. 01-1	Vol. 00-9	3-30-01	
39-0271-0001	Vol. 01-1	Vol. 00-10	3-30-01	
39-0313-0001	Vol. 01-1	Vol. 00-10	3-30-01	
39-0316-0001	Vol. 01-1	Vol. 00-10	3-30-01	
39-0317-0001	Vol. 01-1	Vol. 00-10	3-30-01	
39-0319-0001	Vol. 01-1	Vol. 00-10	3-30-01	
39-0341-9901	Vol. 00-10	Vol. 12-99	3-30-01	
39-0342-0001	Vol. 01-1	Vol. 00-10	3-30-01	Partially rejected by SCR 117
39-0347-0001	Vol. 01-1	Vol. 00-10	3-30-01	
44-0101-0001	Vol. 00-12	Vol. 00-8	3-30-01	
45-0101-0001	Vol. 01-1	Vol. 00-10	3-30-01	
46-0101-0001	Vol. 00-11	Vol. 00-7	3-30-01	

<b>FINAL RULES</b>				
<b>Docket Number</b>	<b>Pending Rule Bulletin Publication</b>	<b>Proposed Rule Bulletin Publication</b>	<b>Effective Date</b>	<b>Action Taken By Concurrent Resolution</b>
46-0101-0002	Vol. 00-11	Vol. 00-7	3-30-01	Approved by SCR 117
47-0101-0001	Vol. 01-1	Vol. 00-10	3-30-01	
47-0102-0001	Vol. 01-1	Vol. 00-10	3-30-01	
47-0103-0001	Vol. 01-1	Vol. 00-10	3-30-01	
48-0101-0001	Vol. 00-12	Vol. 00-10	3-30-01	
50-0101-9903	Vol. 00-9	Vol. 99-12	3-30-01	
52-0102-0001	Vol. 01-1	Vol. 00-10	3-30-01	
55-0103-0001 (Repeal)	Vol. 00-12	Vol. 00-7	3-30-01	
55-0103-0002	Vol. 00-12	Vol. 00-10	3-30-01	
58-0100-0002	Vol. 01-1	Vol. 00-8	3-30-01	
58-0101-9902	Vol. 01-1	Vol. 00-9	3-30-01	
58-0101-9903	Vol. 00-12	Vol. 00-8	3-30-01	
58-0101-9905	Vol. 01-3	Vol. 01-1	3-30-01	Approved by SCR 117
58-0101-0001	Vol. 00-12	Vol. 00-8	3-30-01	
58-0101-0003	Vol. 00-11	Vol. 01-3	3-30-01	
58-0102-0001	Vol. 00-12	Vol. 00-6	3-30-01	
58-0102-0002	Vol. 01-1	Vol. 00-9	3-30-01	
58-0105-0001	Vol. 01-1	Vol. 00-9	3-30-01	
58-0108-0001	Vol. 00-12	Vol. 00-7	3-30-01	
58-0112-0001	Vol. 01-1	Vol. 00-9	3-30-01	
58-0122-0001	Vol. 01-1	Vol. 00-9	3-30-01	
59-0103-9903	Vol. 00-7	Vol. 99-12	3-30-01	
59-0103-0001	Vol. 00-12	Vol. 00-7	3-30-01	
59-0105-9901	Vol. 00-7	Vol. 99-12	3-30-01	
59-0106-0001	Vol. 00-12	Vol. 00-8	3-30-01	
59-0107-9901	Vol. 00-7	Vol. 99-12	3-30-01	

<b>TEMPORARY RULES EXTENDED BY THE ADOPTION OF SENATE CONCURRENT RESOLUTION 118</b>			
<b>Docket No</b>	<b>Temporary Rule Published</b>	<b>Temporary Effective Date</b>	<b>Action Taken By Concurrent Resolution</b>
02-0403-0001	Vol. 10-00	8-22-00	
11-0401-0001	Vol. 01-1	1-1-01	
11-0402-0002	Vol. 01-1	11-1-00	
16-0304-0101	Vol. 01-1	9-22-96; 12-1-00; 2-1-01	
16-0305-0101	Vol. 01-1	1-1-01	
16-0305-0102	Vol. 01-1	1-1-01	
16-0308-0101	Vol. 01-1	11-1-00; 7-1-01	
16-0309-0011	Vol. 00-10	10-1-00	
16-0311-0101	Vol. 01-1	7-1-00	
16-0506-0101	Vol. 01-1	1-1-01	
16-0506-0102	Vol. 01-1	1-1-01	
18-0154-0101	Vol. 01-1	1-1-01	
18-0169-0101	Vol. 01-1	7-1-00	
18-0170-0101	Vol. 01-1	1-1-01	
18-0172-0101	Vol. 01-1	1-1-01	
18-0173-0101	Vol. 01-1	1-1-01	
58-0101-0101	Vol. 01-1	11-10-00	
58-0101-0102	Vol. 01-1	11-10-00	
58-0109-0001	Vol. 00-12	10-19-00	
59-0108-0101	Vol. 01-1	12-1-00	

**ASSISTANCE ON QUESTIONS:** For assistance on questions concerning this notice, contact Karen Gustafson at (208) 332-1821 or Dennis Stevenson at (208) 332-1822.

DATED this 30th day of April, 2001.

Rick Thompson  
Administrative Rules Coordinator  
P.O. Box 83720  
Boise, ID 83720-0004  
PHONE: (208) 332-1820  
FAX: (208) 334-2395

**HOUSE CONCURRENT RESOLUTION NO. 11**

LEGISLATURE OF THE STATE OF IDAHO  
Fifty-sixth Legislature - First Regular Session - 2001

IN THE HOUSE OF REPRESENTATIVES  
HOUSE CONCURRENT RESOLUTION NO. 11  
BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

A CONCURRENT RESOLUTION  
STATING FINDINGS OF THE LEGISLATURE AND REJECTING CERTAIN RULES OF THE  
IDAHO STATE POLICE GOVERNING ALCOHOL BEVERAGE CONTROL  
AND RELATING TO THE DEFINITION OF A RESTAURANT.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that certain rules of the Idaho State Police governing alcohol beverage control and relating to the definition of a restaurant are not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that all of the changes made in certain rules of the Idaho State Police governing alcohol beverage control and relating to the definition of a restaurant, adopted as pending rules under Docket number 11-0501-0001, be, and the same are hereby rejected and declared null, void and of no force and effect.

**Statement of Purpose / Fiscal Impact**

STATEMENT OF PURPOSE  
RS 10760

This concurrent resolution would reject pending rules changes of the Idaho State Police governing alcohol beverage control and relating to the definition of a restaurant. This rejection is made at the request of the Idaho State Police. The effect of this resolution, if adopted by both houses, would be to prevent the agency rules changes from going into effect.

FISCAL IMPACT

This resolution would have no fiscal impact.

Signed: February 20, 2001

CONTACT:  
Representative Debbie Field  
332-1000

## HOUSE CONCURRENT RESOLUTION NO. 25

LEGISLATURE OF THE STATE OF IDAHO  
Fifty-sixth Legislature - First Regular Session - 2001

IN THE HOUSE OF REPRESENTATIVES  
HOUSE CONCURRENT RESOLUTION NO. 25  
BY AGRICULTURAL AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION  
STATING FINDINGS OF THE LEGISLATURE AND REJECTING CERTAIN RULES OF THE  
IDAHO DEPARTMENT OF AGRICULTURE GOVERNING BEEF CATTLE FEEDING  
OPERATIONS AND RELATING TO ADMINISTRATIVE APPEALS, DEFINITIONS,  
NUTRIENT MANAGEMENT, DESIGNATION OF BEEF CATTLE FEEDING  
OPERATIONS AND AUTHORITY TO INSPECT.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that certain rules of the Idaho Department of Agriculture governing beef cattle feeding operations and relating to administrative appeals, definitions, nutrient management, designation of beef cattle feeding operations and authority to inspect, are not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 02.04.15, Section 003, in its entirety, relating to administrative appeals; Section 007, subsection 09, relating to manure, subsection 17, relating to process wastewater, and subsection 18, relating to runoff; Section 030, in its entirety, relating to nutrient management; Section 040, in its entirety, relating to designation of beef cattle feeding operations; and Section 050, subsection 03, relating to authority to inspect, rules of the Idaho Department of Agriculture governing beef cattle feeding operations, adopted as pending rules under Docket number 02-0415-0001, be, and the same are hereby rejected and declared null, void and of no force and effect.

### Statement of Purpose / Fiscal Impact

#### STATEMENT OF PURPOSE RS 11123

This concurrent resolution would reject pending rules of the Idaho Department of Agriculture governing beef cattle feeding operations and relating to administrative appeals, definitions, nutrient management, designation of beef cattle feeding operations and authority to inspect. The effect of this resolution, if adopted by both houses, would be to prevent the particular agency rules that are being rejected from going into effect.

#### FISCAL NOTE

This concurrent resolution has no fiscal impact.

Signed: March 16, 2001

#### CONTACT:

Rep. Doug Jones, Chair  
Agricultural Affairs Committee  
332-1137

## HOUSE CONCURRENT RESOLUTION NO. 27

LEGISLATURE OF THE STATE OF IDAHO  
Fifty-sixth Legislature - First Regular Session - 2001

IN THE HOUSE OF REPRESENTATIVES  
HOUSE CONCURRENT RESOLUTION NO. 27  
BY EDUCATION COMMITTEE

A CONCURRENT RESOLUTION STATING FINDINGS OF THE LEGISLATURE AND  
REJECTING CERTAIN RULES OF THE IDAHO STATE BOARD OF  
EDUCATION GOVERNING THOROUGHNESS AND RELATING  
TO STATE ACHIEVEMENT STANDARDS.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that certain rules of the Idaho State Board of Education governing thoroughness and relating to state achievement standards are not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 08.02.03, Section 004, subsection 02, rules of the Idaho State Board of Education governing thoroughness and relating to incorporation by reference of 9-12 State Achievement Standards, adopted as a pending rule under Docket number 08-0203-0002, be, and the same is hereby rejected and declared null, void and of no force and effect.

BE IT FURTHER RESOLVED by the members of the First Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that sections of material incorporated by reference under IDAPA 08.02.03, Section 004, subsection 01, rules of the Idaho State Board of Education governing thoroughness and relating to incorporation by reference of K-8 State Achievement Standards, adopted as a pending rule under Docket number 08-0203-0002, and as they appear in the "Idaho State Board of Education K-8 Achievement Standards," approved October 19, 2000 by the Idaho State Board of Education as follows:

Section 547 (Achievement Standards - Mathematics Grade 4), the entire section, as it appears on pages 26 and 27;

Section 588 (Achievement Standards - Mathematics Grade 8), the entire section, as it appears on pages 50 and 51;

Section 687 (Achievement Standards - Geography), the entire section, as it appears on pages 102 and 103;

Section 863 (Achievement Standards - Reading Grade 4), the entire section, as it appears on pages 202 and 203;

Section 864 (Achievement Standards - Communications: Listening, Speaking, and Viewing Grade 4), the entire section, as it appears on pages 203 and 204;

Section 897 (Performance Standards - Grade 8 Reading), the entire section, as it appears on pages 253 and 254; and

Section 898 (Achievement Standards - Grade 8 Communication: Listening, Speaking and Viewing), the entire section, as it appears on pages 254, 255 and 256; be, and the same are hereby rejected and declared null, void and of no force and effect.

BE IT FURTHER RESOLVED by the members of the First Regular Session of the Fifty-sixth Idaho Legislature, the House of Representatives and the Senate concurring therein, that the Idaho State Board of Education shall publish notice of the rejected material pursuant to Section 67-5291, Idaho Code, and shall remove the rejected language only from the "Idaho State Board of Education K-8 Achievement Standards," approved October 19, 2000, by the Idaho State Board of Education, which document has been incorporated by reference under IDAPA 08.02.03, Section 004, subsection 01, rules of the Idaho State Board of Education governing thoroughness, adopted as a pending rule under Docket number 08-0203-0002, and approved with the understanding that the Idaho State Board of Education intends to begin the rulemaking process to publish the revised "Idaho State Board of Education K-8 Achievement Standards" in the Idaho Administrative Code.

**Statement of Purpose / Fiscal Impact****STATEMENT OF PURPOSE  
RS10844**

This concurrent resolution would reject certain agency administrative rules that would have incorporated by reference the State Board of Education's achievement standards for grades 9-12, leaving those already approved standards as they are now published in the Idaho Administrative Code. It also would reject certain sections of the State Board of Education's achievement standards for grades K-8, while allowing the remaining sections to go into effect and to be incorporated by reference, but with the understanding that the State Board will begin rulemaking to place K-8 standards in the Idaho Administrative Code.

**FISCAL IMPACT**

This concurrent resolution has no fiscal impact.

Signed: March 13, 2001

**CONTACT:**

Rep. Fred Tilman  
208-332-1148

Rep. Todd Hammond  
208-332-1148

**SENATE CONCURRENT RESOLUTION NO. 103**

LEGISLATURE OF THE STATE OF IDAHO  
Fifty-sixth Legislature - First Regular Session - 2001

IN THE SENATE  
SENATE CONCURRENT RESOLUTION NO. 103  
BY HEALTH AND WELFARE COMMITTEE

A CONCURRENT RESOLUTION STATING FINDINGS OF THE LEGISLATURE  
AND REJECTING A CERTAIN RULE OF THE IDAHO BOARD OF PHARMACY  
RELATING TO LISTING OF THE DRUG CARISOPRODOL.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that certain rules of the Idaho Board of Pharmacy relating to listing of the drug carisoprodol are not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 27.01.01, Section 446 and all related subsequent renumbering of the following sections, rules of the Idaho Board of Pharmacy relating to listing of the drug carisoprodol, adopted as a pending rule under Docket number 27-0101-0003, be, and the same are hereby rejected and declared null, void and of no force and effect.

**Statement of Purpose / Fiscal Impact**

STATEMENT OF PURPOSE  
RS 10699

At the request of the Idaho Board of Pharmacy, this concurrent resolution would reject a pending rule of the Idaho Board of Pharmacy relating to listing of the drug Carisoprodol. The effect of this resolution, if adopted by both houses, would be to prevent the agency rule from going into effect.

FISCAL NOTE

This resolution would have no fiscal impact.

Signed: February 27, 2001

CONTACT:  
Senator Robbi King-Barrutia  
208-332-1347

**SENATE CONCURRENT RESOLUTION NO. 104**

LEGISLATURE OF THE STATE OF IDAHO  
Fifty-sixth Legislature - First Regular Session - 2001

IN THE SENATE  
SENATE CONCURRENT RESOLUTION NO. 104  
BY LOCAL GOVERNMENT AND TAXATION COMMITTEE

A CONCURRENT RESOLUTION STATING LEGISLATIVE FINDINGS AND APPROVING  
A CERTAIN ADMINISTRATIVE RULE OF THE IDAHO STATE TAX COMMISSION  
THAT IMPOSES A FEE OR CHARGE, CONCERNING PENALTIES  
AND RELATING TO DISHONORED CHECKS.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature pursuant to Section 67-5224, Idaho Code, must approve certain administrative rules that impose a fee or charge by adoption of a concurrent resolution before the rules become effective; and

WHEREAS, the Idaho State Tax Commission inadvertently has submitted a pending rule concerning penalties and relating to dishonored checks as a nonfee rule, making it necessary to consider the pending rule separately as a pending fee rule for approval by both houses of the legislature by concurrent resolution before the pending fee rule can go into effect by law; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that a certain administrative rule of the Idaho State Tax Commission that imposes a fee or charge concerning penalties and relating to dishonored checks, IDAPA 35.02.01, Section 400, adopted as a pending rule under Docket Number 35-0201-0001, pursuant to the Administrative Procedure Act during the prior calendar year, and submitted through the Office of Rules Coordinator to the Legislature for review during the 2001 legislative session, be, and the same is hereby approved.

**Statement of Purpose / Fiscal Impact**

STATEMENT OF PURPOSE  
RS 10903

Under Idaho Code, Section 67-5224, the Legislature must approve certain administrative rules that propose a fee or charge through a concurrent resolution passed by both houses. This year, the Idaho State Tax Commission inadvertently submitted an agency rule concerning fees for dishonored checks as a non-fee rule, making it necessary to consider the pending rule separately as a pending fee rule for approval by both houses in order for the rule to go into effect. This resolution would approve the agency rule and make clear that the fees to be charged by the Commission can go into effect by law.

FISCAL NOTE

This concurrent resolution has no fiscal impact.

Signed: February 23, 2001

CONTACT:

Sen. Jerry Thorne, Chairman  
Local Government & Taxation Committee  
332-1333

## SENATE CONCURRENT RESOLUTION NO. 117

LEGISLATURE OF THE STATE OF IDAHO  
Fifty-sixth Legislature - First Regular Session - 2001

IN THE SENATE  
SENATE CONCURRENT RESOLUTION NO. 117  
BY STATE AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION STATING LEGISLATIVE FINDINGS AND APPROVING  
ADMINISTRATIVE RULES THAT IMPOSE A FEE OR CHARGE, WITH EXCEPTIONS,  
AND REJECTING CERTAIN AGENCY RULES THAT ARE NOT APPROVED.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature pursuant to Section 67-5224, Idaho Code, must approve certain administrative rules that impose a fee or charge by adoption of a concurrent resolution before the rules become effective; and

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that certain rules of the Idaho Department of Insurance, relating to extraordinary exam fees and overpayments, and certain rules of the Outfitters and Guides Licensing Board concerning definitions of unethical/unprofessional conduct relating to failure to pay taxes owed to a governmental entity, and certain rules of the Idaho Transportation Department governing use of state right-of-way relating to full control of access, conduits under the roadway, review and approval of construction plans, trees at the edge of the traveled way, rocks at the edge of the traveled way, and permit application fees, are not consistent with legislative intent; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that all pending administrative rules or portions of pending administrative rules adopted by state agencies pursuant to the Administrative Procedure Act during the prior calendar year, and submitted through the Office of Rules Coordinator to the Legislature for review during the 2001 legislative session, which impose a fee or charge, be, and the same are approved, with the exception of the following enumerated pending fee rules:

(1) IDAPA 18.01.44, Section 020, Subsection 05 g., Rules of the Idaho Department of Insurance relating to extraordinary exam fees, and Section 051, Rules of the Idaho Department of Insurance relating to overpayments, adopted as pending fee rules under Docket number 18-0144-0001; and

(2) IDAPA 25.01.01, Section 002, Subsection 45 j., Rules of the Outfitters and Guides Licensing Board concerning definitions of unethical/unprofessional conduct relating to failure to pay taxes owed to a governmental entity adopted as a pending fee rule under Docket number 25-0101-0001.

(3) IDAPA 39.03.42, Rules of the Idaho Transportation Department governing use of state right-of-way, Section 500, Subsection 03, relating to full control of access and Subsection 05 b., relating to conduits under the roadway and review and approval of construction plans, Section 600, Subsection 04 g., relating to trees at the edge of the traveled way, and Subsection 04 h., relating to rocks at the edge of the traveled way, and Section 700, Subsection 02, relating to permit application fees, adopted as pending fee rules under Docket number 39-0342-0001.

BE IT FURTHER RESOLVED by the members of the First Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that IDAPA 18.01.44, Section 020, Subsection 05 g., Rules of the Idaho Department of Insurance relating to extraordinary exam fees, and IDAPA 18.01.44, Section 051, Rules of the Idaho Department of Insurance relating to overpayments, adopted as pending fee rules under Docket number 18-0144-0001, IDAPA 25.01.01, Section 002, Subsection 45 j., Rules of the Outfitters and Guides Licensing Board concerning definitions of unethical/unprofessional conduct relating to failure to pay taxes owed to a governmental entity adopted as a pending fee rule under Docket number 25-0101-0001, and IDAPA 39.03.42, Rules of the Idaho Transportation Department governing use of state right-of-way, Section 500, Subsection 03, relating to full control of access and Subsection 05.b., relating to conduits under the roadway and review and approval of construction plans, Section 600, Subsection 04.g., relating to trees at the edge of the traveled way and Subsection 04.h., relating to rocks at the edge of the traveled way, and Section 700, Subsection 02, relating to permit application fees, adopted as pending fee rules under Docket number 39-0342-0001, be, and the same are hereby

rejected and not approved and thereby pursuant to Section 67-5291, and Section 67-5224, Idaho Code, are declared null, void and of no force and effect.

BE IT FURTHER RESOLVED by the members of the First Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that rule provisions imposing fees or charges that were not submitted through the Office of Rules Coordinator for legislative review or that otherwise are not included and approved in this concurrent resolution shall be null, void and of no force and effect unless approved by adoption of a separate concurrent resolution by both houses of the Legislature as provided in Section 67-5224, Idaho Code.

### **Statement of Purpose / Fiscal Impact**

#### STATEMENT OF PURPOSE RS 11179

By statute, agency rules adopted under the Administrative Procedure Act that impose a fee or charge do not go into effect unless approved by concurrent resolution by both houses of the legislature. This concurrent resolution would approve agency fee or charge rules that have been adopted during the last calendar year, and which were submitted through the Office of the Rules Coordinator to the legislature for review during the current legislative session, with exceptions for those fee rules that were not approved by one committee that reviewed them.

#### FISCAL NOTE

Adoption of this concurrent resolution, in and of itself, would have no fiscal impact upon any state or local government funds, beyond the scope or impact of the individual rules themselves.

Signed: March 30, 2001

#### CONTACT:

Carl Bianchi  
Director of Legislative Services  
334-2475

**SENATE CONCURRENT RESOLUTION NO. 118**

LEGISLATURE OF THE STATE OF IDAHO  
Fifty-sixth Legislature - First Regular Session - 2001

IN THE SENATE  
SENATE CONCURRENT RESOLUTION NO. 118  
BY STATE AFFAIRS COMMITTEE

A CONCURRENT RESOLUTION STATING LEGISLATIVE FINDINGS AND APPROVING AND  
EXTENDING TEMPORARY RULES REVIEWED BY THE LEGISLATURE.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature by statute must approve temporary rules by adoption of a concurrent resolution approving the rule if the temporary rule is to remain in effect beyond the end of the current legislative session; and

WHEREAS, the expiration of temporary rules would occasion additional expense to state agencies in readopting and republishing temporary rules needed to conduct state business; and

WHEREAS, the Legislature finds that it is in the public interest to adopt this resolution.

NOW, THEREFORE, BE IT RESOLVED by the members of the First Regular Session of the Fifty-sixth Idaho Legislature, the Senate and the House of Representatives concurring therein, that all temporary rules adopted by state agencies pursuant to the Administrative Procedure Act and submitted to the Legislature at the Legislature's request through the Office of Rules Coordinator for review during the 2001 legislative session, and all temporary rules previously approved and extended by concurrent resolution adopted in a prior regular session of the Idaho Legislature, be, and the same are approved.

BE IT FURTHER RESOLVED that a temporary rule or partial temporary rule approved by this concurrent resolution shall remain in effect until it expires by its own terms or by operation of law or until it is replaced by a final rule, but in no event shall a temporary rule remain in effect beyond the conclusion of the Second Regular Session of the Fifty-sixth Idaho Legislature unless it is further extended by adoption of a concurrent resolution by both houses of the Legislature. Temporary rules which were not submitted to the Legislature for review during the 2001 legislative session shall expire by operation of statute upon adjournment of the First Regular Session of the Fifty-sixth Idaho Legislature, unless approved by adoption of a separate concurrent resolution by both houses of the Legislature.

**Statement of Purpose / Fiscal Impact**

STATEMENT OF PURPOSE  
RS 11235

Temporary rules adopted by state agencies under the Administrative Procedure Act, by statute expire at the end of the current legislative session. This concurrent resolution would approve and extend agency temporary rules beyond the current session.

FISCAL NOTE

Adoption of this concurrent resolution, in and of itself, would have no fiscal impact upon any state or local government funds or accounts. By adopting this concurrent resolution, the Legislature avoids having necessary agency rules expire, which would occasion additional expense to state agencies for readopting and republishing temporary rules needed to conduct state business.

Signed: March 30, 2001

CONTACT:  
Carl Bianchi, Director of Legislative Services  
334-2475

**IDAPA 02 - IDAHO STATE DEPARTMENT OF AGRICULTURE**  
**02.04.15 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING**  
**BEEF CATTLE ANIMAL FEEDING OPERATIONS**

**DOCKET NO. 02-0415-0001**

**NOTICE OF FINAL RULE**

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the legislature has taken action by concurrent resolution on this rulemaking under Docket No. 02-0415-0001. This agency action for this final rulemaking is authorized pursuant to Section(s) 22-101 and 22-4903, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the final rule and a statement of any change between the text of the proposed rule and text of the final rule with an explanation for any changes.

Pursuant to House Concurrent Resolution No. 25, Docket No. 02-0415-0001 is not consistent with legislative intent and is being amended accordingly. In accordance with the concurrent resolution the following Sections are hereby rejected and are being deleted from the final rule:

Section 003 in its entirety;  
Section 007, Subsection 09, Subsection 17, and Subsection 18;  
Section 030 in its entirety;  
Section 040 in its entirety;  
Section 050, Subsection 03.

In accordance with discussions before the germane committees of the legislature, the Idaho State Department of Agriculture will publish concurrently with this Notice of Final Rule, a Notice of Temporary and Proposed Rule to rewrite the rejected Sections and Subsections of Docket No. 02-0415-0001.

The original text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 00-10, October 4, 2000, pages 61 through 65. The pending rule was published in the Idaho Administrative Bulletin, Volume 01-1, January 3, 2001, pages 27 through 30.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact John Chatburn 332-8540.

DATED this 9th Day of April, 2001.

Patrick A. Takasugi, Director  
Idaho State Department of Agriculture  
2270 Old Penitentiary Road  
PO Box 790  
Boise, ID 83701-0790  
Phone No. (208) 332-8540  
Fax No. (208) 334-4062

**IDAPA 02 – IDAHO STATE DEPARTMENT OF AGRICULTURE**  
**02.04.15 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING**  
**BEEF CATTLE ANIMAL FEEDING OPERATIONS**

**DOCKET NO. 02-0415-0101**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rules is April 18, 2001.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 22-101 and 22-4903, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 16, 2001.

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

This temporary and proposed rule provides authority to regulate nutrient management practices on beef cattle animal feeding operations; requires new beef cattle animal feeding operations to have an approved nutrient management plan before beginning operations; requires existing beef cattle animal feeding operations to submit a nutrient management plan to the Director of the Idaho State Department of Agriculture no later than January 1, 2005; provides authority to designate certain animal feeding operations as beef cattle animal feeding operations; provides authority to conduct inspections of beef cattle animal feeding operations; provides definitions and provides for administrative appeals.

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

The rule is necessary to protect the public health, safety or welfare; confers a benefit.

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811 negotiated rulemaking was not conducted because this rule is necessary to rewrite the sections of IDAPA 02.04.15 that were rejected by the legislature in HCR 25 to ensure enforcement of Title 22, Chapter 49, Idaho Code, the Beef Cattle Environmental Control Act.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 23, 2001.

DATED this 9th day of April, 2001.

Patrick A. Takasugi, Director  
Idaho State Department of Agriculture  
P.O. Box 790  
Boise, Idaho 83701-0790  
(208) 332-8500  
(208) 334-4062 FAX

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0415-0101

003. ~~(RESERVED)~~ **ADMINISTRATIVE APPEAL.**

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (4-18-01)T

(BREAK IN CONTINUITY OF SECTIONS)

007. **DEFINITIONS.**

The following definitions shall apply in the interpretation and enforcement of this chapter. (3-16-01)

01. **Animal.** Bovidae, ovidae, suidae, equidae, captive cervidae, captive antilocapridae, camelidae, and ratiidae. (3-16-01)

02. **Animal Feeding Operation.** A lot or facility where slaughter or feeder cattle are confined and fed for a total of forty-five (45) days or more during any twelve (12) month period and crops, vegetation forage growth, or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. (3-16-01)

03. **Beef Cattle Animal Feeding Operation.** An animal feeding operation, as defined in 40 CFR Section 122.23 and 40 CFR part 122, appendix B, which confines slaughter or feeder cattle. (3-16-01)

04. **Best Management Practices.** Practices as defined in Title 22, Chapter 49, Idaho Code or other practices, techniques, or measures that are determined to be a cost-effective and practicable means of preventing or reducing pollutants from point or non-point sources to a level compatible with state environmental goals. (3-16-01)

05. **Compost.** A biologically stable material derived from the biological decomposition of organic matter. (3-16-01)

06. **Director.** The Director of the Idaho State Department of Agriculture. (3-16-01)

07. **Discharge.** Release of process wastewater or manure from a beef cattle animal feeding operation to waters of the state. (3-16-01)

08. **Land Application.** The spreading on, or incorporation of manure or process wastewater into the soil. (3-16-01)

09. **Manure.** Animal excrement generated on a beef cattle animal feeding operation that may also contain bedding, spilled feed, water, or soil. (4-18-01)T

~~09~~10. **Modified.** Structural changes and alterations to the wastewater storage containment facility, which would require increased storage or containment capacity or such changes, which would alter the function of the wastewater storage or containment facility. (3-16-01)

101. **Non-Compliance.** A practice or condition that causes an unauthorized discharge or a practice or condition that if left uncorrected will cause an unauthorized discharge. (3-16-01)

112. **Nutrient Management Plan.** A plan prepared in conformance with the nutrient management standard or other equally protective standard for managing the amount, source, placement, form, and timing of the land application of nutrients or soil amendments. (3-16-01)

**123. Nutrient Management Standard.** The 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. (3-16-01)

**134. Operate.** Confining and feeding slaughter or feeder cattle in the state of Idaho. (3-16-01)

**145. Operator.** The person who has power or authority to manage, or direct, or has financial control of a beef cattle animal feeding operation. (3-16-01)

**156. Person.** Any individual association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state, or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties. (3-16-01)

**17. Process Wastewater.** Any water generated on a beef cattle animal feeding operation that comes into contact with manure, compost, bedding, or feed, and runoff. (4-18-01)T

**18. Runoff.** Any precipitation that comes into contact with manure, compost, bedding, or feed on a beef cattle animal feeding operation. (4-18-01)T

**169. Slaughter Or Feeder Cattle.** All cattle except those cattle located on a dairy farm permitted by the Idaho State Department of Agriculture pursuant to IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste." (3-16-01)

**1720. Unauthorized Discharge.** A discharge of process wastewater or manure from a beef cattle animal feeding operation to surface waters of the state that is not authorized by a National Pollutant Discharge Elimination System permit issued by the United States Environmental Protection Agency, or the release of process wastewater or manure from a beef cattle animal feeding operation, to waters of the state, that does not meet the requirements of the act or water quality standards. (3-16-01)

**1821. Wastewater Storage And Containment Facility.** That portion of a beef cattle animal feeding operation where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds. (3-16-01)

**1922. Waters Of The State.** All surface and ground water located within the boundaries of the state or boundary streams, rivers and lakes except for private waters as defined in Title 42, Chapter 2, Idaho Code. (3-16-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**022. -- 0429. (RESERVED).**

**030. NUTRIENT MANAGEMENT.**

Each beef cattle animal feeding operation shall submit a nutrient management plan for land owned or controlled by the operator, which conforms to the nutrient management standard and addresses odors generated in excess of odors normally associated with raising beef cattle in Idaho, to the Director for approval. (4-18-01)T

**01. Existing Beef Cattle Animal Feeding Operations.** Beef cattle animal feeding operations that are operating on or before July 1, 2000 shall submit a nutrient management plan to the director for approval no later than January 1, 2005. The Director shall respond to or approve such plan in writing within forty-five (45) days of submission. (4-18-01)T

**02. New Beef Cattle Animal Feeding Operations.** Any new beef cattle animal feeding operation commencing operations after July 1, 2000 shall not operate prior to the Director's approval of a nutrient management plan. The Director shall respond to or approve such plan within forty-five (45) days of submission. (4-18-01)T

**03. Implementation of a Nutrient Management Plan.** Failure to implement an approved nutrient management plan is a violation of these rules. (4-18-01)T

**031. -- 039. (RESERVED).**

**040. DESIGNATION OF BEEF CATTLE ANIMAL FEEDING OPERATIONS.**

**01. Designation Of Animal Feeding Operations.** The director, on a case by case basis, may designate any animal feeding operation that confines slaughter or feeder cattle as a beef cattle animal feeding operation if, after an inspection, the Director determines that the animal feeding operation is a significant contributor of pollution to waters of the state. The designation shall be provided to the operator of the animal feeding operation in writing setting forth the basis for the Director's decision. When designated, these operations shall be considered existing beef cattle animal feeding operations. The Director shall consider the following factors when making such designation: (4-18-01)T

a. Size of the animal feeding operation and the amount of manure, process wastewater, and runoff reaching waters of the state; (4-18-01)T

b. Location of the animal feeding operation relative to waters of the state; (4-18-01)T

c. Means of conveyance of manure, process wastewater, and runoff into waters of the state; and (4-18-01)T

d. Slope, vegetation, precipitation, and other factors affecting the likelihood or frequency of discharge of manure, process wastewater, or runoff into waters of the state. (4-18-01)T

**02. Redesignation Of A Beef Cattle Animal Feeding Operation.** Upon request by the operator, the Director shall redesignate a facility previously designated under Section 040, if the facility is no longer a significant contributor of pollution to waters of the state. Such redesignation shall be provided to the operator in writing. (4-18-01)T

**041. -- 049. (RESERVED).**

**050. AUTHORITY TO INSPECT.**

The Director or his designee is authorized to inspect any animal feeding operation that confines slaughter or feeder cattle in accordance with Title 22, Chapter 49, Idaho Code, to ensure compliance with these rules. The Director shall comply with the operation's biosecurity protocol so long as the protocol does not inhibit reasonable access to: (3-16-01)

**01. Entry.** Enter at reasonable times upon the premises of an operation or where records are kept. (3-16-01)

**02. Access To Records.** Have access to and copy any records that must be kept in accordance with these rules. (3-16-01)

**03. Sample Or Monitor.** Sample substances or monitor parameters directly related to these rules. (3-16-01)

**04. Inspections.** Inspect any facility or land application site owned or controlled by the operator. (4-18-01)T

**IDAPA 08 - IDAHO STATE BOARD OF EDUCATION**

**08.02.03 - RULES GOVERNING THOROUGHNESS**

**DOCKET NO. 08-0203-0002**

**NOTICE OF FINAL RULE**

**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 33-105(1) and 33-107(3), 33-116, and 33-1612, Idaho Code and Article IX, Section 2 of the Idaho Constitution.

**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.

Pursuant to House Concurrent Resolution No. 27, IDAPA 08.02.03, Section 004.02, has been determined to be inconsistent with legislative intent and rejected. Docket No. 08-0203-0002 is being amended accordingly by deleting the rejected subsection from the rule.

Also, pursuant to House Concurrent Resolution No. 27, certain sections of material incorporated by reference under IDAPA 08.02.03, Section 004.01, are being amended accordingly by deleting the rejected sections from the incorporated document. The rejected sections, as they appear in the "Idaho State Board of Education K-8 State Achievement Standards," approved on October 19, 2000, are as follows:

Section 547 (Achievement Standards - Mathematics Grade 4), the entire section, as it appears on pages 26 and 27;  
Section 588 (Achievement Standards - Mathematics Grade 8), the entire section, as it appears on pages 50 and 51;  
Section 687 (Achievement Standards - Geography), the entire section, as it appears on pages 102 and 103;  
Section 863 (Achievement Standards - Reading Grade 4), the entire section, as it appears on pages 202 and 203;  
Section 864 (Achievement Standards - Communications: Listening, Speaking, and Viewing Grade 4), the entire section, as it appears on pages 203 and 204;  
Section 897 (Performance Standards - Grade 8 Reading), the entire section, as it appears on pages 253 and 254; and  
Section 898 (Achievement Standards - Grade 8 Communication: Listening, Speaking and Viewing), the entire section, as it appears on pages 254, 255 and 256;

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Randi McDermott at (208) 334-2270.

DATED this 29th day of March, 2001.

Randi McDermott  
Idaho State Board of Education  
PO Box 83720  
Boise, ID 83720-0037  
(208) 334-2270 phone  
(208) 334-2632 fax

**IDAPA 11 - IDAHO STATE POLICE**  
**11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL**  
**DOCKET NO. 11-0501-0001**  
**NOTICE OF FINAL RULE**

**AUTHORITY:** In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that the Legislature has rejected proposed rulemaking under the above docket. IDAPA 11.05.01, Section 010 will revert back to the original text prior to publication of this docket. The agency action for final rulemaking is authorized pursuant to Title 67, Chapter 30, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the final rule and a statement of any change between the text of the proposed rule and text of the final rule with an explanation for any changes.

Pursuant to House Concurrent Resolution No. 11, in Docket No. 11-0501-0001, Subsection 010.04, has been determined to be inconsistent with legislative intent and rejected. Docket No. 11-0501-0001 is being amended accordingly by rejecting Subsection 010.04 from the final rule and reverting it back to the original text. The codified text of the Subsection 010.04 is being printed here as prescribed in HCR 11.

The original text of the proposed rule was published in the September 6, 2000, Administrative Bulletin, Volume 00-9, pages 61 through 63. The pending rule was published in the December 6, 2000, Administrative Bulletin, Volume 00-12, page 25.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the final rule, contact Lonnie Gray at (208) 884-7060.

DATED this 9th day of April, 2001.

Margaret P. White  
Deputy Attorney General  
Idaho State Police  
P.O. Box 700  
Meridian, ID 83680-0700  
(208) 884-7050  
(208) 884-7090 (FAX)

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**THE FOLLOWING IS THE TEXT OF THE FINAL RULE AS AMENDED BY HCR 11**

***SECTION 010***

**010. DEFINITIONS.**

***Subsection 010.04***

**04. Restaurant.** The term Restaurant, as defined by Section 23-942(c), Idaho Code, is further defined as an establishment maintained, advertised and held out to the public, where individually priced meals are prepared and regularly served to the public, primarily for on-premise consumption. The establishment must also have a dining

room or rooms, and the number, and type of employees normally used in the preparing, cooking and serving of meals. The establishment must be able to demonstrate to the satisfaction of the Director, through recordkeeping, that no more than fifty percent (50%) of the gross revenues from the sale of food and beverages is derived from the sale of alcoholic beverages. (4-5-00)

**IDAPA 18 - DEPARTMENT OF INSURANCE**  
**18.01.44 - SCHEDULE OF FEES, LICENSES AND MISCELLANEOUS CHARGES**  
**DOCKET NO.18-0144-0001**  
**NOTICE OF FINAL RULE**

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the legislature has taken action by concurrent resolution on this rulemaking under Docket No. 18-0144-0001. This agency action for this final rulemaking is authorized pursuant to Sections 41-211 and 41-401, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the final rule and a statement of any change between the text of the pending rule and text of the final rule with an explanation for any changes.

Pursuant to Senate Concurrent Resolution No. 117, Docket No. 18-0144-0001 is not consistent with legislative intent and is being amended accordingly. In accordance with the concurrent resolution the following changes are being made to the final rule:

The changes proposed by adding new Subsection IDAPA 18.01.44.020.05.g. relating to extraordinary exam fees and the proposed change to current Section 051 relating to overpayments are null and void and of no force and effect.

The original text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 00-10, October 4, 2000, pages 434 through 437. The pending rule was published in the Idaho Administrative Bulletin, Volume 01-1, January 3, 2001, pages 170 and 171.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Robert C. Murphy, at (208) 334-4250.

DATED this 5th day of April, 2001.

Mary L. Hartung, Director  
Idaho Department of Insurance  
700 West State Street - 3rd Floor  
P.O. Box 83720  
Boise, ID 83720-0043  
Telephone No. (208) 334-4250

**IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD**  
**25.01.01 - RULES GOVERNING THE OUTFITTERS AND GUIDES LICENSING BOARD**  
**DOCKET NO. 25-0101-0001**  
**NOTICE OF FINAL RULE**

**EFFECTIVE DATE:** This rule is effective March 30, 2001.

**AUTHORITY:** In compliance with Sections 67-5224, 67-5291 and 67-5292, Idaho Code, notice is hereby given that the Idaho legislature has taken action by concurrent resolution on this rulemaking under Docket No. 25-0101-0001 of the Outfitters and Guides Licensing Board. This agency action is authorized pursuant to Section 36-2107(b) and 36-2107(d), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the final rules:

By the adoption of and pursuant to Senate Concurrent Resolution, SCR 117, Subsection 002.45.j. has been rejected by the legislature and therefore will not take effect.

The original text of the proposed rules was published in the September 2000 Idaho Administrative Bulletin, Volume 99-9, pages 140 through 148.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the final rules, contact Dean Sangrey, Executive Director, (208) 327-7380 - FAX 327-7382.

DATED this 27th day of March, 2001.

Dean Sangrey  
Executive Director  
Outfitters and Guides Licensing Board  
1365 North Orchard  
Suite 172  
Boise, Idaho 83706  
(208) 327-7380  
FAX (208) 327-7382

**IDAPA 27 - BOARD OF PHARMACY**  
**27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY**  
**DOCKET NO. 27-0101-0003**  
**NOTICE OF REJECTION OF RULEMAKING**

**AUTHORITY:** In compliance with Sections 67-5224, Idaho Code, notice is hereby given that the Idaho legislature has rejected the rulemaking adopted by the Board of Pharmacy under Docket No. 27-0101-0003. This action is authorized pursuant to Sections 67-5291 and 67-5292, Idaho Code and by the adoption of Senate Concurrent Resolution 103.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of this Notice of Rejection of Rulemaking:

In compliance with Section 67-5291, Idaho Code, notice is hereby given that by Senate Concurrent Resolution No. 103, effective February 27, 2001, the rulemaking published under Docket No. 27-0101-0003, "Rules of the Idaho Board of Pharmacy," is rejected and is null, void and of no force and effect. The rejection affects Section 446, relating to listing of the drug carisoprodol, and all related subsequent renumbering of Sections that followed.

The text of the proposed rule was published in the October 4, 2000, Idaho Administrative Bulletin, Volume No. 00-10, pages 582 through 586. The pending rule published in the January 3, 2001, Idaho Administrative Bulletin, Volume 01-1, page 238.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the final rules, contact: Richard K. Markuson, Director, (208) 334-2356 - FAX 334-3536.

DATED this 2nd day of April, 2001.

Richard K. Markuson, Director  
Idaho Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P.O. box 83720  
Boise, ID 83720-0067  
Telephone: (208) 334-2356  
Facsimile: (208) 334-3536

**IDAPA 35 - STATE TAX COMMISSION**  
**35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES**  
**DOCKET NO. 35-0103-0101**  
**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** This temporary rule is effective January 1, 2001.

**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 regular proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 63-105A and 63-3624, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 16, 2001.

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

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

Property Tax Rule 609 - Property Exempt From Taxation - Residential Improvements is being amended as a temporary and proposed rule to clarify that the term "owner" includes a partner of a limited partnership, member of a limited liability company or a shareholder of a corporation. A provision of how to certify and apply for the exemption is being added.

Property Tax Rule 700 - Definitions For Property Tax Reduction Benefit is being amended to state there will be no reduction to benefits if the claimant is a partner of a limited partnership, a member of a limited liability company, or shareholder of a corporation, unless some other shared ownership exists.

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

Statutory timing of the program requires the rule be adopted as a temporary rule.

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because nature of the rule is conferring a benefit and the time constraints of having the benefits in effect for the year 2001.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 23, 2001.

DATED this 28th day of March, 2001.

Alan Dornfest, Tax Policy Specialist Supervisor  
State Tax Commission  
800 Park, Plaza IV, P.O. Box 36  
Boise, ID 83722  
(208) 334-7530  
FAX (208) 334-7844

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0101

**609. PROPERTY EXEMPT FROM TAXATION RESIDENTIAL IMPROVEMENTS (Rule 609).**

Section 63-602G, Idaho Code.

(1-1-01)T

**01. Homeowner's Exemption.** This exemption shall also be known as the homeowners exemption.

(3-23-94)

**02. Residential Improvements.** Primary dwelling place means the claimant's dwelling place on January 1 of the year for which the claim is made. The primary dwelling place is the single place where a claimant has his true, fixed, and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates as his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided on January 1 and:

(3-23-94)

a. At least six (6) months during the prior year; or

(3-23-94)

b. The majority of the time the claimant owned the dwelling if owned by the claimant less than one (1) year; or

(3-23-94)

c. The majority of the time after the claimant first occupied the dwelling if occupied by the claimant less than one (1) year.

(3-23-94)

**03. Requirements.** If these requirements are not met, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration to occupy the dwelling. A care facility is a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded as defined in Section 39-1301, Idaho Code, or a facility as defined in Section 39-3302(15), Idaho Code, or a dwelling other than the one (1) upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection, and security.

(3-23-94)

**04. Owner.** "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate. "Owner" shall also include any person who as grantor created a revocable or an irrevocable trust and named himself or herself as beneficiary of that trust. "Owner" shall not include any person that otherwise occupies property as beneficiary of a trust. "Owner" includes a vendee in possession under a land sale contract. On the tax rolls for 2001 and later, "owner" shall also include a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation.

~~(3-23-94)~~(1-1-01)T

**05. Partial Ownership.** Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption, however, the amount of the exemption shall be reduced to a proportion commensurate with the proportion of partial ownership. Partial ownership, for purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person. The combined community property interests of both spouses shall not be considered partial ownership. The proportional reduction required under this subsection shall not apply to community property interests. Additionally, on tax rolls for 2001 and later, there is no reduction to the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation unless any interests are shared by any entity other than the limited partnership, limited liability company or corporation.

~~(3-23-94)~~(1-1-01)T

**06. Certification.** Beginning January 1, 2001, as an owner, the applying partner of a limited partnership, member of a limited liability company or shareholder of a corporation must certify to the county assessor that he has not made application for this exemption in any other county or on any other residential improvement in this county. Although more than one (1) residential improvement owned by the same partnership, limited liability

company or corporation may qualify for this exemption, each partner, member or shareholder shall not receive this exemption on more than one (1) residential improvement. (1-1-01)T

**067. Determination Of Residency.** The State Tax Commission may release pertinent information from any Idaho income tax return to the county assessor and the county board of equalization for the sole purpose of providing one indicator of eligibility for the homeowner's exemption. According to Section 63-3077(d), Idaho Code, this information is confidential and is not subject to public disclosure. (7-1-98)

**(BREAK IN CONTINUITY OF SECTIONS)**

**700. DEFINITIONS FOR PROPERTY TAX REDUCTION BENEFIT (Rule 700).** (1-1-01)T  
Section 63-701, Idaho Code.

**01. Blind.** A person for whom there exists the medically documented opinion that the person is functionally blind as defined in Section 67-5402(2), Idaho Code. (3-30-01)

**02. Burden Of Proof.** See Rule 610 of these rules. (3-30-01)

**03. Claimant's Income.** All income defined in Section 63-701(5), Idaho Code, that is received by either spouse is included in household income even if one (1) spouse lives in a medical care facility or otherwise lives outside the home. (3-30-01)

**04. Fatherless/Motherless Child.** Fatherless/Motherless child for purposes of Section 63-701(1), Idaho Code, means a child judicially determined to be abandoned as defined by Sections 16-1602 or 16-2005, Idaho Code, by the child's male/female parent or a child whose male/female parent has had his parental rights terminated pursuant to court order or is deceased. (3-30-01)

**05. Proportional Reduction Of Benefits.** Proportional reduction of benefits pursuant to 63-701(8), Idaho Code, is required for partial ownership of otherwise eligible property. (3-30-01)

a. There is no reduction of benefits for community property with no other interests. Additionally, on the tax rolls for 2001 and later, there is no reduction for the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation unless any interests are shared by any entity other than the limited partnership, limited liability company or corporation. ~~(3-30-01)~~(1-1-01)T

b. In other cases, benefits are to be calculated by applying the claimant's property tax reduction benefit to the eligible net taxable value of the claimants property. This value is determined by multiplying gross market value times the claimant's percent of ownership and subtracting the claimant's share of the homeowner's exemption. For example:

Land Market Value	\$50,000
Improvement Market Value	\$150,000
Gross Market Value	\$200,000
Maximum Allowable Homeowner's Exemption (Based on Improvement Market Value)	<\$50,000>
Percent of Ownership of Claimant	50%
Claimant's Share of Land Market Value (Land Market Value x Percentage of Ownership)	\$25,000
Claimant's Share of Improvement Market Value (Improvement Market Value x Percentage of Ownership)	\$75,000

Claimant's Share of Homeowner's Exemption (Maximum Allowable Homeowner's Exemption x Percentage of Ownership)	<\$25,000>
Claimant's Eligible Net Taxable Value equals Land plus Improvement less Homeowner's Exemption ( $\$25,000 + \$75,000 - \$25,000 = \$75,000$ )	\$75,000

In this example, the claimant's property tax reduction benefit will be applied to the tax on his/her net taxable market value of seventy-five thousand dollars (\$75,000). (3-30-01)

**06. Physician.** Physician shall mean a licensed physician, as defined in Section 54-1803(3), Idaho Code. (3-30-01)

**07. Widow/Widower.** A person who has not remarried after the death of their spouse or whose subsequent marriage has been annulled. (3-30-01)

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.42 - RULES GOVERNING HIGHWAY RIGHT-OF-WAY ENCROACHMENTS**  
**ON STATE RIGHTS-OF-WAY**

**DOCKET NO. 39-0342-0001**

**NOTICE OF FINAL RULE**

**EFFECTIVE DATE:** This rule is effective March 30, 2001.

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the 2001 Legislature has taken action by concurrent resolution on this rulemaking.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the final rule and a statement of any change between the text of the proposed rule and the text of the final rule with an explanation for any changes.

Pursuant to Senate Concurrent Resolution 117, proposed changes to IDAPA 39.03.42 adopted by the agency as pending rules, Subsections 500.03, 500.05.b., 600.04.g., 600.04.h. and 700.02 only, have been determined to be inconsistent with legislative intent and are rejected. Docket No. 39-0342-0001 is being amended accordingly by deleting the rejected subsections from the final rule.

The original text of the proposed rule was published in the October 4, 2000 Idaho Administrative Bulletin, Volume 00-10, pages 723 through 751. The pending rule was published in the January 3, 2001 Idaho Administrative Bulletin, Volume 01-1, pages 253 through 256.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Steve Holland, Transportation Staff Engineering Assistant, (208) 334-8565.

DATED this 21st day of March, 2001.

Linda L. Emry, Management Assistant  
Office of Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
P. O. Box 7129  
Boise ID 83707-1129  
Phone: 208-334-8810  
FAX: 208-334-8195

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.42 - RULES GOVERNING HIGHWAY RIGHT-OF-WAY ENCROACHMENTS**  
**ON STATE RIGHTS-OF-WAY**

**DOCKET NO. 39-0342-0101**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** This temporary rule is effective March 30, 2001.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 40-310(9), 40-311(1), 40-312(3), 40-313(2), 49-202(19), (23), and (28), 49-221, and 67-5203, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 16, 2001.

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

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: It was determined that certain text included in Docket 39-0342-0001, presented to the 2001 Legislature, was not consistent with legislative intent, and also needed clarification. Those subsections have been revised to reflect legislative intent and provide clarification, based on recommendations from the legislators and industry representatives.

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

One of the subsections rejected in Docket 39-0342-0001 addressed the placement of telecommunications and other utilities along interstate highways. Without this subsection in place, there is no provision for such placement. Telecommunications has been identified by the Governor and the Legislature to be of particular importance in the statewide development of wideband fiber optics, strengthening communications in rural areas and promoting e-commerce and internet technology.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule-making is based on testimony by industry representatives to the House and Senate Transportation Committees of the 2001 Legislative Session and recommendations from those same representatives as well as members of those same committees.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Lance Johnson, Traffic Engineer, 334-8557, or Steve Holland, Transportation Staff Engineering Assistant, 334-8565.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 23, 2001.

DATED this 21st day of March, 2001.

Linda L. Emry, Management Assistant  
Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
3311 West State Street  
P O Box 7129  
Boise ID 83707-1129  
Phone – 208-334-8810  
FAX – 208-334-8195

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0342-0101**

**200. APPLICATIONS AND PERMITS.**

**01. Required.** To help preserve the highways as constructed and provide responsible growth where allowed, any individual, business, or other entity planning to add, modify, relocate, maintain, or remove an encroachment on the State highway or use highway right-of-way for any purpose other than normal travel, shall obtain a permit to use State highway right-of-way. ~~Use~~ Encroachment permits approved by the Department are required for private and public approaches (driveways and streets), utilities and other miscellaneous encroachments.

~~(3-30-01)~~(3-30-01)T

**02. Work Prior To Approval.** No activities shall be allowed on State highway rights-of-way until an approved permit has been issued by the Department or a delegated local highway agency. In an emergency, that effects highway operations and motorist safety, approval may be given by the Department or a delegated highway agency in advance of processing the permit.

(3-30-01)

**03. Local Highway Agency Authority.** ~~The~~ Department may delegate authority to a local highway agency to issue permits to use State highway rights-of-way if adequate local ordinances are in place and are enforceable. The Department shall retain final approval for all permits issued by a local highway agency on the State Highway System.

~~(3-30-01)~~(3-30-01)T

**04. Administration.** Permitting process shall be administered by the Department or their delegated representative, within their respective jurisdiction. Department District offices are located in Coeur d'Alene, Lewiston, Boise, Shoshone, Pocatello and Rigby.

(3-30-01)

**05. Application Forms.** All applications to use State highway right-of-way shall be made on approved Department forms.

(3-30-01)

**06. Applicant To Be Informed.** Applicants shall be informed of Department policies and regulations concerning encroachments and shall pay for any changes or adjustments of highway features or fixtures brought about by actions, operations or requirements caused by the applicant.

(3-30-01)

**07. Encroachment Conflicts.** Conflicts between proposed encroachments and highway maintenance or construction projects, utilities or other encroachments shall be resolved before an application is submitted.

(3-30-01)

**08. Review Process.** The review process shall commence on the day the applicant signs the application and makes payment of the initial application fee(s). If the Department determines there is insufficient documentation to process the application, the process will be placed on hold until such documentation has been received. All applications for encroachment permits shall be reviewed and evaluated for current access control requirements, deed restrictions, safety and capacity requirements, design and location standards or an approved variance of these standards, environmental impacts, location conflicts, long-range planning goals and the need for an appraisal ~~of access where the State has acquired access rights~~. A time table for the review process is available at the Idaho Transportation Department Headquarters Office or any Highway District Office.

~~(3-30-01)~~(3-30-01)T

**09. Department Held Harmless.** In accepting an approved permit, the permittee, their successors and assigns, shall agree to hold harmless and defend, regardless of outcome, the State from the expenses of and against all suits or claims, including costs, expenses and attorney fees that may be incurred by reason of any act or omission, neglect or misconduct of the permittee or its contractor in the design, construction, maintenance or operation of the encroachment.

(3-30-01)

**10. Permit Requirements.** All permits shall be accompanied by approved traffic control plans, design details and specifications that address dust control, site reclamation, environmental protection and work site safety. The Applicant shall be required to submit ~~for approval~~ construction plans stamped by an engineer licensed in the

state of Idaho to the Department for approval.

~~(3-30-01)~~(3-30-01)T

**11. Void Application.** Once an application is submitted, if the permitting process is not completed within one (1) year as a result of inactivity on the applicant's part, the application shall be considered void. (3-30-01)

**12. Denial of Application.** Applications for encroachments not allowed shall be verbally denied. If the applicant insists on proceeding with the application, the non-refundable fee shall be accepted and a permit denial issued by certified letter. Upon receipt of the denial letter, the applicant can appeal the Department's action.(3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**500. LOCATION AND DESIGN STANDARDS FOR UTILITIES.**

**01. Approved Permit Required.** An approved right-of-way encroachment permit shall be required for all utility encroachments, including new utility installation and the relocation, maintenance, modification or removal of existing utility facilities prior to the initiation of any work within the State highway right-of-way. (3-30-01)

**02. Utility Locations.** Final utility locations shall be identified on the appropriate roadway and bridge plans. (3-30-01)

**03. Interstate Highways.** Longitudinal placement of telecommunication utilities in areas of Type V access control (Interstate), as addressed in the 1996 Telecommunications Act, shall require a permit approved by the Department for the installation of utilities. Longitudinal placement of all other utilities in areas of Type V access control (Interstate) shall require a utility permit approved by both the Department and the FHWA. (3-30-01)T

**034. Utility Maintenance And Emergency Repair.** Right-of-way ~~use~~ encroachment permits, approved annually by the Department, shall be required for all maintenance or emergency repairs of utility facilities. The utility shall notify the Department in advance of any work that affects the traveling public. ~~(3-30-01)~~(3-30-01)T

**045. Conduits Under The Roadway.** (12-26-90)

a. Conduits crossing under highways that carry utility structures including, but not limited to, water, sewage, chemicals, electrical wire, and communications cables, shall be installed by jacking, driving or boring unless trenching can be justified. Acceptable justification would only be poor soil conditions, such as rock or boulders, inadequate room for a boring pit, or conflicts with other utility lines which cannot be located accurately (gas lines, multiple telephone conduits). If gravel or boulders prevent boring or jacking on the first attempt, at least two (2) other documented attempts should be made at different locations before contacting the District about an alternate installation method, unless the utility can provide documentation from a qualified agency or engineer that indicates the strata is not conducive to boring, driving or jacking. Normally installation of conduit point six (0.6) meters/ twenty-four (24) inches or less outside diameter should be attempted by jacking, driving or boring before consideration of trenching as an alternative. (3-30-01)

b. The applicant is required to submit for review and approval, a set of construction plans stamped by an engineer licensed in the state of Idaho. The plans shall show all details on casing, conduits, bulkheads and placement, vertical and horizontal dimensions of the pit and shoring, method of installing the conduit, drainage, void filling, and traffic control devices. Sluicing or jetting shall not be allowed. If required by the Engineer, casings should be installed from highway right-of-way line to highway right-of-way line to allow for servicing of the utility facility with minimal disruption to traffic flows. Casings should be installed wherever feasible to allow for placement of multiple conduits. (3-30-01)T

~~b~~c. Conduits under interstate highways shall not be installed by cutting through the pavement under any circumstance. (3-30-01)

**056. Conduits Attached To Structure.** Conduits attached to any structure shall meet the following

- requirements: (3-30-01)
- a. A set of construction plans showing all details and calculations of a crossing or proposed attachments, stamped by an engineer licensed in the state of Idaho, shall be submitted to the Department for review and approval at the time of permit application. A copy of the existing structure plans shall also be submitted that are marked to show the proposed structure modifications. (3-30-01)
  - b. Reinforcement shall be located prior to the placement of threaded inserts to suspend utilities using a method approved by the Department. (3-30-01)
  - c. All attaching hardware shall be galvanized or coated as directed by the Department. (3-30-01)
  - d. Bolts for the attachment clamps shall be a minimum of twelve point seven (12.7) mm/one-half (1/2) inches in diameter. (3-30-01)
  - e. Slip joints shall be installed as directed by the Department. (3-30-01)
  - f. Drilling of any bridge structural element shall be prohibited without approval from the Department. (3-30-01)
  - g. Utilities shall be attached to bridges in an interior bay, unless interior attachment is not practical due to the bridge diaphragm or end beam construction. (3-30-01)
  - h. Placing brackets along or around the structure rail is prohibited. (3-30-01)
  - i. The installing utility shall relinquish exclusive rights to future use of a hanger system, once installed. However, the responsibility for required maintenance shall remain with the installing utility until the hanger system is placed into a joint-use system. At that time, the responsibility for maintenance shall become a shared responsibility. (3-30-01)
  - j. A set of "as-built" plans for all conduit or utility crossings and structure attachments shall be submitted to the Department and the local utility locating service with all details of construction within thirty (30) days of the work completion. All "as-built" plans are required to be stamped by an Engineer licensed in the state of Idaho. (3-30-01)

**(BREAK IN CONTINUITY OF SECTIONS)**

**600. LOCATION AND DESIGN STANDARDS FOR OTHER ENCROACHMENTS.**

**01. Approved Permit Required.** An approved right-of-way encroachment permit shall be required for all portable objects or signs, memorials, urban improvements, landscaping, farming, irrigation or drainage, mailbox stands or turnouts, recreational parking facilities, park-and-ride lots, school bus turnouts, or structures within the State highway right-of-way other than those authorized or installed by the Department, or those which the government entity deems necessary for regulating, warning and guiding of traffic. (3-30-01)

**02. Benches, Planters, And Other Urban Structures.** Structures, including protrusions and overhangs, shall be a minimum of point five (0.5) meters/eighteen (18) inches behind the face of curb. When a structure is within a sidewalk area, at least one point two (1.2) meters/four (4) feet of unobstructed space shall be available for pedestrians. (3-30-01)

**03. Overhanging Displays, Canopies And Marquees.** In a curb section, encroachments shall not extend closer than point five (0.5) meters/eighteen (18) inches behind face of curb. In a non-curb section, encroachments supported by a building shall not extend more than point three (0.3) meters/twelve (12) inches into right-of-way. Signs or displays shall be no lower than three point seven (3.7) meters/twelve (12) feet above the

sidewalk or ground level. Canopies and marquees shall be no lower than two point four (2.4) meters/eight (8) feet. (3-30-01)

**04. Landscaping, Farming And Associated Irrigation.** Repair of landscaping in the State highway right-of-way shall be the responsibility of the permittee, and the Department will not be responsible for, or participate in, any repair or maintenance costs. All requests for landscaping, farming and irrigation shall require a review of current access control records for restrictive covenants. Applications may be approved provided the following conditions are met: (3-30-01)

a. Landscaping, farming, and irrigation systems shall maintain the structural integrity of the State highway right-of-way. No undercutting of the present highway fill and ballast section nor unprotected bare soil for access from the State highway shall be allowed. (3-30-01)

b. Unless otherwise specified, the degree of landscaping will be limited to what is necessary to insure that the appearance of the State highway right-of-way is compatible with the appearance of the surrounding area and shall not interfere with public safety and overall maintenance operations. (3-30-01)

c. Landscaping, farming, and irrigation systems shall not disturb, obstruct, or add to the normal drainage patterns of the State highway right-of-way. No new ditches shall be constructed without prior approval. (3-30-01)

d. Landscaping, farming, and irrigation systems shall not interfere with utility installations, removals, or operations. (3-30-01)

e. Provisions shall be established for the responsibility of future maintenance. (3-30-01)

f. Only planting of forage plants, grasses, flowers, and shrubs with a mature height not to exceed point nine (0.9) meters/three (3) feet will be allowed within the clear zone of the State highway right-of-way. Type and size of grasses, flowers, and shrubs will be determined by the Department. (3-30-01)

g. No trees shall be allowed within the clear zone of the State highway right-of-way. (3-30-01)T

h. All work within the highway right-of-way shall be required to return the right-of-way to either it's original condition or to the requirements of the encroachment permit as approved by the Department. (3-30-01)T

i. Irrigation systems shall be no closer than one point five (1.5) meters/five (5) feet from the pavement edge and shall be adjusted so water does not cover any ~~part~~ portion of the highway pavement. ~~(3-30-01)~~(3-30-01)T

j. No grading, excavation or other ground disturbing activities will be performed during rainy periods. If work cannot be avoided during rainy periods, the permittee will install check dams or other approved device(s) or structure(s) in drainage channels and provide a sediment retention basin to avoid discharging sediment containing runoff into the drainage system, or any wetlands, or water bodies (streams, rivers, lakes and ponds). No work shall be performed in or adjacent to any wetland or water body without providing the Department with copies of the appropriate permits from the Army Corps of Engineers, Idaho Department of Water Resources, and the Idaho Division of Environmental Quality. (3-30-01)

k. All areas within the State highway right-of-way disturbed by construction shall be returned to its original condition and reclaimed (re-seeded, fertilized and mulched) as directed by the Department or delegated local highway agency. (3-30-01)

l. Appropriate Best Management Practices to temporarily control erosion and resulting sediment shall be used. Typical soil surface protection practices include erosion control blankets, taced mulches of straw, wood fiber, paper fiber, soil amendments, or rock mulch. Typical sediment control practices may include silt fences, fiber wattles, rock check dams, sediment basins/ponds, inlet culvert risers, and inlet rock filters. For further information on Best Management Practices, contact the Department. (3-30-01)

m. Travel lanes shall be kept reasonably free of dirt, rocks and other debris resulting from construction

or maintenance of landscaping, farming, or irrigation. (3-30-01)

**05. Recreational Parking And Park-And-Ride Lots.** (3-30-01)

a. Parking areas shall be designed to safely accommodate an adequate number of parking spaces as determined by the Department. (3-30-01)

b. Access points shall be located so that adequate sight distance is maintained for the safety of approaching traffic and so that minimal interference with the normal flow of traffic on the traveled way results. (3-30-01)

c. ~~No commercial-sized~~ Approaches shall be ~~permitted~~ constructed in accordance with Department standards. ~~(3-30-01)~~(3-30-01)T

d. Installation of fencing and delineation should be considered to restrict ingress and egress locations and widths. (3-30-01)

e. Unrestricted drainage shall be provided and shall comply with ~~minimum~~ Department standards. ~~(3-30-01)~~(3-30-01)T

f. Construction and maintenance of parking areas, including snow removal shall be the responsibility of the permittee. (3-30-01)

**06. Mailbox Turnouts.** (3-30-01)

a. Mailbox turnouts in rural areas may be combined with an adjacent approach or may be independent of the approach. For safety reasons, the mail carrier should be able to stop out of the traveled way whenever possible. The applicant should be required to construct a mailbox turnout at the same time a mailbox is installed. (3-30-01)

b. Mailbox turnouts and mailbox supports shall be constructed in accordance with ~~minimum~~ Department standards. The box-to-post attachments shall resist separation when struck by a vehicle. No massive metal, concrete, stone or other hazardous supports shall be allowed. Owners of mailboxes that do not meet minimum installation requirements shall be notified that correction is required. ~~(3-30-01)~~(3-30-01)T

**07. School Bus Turnouts.** (3-30-01)

a. School bus turnouts shall be constructed with sufficient length and width to accommodate bus length and turning maneuvers as determined by the Department. (3-30-01)

b. Turnouts shall be located so adequate sight distance is maintained for the safety of approaching traffic and so that minimal interference with the normal flow of traffic on the traveled way results. (3-30-01)

c. All permitted school bus turnouts shall include approved advance warning signs installed at Department expense. (3-30-01)

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**  
**39.03.42 - RULES GOVERNING HIGHWAY RIGHT-OF-WAY ENCROACHMENTS**  
**ON STATE RIGHTS-OF-WAY**

**DOCKET NO. 39-0342-0102**

**NOTICE OF PROPOSED FEE RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 40-310(9), 40-311(1), 40-312(3), 40-313(2), 49-202(19), (23), and (28), 49-221, and 67-5203, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 16, 2001.

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

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

This rulemaking is being promulgated to include the application fee schedule in the rule. In the past, the fee schedule was only available at the Headquarters or District Offices.

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

Permit application fees are to be based on the Department's cost to produce the permit and administer the program. Current fees, as authorized by Section 40-314(3), Idaho Code, and previously approved in rule as a fee schedule available at the Department, have not been reviewed or increased since 1982, and have never been published as part of this rule. Proposed increases in Docket 39-0342-0001 were rejected by the House and Senate Transportation Committees in the 2001 Legislature. The currently proposed fees have been reviewed by those committees and found acceptable for consideration in this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted. However, all interested parties, including ITD staff, FHWA, local highway jurisdictions, and utilities within the State of Idaho, were consulted and reviewed the information contained in this rulemaking over the five year period during which it was developed. The fees proposed in Docket 39-0342-0001 to the 2001 Legislature were rejected. The proposed fees have been reviewed and approved by the House and Senate Transportation Committee members for consideration in this rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Lance Johnson, Traffic Engineer, 334-8557, or Steve Holland, Transportation Staff Engineering Assistant, 334-8565.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 23, 2001.

DATED this 2nd day of May, 2001.

Linda L. Emry, Management Assistant  
Budget, Policy, Intergovernmental Relations  
Idaho Transportation Department  
3311 West State Street  
P O Box 7129, Boise ID 83707-1129  
Phone – 208-334-8810  
FAX – 208-334-8195

**THE FOLLOWING IS THE TEXT OF DOCKET NO. 39-0342-0102**

**700. APPLICATION FEES.**

**01. Fee Administration.** Fees for applications for permits shall be based on the Department's cost to produce the permit and administer the program. Fees for permits are not refundable in the event of denial of the permit ~~by the Transportation Board~~ or in the event the permittee fails to comply with the permit. Applications shall not be processed until all applicable permit fees are received. (3-30-01)( )

**02. Availability Of Fee Schedule.** ~~A current schedule of fees is available at the Idaho Transportation Department Headquarters Office or any Highway District Office.~~ The permit application fees shall be as follows: (12-26-90)( )

- a. Approaches and Other Encroachments: ( )
- i. Farm or Field, Type I Access Control, fifty dollars (\$50); ( )
- ii. Farm or Field, Type II-IV Access Control, seventy-five dollars (\$75); ( )
- iii. Single Family Residential, Type I Access Control, fifty dollars (\$50); ( )
- iv. Single Family Residential, Type II-IV Access Control, seventy-five dollars (\$75); ( )
- v. Multiple-Family Residential, Type I Access Control, fifty dollars (\$50); ( )
- vi. Multiple-Family Residential, Type II-IV Access Control, seventy-five dollars (\$75); ( )
- vii. Subdivision, Type I Access Control (No TIS Required), fifty dollars (\$50); ( )
- viii. Subdivision, Type I Access Control (TIS Required), seventy-five dollars (\$75); ( )
- ix. Subdivision, Type II-IV Access Control (No TIS Required), seventy-five dollars (\$75); ( )
- x. Subdivision, Type II-IV Access Control (TIS Required), one-hundred dollars (\$100); ( )
- xi. Commercial, Type I Access Control (No TIS Required), fifty dollars (\$50); ( )
- xii. Commercial, Type I Access Control (TIS Required), seventy-five dollars (\$75); ( )
- xiii. Commercial, Type II-IV Access Control (No TIS Required), seventy-five dollars (\$75); ( )
- xiv. Commercial, Type II-IV Access Control (TIS Required), one-hundred dollars (\$100), and ( )
- xv. Other Encroachments, fifty dollars (\$50). ( )
- b. Utility Permits: ( )
  - i. Non-interstate (Type I-IV): new, modify, relocate with no prior easement rights, fifty dollars (\$50). ( )
  - ii. Interstate (Type V): fees for the placement of utilities in full control of access (Interstate), will be addressed at the time of application. ( )
  - iii. Interstate and non-interstate (Type I-V): maintenance or emergency repairs with no prior easement

rights - No Charge ( )

iv. Interstate and non-interstate (Type I-V): new, modify, relocate with prior easement rights within an ITD State highway project) - No Charge. ( )

**03. Miscellaneous Costs.** In addition to the application fee, the Department may require payment of costs associated with the following: (3-30-01)

a. Study or appraisal review; or (3-30-01)

b. Appraisal fees required to establish the value of property for new, additional, modification in design or use ~~to~~, or relocation of approaches or other encroachments in a controlled access highway. ~~(3-30-01)~~(3-30-01)T

c. Inspection fees may be charged at the discretion of the District Engineer when substantial inspection time will be required to monitor and accept work done within the right-of-way. This includes wages, travel, subsistence and other expenses incurred. The intent is to recover only Department costs. When the inspection fee is to be assessed, it shall be stipulated under the application's special provisions. Travel time in excess of one (1) hour, a loaded payroll rate, vehicle rental cost, subsistence and other expenses incurred. If additional inspections are required, the permittee will be billed a flat fee as determined by the Department at the time the permit is issued. (3-30-01)

d. A performance bond may be required of an applicant at the discretion of the Department. The purpose of this bond is to guarantee completion of the work in accordance with the requirements of the permit. The bond amount should be large enough to cover costs to correct potential damage that might be caused by the permittee. The bond shall be executed by a surety company authorized to conduct business in Idaho. (3-30-01)

e. Construction of highway modifications or improvements, including but not limited to signals, illumination, signs, pavement markings, delineation, guardrail and culverts; (3-30-01)

f. Changes or adjustments made to highway features or fixtures; or (3-30-01)

g. Expenses relating to photocopying highway plans, permits or related documents. (3-30-01)

**04. Waivers.** Permit fees may be waived and the justification included with the application for: (3-30-01)

a. Approaches resulting from right-of-way negotiations that are included in plans and completed during construction of a highway project. (3-30-01)

b. Government agencies. (3-30-01)

c. Agricultural uses of the right-of-way as included in the right-of-way agreement. (3-30-01)

d. Approaches and other encroachments where direct benefit to the Department is gained. (3-30-01)

e. Utility adjustments or relocations per project utility agreement, or requested by the Department, or utility maintenance and emergency repairs. (3-30-01)

**IDAPA 54 - OFFICE OF THE STATE TREASURER**  
**54.02.01 - RULES GOVERNING THE COLLEGE SAVINGS PROGRAM**  
**DOCKET NO. 54-0201-0101**

**NOTICE OF TEMPORARY AND PROPOSED RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is March 8, 2001.

**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 regular proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-5402, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 16, 2001.

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

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

This rulemaking is necessary in order to implement the College Savings Program that has been established by state law. Immediate implementation of the Program will allow Idaho taxpayers, who elect to do so, to contribute to the program now and take the deduction on their tax returns for the year 2000.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in order to (1) confer a benefit to Idaho taxpayers (Section 67-5226(1)(c), Idaho Code), and (2) comply with the deadline set forth in the legislative mandate (Section 67-5226(1)(b), Idaho Code).

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

**NEGOTIATED RULEMAKING:** Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rulemaking is necessary to comply with the deadline in existing law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Judy Comstock, Chair, at (208) 334-3200.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 23, 2001.

DATED this 8th day of March, 2001.

Judy Comstock, Chair  
College Savings Program  
Office of the State Treasurer  
State Capitol Building, Room 101  
P. O. Box 83720  
Boise, Idaho 83720-0091  
Telephone: (208) 334-3200  
Facsimile: (208) 332-2960

**THE FOLLOWING IS THE TEXT OF DOCKET 54-0201-0101**

**IDAPA 54**  
**TITLE 02**  
**Chapter 01**

**54.02.01 - RULES GOVERNING THE COLLEGE SAVINGS PROGRAM**

**000. LEGAL AUTHORITY.**

In accordance with Section 33-5402(1), Idaho Code, the State College Savings Program Board shall make, adopt, and publish rules pursuant to Title 33, Chapter 54, Idaho Code, as may be necessary or appropriate to carry out the provisions and purposes of the College Savings Program. (3-8-01)T

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited in full as IDAPA 54.02.01, "Rules Governing the College Savings Program". (3-8-01)T

**02. Scope.** These rules specify the conditions and standards under which the Program shall be implemented. (3-8-01)T

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 33-5402(5), Idaho Code, the Board may issue written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. (3-8-01)T

**003. ADMINISTRATIVE APPEALS.**

The provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," shall govern all contested cases filed pursuant to the provisions of Title 67, Chapter 52, Idaho Code. (3-8-01)T

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference into these rules. (3-8-01)T

**005. OFFICE - OFFICE HOURS - MAILING ADDRESS AND STREET ADDRESS.**

The office of the Program is located in the State Capitol Building, 700 West Jefferson, Room 102, Boise, Idaho. The mailing address of the Program is, C/O Office of the State Treasurer, P. O. Box 83720, Boise, Idaho 83720-0091. The telephone number of the Program is (208) 334-3200. The Program's facsimile number is (208) 332-2960. (3-8-01)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The records associated with the Program are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 1, Idaho Code. (3-8-01)T

**007. FILING OF DOCUMENTS.**

All filings for rulemaking or contested cases must be filed with the Board. Whenever documents are filed by facsimile transmission, originals shall be deposited in the mail the same day or hand delivered the following business day to the Board. (3-8-01)T

**008. -- 009. (RESERVED).**

**010. DEFINITIONS.**

- 01. Act.** The College Savings Program, Title 33, Chapter 54, Idaho Code. (3-8-01)T
- 02. Account.** An individual trust account or savings account established as prescribed in Title 33, Chapter 54, Idaho Code. (3-21-01)T
- 03. Account Owner.** The Person designated at the time an Account is opened as having the right to withdraw moneys from the Account before the Account is disbursed to or for the benefit of the Designated Beneficiary. (3-8-01)T
- 04. Beneficiary Or Designated Beneficiary.** Except as provided in Section 33-5404, Idaho Code, with respect to an Account, the Person designated at the time the Account is opened as the Person whose higher education expenses are expected to be paid from the Account or, if this Designated Beneficiary is replaced in accordance with Section 33-5404, Idaho Code, the replacement Beneficiary. (3-8-01)T
- 05. Board.** The State College Savings Program Board created by Section 33-5402, Idaho Code. (3-8-01)T
- 06. Cash.** Cash shall include checks (other than traveler's checks, cashier's checks or third-party checks exceeding ten thousand dollars (\$10,000)), money orders, payroll deductions, automatic contribution plans, electronic funds transfers, and transfers from another Qualified State Tuition Program. Cash does not include property. (3-8-01)T
- 07. Contingent Account Owner.** The Person designated by the Account Owner, pursuant to Subsection 021.02, to become the owner of the Account upon the death of the Account Owner. (3-8-01)T
- 08. Contribution.** Cash deposited into an Account established under the Act for the benefit of a Designated Beneficiary. (3-8-01)T
- 09. Earnings.** The total Account balance on a particular date minus the Contributions in the Account as of that date. (3-8-01)T
- 10. Higher Education Institution.** Shall have the meaning as provided in 26 U.S.C. Section 529. (3-8-01)T
- 11. Member Of The Family.** Shall have the meaning as provided in 26 U.S.C. Section 529. (3-8-01)T
- 12. Person Or Persons.** An individual, a trust, an estate, a partnership, an association or a corporation. (3-8-01)T
- 13. Program.** The College Savings Program established under Title 33, Chapter 54, Idaho Code. (3-8-01)T
- 14. Program Manager.** The financial institution selected by the Board pursuant to the provisions of Section 33-5403, Idaho Code, to act as manager of the Program. (3-8-01)T
- 15. Qualified Higher Education Expense.** Shall have the meaning as provided in 26 U.S.C. Section 529. (3-8-01)T
- 16. Qualified State Tuition Programs.** Shall have the meaning as provided in 26 U.S.C. Section 529. (3-8-01)T
- 17. Rollover Distribution.** Includes any of the following: (3-8-01)T
- a. Within sixty (60) days of a withdrawal, an Account Owner transfers on deposit the funds withdrawn from an Account to another Account (or funds are withdrawn from another Account and deposited in the

Account Owner's Account); (3-8-01)T

b. Within sixty (60) days of an Account Owner's withdrawal of funds from another state's Qualified State Tuition Program, the Account Owner deposits such funds in an Account in the Program; or (3-8-01)T

c. Within sixty (60) days of an Account Owner's withdrawal of funds from an Account in the Program, the Account Owner transfers such funds to an account established in another state's Qualified State Tuition Program. (3-8-01)T

**18. Scholarship.** Shall have the meaning set forth in 26 U.S.C. Section 529(b)(3)(C) and shall also refer to an allowance or payment described in 26 U.S.C. Section 135(d)(1)(B) or (C). Scholarship includes certain educational assistance allowances under federal law and certain payments for educational expenses, or attributable to attendance at certain education institutions, that are exempt from federal income tax. (3-8-01)T

**19. Transfer.** A distribution as described in 26 U.S.C. Section 529(c)(3)(C)(i). (3-8-01)T

**011. -- 019. (RESERVED).**

**020. CHANGE OF BENEFICIARY.**

**01. Change Of Beneficiary Form.** An Account Owner may change the Beneficiary designated for the Account at any time by submitting a completed change of Beneficiary form to the Program Manager. (3-8-01)T

**02. Change Of Beneficiary Through Rollover Distribution.** A change of Beneficiary may also be accomplished by means of a Rollover Distribution. (3-8-01)T

**021. CHANGE OF ACCOUNT OWNERSHIP.**

**01. Transfer Of Ownership.** An Account Owner may transfer ownership of an Account to another eligible Account Owner at any time. The change of ownership shall be effective if the transfer: (3-8-01)T

a. Is irrevocable; (3-8-01)T

b. Transfers all ownership, reversionary rights, powers of appointments, and powers to direct the withdrawal of funds; and (3-8-01)T

c. Is submitted to the Program Manager in writing. (3-8-01)T

**02. Contingent Account Owner.** An Account Owner may designate a contingent Account Owner to become the owner of the Account automatically upon the death of the Account Owner by submitting a written request to the Program Manager. The contingent Account Owner designation may be revoked by the Account Owner at any time by submitting to the Program Manager another written request that either designates a new contingent Account Owner or revokes all previous designation(s) of a contingent Account Owner. The successor Account Owner shall provide: (3-8-01)T

a. A certified copy of a death certificate sufficiently identifying the deceased by name and Social Security Number, or such other proof of death as is recognized under applicable law and is acceptable to the Program Manager, and (3-8-01)T

b. A participation agreement signed by the successor Account Owner. (3-8-01)T

**03. Court Order.** A change in an Account Owner may be effected by submitting to the Program Manager a written request that is not signed by the Account Owner of record if the change of Account ownership is accompanied by a court order directing the change of ownership or by an affidavit or declaration that is recognized under applicable law to require the transfer of ownership upon death without a court order. The Program Manager shall not implement a change in ownership (other than a change in ownership described in Subsection 021.02 of this regulation) without first receiving a written request signed by the Account Owner of record, a court order, or an affidavit or declaration as herein described. The successor Account Owner must submit a completed participation

agreement to the Program Manager. (3-8-01)T

**022. -- 029. (RESERVED).**

**030. WITHDRAWALS.**

**01. Qualified Withdrawal.** Contributions must be on deposit in an Account a minimum of ten (10) days before being withdrawn. Following the request of an Account Owner for a qualified withdrawal of all or part of the balance from an Account, payment shall be made not later than seven (7) days after the date on which a determination is made by the Program Manager, that a qualified withdrawal request should be effected. (3-8-01)T

**02. Non-qualified Withdrawal.** If the Program Manager determines that a withdrawal is a non-qualified withdrawal, the Program Manager shall pay the amount of the withdrawal to the Account Owner net of penalties described in Subsection 040.02. Following the request of an Account Owner for a non-qualified withdrawal of all or part of the balance from an Account, payment shall be made not later than seven (7) days after the date on which a determination is made by the Program Manager, that a non-qualified withdrawal request should be effected. If such withdrawal is subsequently determined to be a qualified withdrawal, pursuant to procedures established by the Board and the Program Manager, the Account Owner may request a refund of penalties from the Board and the Board shall refund such penalties not later than seven (7) days after the date on which the determination is made that the withdrawal was a qualified withdrawal. (3-8-01)T

**03. Excess Scholarship Withdrawal.** The portion of a sum withdrawn from an Account due to the award of a Scholarship to the Designated Beneficiary that is greater than the amount of the Scholarship identified in the third-party written confirmation required under Subsection 031.02.c. shall be considered a non-qualified withdrawal and subject to the penalty described in Subsection 040.02. (3-8-01)T

**04. Refunds Of Payments Of Qualified Higher Education Expenses.** If a Higher Education Institution refunds to a Beneficiary any portion of an amount withdrawn from an Account that the institution receives under the Program for the payment of Qualified Higher Education Expenses, the Beneficiary or Account Owner must provide the Program Manager with a signed statement identifying the amount of any such refunds at the end of each year in which withdrawals from the Account for Qualified Higher Education Expenses were made. Any such refund may be treated as a non-qualified withdrawal unless the Account Owner or Beneficiary provides substantiation that the refund has been allocated to other Qualified Higher Education Expenses or the refund was made due to the death of, disability of, or receipt of a scholarship by the Beneficiary. (3-8-01)T

**031. CONFIRMATION OF DEATH, DISABILITY OR SCHOLARSHIP OF DESIGNATED BENEFICIARY.**

**01. Certify Reason For Withdrawal.** Prior to a withdrawal from an Account due to the death or disability of the Designated Beneficiary of that Account, or because the Designated Beneficiary has received a Scholarship to be applied toward attendance at a Higher Education Institution, the Account Owner shall certify the reason for the withdrawal and provide written confirmation from a third party that the Designated Beneficiary has in fact died, become disabled, or received a Scholarship for attendance at a Higher Education Institution. A request to make a withdrawal due to the death or disability of, or a Scholarship award to, the Designated Beneficiary shall not be considered complete until such third party written confirmation is received by the Program Manager. (3-8-01)T

**02. Third Party Confirmation.** For purposes of Subsection 031.01 of these rules, third party written confirmation shall consist of the following documentation: (3-8-01)T

a. For death of the Designated Beneficiary, a certified death certificate sufficiently identifying said Beneficiary by name and social security number, or such other proof of death as is recognized under applicable law. (3-8-01)T

b. For disability of the Designated Beneficiary, a certification by a physician who is a doctor of medicine or osteopathy that indicates that he or she is legally authorized to practice in a state of the United States and that the Beneficiary is unable to attend any Higher Education Institution because of an injury or illness that is expected to continue indefinitely or result in death. Such certification shall be on a form provided or approved by the Program Manager. (3-8-01)T

c. For a Scholarship award to the Designated Beneficiary, a letter from the grantor of the Scholarship or from the Higher Education Institution receiving or administering the Scholarship, that identifies the Beneficiary by name and social security number as the recipient of the Scholarship and states the amount of the Scholarship, the period of time or number of credits or units to which it applies, or the date of the Scholarship, and, if applicable, the Higher Education Institution to which the Scholarship is to be applied. (3-8-01)T

**032. -- 039. (RESERVED).**

**040. ACCOUNT BALANCE LIMIT ON CONTRIBUTIONS - PENALTY.**

**01. Account Balance Limit On Contributions. (3-8-01)T**

a. A Contribution for any Designated Beneficiary shall be rejected (or, if accepted in error, returned to the Account Owner with any earnings thereon and less any penalties applicable thereto) if such contribution would cause the total balance of the Account, together with other Accounts established under the Program for the benefit of the same Beneficiary, to exceed the maximum amount established by the Board from time to time (the "Account Balance Limit on Contributions"), but in no event more than the amount permitted under 26 U.S.C. Section 529. Any payment of such excess amounts to the Account Owner may be a non-qualified withdrawal subject to the penalties set forth in Subsection 040.02. 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. (3-8-01)T

b. For purposes of applying the Account Balance Limit on Contributions, qualified withdrawals and withdrawals due to death or disability of, or Scholarship to, a Designated Beneficiary from an Account and all other Accounts in the Program, if any, for the same Beneficiary will be treated as reducing the Account Balance Limit on Contributions. Therefore, subsequent Contributions cannot be made to replenish the Account to the extent the Contribution would cause the aggregate amount held for the Beneficiary to exceed this reduced Account Balance Limit on Contributions. Such subsequent Contributions shall be rejected (or, if accepted in error, returned to the Account Owner with any earnings thereon and less any penalties applicable thereto as provided in Subsection 040.01.a. However, a non-qualified withdrawal or Rollover Distribution will not be treated as reducing the Account Balance Limit on Contributions, so that when such distributions are taken, subsequent Contributions may be made to the Account to effectively replenish the Account up to the Account Balance Limit on Contributions. (3-8-01)T

**02. Penalty.** A penalty shall be withheld, and paid to the Board, from any non-qualified withdrawal from an Account, in an amount equal to ten percent (10%) of the portion of the withdrawal constituting earnings. Such penalty amount is a more than de minimis penalty for the purposes of 26 U.S.C. Section 529. Such penalty amount shall be increased, if required, in order for it to be "more than a de minimis penalty" for purposes of 26 U.S.C. Section 529. Penalties shall be imposed, collected, and applied in a manner consistent with 26 U.S.C. Section 529. (3-8-01)T

**041. ROLLOVER DISTRIBUTIONS.**

**01. Rollover Distribution From Another Qualified State Tuition Program.** An Account Owner may transfer funds at any time from another Qualified State Tuition Program to an Account established under the Act, either owned by the same or a different Account Owner, by submitting a written request to the Program Manager. The rollover of funds from the other Qualified State Tuition Program shall be effective provided that: (3-8-01)T

a. The funds are transferred to an Account for a new Beneficiary who is a Member of the Family of the Beneficiary of the Account in the other Qualified State Tuition Program; and (3-8-01)T

b. The transfer of funds does not cause the aggregate amount of contributions held for the new Beneficiary to exceed the Account Balance Limit on Contributions applicable to that Beneficiary. (3-8-01)T

**02. Rollover Of Account Funds Methods.** A rollover of Account funds from or to another Qualified State Tuition Program or within this Program shall be effected through a direct Transfer of funds to an Account or as a deposit of the funds into an Account established under a Qualified State Tuition Program within sixty (60) days of

withdrawal of the funds from the other Qualified State Tuition Program. (3-8-01)T

**03. Transfer Of Account Funds As Rollover Distribution.** An Account Owner may transfer funds from an Account established under the Act to another Account established under the Act, or an Account established under a Qualified State Tuition Program in another state, either owned by the same or a different Account Owner at any time by submitting a written request to the Program Manager. The transfer of Account funds shall be effective provided that: (3-8-01)T

a. The funds are transferred to an Account for a new Beneficiary who is a Member of the Family of the Beneficiary of the Account from which the funds are being transferred; and (3-8-01)T

b. The transfer of funds does not cause the aggregate amount of contributions held for the new Beneficiary to exceed the Account Balance Limit on Contributions applicable to that Beneficiary. (3-8-01)T

**04. Execution Of New Participation Agreement.** Any Rollover Distribution that is intended to transfer funds to a new Account not yet established under the Act shall not be effective until the Account Owner who is to receive the transferred funds has submitted a completed participation agreement for the new Account and the Account has been established. (3-8-01)T

**042. -- 999. (RESERVED).**

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# Bulletin Summary of Proposed Rulemakings

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## PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

### **IDAPA 02 - DEPARTMENT OF AGRICULTURE P.O. Box 790, Boise, Idaho 83701-0790**

Docket No. **02-0415-0101**, Rules Governing Beef Cattle Animal Feeding Operations. Authorizes the regulation of nutrient management practices and allows for inspections of beef cattle animal feeding operations; requires an approved nutrient management plan for new operations before beginning operations; requires existing operations to submit a nutrient management plan to the Department Director no later than January 1, 2005; authorizes designation of certain animal feeding operations as beef cattle animal feeding operations; provides definitions and provides for administrative appeals. Comment By: 5/23/01.

### **IDAPA 35 – IDAHO STATE TAX COMMISSION 800 Park, Plaza IV, P.O. Box 36, Boise, ID 83722**

Docket No. **35-0103-0101**, Property Tax Administrative Rules. Clarifies that the term “owner” includes a partner of a limited partnership, member of a limited liability company or a shareholder of a corporation; adds provision for certifying and applying for the exemption; and states there will be no reduction to benefits if the claimant is a partner of a limited partnership, a member of a limited liability company, or shareholder of a corporation, unless some other shared ownership exists. Comment By: 5/23/01.

### **IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT P.O. Box 7129, Boise, ID 83707-1129**

Docket No. **39-0342-0101**, Rules Governing Use of Right-of-Way Encroachments on State Highway Rights-of-Way. Changes conform to legislative intent by readdressing the placement of telecommunications and other utilities along interstate highways and permit requirements for such placement. Comment By: 5/23/01.

Docket No. **39-0342-0102**, Rules Governing Use of Right-of-Way Encroachments on State Highway Rights-of-Way. Adds the permit application fee schedule to the rule. Comment By: 5/23/01.

### **IDAPA 54 - OFFICE OF THE STATE TREASURER P.O. Box 83720, Boise, Idaho 83720-0091**

Docket No. **54-0201-0101**, Rules Governing the College Savings Program. Implements the College Savings Program established by state law. Comment By: 5/23/01.

Please refer to the Idaho Administrative Bulletin, **May 2, 2001, Volume 01-5** for notices and text of all rulemakings, public hearing schedules, Governor’s executive orders, and agency contact names.

**Citizens of your county can view all issues of the Idaho Administrative Bulletin at the county law libraries.**

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The Idaho Administrative Bulletin and Administrative Code are available on the Internet at the following address: <http://www.state.id.us/> - from the State of Idaho Home Page select Administration Rules.

**CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES**

**This index tracks the history of all agency rulemakings from 1993 to the present.  
It includes all rulemaking activities on each chapter of rules  
and includes negotiated, temporary, proposed, pending  
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