

IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a 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 RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rulemaking process comprises five distinct activities; Negotiated, Proposed, Temporary, Pending, and Final rulemaking. Not all rulemakings consist of all five. At a minimum a rulemaking includes proposed, pending, and final rulemaking. Many rules are adopted as temporary rules when meeting required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek 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 RULEMAKING

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 RULEMAKING

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 RULEMAKING

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 RULEMAKING

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, BYU Idaho Library, and Northwest Nazarene College Library.

SUBSCRIPTIONS AND DISTRIBUTION

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

The 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, 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 2002

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
02-1	January, 2002	*November 14, 2001	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 27, 2002	May 1, 2002	May 22, 2002
02-6	June, 2002	April 24, 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	**August 21, 2002	October 2, 2002	October 23, 2002
02-11	November, 2002	September 25, 2002	November 6, 2002	November 27, 2002
02-12	December, 2002	October 23, 2002	December 4, 2002	December 25, 2002

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2003

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
03-1	January, 2003	*November 13, 2002	January 1, 2003	January 22, 2003
03-2	February, 2003	December 18, 2002	February 5, 2003	February 26, 2003
03-3	March, 2003	January 22, 2003	March 5, 2003	March 26, 2003
03-4	April, 2003	February 19, 2003	April 2, 2003	April 23, 2003
03-5	May, 2003	March 26, 2003	May 7, 2003	May 28, 2003
03-6	June, 2003	April 23, 2003	June 4, 2003	June 25, 2003
03-7	July, 2003	May 21, 2003	July 2, 2003	July 23, 2003
03-8	August, 2003	June 25, 2003	August 6, 2003	August 27, 2003
03-9	September, 2003	July 23, 2003	September 3, 2003	September 24, 2003
03-10	October, 2003	**August 20, 2003	October 1, 2003	October 22, 2003
03-11	November, 2003	September 24, 2003	November 5, 2003	November 26, 2003
03-12	December, 2003	October 22, 2003	December 3, 2003	December 24, 2003

****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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24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS

DOCKET NO. 24-0301-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-707, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Change expiration date and reinstatement of licenses to be in accordance with section 67-2614, Idaho Code and establish requirement for licenses canceled over five (5) years to be in accordance with section 67-2614, Idaho Code.

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

There are no fees or charges imposed or increased as a result of these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0301-0201

250. RENEWAL OR REINSTATEMENT OF LICENSE (Rule 250).

01. Expiration Date. All chiropractic licenses expire ~~on June 30th of each year~~ and must be renewed annually ~~before July 1st~~ in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be canceled. (3-15-02)()

02. Reinstatement. (7-1-97)

~~**a.** Any license canceled for failure to renew may be reinstated upon payment of in accordance with Section 67-2614, Idaho Code, with the exception that the reinstatement fee shall be two hundred fifty dollars (\$250) together with all delinquent renewal fees and documentation of the applicant shall submit proof of having met the required continuing education for the year of reinstatement. (7-1-97)()~~

~~**b.** *Provided further, that where a license has been canceled for a period of more than five (5) years, the person so affected shall be required to make application to the board, using the same forms and furnishing the same information as required of a person originally applying for a license and pay the same fee that is required of a person taking the chiropractic examination. Said applicant shall appear in person before the board at a regular meeting for an examination, the nature of which shall be determined by the board. If after an examination, the board is of the opinion that the person examined is the bona fide holder of the canceled license, is of good moral character and, if found capable of again practicing chiropractic in this state, the license shall be reinstated and the holder thereof entitled to practice subject to the laws of this state.* (7-1-97)~~

03. Canceled License. A license that has been canceled for a period of more than five (5) years may be re-issued in accordance with section 67-2614, Idaho Code. ()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.04.01 - RULES OF THE IDAHO BOARD OF COSMETOLOGY

DOCKET NO. 24-0401-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 3, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-821, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Clarify high school education equivalent to be any test approved by the Department of Education; clarify working floor space in a primary and contiguous establishment; establish that no original license fee is required for relocation of a contiguous establishment within the same primary establishment; establish requirements for an out of business shop; establish requirements for practical and written reexamination for cosmetology, electrology, esthetics and nail technician; delete models for nail technology exam may not have artificial nails; establish requirements for instructor reexamination

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

In order to protect the public health, safety, and welfare. Providing the acceptance of equivalency tests that have been approved by the Department of Education will assist schools with student admission. Allowing a change in the designation of the working floor space from designated footage to adequate dimension changes the focus of the Board in this area. Establishing the licensing requirements for changes in ownership or location clarifies the licensing process and fee. Establishing the requirements for any shop ceasing operation provides notification and license status. The change in the licensure examinations to provide for additional instruction assists applicants in retesting with additional study.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees or charges imposed or increased as a result of these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0301-0201

250. ESTABLISHING EQUIVALENCY IN LIEU OF THE REQUIRED HIGH SCHOOL EDUCATION (Rule 250).

The Board will accept the following tests as being equivalent in lieu of the required high school education (pursuant to Section 54-805, Idaho Code). (3-30-01)

01. GED Test. The General Educational Development (G.E.D.) Tests approved by the Department of Education, when an applicant receives an average cutting score of not less than forty-five (45), with no category below a cutting score of forty (40). (3-30-01)

02. CPA Equivalent Test. ~~The CPA (Career Programs Assessment test);~~ Any test approved by the Department of Education to establish education equivalency shall be approved by the Board when an applicant receives a score approved by the U.S. Department of Education as meeting the equivalency requirement. ~~(3-30-01)~~(6-3-02)T

300. LICENSURE AND OPERATION OF PRIMARY AND CONTIGUOUS ESTABLISHMENTS (Rule 300.)

01. Applications. Application for establishment license shall be made on forms furnished by the board. The fully completed application form, with the required fees, must be submitted to the board and a license issued prior to the opening or operation of any cosmetological establishment. (7-1-97)

02. Primary Establishment License. A primary establishment license may be issued and annually renewed only under the following condition: (7-1-97)

a. Compliance with Subsection 300.01; and (7-1-97)

b. There is a clearly defined and designated working floor space of ~~not less than one hundred eight (108) square feet for a single station shop~~ adequate dimension to allow the safe and sanitary practice of any one (1) or combination of defined practices of cosmetology for all individual stations that may be in operation in addition to any restroom and access areas ~~and an additional fifty (50) square feet of floor space for every station in excess of one (1);~~ and ~~(7-1-97)~~(6-3-02)T

c. There is an approved hot and cold running water source and drainage system that is available to any contiguous cosmetology establishment or barber shop that may exist; and must be within the perimeters of the licensed establishment and separate from the toilet facilities. (7-1-97)

d. The licensed area does not overlap any portion of a contiguous or other primary establishment designated area; and (7-1-97)

e. There is access to restroom facilities from within the building in which the primary establishment is located and which shall be accessible from the primary area and to all contiguous establishments. Said restroom facilities shall contain an approved hot and cold running water source and approved drainage system. Said water source shall be in addition to the work area facilities. (7-1-97)

f. All primary areas shall be connected by an access area not less than three (3) feet wide and said access shall not be part of any contiguous establishment's designated area. (7-1-97)

03. Contiguous Establishment License. A contiguous establishment license may be issued and annually renewed only under the following condition: (7-1-97)

a. Compliance with Subsection 300.01; and (7-1-97)

b. The licensed area is contiguous to an area licensed as a primary cosmetology establishment or barber shop and which is accessible from the primary area by not less than a three (3) foot wide access area; and (7-1-97)

c. The licensed area does not overlap any portion of a primary or other contiguous establishments' designated area. "Overlap" will not include the cooperative or joint use of "common areas" such as shampoo bowls, restrooms, entrance or reception areas or the like, which are physically located within the designated licensed area of the primary shop but which are not within the designated licensed area of any contiguous shop. As these common areas are within the designated area licensed by the primary establishment, the holder of the primary license will be responsible for any violations which occur there; and (7-1-97)

d. The licensed contiguous shop area shall provide ~~a minimum of fifty (50) square feet of working floor space for each individual station~~ adequate dimension to allow the safe and sanitary practice of any one (1) or combination of the defined practices of cosmetology for all individual stations that may be in operation; and ~~(7-1-97)~~(6-3-02)T

e. There is access to restrooms from within the building. (7-1-97)

04. Businesses Other Than Cosmetological Establishments Or Barber Shops. Businesses other than cosmetological establishments or barber shops, and living quarters shall be separate and apart. Home establishments must provide a separate outside entrance directly into the establishment and substantial partitions or walls shall extend from the floor to not less than seven (7) feet high, separating the establishment from adjoining rooms used for business or domestic purposes. All doors to an establishment from adjacent rooms shall be closed. (7-1-97)

05. Adequate Toilet Facilities. Adequate toilet facilities shall be conveniently located and accessible from within the building where the establishment is located. (7-1-97)

06. Conditions For Issuance. No cosmetological establishment license may be issued which includes or overlaps all or any portion of an existing establishment license. (7-1-97)

301. COSMETOLOGICAL ESTABLISHMENT CHANGES IN - OWNERSHIP - LOCATION - LICENSURE REQUIREMENTS (Rule 301).

01. Change Of Ownership Or Location. Whenever a change of ownership or fixed location of an establishment occurs, an original license fee must be paid and compliance with all rules concerning a new establishment must be met, before a new license will be issued. In the event of the relocation of a contiguous establishment within the same primary establishment, an original license fee shall not be required provided the contiguous establishment is currently licensed at the time of the relocation. ~~LICENSES ARE NOT TRANSFERABLE.~~ ~~(3-30-01)~~(6-3-02)T

02. Board Must Be Informed Of All Changes. The board must be informed in writing of any and all changes of ownership and locations of establishments. ~~(7-1-97)~~(6-3-02)T

03. Deletion Of An Owner. Deletion of an owner in a multiple ownership may be effected by filing a written statement with the board signed by the person withdrawing and/or the remaining owner(s). (7-1-97)

04. Transfer Of Owner. If the transfer involves change of corporate structure or deleting one (1) or more owners, a written notarized statement signed by all former owners as registered with the board shall be accepted. If the existing establishment license has expired, the procedure as set forth in Subsection 300.01 shall be followed. (7-1-97)

05. Addition Of An Owner. Addition of an owner to multiple ownership constitutes a change in ownership and the requirements for a new establishment apply. (7-1-97)

06. Supervision In An Establishment. A properly licensed establishment must operate under proper supervision, refer to Section 54-803, Idaho Code. (7-1-97)

07. Out Of Business. Whenever any shop ceases operation at the licensed location, the owner(s) or authorized agent of the shop shall notify the Board by submitting either: (6-3-02)T

a. A signed letter advising that the shop is out of business; or (6-3-02)T

b. The establishment license bearing the signature of the owner(s) or authorized agent and marked out-of-business. (6-3-02)T

08. License Status. A new primary or contiguous establishment license will not be issued for any location that is currently licensed as an establishment at the time of application. (6-3-02)T

(BREAK IN CONTINUITY OF SECTIONS)

450. EXAMINATIONS - GENERAL (Rule 450).

Examination for licensure shall consist of both a practical and written examination for each of those disciplines included in Chapter 8, Title 54, Idaho Code. (6-3-02)T

01. Dates And Places. (7-1-97)

a. Examinations for licensure are to be held at the discretion of the board. (7-1-97)

b. The dates and places of examination will be published annually. (7-1-97)

02. Written Examination. The written examination consists of two (2) parts: theory and Idaho jurisprudence. (7-1-97)

~~**a.**~~ The Idaho jurisprudence examination will be a comprehensive written examination ~~which that~~ will include ~~all aspects of Idaho laws and rules relating to the provision of cosmetological services~~ Chapter 8, Title 54, Idaho Code and these rules. (7-1-97)(6-3-02)T

~~**b.**~~ The theory examination will be the national examination provided by the National Interstate Council of State Boards of Cosmetology (NIC). (7-1-97)(6-3-02)T

i. The theory examination for cosmetology will include all phases of the art of cosmetology, hair dressing, manicuring and pedicuring, facial massage, and sanitation. (6-3-02)T

ii. The theory examination for electrology will cover all phases of the art of electrology and sanitation. (6-3-02)T

iii. The theory examination for esthetics will cover all phases of the art of skin care and sanitation. (6-3-02)T

iv. The theory examination for nail technology will cover all phases of the art of manicuring, artificial nails, and sanitation. (6-3-02)T

v. The theory examination for an instructor will cover all phases of the applicant's ability to teach cosmetology, nail technology, esthetics or electrology, and sanitation. (6-3-02)T

03. The Practical Examination. The practical examination will be the NIC examination specific to the discipline for which licensure is sought. (6-3-02)T

~~**a.**~~ Oral Test. As authorized by Section 54-810, Idaho Code, the examiners may direct questions to individual examinees during the course of the practical examination. (7-1-97)

~~04b.~~ Supplies. Each applicant is required to bring adequate supplies and materials for the practical examination. Detailed information will be provided upon notification of acceptance for examination. (7-1-97)

~~054.~~ **Failure To Pass Examination.** (7-1-99)

~~a.~~ The practical examination is failed when an applicant obtains an average score below seventy-five percent (75%). Reexamination shall consist of the entire examination. (7-1-98)

~~b.~~ Written examination is failed when the applicant obtains a score of below seventy-five percent (75%) on the national theory examination or the Idaho jurisprudence examination. Reexamination shall consist of the written examination on the portion or portions failed. (7-1-97)

~~065.~~ **Eligibility For Reexamination.** A new application must be filed with the board. The prescribed fee must accompany said application. (7-1-97)

~~a.~~ Additional instruction required to qualify for the practical reexamination shall be as follows: (6-3-02)T

~~i.~~ An applicant failing on the first practical examination attempt shall complete a full review of the proper practical procedures for those service applications in the discipline for which licensure is sought as outlined in Section 54-808(6), Idaho Code. The applicant must also sign an affidavit attesting to the completion of the review. The review and affidavit shall constitute proof of required additional instruction prior to the first reexamination only. (6-3-02)T

~~ii.~~ An applicant failing the practical examination on a second attempt and all subsequent attempts, shall complete additional instruction of no less than twenty percent (20%) of the hours required for original examination. (6-3-02)T

~~b.~~ Additional instruction required to qualify for the written reexamination shall be as follows: (6-3-02)T

~~i.~~ An applicant failing on the first written examination attempt in either the theory or Idaho jurisprudence examination shall complete a full review as applicable to the area or areas of failure, of either the proper theoretical procedures for the discipline and those service applications for which licensure is sought as outlined in Section 54-808(6), Idaho Code, or of the Idaho Laws and Rules governing the licensure and practice of those disciplines included in Chapter 8, Title 54, Idaho Code. The applicant must also sign an affidavit attesting to the completion of the review. The review and affidavit shall constitute proof of required additional instruction prior to the first reexamination only. (6-3-02)T

~~ii.~~ An applicant failing either the theory examination or the Idaho jurisprudence examination on a second attempt and all subsequent attempts shall complete not less than forty (40) hours of additional instruction in theory or Idaho jurisprudence as is appropriate, in a curriculum approved by the board, in an Idaho licensed school, and comply with all other requirements for reexamination. (6-3-02)T

~~07.~~ **Termination.** All application records in the bureau of applicants who have not qualified for reexamination within five (5) years of notification of failure in any examination under the Cosmetology Law will be terminated and destroyed. (7-1-97)

~~451.~~ ***COSMETOLOGY LICENSURE EXAMINATION (Rule 451).***

~~01.~~ ***Written Examination.*** *The written examination will cover both theory and Idaho jurisprudence. Theory will include all phases of the art of cosmetology, hair dressing, manicuring and pedicuring, facial massage, and sanitation.* (7-1-98)

~~02.~~ ***The Practical Examination.*** *The practical examination will be the NIC examination.* (7-1-98)

~~03. **Practical Examination Additional Instruction.** Additional instruction required to qualify for practical reexamination shall be as follows: (3-30-01)~~

~~a. Applicant failing below seventy five percent (75%) will not be required to complete any additional instruction prior to the first reexamination. (3-30-01)~~

~~b. Upon failing the practical examination on a second attempt and all subsequent attempts, applicant must complete a minimum of four hundred (400) hours of additional instruction. (3-30-01)~~

~~04. **Written Examination Additional Instruction.** Additional instruction required to qualify for the written reexamination shall be as follows: (3-30-01)~~

~~a. Applicant failing below seventy five percent (75%) in either the theory or Idaho jurisprudence examination will not be required to complete any additional instruction prior to the first reexamination. (3-30-01)~~

~~b. On reexamination, applicant failing below seventy five percent (75%) in either or both the theory and Idaho jurisprudence examination may qualify for reexamination by taking not less than forty (40) hours of additional instruction in theory and Idaho jurisprudence, in a curriculum approved by the board, in an Idaho licensed school, and complying with all other requirements for reexamination. (3-30-01)~~

~~452.---456. (RESERVED);~~

~~457. **ELECTROLOGY EXAMINATION (Rule 457):**~~

~~01. **The Written Examination.** The written examination will cover all phases of the art of electrology and sanitation. (7-1-99)~~

~~02. **The Practical Examination.** The practical examination will cover: (7-1-97)~~

~~a. Electrology: Preparation and sanitation of equipment and supplies, epilation, adjusting and control of machine, after treatment and personal appearance, attitude, sanitation. (7-1-97)~~

~~03. **Additional Instruction.** Additional instruction required to qualify for reexamination shall be as follows: (3-30-01)~~

~~a. Applicant failing below seventy five percent (75%) will not be required to complete any additional instruction prior to the first reexamination. (3-30-01)~~

~~b. Additional instruction required to qualify for practical reexamination shall be twenty percent (20%) of the hour requirement for original examination. (3-30-01)~~

~~c. Additional instruction required to qualify for the written reexamination shall be not less than forty (40) hours in theory and Idaho jurisprudence, in a curriculum approved by the board, in an Idaho licensed school, and complying with all other requirements for reexamination. (3-30-01)~~

~~458.---462. (RESERVED);~~

~~463. **ESTHETICS EXAMINATION (Rule 463):**~~

~~01. **The Written Examination.** The written examination will cover all phases of the art of skin care and sanitation. (7-1-97)~~

~~02. **The Practical Examination.** The practical examination will cover preparation, cleansing/basic facial, massage, makeup and personal appearance, attitude, sanitation. (7-1-97)~~

~~03. **Additional Instruction.** Additional instruction required to qualify for reexamination shall be as follows: (3-30-01)~~

~~a.~~ Applicant failing below seventy-five percent (75%) will not be required to complete any additional instruction prior to the first reexamination. (3-30-01)

~~b.~~ Additional instruction required to qualify for practical reexamination shall be twenty percent (20%) of the hour requirement for original examination. (3-30-01)

~~c.~~ Additional instruction required to qualify for the written reexamination shall be not less than forty (40) hours in theory and Idaho jurisprudence, in a curriculum approved by the board, in an Idaho licensed school, and complying with all other requirements for reexamination. (3-30-01)

~~464. -- 468.~~ (RESERVED).

469. NAIL TECHNOLOGY EXAMINATION (Rule 469).

~~01. The Written Examination.~~ The written examination will cover all phases of the art of manicuring, artificial nails and sanitation. (7-1-97)

~~02. The Practical Examination.~~ The practical examination will include a complete basic manicure on one (1) hand, sculptured nails (with form), tips (finished), nail overlay with fabric. (7-1-97)

~~03. Additional Instruction.~~ Additional instruction required to qualify for reexamination shall be as follows: (3-30-01)

~~a.~~ Additional instruction required to qualify for the practical reexamination shall be twenty percent (20%) of the hour requirement for original examination. (3-30-01)

~~b.~~ Additional instruction required to qualify for the written reexamination shall be not less than forty (40) hours in theory and Idaho jurisprudence, in a curriculum approved by the board, in an Idaho licensed school, and complying with all other requirements for reexamination. (3-30-01)

~~c.~~ Additional instruction will not be required of those applicants failing the examination for the first time. (3-30-01)

~~470-51. -- 474.~~ (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

600. INSTRUCTOR RULES (Rule 600).

01. Requirements For Instructor License. (7-1-97)

a. Application for an instructor license shall be made on forms furnished by the board and accompanied with the required fees. (7-1-97)

b. Section 54-805(2)(8), Idaho Code, provides for twelve (12) semester college credit hours or equivalent, as approved by the board, or successful completion of the examination required by board rules. Credit hours must be obtained from the Education Department, Speech Communications Department or from the Psychology/Sociology Department and other credit at the discretion of the Board. (7-1-97)

c. Equivalent: (7-1-97)

i. Teaching seminars directed to cosmetology, nail technology, esthetics, or electrology must be approved by the board. Fourteen (14) clock hours is equivalent to one (1) semester college credit hour in an approved seminar. Verification of satisfactory completion must be submitted to the board for their approval. (3-30-01)

ii. Verified satisfactory teaching as a qualified instructor from another state three (3) of the previous five (5) years immediately prior to application. (7-1-97)

d. Experience Requirements for Instructor Applicant (Reference Section 54-805(2)(8), Idaho Code). Five (5) years experience is deemed "immediately preceding" if obtained during the seven (7) year period immediately preceding application for licensure. (7-1-97)

e. An electrologist with fewer than five (5) years' experience as a licensed electrologist must complete three (3) months, five hundred (500) hours of teacher's instruction in a cosmetology school approved to teach electrology as set forth in Subsection 550.08. (3-30-01)

02. Examination Dates And Places. The dates and places of examination are subject to change. (3-30-01)

03. Termination. All application records in the bureau of applicants who have not qualified for reexamination within five (5) years of notification of failure in any examination under the Cosmetology Law will be terminated and destroyed. (7-1-97)

~~**04. Scope And Requirement Of Examination For License.**~~ (7-1-97)

~~a. Examination will consist of both a practical and written examination. The written examination will be in two parts: a national theory examination and an Idaho jurisprudence examination.~~ (7-1-97)

~~b. Mannequin shall be used.~~ (3-30-01)

~~c. Examinee will be required to demonstrate to the board the ability to teach cosmetology, nail technology, esthetics, or electrology services. One subject to be assigned when accepted for examination and a subject to be drawn at the time of the examination.~~ (3-8-02)

~~d. Supplies required for the instructor's examination. Bring sufficient materials and supplies to demonstrate in assigned category.~~ (7-1-97)

054. Instructor Reexamination. To be eligible for reexamination, an applicant who fails any portion of the examination on a second attempt and all subsequent attempts, must obtain two hundred (200) hours additional instruction in a school of cosmetology, nail technology, esthetics, or electrology as a student instructor. (3-8-02)(6-3-02)T

065. Requirements For Student Instructor. (7-1-97)

a. A student instructor shall file an application on forms provided by the board before beginning instruction and shall at all times be under the direct supervision of a licensed instructor. (3-30-01)

b. The time spent as a student instructor to meet instructor licensure requirements will not be credited to the years experience required for an instructor license. (7-1-97)

c. One (1) year experience may be obtained within a school upon completion of instructor instruction. (3-30-01)

d. Six (6) months is considered to be one thousand (1,000) hours of instruction. Three (3) months is considered to be five hundred (500) hours of instruction. (3-30-01)

076. Student Registration. Schools are required to register all students with the board prior to providing any instruction. Student registration fee must be submitted at time of registration. (7-1-97)

087. Records Required. Records required of schools teaching student instructors shall be maintained in accordance with the records required for schools of cosmetology. (3-30-01)

098. Record Of Instruction. Records of the operations completed by each student shall be maintained of the following: (3-30-01)

- a.** Lesson Planning. (3-30-01)
- b.** Audio Visual Aid Preparation. (3-30-01)
- c.** Theory Class. (3-30-01)
- d.** Practical Demonstrations. (3-30-01)
- e.** Testing and Evaluation Theory. (3-30-01)
- f.** Testing and Evaluation. (3-30-01)
- g.** Clinic Floor Supervision. (3-30-01)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.05.01 - RULES OF THE BOARD OF ENVIRONMENTAL HEALTH SPECIALIST EXAMINERS

DOCKET NO. 24-0501-0201

NOTICE OF RULEMAKING - PROPOSED RULE

(REPEAL OF CHAPTER)

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Effective March 19, 2002, Chapter 24, Title 54, Idaho Code, Environmental Health Specialists law was repealed. Therefore, this chapter of rules is being repealed.

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

There are no fees or charges imposed or increased as a result of these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

IDAPA 24.05.01 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.09.01 - RULES OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

DOCKET NO. 24-0901-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Deletes the reference under nursing home administrator-in-training requirement to the facility administrator not being the preceptor.

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

There are no fees or charges imposed or increased as a result of these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0901-0201

400. NURSING HOME ADMINISTRATORS-IN-TRAINING (Rule 400).

01. Related Health Care Field. "Related health care field" shall mean a field in health care related to administration. (7-1-93)

02. Trainees. Trainees must work on a full time basis in an Idaho licensed nursing health care facility, preferably a nursing home. Full time shall be a forty (40) hour per week work schedule with consideration for normal

leave taken. Failure to comply with this rule or Section 54-1610, Idaho Code, shall not receive credit as a Nursing Home Administrator-In-Training. (7-1-98)

a. Each trainee shall register with the Board as a Nursing Home Administrator-In-Training (AIT) by submitting an application provided by the Board together with the required fee. The effective date of each AIT program shall be the date the Board approves the application. (3-13-02)

b. Quarterly reports for those trainees employed in a nursing home must reflect that the preceptor of the trainee has instructed, assisted and given assignments as deemed necessary to fulfill the requirements of Subsection 400.03. (7-1-98)

03. Nursing Home Administrator-In-Training Requirements. A Nursing Home Administrator-in-Training shall be required to train in all phases of nursing home administration including the following: (7-1-93)

a. Resident Care Management. (7-1-98)

b. Personnel Management. (7-1-93)

c. Financial Management. (7-1-93)

d. Environmental Management. (7-1-98)

e. Meeting Regulations and Governing Entities Directives. (7-1-98)

f. Organizational Management. (7-1-98)

04. Facility Administrator. ~~If the facility administrator is not the preceptor,~~ The trainee must spend no less than thirty-two (32) hours a month with the preceptor in a training and/or observational situation in the six (6) areas of nursing home administration as outlined in Subsection 400.03. Quarterly reports must reflect particular emphasis on the six (6) phases of nursing home administration during the time spent in the nursing home. (7-1-98)()

05. Preceptor Certification. (7-1-93)

a. A nursing home administrator who serves as a preceptor for a nursing home administrator-in-training must be certified by the Board of Examiners of Nursing Home Administrators. The Board will certify the Idaho licensed nursing home administrator to be a preceptor who: (7-1-98)

i. Is currently practicing as a nursing home administrator and who has practiced a minimum of two (2) consecutive years as a nursing home administrator; and (7-1-98)

ii. Who successfully completes a six (6) clock hour preceptor orientation course approved by the Board. (7-1-93)

b. The orientation course will cover the philosophy, requirements and practical application of the nursing home administrator-in-training program and a review of the six (6) phases of nursing home administration as outlined in Subsection 400.03. (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.11.01 - RULES OF THE STATE BOARD OF PODIATRY

DOCKET NO. 24-1101-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

Updates the Incorporation by Reference section to reflect current publication date; deletes reference to annual renewal date; changes passing grade on examination to 70%; and changes the standards of ethical practice shall be the American Podiatric Medical Association's Code of Ethics.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees or charges imposed or increased as a result of these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1101-0201

004. INCORPORATION BY REFERENCE (Rule 4).

The document titled American Podiatric Medical Association's Code of Ethics as published by the American Podiatric Medical Association, dated March 2002 and referenced in Section 500, is herein incorporated by reference and is available from the Board's office and on the Board web site. ~~(3-13-02)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

300. FEES (Rule 300).

- 01. Application Fee.** A fee shall accompany all applications. The fee shall be two hundred dollars (\$200). (7-1-97)
- 02. Original License Fee.** The original license fee shall be three hundred dollars (\$300). (3-13-02)
- 03. Written Exam Fee.** The fee for examination shall be equal to that charged by the national examining entity, together with an additional twenty-five (\$25) dollar administrative fee. (3-13-02)
- 04. Annual Renewal Fee.** Fee for annual renewal of licenses, three hundred dollars (\$300) ~~on or before the first day of July of each year.~~ (3-13-02)()
- 05. Re-Exam Fee.** For candidates re-examining for the written and practical examinations or written examination only, the fee for re-examination will be four hundred dollars (\$400). For candidates re-examining for the practical only, the fee shall be two hundred dollars (\$200). (3-13-02)
- 06. Fee Non-Refundable.** All fees are non-refundable. (3-13-02)

(BREAK IN CONTINUITY OF SECTIONS)

400. LICENSURE BY EXAMINATION (Rule 400).

- 01. Examination Of Applicants.** Examination of applicants shall be conducted by the whole board or by its designated agents or representatives. (7-1-97)
- 02. Exam Required For Licensure.** No person shall be granted a license to practice podiatry without first receiving a passing grade on an examination given by the board and consisting of those subjects outlined in Section 54-606, Idaho Code. (3-13-02)
- 03. Exam Dates.** Examinations shall be held at Boise, Idaho, the third Monday of July and at such other times as the board shall direct. (3-13-02)
- 04. Passing Grade.** A passing grade in all subjects examined shall be a general average of not less than seventy ~~five~~ percent (75 ~~0~~ %). (3-13-02)()
- 05. Failure Of Exam.** An applicant failing the examination shall be entitled within six (6) months to a reexamination upon the payment of an additional fee as established in Section 300. (3-13-02)
- 06. Failure Of Reexam.** An applicant who fails the examination on two (2) such reexaminations shall exhaust his privilege under his original application. (9-28-94)
- 07. Original Application.** The original application will be considered null and void after a period of two (2) years from date of original application if no license has been issued. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

500. STANDARDS OF THE ETHICAL PRACTICE OF PODIATRY (Rule 500).

The standards ~~of~~ for the ~~E~~thical ~~P~~ractice of ~~P~~podiatry ~~are prescribed in Section 54-609, Idaho Code, in~~ shall be the American Podiatric Medical Association's Code of Ethics as referenced in Subsection 004 of these rules and are hereby adopted and shall apply to all practitioners of podiatry. (3-13-02)()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.12.01 - RULES OF THE STATE BOARD OF PSYCHOLOGIST EXAMINERS
DOCKET NO. 24-1201-0201
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-2305, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Adds that the reexamination fee shall be those charged by the national examining entity plus \$25 processing fee and change reciprocity fee to endorsement fee.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees or charges imposed or increased as a result of these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1201-0201

150. FEES (Rule 150).

- 01. Annual Renewal Fee.** Annual renewal fee - two hundred dollars (\$200). (7-1-98)
- 02. Application Fee.** Application fee - two hundred dollars (\$200). (7-1-93)
- 03. Examination and Reexamination Fee.** Examination and reexamination fees shall be equal to that those charged by the national examining entity plus a processing fee of twenty-five dollars (\$25). ~~(3-18-99)~~()

04. ~~**Reexamination Fee.** Reexamination fee shall be equal to that charged by the national examining entity plus a processing fee of twenty-five dollars (\$25).~~ (3-18-99)

054. ~~**Endorsement Fee.** Reciprocity~~ Endorsement fee - one hundred dollars (\$100) as established by Section 54-2312, Idaho Code. (3-15-02)(_____)

065. ~~**Examination, Reexamination Or Endorsement Fee In Addition To Application Fee.**~~ The examination, reexamination, or endorsement fee shall be in addition to the application fee and must accompany the application. (3-15-02)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.12.01 - RULES OF THE STATE BOARD OF PSYCHOLOGIST EXAMINERS
DOCKET NO. 24-1201-0202
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 11, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2305, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Allows a one (1) year carryover of continuing education hours; deletes unnecessary record keeping requirement; require the training faculty to be on site and of adequate size; clarifies the definition of a professional psychology program.

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

These rules confer a benefit by allowing the continuing education courses not claimed for continuing education credit in the current renewal year, to be carried over and claimed the following renewal year. With this rule a broader scope is provided licensees regarding continuing education credits. The on site training faculty requirement improves training. Clarifying the definition of a professional psychology program assists licensees and the general public.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees or charges imposed or increased as a result of these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1201-0202

401. CONTINUING EDUCATION REQUIREMENTS FOR RELICENSURE IN PSYCHOLOGY (Rule 401).

01. Number Of Hours Required. All licensed psychologists, in order to renew their license, must have accumulated twenty (20) hours per year of continuing education credits. At the time of renewal of the psychologists' licenses, they will certify that they are aware of the requirements for continuing education and that they have met those requirements for the preceding year. (7-1-93)

02. Professional Level Of Continuing Education - Time Period Records Kept - Audit. This continuing education experience must be at an appropriate level for professional training in psychology. The licensees have responsibility for demonstrating the relevance and adequacy of the educational experience they select. The licensees are also responsible for keeping an accurate record of their own personal continuing education hours for a period of five (5) years. A random audit may be conducted to insure compliance. (7-1-93)

03. Newly Licensed Individuals. Newly licensed individuals will be considered to have satisfied the continuing education requirements for the remainder of the year in which their license is granted. (7-1-93)

04. Certificates Of Satisfactory Attendance And Completion. Certificates of satisfactory attendance and completion, cancelled checks, participant lists, transcripts from universities, letters of certification on instructor's letterhead, and other reasonably convincing proof of the submitted activities may serve as documentation when persons audited are required to submit proof of continuing education. (7-1-93)

05. Licensees Who Do Not Fulfill The Continuing Education Requirements. Licensees who do not fulfill the continuing education requirements may be subject to disciplinary action. (7-1-93)

06. Carryover Of Continuing Education Hours. Continuing education courses not claimed for CE credit in the current renewal year, may be credited for the next renewal year. A maximum of twenty (20) hours may be carried forward from the immediately preceding year. (4-11-02)T

(BREAK IN CONTINUITY OF SECTIONS)

450. GUIDELINES FOR USE OF SERVICE EXTENDERS TO LICENSED PSYCHOLOGISTS (Rule 450).

The board recognizes that licensed psychologists may choose to extend their services by using service extenders. The board provides general rules to cover all service extenders as well as specific rules to cover service extenders with different levels of training and experience. (7-1-93)

01. General Provisions For Licensed Psychologists Extending Their Services Through Others. (7-1-93)

a. The licensed psychologist exercising administrative control for a service extender shall: (7-1-93)

i. Have the authority to cause termination of compensation for the service extender. (7-1-93)

ii. Have the authority to cause the suspension or removal of the service extender from his position as a service provider. (7-1-93)

b. The licensed psychologist exercising professional direction for a service extender shall: (7-1-93)

i. Within thirty (30) days after employing the service extender, formulate and provide to the board a written supervisory plan for each service extender. The plan shall include provisions for supervisory sessions and chart review. If the psychologist requires tapes to be made of psychological services delivered by the service extender, then the plan shall also specify review and destruction of these tapes. The plan shall also specify the hours per calendar week that the licensed psychologist will be at the same physical location as the person extending the

services of the licensed psychologist. The plan shall be accompanied by a completed application form and an application fee of fifty dollars (\$50). (7-1-93)

ii. Establish and maintain a level of supervisory contact sufficient to be readily accountable in the event that professional, ethical, or legal issues are raised. There will be a minimum of one (1) hour of face-to-face supervisory contact by a licensed psychologist with the service extender for each one (1) to twenty (20) hours of services provided by the service extender during any calendar week. At least one half (1/2) of this face-to-face supervisory contact will be conducted individually, and up to one half (1/2) of this face-to-face supervisory contact may be provided using a group format. A written record of this supervisory contact, including the type of activities conducted by the service extender, shall be maintained by the licensed psychologist. Except under unusual circumstances, the supervisory contact will occur either during the week the services are extended or during the week following. In no case will services be extended more than two (2) weeks without supervisory contact between the service extender and a licensed psychologist. (7-1-93)

iii. Provide the service extender a copy of the current Ethical Standards of the American Psychological Association, and obtain a written agreement from the service extender of his intention to abide by them. (7-1-93)

02. Qualifications For Service Extenders. (7-1-93)

a. Category I: A service extender will be placed in Category I if: (7-1-93)

i. The licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the board that the service extender holds a license issued by the state of Idaho to practice a specific profession, and that the issuance of that license requires the licensee hold a master's degree or its equivalent as determined by the board; or (7-1-93)

ii. The service extender meets the criteria for Category II specified below and the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the board that the service extender has satisfactorily functioned as a service extender to one (1) or more licensed psychologist for at least twenty (20) hours per calendar week over a period totaling two hundred sixty (260) weeks. (7-1-93)

b. Category II: A service extender will be placed in Category II if the licensed psychologist wishing to employ the service extender verifies in writing to the satisfaction of the board that the service extender holds a master's degree from a program in psychology, counseling, or human development as determined by the board. (7-1-93)

03. Conditions For Use Of Service Extenders. (7-1-93)

a. All persons used to extend the services of a licensed psychologist shall be under the direct and continuing administrative control and professional direction of a licensed psychologist. These service extenders may not use any title incorporating the word "psychologist" or any of its variants or derivatives, e.g. "psychological," "psychotherapist," etc. (7-1-93)

b. Work assignments shall be commensurate with the skills of the service extender and procedures shall be planned in consultation with the licensed psychologist under all circumstances. (7-1-93)

c. Public announcement of fees and services, as well as contact with lay or professional public shall be offered only in the name of the licensed psychologist whose services are being extended. However, persons licensed to practice professions other than psychology may make note of their status in such announcements or contacts. (7-1-93)

d. Setting and collecting of fees shall remain the sole domain of the licensed psychologist; excepting that when a service extender is used to provide services of the licensed psychologist, third party payers shall be informed of this occurrence in writing at the time of billing. Unless otherwise provided in these rules and regulations, licensed psychologists may neither claim or imply to service recipients or to third party payers an ability to extend their services through any person who has not been approved as a service extender to that psychologist as specified in this section. (7-1-93)

e. All service recipients shall sign a written notice of the service extender's status as a service extender for the licensed psychologist. A copy of the signed written notice will be maintained on file with the licensed psychologist. (7-1-93)

f. Within the first three (3) contacts, the licensed psychologist shall have face-to-face contact with each service recipient. (7-1-93)

g. A licensed psychologist shall be available to both the service extender and the service recipient for emergency consultation. (7-1-93)

h. Service Extenders shall be housed in the same service delivery site as the licensed psychologist whose services they extend. Whatever other activities they may be qualified to perform, service extenders shall limit themselves to acting as service extenders of the licensed psychologist when providing direct services so long as they are physically located in the offices of the licensed psychologist. (7-1-93)

i. A service extender in Category I may deliver as much as, but not more than fifty percent (50%) of their service while the licensed psychologist is not physically present at the service delivery site. A service extender in Category II may deliver as much as, but not more than twenty-five percent (25%) of their service while the licensed psychologist is not physically present at the service delivery site. Service Extenders providing as many as, but no more than, three (3) hours of service extension per calendar week shall be exempted from these provisions. Without notification to the board, short term exemption from this rule for atypical circumstances, such as irregular travel by the licensed psychologist, may occur for periods as long as, but no longer than three (3) calendar weeks. Longer exemptions may be granted at the discretion of the board on written request by the licensed psychologist to the board. (7-1-93)

j. The licensed psychologist shall employ no more than three (3) service extenders. (3-18-99)

k. When a licensed psychologist terminates employment of a service extender, the licensed psychologist will notify the board in writing within thirty (30) days. (7-1-93)

l. At the time of license renewal the licensed psychologist shall submit: (7-1-93)

i. A copy of the written record of supervisory contact for the previous twelve (12) months with the names of service recipients removed. (7-1-93)

ii. The percentage of time during the previous twelve (12) months that the service extender extended services while the licensed psychologist was at the service delivery site. (7-1-93)

~~iii. The modal number of hours per calendar week, during the previous twelve (12) months, that the licensed psychologist delivered services at the site on which the service extender extended his services. (7-1-93)~~

~~iv. An updated plan for the supervision of each of his service extenders. The updated plan shall be accompanied by a fee of fifty dollars (\$50). (7-1-93)~~

(BREAK IN CONTINUITY OF SECTIONS)

500. EDUCATIONAL AND CREDENTIALING REQUIREMENTS FOR LICENSURE (Rule 500).

Applicants who receive a doctoral degree from a program accredited by the American Psychological Association are considered to have met all criteria outlined in Section 500. (4-11-02)T

01. Training In Professional Psychology. Training in professional psychology is doctoral training offered in an institution of higher education accredited by: (7-1-93)

- a. Middle States Association of Colleges and Schools. (7-1-93)
- b. The New England Association of Schools and Colleges. (7-1-93)
- c. The North Central Association of Colleges and Schools. (7-1-93)
- d. The Northwest Association of Schools and Colleges. (7-1-93)
- e. The Southern Association of Colleges and Schools. (7-1-93)
- f. The Western Association of Schools and Colleges. (7-1-93)
- 02. Training Program.** The training program must stand as a recognizable, coherent organizational entity within the institution. Programs that are accredited by the American Psychological Association or that meet the criteria for such accreditation are recognized as meeting the definition of a professional psychology program. ~~(7-1-93)~~(4-11-02)T
- 03. Authority And Primary Responsibility.** There must be a clear authority and primary responsibility for the core and specialty areas. (7-1-93)
- 04. Content Of Program.** The program must be an integrated, organized sequence of study. (7-1-93)
- 05. There Must Be An Identifiable Training Faculty And A Psychologist Responsible For The Program.** There must be an identifiable training faculty on site of sufficient size and breadth to carry out the training responsibilities. ~~and a~~ A faculty psychologist must be responsible for the program. ~~(7-1-93)~~(4-11-02)T
- 06. Program Must Have An Identifiable Body.** The program must have an identifiable body of students who are matriculated in that program for a degree. (7-1-93)
- 07. What The Program Must Include.** The program must include supervised practicum, internship, field or laboratory training appropriate to the practice of psychology. Pre-doctoral internships must be completed at member sites of the Association of Psychology Postdoctoral and Internship Centers, or sites demonstrating an equivalent program. ~~(7-1-93)~~(4-11-02)T
- 08. Curriculum.** The curriculum shall encompass a minimum of three (3) academic years of full time graduate study at least one (1) year of which is spent in full-time physical residence at the degree granting educational institution. In addition to instruction in scientific and professional ethics and standards, research design and methodology, statistics, and psychometrics, the core program shall require each student to demonstrate competence in each of the following substantive content areas. This typically will be met by including a minimum of three (3) or more graduate semester hours (five (5) or more graduate quarter hours) in each of these four (4) substantive content areas: ~~(7-1-93)~~(4-11-02)T
- a. Biological Bases of Behavior: Physiological psychology, comparative psychology, neuropsychology, sensation and perception, psychopharmacology. (7-1-93)
- b. Cognitive-Affective Bases of Behavior: Learning, thinking, motivation, emotion. (7-1-93)
- c. Social Bases of Behavior: Social psychology, group processes, organizational and systems theory. (7-1-93)
- d. Individual Differences: Personality theory, human development, abnormal psychology. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

550. REQUIREMENTS FOR SUPERVISED PRACTICE (Rule 550).

01. Duration And Setting Of Supervised Practice. (7-1-93)

a. A year of supervised experience is defined as a minimum of one thousand (1000) hours of supervised service provision acquired during not less than a twelve (12) month and no more than a thirty-six (36) calendar month period. The first year of supervised experience shall be accredited only after acquiring the equivalent of ~~two~~ one (21) years of full time graduate study. A second year must be obtained post-doctorally.

~~(3-18-99)~~(4-11-02)T

b. A minimum qualifying supervised experience consists of two (2) years of supervised experience, neither of which is the internship, and at least one (1) of which is obtained post-doctorally. (7-1-93)

02. Qualifications Of Supervisors. Supervising psychologists shall be licensed and shall have training in the specific area of practice in which they are offering supervision. (7-1-93)

03. Amount Of Supervisory Contact. One (1) hour per week of face-to-face individual contact per twenty (20) hours of applicable experience is a minimum. (7-1-93)

04. Evaluation And Accreditation Of Supervised Practice. The board shall require submission of information by the supervisor(s) which enable it to evaluate and credit the extent and quality of the candidate's supervised practice. The form requesting such information shall cover the following: (7-1-93)

- a.** Name of supervisee; (7-1-93)
- b.** Educational level of supervisee; (7-1-93)
- c.** Supervisor's name, address, license number, state in which granted and area of specialization; (7-1-93)
- d.** Name and nature of setting in which supervised practice took place; (7-1-93)
- e.** Date of practice covered in this report; (7-1-93)
- f.** Number of practice hours during this period; (7-1-93)
- g.** Supervisee's duties; (7-1-93)
- h.** Number of one-to-one supervisory hours; (7-1-93)
- i.** Assessment of supervisee's performance; and (7-1-93)
- j.** Whether or not the supervisee received monetary compensation for the supervised services they provided. (7-1-93)

05. Unacceptable Supervision. Supervised practice time during which the supervisor deems supervisee's performance to have been unacceptable shall not be credited towards the required supervised practice hours. (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS

DOCKET NO. 24-1401-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 5, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-3204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Adds Bureau contact information; deletes obsolete social work classifications and establish current classifications and definitions to be in compliance with current law changes; adds the board/bureau contract is to include investigative, legal and fiscal responsibilities; clarifies reimbursement expenses for board members; deletes that expired licenses will cancel on July first; updates the classifications under fees to reflect those in the current law change; changes board meeting dates to be at least three (3) times each year and at such other times and places as deemed by the board; clarifies endorsement requirements; changes application deadline date to be at least ten (10) days prior to the next board meeting; clarifies continuing education requirements.

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

To be in compliance with deadlines in amendments to governing law or federal programs.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees or charges imposed or increased as a result of these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1401-0201

100. APPROVED COLLEGES AND RELATED FIELDS (Rule 100).

Social work and social work practice is a professional discipline requiring specialized knowledge and training. (7-1-93)

01. College Or University Approved By The Board. ~~“College or university approved by the board” is a~~Any college, university, or school of social work accredited or ~~it~~ is a candidate ~~status~~ for accreditation by the ~~Council of Social Work Education Northwest Association of Secondary and Higher Schools or any similar accrediting body.~~ (5-24-95)(8-5-02)T

02. Other College Or University Approved By The Board. ~~“College or university approved by the board” is any college or university accredited by the Northwest Association of Secondary and Higher Schools or any similar accrediting body.~~ (7-1-93)

03. Related Fields. ~~“Or related fields” is defined as a baccalaureate degree that includes twenty-four (24) semester credit hours of courses in which the content is consistent with that recommended as basic to social work training by the Council on Social Work Education. Twelve (12) of the twenty-four (24) hours shall be taught by a social worker with a graduated degree from an accredited school of social work. The basic content areas to be required shall include:~~ (7-1-93)

~~a. Social work practice is to include a methods content of a minimum of three (3) hours; and social work internship in minimum of six (6) hours. The methods course(s) are to be taught and the internship is to be supervised by a faculty member with a graduate degree from an accredited school of social work. The program providing the practice content and internship experience must be able to demonstrate how the internship is developed and monitored to assure that internship students demonstrate application of the knowledge, values and skills taught within the required basic content areas.~~ (7-1-93)

~~b. Social welfare policy and services shall include social welfare historical development, current policies and services.~~ (7-1-93)

~~c. Human behavior and social environment shall include human behavior in the social environment, with demonstrated content representing five (5) human systems: individual, family, group, organization and community.~~ (7-1-93)

~~d. Social research shall include social statistics and research methods.~~ (7-1-93)

~~e. Course content and curriculum preparing students for practice will be evaluated by board review of course and program description provided by the college or university.~~ (7-1-93)

042. Related Fields. ~~“Or related fields” is defined as a~~**A** baccalaureate degree that includes thirty-six (36) semester credit hours with a grade of “C” or above in each course, in which the content is consistent with that recommended as minimal to social work training by ~~the Council on Social Work Education~~ **an approved accrediting body.** Eighteen (18) of the thirty-six (36) semester credit hours shall be taught by a social worker with a graduate degree from an accredited school of social work. The basic content areas to be required shall include: (7-1-96)(8-5-02)T

a. Social work practice is to include a methods content of a minimum of six (6) semester credit hours; and a social work practicum with a minimum of nine (9) semester credit hours. The methods courses are to be taken previous to participation in practicum and are to be taught by a faculty member with a graduate degree (MSW) from an accredited school of social work. The practicum is to be supervised by a faculty member who has a graduate degree (MSW) from an accredited school of social work. The on-site supervisor is to be a licensed social worker. Both the methods courses and the practicum must have been completed within the past five (5) years (date computed from time of application). The program providing the practice content and internship experience is developed and monitored to assure that internship students demonstrate application of the knowledge, values and skills taught within the required basic content areas. (7-1-96)

b. Social welfare policy and services shall include current policies and services, and shall be taught by a faculty member with a graduate degree in social work. (7-1-96)

- c. Human behavior and social environment shall include human behavior in the social environment with demonstrated content representing five (5) human systems: individual, family, group, organization and community. (7-1-96)
- d. Social research shall include social statistics and research methods. (7-1-96)
- e. Ethics shall include any three (3) credit course from a “college or university approved by the board” which includes the word “ethics” in the course title. (7-1-96)
- f. Cultural diversity shall include a three (3) credit course from a “college or university approved by the board” which includes content specific to ethnic minority group(s). (7-1-96)
- g. Course content and curriculum preparing students for practice will be evaluated by board review of course and program description provided by the college or university. (7-1-96)

(BREAK IN CONTINUITY OF SECTIONS)

150. ADMINISTRATION AND ACCOUNTING (Rule 150).

The disposition of receipts and expenses for administering the terms and provisions of this Act shall be duly appropriated in the following manner: (7-1-93)

01. Board Shall Contract With The Bureau Of Occupational Licenses. The board shall contract with the Bureau of Occupational Licenses for administrative, investigative, legal, fiscal and clerical responsibilities, for appropriation and accountability of all fees obtained under the terms and provisions of this Act, for issuing licenses to qualified applicants upon approval by the board and for any other duties so prescribed by the contract. (7-1-93)(8-5-02)T

02. Reimbursement Of Board Members. Board members shall *not be reimbursed for time spent while engaged in the functions of the board, but shall* be entitled to reimbursement for actual expenses incurred as long as such expenses are deemed necessary and prudent and are approved by the Board. (7-1-93)(8-5-02)T

(BREAK IN CONTINUITY OF SECTIONS)

200. LICENSING QUALIFICATIONS AND DEFINITION OF TERMS (Rule 200).

All applicants for licensing under the Social Work Licensing Act must meet the minimum qualifications as set forth by this act. (7-1-93)

01. Good Moral Character. “Good moral character” is defined by the board as that behavior exhibited on the part of an qualified applicant which is in conformity with ~~Rule H,~~ the Social Work Code of Professional Conduct and within the limits of state law. (7-1-93)(8-5-02)T

02. Application For Licensure. Application for licensure must be made to the Board of Social Work Examiners on forms provided by the Bureau of Occupational Licenses. (7-1-93)

03. Educational Requirements. Educational requirements must be verified by submission of official transcripts from the educational institution directly to the Bureau of Occupational Licenses. (7-1-93)(8-5-02)T

201. ~~PRIVATE AND INDEPENDENT PRACTICE OF SOCIAL WORK.~~

01. ~~Private And Independent Practice Of Social Work.~~ “~~Private and independent practice of social work~~” is defined as ~~that practice in which an individual who, wholly or in part, practices social work autonomously,~~

~~with responsibility for his own practice and sets up his own contractual conditions of payment with client, agency or institution.~~ **Baccalaureate Social Work.** The application of social work theory, knowledge, methods, and ethics to restore or enhance social or psychosocial functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate social work is a generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, supportive counseling, supervision, and consultation with clients. Baccalaureate social work also includes advocacy, education, community organization, and the development, implementation and administration of policies, programs, and activities. Bachelor level social workers are prohibited from performing clinical social work. (7-1-93)(8-5-02)T

~~a. "Under appropriate supervision" is interpreted to mean that type of consultative-teaching supervision which is directed toward enhancement and improvement of the individual's social work values, knowledge, methods and techniques. Supervision shall come from a qualified and experienced professional working in the same area of practice. The supervisor must hold an appropriate license for his/her discipline. Supervision must occur on a regular and on-going basis, consisting of a minimum of one hundred hours (100) hours. Ratio of supervisor/supervisee shall not exceed two (2) social workers to one (1) supervisor. (7-1-97)~~

02. Master's Social Work. The application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Master's social work requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, supportive counseling, supervision and consultation with clients, advocacy, teaching, research, community organization, and the development, implementation, and administration of policies, programs, and activities. Master level social workers who do not hold clinical licensure may provide clinical social work only under the supervision of a licensed clinical social worker, psychologist, or psychiatrist. (refer to supervision plan). (8-5-02)T

023. Private And Independent Practice Of Clinical Social Work. ~~Private and independent~~ The practice of clinical social work is ~~the professional~~ a specialty within the practice of master's social work and requires the application of ~~social work theory and methods to the treatment and prevention of psychosocial dysfunction, disability or impairment, including emotional and mental disorders~~ specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions. ~~#~~ Clinical social work is based on knowledge and theory of psychosocial development, behavior, psychopathology, motivation, interpersonal relationships, environmental stress, social systems, and cultural diversity, with particular attention to person-in-environment. It shares with all social work practice the goal of enhancement and maintenance of psychosocial functioning of individuals, families, and small groups. Clinical social work encompasses interventions directed to interpersonal interactions, intrapsychic dynamics, and life-support and management issues. It includes, but is not limited to, individual, couples, family and group psychotherapy. (7-1-93)(8-5-02)T

~~a. Clinical social work encompasses interventions directed to interpersonal interactions, intrapsychic dynamics, and life-support and management issues. It includes but is not limited to individual, couples, family and group psychotherapy. Clinical social work services consist of assessment, treatment and evaluation. (7-1-93)~~

~~b. "Under appropriate supervision" shall be defined to mean that type of consultative-teaching supervision aimed at enhancing the professional development of supervisees in providing services which focus upon the evaluation and treatment of emotional disorders and mental illness as related to the total health of the individual, and on helping with problems of living and activities designed to stimulate growth and development. Supervision shall come from a licensed clinical social worker, licensed psychologist or a person licensed to practice medicine and surgery who practices in the area of psychiatry, working in the same area of practice. Supervision must occur on a regular and on-going basis, consisting of a minimum of one hundred (100) hours equally distributed throughout the qualifying period. Ratio of supervisor/supervisee shall not exceed two (2) social workers to one (1) supervisor. (7-1-97)~~

04. Post Graduate Experience. ~~"Two (2) years of post graduate experience" refers to full time social work experience gained after completion of the educational requirements and receipt of a Master of Social Work degree. A total of three thousand (3,000) part and/or full time hours of social work experience accumulated in not less than two (2) years maybe substituted for the two (2) years full time requirement.~~ **Independent Practice Of Social Work.** As defined in Section 54-3207, Idaho Code, is that practice in which an individual who, wholly or in

part, practices social work autonomously, with responsibility for that practice. No social worker, regardless of the level of licensure, shall engage in independent practice until such time as the social worker shall have worked in a supervised setting and received a minimum of three thousand (3000) hours in a supervised setting in no less than two (2) years. (7-1-93)(8-5-02)T

05. ~~Appropriate Supervision.~~ ~~“Under appropriate supervision” is interpreted to mean that type of consultative-teaching supervision which is directed toward enhancement and improvement of the individual’s social work values, knowledge, methods and techniques. Supervision shall come from a qualified and experienced professional working in the same area of practice. The supervisor must hold an appropriate license for his discipline. Supervision must occur on a regular and on-going basis.~~ **Private Practice of Social Work.** As defined in Section 54-3207, Idaho Code, is that independent practice in which an individual sets up and maintains responsibility for the contractual conditions of payment with clients, agencies, or institutions. (7-1-93)(8-5-02)T

036. Employment Of A Social Worker. A social worker employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility, is not to be considered within the definition of an ~~private independent~~ practitioner. Furthermore, a social worker who contracts with an agency or institution that assumes full responsibility for and supervises ~~ones of the~~ services provided to clients is not considered to be a private practitioner. (7-1-93)(8-5-02)T

067. ~~Application For Certification For Private And Independent Practice.~~ ~~Application for certification for private and independent practice must be made to the Board of Social Work Examiners on forms provided by the Bureau of Occupational Licenses.~~ **Supervision.** Consultative-teaching supervision that is directed toward enhancement and improvement of the individual’s social work values, knowledge, methods, and techniques. Supervision shall be face-to-face and provided by a qualified and experienced professional working in the same area of practice. Supervision for licensure as an independent social worker must occur on a regular and on-going basis and consist of a minimum of one hundred hours (100) hours. Ratio of supervisor/supervisee shall not exceed two (2) social workers to one (1) supervisor per hour of supervision. Supervisors must hold a degree in social work and a current license in good standing, except as noted in Subsection 201.07.c. (7-1-93)(8-5-02)T

a. Supervision of baccalaureate social workers pursuing licensure as independent practitioners must be provided by a licensed social worker who is approved to provide independent practice at the baccalaureate, masters, or clinical level. (8-5-02)T

b. Supervision of masters social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the masters or clinical level. (8-5-02)T

c. Supervision of social workers pursuing licensure as clinical level independent practitioners must be provided by a licensed clinical social worker, a licensed clinical psychologist, or a person licensed to practice medicine and surgery who practices in the area of psychiatry. (8-5-02)T

d. Supervision reports shall be submitted from each supervisor directly to the Board within thirty (30) days following each six (6) month period. Failure of the supervisor to submit the required reports in a timely manner may result in the supervisor being restricted by the Board from providing further supervision. (8-5-02)T

08. Supervised Practice Required. To be eligible for licensure as an independent practitioner a candidate must: (8-5-02)T

a. Meet the requirements set forth in Subsection 201.07; (8-5-02)T

b. Develop a plan for supervision that must be approved by the Board prior to commencement of supervision. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by the Board prior to the commencement of supervision by the new supervisor; and (8-5-02)T

c. Not have more than two (2) supervisors at any given time. (8-5-02)T

202. TEMPORARY PERMIT (Rule 202).

The Chief of the Bureau of Occupational Licenses, acting in behalf of the Idaho Board of Social Work Examiners, may issue a permit to temporarily practice as a social worker or as a certified social worker, to an individual who makes application on forms provided by the Bureau of Occupational Licenses, pays the required fee and who has filed a complete application and payed the required fees for licensure, when the Chief has determined the applicant is eligible for licensure upon approval by the board or successful passage of the examination required by the board.

(7-1-93)

01. ~~Validity Of Permit.~~ *A temporary permit shall be valid only until the board takes action on the application for licensure or until the applicant is called by the board for examination and the results of the examination are made known.*

(7-1-93)

02. ~~Eligibility To Receive Permit.~~ *An applicant is not eligible to receive a temporary permit when the applicant has previously had a permit or when the applicant has failed the examination for licensure.*

(7-1-93)

03. ~~Supervision While On A Permit.~~ *A permit holder must at all times in the practice of social work be under the supervision and responsible to a licensed social worker who has accepted this responsibility as a condition to issuance of the permit.*

(7-1-93)

04. ~~Obligation Of The Board.~~ *The issuance of a temporary permit does not in any manner obligate the board to grant a license to practice as a social worker or certified social worker.*

(7-1-93)

05. ~~Termination Of Permit.~~ *A temporary permit may be summarily terminated without a hearing by the board or the Chief when there is reason to believe that the permittee was not eligible to receive the permit or is not eligible for licensure except for successful passage of the examination.*

(7-1-93)

2032. -- 249. (RESERVED).

250. REINSTATEMENT REQUIREMENTS (Rule 250).

The Bureau shall cancel all licenses that have ~~become invalid~~ expired for failure to renew ~~on July first of that year.~~ The Bureau of Occupational Licenses may reinstate said licenses in accordance with the requirements of Section 67-2614, Idaho Code.

(5-24-95)(8-5-02)T

(BREAK IN CONTINUITY OF SECTIONS)

300. FEES (Rule 300).

To administer and carry out the provisions of this Act, the following fees are established:

(7-1-93)

01. ~~Application And Original License Fee.~~ Application and Original License Fee for licensed clinical social worker or licensed masters social worker or licensed social worker:

(7-1-93)

~~a.~~ *Certified Social Worker - Fifty dollars (\$50).* *(3-13-02)(8-5-02)T*

~~b.~~ *Private and Independent Practice - Fifty dollars (\$50).* *(3-13-02)*

~~c.~~ *Social Worker - Fifty dollars (\$50).* *(3-13-02)*

~~d.~~ *Temporary permit, Social Worker or Certified Social Worker - Thirty five dollars (\$35).* *(3-13-02)*

02. Examination Fee. Examination fee will be set by the Board in concordance with the testing service fees.

(7-1-93)

03. Endorsement And License Fee. ~~Endorsement and License Fee: (Reference to Subsection 300.06)~~ for licensed clinical social worker or licensed masters social worker or licensed social worker

(7-1-93)

- ~~a.~~ *Certified Social Worker* - Fifty-five dollars (\$55). (~~3-13-02~~)(8-5-02)T
- ~~b.~~ *Social Worker – Fifty-five dollars (\$55).* (~~3-13-02~~)
- ~~c.~~ *Private and Independent Practice – Fifty-five dollars (\$55).* (~~3-13-02~~)
- 04. Renewal Fee.** Renewal Fee: (7-1-93)
- a.** Licensed Clinical Social Worker – Sixty dollars (\$60). (8-5-02)T
- ~~a~~**b.** *Certified Licensed Masters Social Worker - Fifty dollars (\$50).* (~~3-13-02~~)(8-5-02)T
- ~~b.~~ *Certified Social Worker with Private and Independent Practice – Sixty dollars (\$60).* (~~3-13-02~~)
- c.** Licensed Social Worker - Fifty dollars (\$50). (~~3-13-02~~)(8-5-02)T
- 05. Reinstatement Fee.** Reinstatement fees in accordance with Section 67-2614, Idaho Code. (7-1-93)
- 06. All Fees Under This Act Are Non-Refundable.** All fees under this Act are non-refundable. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

350. EXAMINATIONS AND BOARD MEETINGS (Rule 350).

Examinations will be conducted by the board for qualified applicants for social work licensing and board meetings will be held to conduct other business. (7-1-93)

01. Board Meetings. Board meetings will be held *on the first Monday of the months of April, August and December of* at least three (3) times each year and at such other times and places as the board deems necessary. (~~7-1-93~~)(8-5-02)T

02. Exam Utilized. The Board utilizes the uniform, nationally standardized examination of the *American Association of State Social Work Boards (AASSWB).* (8-5-02)T

a. Bachelor level candidates shall be required to successfully pass the basic examination. (8-5-02)T

b. Masters level candidates shall be required to successfully pass the intermediate examination. (8-5-02)T

c. Clinical level candidates shall be required to successfully pass the clinical examination. (~~7-1-93~~)(8-5-02)T

03. Dates Of Exams. Examination at all levels of social work licensing will be conducted on dates established for national administration. (7-1-93)

04. Graduation Date To Qualify For Exam. Candidates for examination who can satisfy the board that they will be graduating at the end of the spring, summer or fall terms of any given year, may qualify for examination at the established testing period immediately preceding the date of graduation. (5-24-95)

05. Exemption From Exam. An applicant who has been tested for licensure utilizing an acceptable examination will be exempt from the Idaho examination if the applicant received a converted score of seventy (70) based upon a criterion reference examination. (7-1-93)

06. Endorsement. *Total exemption from the requirement for examination is provided under Section 54-3208(3), Idaho Code.* The Board may grant a license to any person who submits a completed application on a form

approved by the Board together with the required fees and who: (7-1-93)(8-5-02)T

a. ~~Exemption from examination will be extended to applicants licensed in another state with substantially the same requirements for licensing. This interpretation does not imply an exemption from academic requirements.~~ Holds a current active license, in the profession for which a license is being sought, issued by the authorized regulatory entity in another state or country, the certification of which must be received directly by the Board from the issuing agency; and (7-1-93)(8-5-02)T

b. ~~The Professional Examination Service (PES) examination at the certified social worker and social worker level are accepted as similar to the examination required by Idaho law and Subsection 350.02 above. The Education Testing Service (ETS) examination will be accepted as similar to the examination required by Idaho law and Subsection 350.02 if taken prior to January 1, 1987.~~ Has not been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity and has never voluntarily surrendered a license; and (5-24-95)(8-5-02)T

c. Is of good moral character and has not been convicted, found guilty, or received a withheld judgment or suspended sentence for any felony; and (8-5-02)T

d. Has successfully passed an examination, as referenced in Subsection 350.02, or an examination provided by the Professional Examination Service (PES) at the clinical social worker and social worker level or the Education Testing Service (ETS) examination; and (8-5-02)T

e. Has certified under oath to abide by the laws and rules governing the practice of social work in Idaho and the code of professional conduct. (8-5-02)T

07. Application Deadline. Applications must be received in the Bureau of Occupational Licenses at least ~~ninety ten~~ (910) days prior to the ~~examination date~~ next board meeting. Candidates whose Applications are received after this date will be scheduled for the ~~next available examination for which the application meets the filing deadline~~ subsequent board meeting. (7-1-93)(8-5-02)T

351. CONTINUING EDUCATION (Rule 351).

01. Continuing Education Requirements. (7-1-95)

a. ~~Beginning July 1, 1995,~~ Continuing education is required for renewal at all levels of social work licensure in Idaho. (7-1-95)(8-5-02)T

b. The completion of a minimum of twenty (20) continuing education (CE) hours ~~that are annually is~~ required to renew ~~at~~ each licensure level ~~are~~. (7-1-95)(8-5-02)T

i. ~~Certified Social Worker, Private/Independent Practice – twenty (20) hours annually.~~ (7-1-95)

ii. ~~Certified Social Worker – twenty (20) hours annually.~~ (7-1-95)

iii. ~~Social Worker – twenty (20) hours annually.~~ (7-1-95)

e. ~~Beginning July 1, 1995, certified proof of attendance for formal continuing education hours will be required.~~ (7-1-95)

d.c. ~~Compliance with the~~ Continuing education (CE) requirements for licensees ~~are to~~ shall be reported annually. A continuing education course taken in any renewal year, but not claimed for CE credit in that year, may be utilized for credit in the following renewal year. (7-1-98)(8-5-02)T

ed. Each licensed social worker shall complete and return to the Bureau a Board approved continuing education report form as part of the annual renewal of licenses. ~~This form will include identification of the title, date, and location of the course for which credit is claimed as well as a signature space for the licensee.~~ (7-1-98)(8-5-02)T

fe. Licensees will maintain documentation verifying CE attendance and curriculum for a period of

~~three~~ four (34) years. This documentation will be subject to audit by the board.

~~(7-1-98)~~(8-5-02)T

~~g.~~ Licensees shall not be required to comply with this requirement during the first year in which they become licensed under the social work act.

~~(7-1-95)~~(8-5-02)T

~~h.~~ One (1) continuing education hour shall equal one (1) clock hour. (7-1-95)

~~i.~~ Courses that are part of the curriculum of a university, college or other educational institution shall be allotted CE credit at the rate of fifteen (15) CE hours for each semester hour or ten (10) CE hours for each quarter hour of school credit awarded. (7-1-95)

~~j.~~ No more than ten (10) continuing education hours may be obtained from category II. (7-1-95)

~~k.~~ As part of the required hours of continuing education, all licensees must complete at least four (4) hours of training every four (4) years in professional ethics. (7-1-95)

k. Applications for reinstatement of a cancelled license shall include documented proof of meeting the continuing education requirements for the previous twelve (12) months. The four (4) year cycle for professional ethics training shall continue during any period of cancellation. (8-5-02)T

02. Categories Of Continuing Education. (7-1-95)

a. Category I. Category I includes formally organized learning events, ideally involving face-to-face interaction with a teacher for the purpose of accomplishing specific learning objectives. Courses, workshops, conferences, practice oriented seminars, staff development and training activities coordinated and/or taught by approved and recognized educators also are included in this category. Because of our geographic location and sparse population, closed circuit T.V., video tapes, and correspondence courses may be substituted for face-to-face contact if coordinated by an approved instructor. Videotaped presentations require a discussion period to follow that reviews the learning objectives of the taped program. (7-1-95)

b. Category II. Category II consists of a variety of self-directed professional study activities and growth experiences. Examples include making presentations on professional issues or programs, teaching a course, presenting a lecture, or conducting a workshop for the first time, editing or writing professional books or articles, and conducting professional research. (7-1-95)

c. The subject matter of all approved continuing education shall be germane to the practice of social work as defined in Section 54-3202, Idaho Code, and may include the specialties of Marriage and Family Therapy, Psychiatry, Psychiatric Nursing, Psychology, or Pastoral Counseling. (8-5-02)T

03. Continuing Education Sources. (7-1-95)

a. Continuing education courses ~~which are offered or approved by the National Association of Social Workers are automatically acceptable to the Board.~~ providers shall include: (7-1-95)(8-5-02)T

i. Professional Associations. Continuing education hours may be obtained by participating in activities sponsored by or approved by professional associations including but not limited to the ~~specialties of Professional Counseling, Social Work, Marriage and Family Therapy, Psychiatry, Psychiatric Nursing, Psychology or Pastoral Counseling~~ Idaho Chapter of the National Association of Social Workers, Idaho Society for Clinical Social Workers. The professional association shall certify the number of clock hours of educational content in each sponsored or approved activity. (7-1-95)(8-5-02)T

ii. Educational Institutions. Continuing education hours may be obtained by completing coursework not below your level of licensing or by participating in continuing education programs sponsored by or approved by educational institutions accredited by a regional body recognized by the Council on Post Secondary Accreditation. The educational institution shall certify the number of clock hours of educational content in each sponsored or approved program. (7-1-95)

iii. Government Agencies, Schools and Hospitals. Continuing education hours may be obtained by

participating in in-service training, courses or workshops sponsored by federal, state, or local government agencies, public school systems and licensed hospitals. The provider shall certify the number of clock hours of educational content in each approved activity. (7-1-95)

b. All continuing education hours must be relevant to the profession of social work at the individual's particular level of social work licensure. The presenter's level of education must be at the licensee's level or above. Continuing education for clinical licensees must be clinical in nature. Final approval of acceptable programs rests with the Board. ~~(7-1-95)~~(8-5-02)T

04. Documentation. (7-1-95)

a. Each licensee shall maintain documentation verifying CE attendance and curriculum for a period of three four (34) years from the date of submission to the Board their own record of the continuing education activities which they have completed completion. This documentation will be subject to audit by the Board. ~~(7-1-95)~~(8-5-02)T

b. Licensees shall attest, on their annual license renewal application, that they have satisfied the continuing education requirements. ~~Documentation of these activities should be retained by the licensee and also sent to the Board.~~ False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action, including revocation. ~~(7-1-95)~~(8-5-02)T

c. Category I documents must be in the form of a certificate of attendance, a statement signed by the provider verifying participation in the activity, or an official transcript. ~~Documentation of Category II shall be in the form of an affidavit which includes a description of the activity, the subject material covered, the dates and number of hours involved.~~ ~~(7-1-95)~~(8-5-02)T

d. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the license will not be renewed. (7-1-95)

e. Documented proof of meeting the continuing education requirement shall be in the form of a certificate or letter from the sponsoring entity that includes the title of the activity, the subject material covered, the dates and number of hours credited, and the presenter's full name and professional credentials. (8-5-02)T

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.15.01 - RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-3404, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Adds an Incorporation by Reference for supervisors; adds postgraduate supervision requirement to be effective July 1, 2004; establishes counselor supervisor requirements; establishes acceptable supervised experience for a Clinical Professional Counselor, Pastoral Counselor and Marriage and Family Therapists; adds effective July 1, 2004 Marriage and Family Therapist must be registered with the board to provide post graduate supervision; deletes continuing education rules for Pastoral Counselor, Clinical Professional Counselor and Marriage and Family Therapists and incorporates all under one rule; delete rules for conditional counseling license; establishes requirements for registered interns.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Pursuant to Section 67-5226(2), the Governor has found that the fee being imposed is justified and necessary to avoid immediate danger and the fee is described herein: The statute authorizing the above fee is 54-3402, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1501-0201

004. INCORPORATION BY REFERENCE (Rule 4).

01. ACA Code Of Ethics. "ACA Code of Ethics and Standards of Practice," as published by the American Counseling Association (ACA), dated 1999 and referenced in Subsections 241.02, 350, and 450.01, is

herein incorporated by reference and is available from the Board's office and on the Board web site. (3-13-02)

02. AAMFT Code Of Ethics. The document titled "AAMFT Code of Ethics", as published by the American Association for Marriage and Family Therapy (AAMFT), dated July 1, 2001 and referenced in Subsections 350, and 450.01, is herein incorporated by reference and is available from the Board's office and on the Board web site. (3-13-02)

03. ACES Guidelines. The document titled "ACES" that provides supervision guidelines for supervisors, as published by the Association for Counselor Education and Supervision (ACES), dated March 1993 referenced in Subsection 200.03.a., is herein incorporated by reference and is available from the Board's office and on the Board web site. ()

(BREAK IN CONTINUITY OF SECTIONS)

150. QUALIFICATIONS FOR PROFESSIONAL COUNSELOR LICENSURE (Rule 150).

Licensure as a "professional counselor" shall be restricted to persons who have successfully completed each of the following requirements: (3-13-02)

01. Graduate Program Requirement. A planned graduate program of sixty (60) semester hours which is primarily counseling in nature, six (6) semester hours of which are earned in an advanced counseling practicum, and including a graduate degree in a counseling field from an accredited university or college offering a graduate program in counseling. (7-1-93)

a. A planned graduate program in a counseling field shall be defined as completion of one (1) of the following: (7-1-93)

i. A counseling program accredited or approved by the National Council for accreditation of Teacher Education or a counseling program listed in the Interstate List of Approved Programs; or (7-1-93)

ii. A counseling program approved by the Council for Accreditation of Counseling and Related Educational Programs; or (7-1-93)

iii. A counseling program approved by the Council on Rehabilitation Education; or (7-1-93)

iv. A counseling program approved by the Board which shows evidence of education in the following areas: Counseling Theory, Counseling Techniques and Supervised Counseling Experience (this practicum must be supervised at the ratio of at least one (1) hour of one-to-one supervision for every ten (10) hours of experience in the setting) and at least six (6) of the following: (7-1-93)

(1) Human growth and development: Includes studies that provide a broad understanding of the nature and needs of individuals at all developmental levels. Emphasis is placed on psychological, sociological, and physiological approaches. Also included are areas such as human behavior (normal and abnormal), personality theory, and learning theory. (7-1-93)

(2) Social and cultural foundations: Includes studies of change, ethnic groups, subcultures, changing roles of women, sexism, urban and rural societies, population patterns, cultural mores, use of leisure time, and differing life patterns. (7-1-93)

(3) The helping relationship: Includes philosophic bases of the helping relationship: Consultation theory and/or an emphasis on the development of counselor and client (or consultee) self-awareness and self-understanding. (7-1-93)

(4) Groups: Includes theory and types of groups, as well as descriptions of group practices, methods dynamics, and facilitative skills. It includes either a supervised practice and/or a group experience. (7-1-93)

(5) Life-style and career development: Includes areas such as vocational-choice theory, relationship between career choice and life-style, sources of occupational and educational information, approaches to career decision-making processes, and career-development exploration techniques. (7-1-93)

(6) Appraisal of the individual: Includes the development of a framework for understanding the individual, including methods of data gathering and interpretation, individual and group testing, case-study approaches and the study of individual differences. Ethnic, cultural, and sex factors are also considered. (7-1-93)

(7) Research and evaluation: Includes areas such as statistics, research design, and development of research and demonstration proposals. It also includes understanding legislation relating to the development of research, program development, and demonstration proposals, as well as the development and evaluation of program objectives. (7-1-93)

(8) Professional orientation: Includes goals and objectives of professional counseling organizations, codes of ethics, legal consideration, standards of preparation, certification, and licensing and role of identity of counselors. (7-1-93)

b. A total of at least sixty (60) graduate semester hours or ninety (90) graduate quarter hours shall be required. (7-1-93)

c. Advanced counseling practicum shall be practica taken at the graduate school level. (7-1-93)

d. A graduate degree shall be one of the following beyond the baccalaureate level: The master's degree, the educational specialist certificate or degree, or the doctor's degree. (7-1-93)

e. An accredited university or college shall be a college or university accredited by one (1) of the following: the Middle States Association of Colleges and Secondary Schools, the New England State Association of Colleges and Secondary Schools, the North Central Association of Colleges and Secondary Schools, the Northwest Association of Colleges and Secondary Schools, the Southern Association of Colleges and Secondary Schools, or the Western College Association. (7-1-93)

02. Supervised Experience Requirement. One thousand (1,000) hours of supervised experience in counseling acceptable to the Board. (7-1-93)

a. One thousand (1,000) hours is defined as one thousand (1,000) clock hours of experience working in a counseling setting, four hundred (400) hours of which shall be direct client contact. Supervised experience in practica and/or internships taken at the graduate level may be utilized. The supervised experience shall include a minimum of one (1) hour of face-to-face or one-to-one (1/1) or one-to-two (1/2) consultation with the supervisor for every twenty (20) hours of job/internship experience. (As stated under Subsection 150.01.a.iv. counseling practicum experience as opposed to job or internship experience shall be supervised at a ratio of one (1) hour of supervision for every ten (10) hours in the settings. For example: (3-13-02)

i. A person in a twenty (20) hour per week job/internship who is receiving one (1) hour of individual supervision each week would accumulate one thousand (1,000) supervised hours in fifty (50) weeks to equal the twenty to one (20/1) ratio. (7-1-93)

ii. A person in a forty (40) hour per week setting with one (1) hour of supervision per week would still require fifty (50) weeks to equal the twenty to one (20/1) ratio. (7-1-93)

iii. A person in a forty (40) hour per week setting with two (2) hours of supervision per week would accumulate the one thousand (1,000) hours at the twenty to one (20/1) supervision ratio in twenty-five (25) weeks. (7-1-93)

b. ~~Effective July 1 1988~~ Until July 1, 2004, the supervision must be provided by a Professional Counselor or a Clinical Professional Counselor licensed by the state of Idaho. Effective July 1, 2004, postgraduate supervision must be provided by a Professional Counselor or a Clinical Professional Counselor licensed by the state

of Idaho and registered with the Board as a Counselor Supervisor. If the applicant's supervision was provided in another state, it must have been provided by a counseling professional licensed by that state, provided the requirements for licensure in that state are substantially equivalent to the requirements of Title 54, Chapter 34, Idaho Code. If supervision was obtained prior to July 1, 1988, or in a state that does not regulate counseling, that supervision must have been provided by a qualified counselor educator as a part of a planned graduate program or by a person who holds a graduate degree beyond the baccalaureate level who is certified and/or licensed as a counselor, social worker, psychologist, or psychiatrist. Supervision by an administrative superior who is not in a counseling related profession is not acceptable to the Board. Supervision by a professional counseling peer, however, may be acceptable to the Board if the peer/supervisory relationship includes the same controls and procedures expected in an internship setting. (See Subsection 150.02.a.) For example, the relationship should include the staffing of cases, the critiquing of counseling tapes and this supervision must be conducted in a formal, professional, consistent manner on a regularly scheduled basis. (3-13-02)()

c. Experience in counseling is defined as assisting individuals or groups, through the counseling relationship, to develop an understanding of personal problems, to define goals, and to plan action reflecting interests, abilities, aptitudes, and needs as related to personal-social concerns, educational progress, and occupations and careers. Counseling experience may include the use of appraisal instruments, referral activities, and research findings. (7-1-93)

d. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. ()

03. Written Examination Requirement. (7-1-93)

a. The Board requires the successful passage of the National Counselor Examination prepared by the National Board for Certified Counselors (NBCC). (3-13-02)

b. Completion of the examination will not be required until the applicant meets the requirements presented in Subsections 150.01 and 151.02. However, an applicant may take the examination earlier if he desires. (7-1-93)

c. The examination will be conducted at a time and place specified by the Board. (7-1-93)

d. Successful passage of the examination is defined by the Board as achievement of the passing score set by the NBCC. Reexamination shall consist of the entire examination. (3-13-02)

151. -- ~~224199~~. (RESERVED).

200. COUNSELOR SUPERVISOR REQUIREMENTS (Rule 200).
Effective July 1, 2004, Idaho licensed counselors shall be registered with the Board in order to provide postgraduate supervision for those individuals pursuing licensure in Idaho as a counselor. ()

01. Requirements for Registration. ()

a. Document at least two (2) years experience as a licensed counselor in Idaho. ()

b. Document at least one thousand five hundred (1,500) hours of direct client contact as a counselor. ()

c. Document fifteen (15) contact hours of education in supervisor training as approved by the Board. ()

d. Have not been the subject of any disciplinary action for five (5) years prior to application for registration. ()

02. Registration. A supervisor applicant shall submit to the Bureau a completed application form as approved by the Board. ()

a. Upon receipt of a completed application verifying compliance with the requirements for registration as a supervisor, the applicant shall be registered as a supervisor. ()

b. A supervisor's registration shall be valid only so long as the individual's counselor license remains current and in good standing. ()

03. Supervision. ()

a. A Registered Counselor Supervisor shall provide supervision in conformance with the guidelines for supervisors dated March 1993, adopted by the Association for Counselor Education and Supervision. ()

b. A Registered Counselor Supervisor shall not provide supervision to more than three (3) individuals at one time. ()

201. -- 224. (RESERVED).

225. CLINICAL PROFESSIONAL COUNSELOR LICENSURE (RULE 225).

The following requirements must be met for clinical professional counselor licensure. (3-13-02)

01. Requirements. The following requirements must be met: (3-13-02)

a. Hold a ~~current Idaho~~ valid licensed professional counselor license; and (7-1-97)()

b. Document two thousand (2,000) hours of direct client contact experience under supervision accumulated in no less than a two (2) year period after licensure in any state. (3-13-02)()

i. All applicants for Clinical Professional Counselor license must provide verification of meeting at least one thousand (1,000) hours of supervised experience under the supervision of a licensed Clinical Professional Counselor. The remainder of the supervision may be provided by licensed Psychiatrists, Counseling/Clinical Psychologists, Certified Social Workers-Private and Independent Practice or Marriage and Family Therapists. (3-13-02)

ii. The ratio for supervision will consist of one (1) hour of face-to-face, one-on-one (1/1) supervision to every thirty (30) hours of direct client contact. (7-1-97)

c. Document proficiency in Diagnostic Evaluation by providing verification of successful completion of graduate course or other training/experience equivalent to a college course acceptable to the board. (7-1-97)

d. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. ()

02. Supervisors. A supervisor may supervise no more than three (3) licensed professional counselors at any one time. (7-1-97)

~~**03. Continuing Education.** Twenty (20) contact hours of continuing education germane to the practice of counseling as determined by the Board, is required each year to renew a Clinical Professional Counselor license. (3-13-02)~~

~~**a.** It shall be necessary for the applicant to provide documentation of attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any and all hours attended by the applicant. This documentation must be maintained by the applicant and provided to the Board upon request by the Board or its agent. (3-13-02)~~

~~**b.** Continuing education requirement shall be waived for the first renewal of a clinical professional counselor license. (3-13-02)~~

226. -- 234. (RESERVED).

235. PASTORAL COUNSELORS (Rule 235).

The following requirements must be met for pastoral counselor licensure: (7-1-98)

01. Graduate Degree. Hold a Master of Divinity (M.Div.) degree or doctoral degree meeting the requirements set forth in Section 54-3405A(1) Idaho Code, from an accredited university or religious institution. (7-1-98)

a. An accredited university or religious institution shall be one accredited by: the Middle States Association of Colleges and Secondary Schools; the New England State Association of Colleges and Secondary Schools; the North Central Association of Colleges and Secondary Schools; the Northwest Association of Colleges and Secondary Schools; the Southern Association of Colleges and Secondary Schools; or the Western Colleges Association. (7-1-98)

b. The Pastoral Counselor Program May also be accredited by the Association of Theological Schools (ATS). (7-1-98)

02. Practicum. Completion of a practicum of supervised counseling experience of four hundred (400) contact hours. (7-1-98)

a. The four hundred (400) contact hours shall be supervised at a ratio of one (1) hour of supervision for each ten (10) contact hours. (7-1-98)

b. The practicum must be supervised by a qualified counselor educator as part of a planned graduate program. (7-1-98)

03. Post-Graduate Supervised Counseling Experience. The completion of two thousand (2,000) contact hours of post-graduate supervised counseling experience with an approved supervisor. (7-1-98)

a. "Two thousand (2000) hours" hours is defined as two thousand (2,000) clock hours of experience working in a counseling setting. (7-1-98)

b. The ratio of supervision to contact hours shall be one (1) hour of supervision for each twenty (20) contact hours. (7-1-98)

c. An approved supervisor shall include an American Association of Pastoral Counselors approved supervisor, a licensed pastoral counselor, a licensed psychiatrist, a licensed psychologist, a licensed marriage and family therapist, or licensed professional counselor. (3-13-02)

d. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. ()

04. Examination. (7-1-98)

a. The Board requires the successful passage of the National Counselor Examination prepared by the National Board for Certified Counselors (NBCC). (3-13-02)

b. The examination will be conducted at a time and place specified by the Board. (7-1-98)

c. Successful passage of the examination is defined by the Board as achievement of the passing score set by the NBCC. Reexamination shall consist of the entire examination. (3-13-02)

236. -- 237. (RESERVED).

237. CONTINUING EDUCATION FOR PASTORAL COUNSELOR (Rule 237).-

A pastoral counselor must complete twenty (20) contact hours of continuing education to renew their license. (3-13-02)

01. Contact Hours. *The contact hours of continuing education must be undertaken within the following areas of study: (7-1-98)*

a. *Theories of personality and personality development; (7-1-98)*

b. *Theories of counseling and psychotherapy; (7-1-98)*

c. *Marriage and family dynamics and counseling; (7-1-98)*

d. *Group dynamics and counseling; (7-1-98)*

e. *Personality, culture and ethics; (7-1-98)*

f. *Psychology of religious experience; (7-1-98)*

g. *Pastoral assessment and treatment; (7-1-98)*

h. *Psychopathology; (7-1-98)*

i. *Theories of pastoral care; (7-1-98)*

j. *Research methods; (7-1-98)*

k. *Orientation to the helping professions. (7-1-98)*

02. Documentation Of Attendance. *It shall be necessary for the applicant to provide documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any and all hours attended by the applicant. This documentation must be maintained by the applicant and provided to the Board upon request by the Board or its agent. (3-13-02)*

03. When Requirements Begin. *Continuing education requirements shall be waived for the first renewal of a pastoral counselor license. (3-13-02)*

238. MARRIAGE AND FAMILY THERAPISTS (Rule 238).

The following requirements must be met for marriage and family therapist licensure: (3-13-02)

01. Graduate Degree. Possess a graduate degree as outlined in Section 54-3405C(1), Idaho Code. (3-13-02)

02. Practicum. Must meet the requirements as outlined in Section 54-3405C(2), Idaho Code. (3-13-02)

03. Supervised Marriage And Family Therapy Experience. Must meet the three thousand (3,000) hour requirement as outlined in Section 54-3405C(3), Idaho Code. Effective July 1, 2004, a Marriage and Family Therapist must be registered with the Board to provide post graduate supervision. (3-13-02)()

a. A minimum of two thousand (2,000) postgraduate direct client contact hours, in no less than a two (2) year time period shall include; (3-13-02)

i. A minimum one thousand (1,000) direct client contact hours with couples and families; and (3-13-02)

ii. Two hundred (200) hours of supervision. (3-13-02)

- b. No more than one hundred (100) hours of group supervision shall be allowed. Group supervision shall be defined as no more than six (6) supervisees per each supervisor; and (3-13-02)
- c. Individual supervision is defined as up to two (2) supervisees per supervisor; and (3-13-02)
- d. Supervision must employ the use of audio technologies or video technologies or co-therapy, or live supervision; and (3-13-02)
- e. In accordance with the adopted Codes of Ethics prohibiting dual relationships, a supervisor shall not act as an applicant's personal Professional Counselor/Therapist. (3-13-02)
- f. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. ()

04. Examination. (3-13-02)

- a. The Board requires successful passage of the National Marital and Family Therapy Examination as approved by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB). (3-13-02)
- b. The examination will be conducted at a time and place specified by the Board. (3-13-02)
- c. Successful passage of the examination is defined by the Board as achievement of the passing score set by the AMFTRB. Reexamination shall consist of the entire examination. (3-13-02)

(BREAK IN CONTINUITY OF SECTIONS)

~~**240. CONTINUING EDUCATION FOR MARRIAGE AND FAMILY THERAPISTS (Rule 240).**~~

~~A marriage and family therapist must annually complete twenty (20) contact hours of continuing education to renew their license. (3-13-02)~~

~~**01. Contact Hours.** The contact hours of continuing education shall be obtained in areas of study germane to the practice of marriage and family therapy as approved by the Board. (3-13-02)~~

~~**02. Documentation Of Attendance.** It shall be necessary for the applicant to provide documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any and all hours attended by the applicant. This documentation must be maintained by the applicant and provided to the Board upon request by the Board or its agent. (3-13-02)~~

~~**03. When Requirements Begin.** Continuing education requirements shall be waived for the first renewal of a marriage and family therapist license. (3-13-02)~~

~~**04. Excess Hours.** Continuing education hours accumulated during the twelve (12) months immediately preceding the license expiration date may be applied toward meeting the continuing education requirement for the next license renewal. No more than five (5) hours in excess of the required twenty (20) hours shall be carried forward. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) time. (3-13-02)~~

~~**241. CONDITIONAL COUNSELING LICENSE (Rule 241).**~~

~~The following requirements must be met for the issuance of a conditional counseling license: (3-18-99)~~

~~**01. Possess A Bachelor's Degree.** Possess a bachelor's degree in a counseling field from an accredited university or college offering an undergraduate program in counseling. (3-18-99)~~

~~a. A counseling field shall be in social work, psychology, mental health areas or such other degree as determined by the board in one or more of those areas stated in Subsection 150.01.a.iv. (3-18-99)~~

~~b. An accredited university or college shall be a college or university accredited by one (1) of the following: the Middle States Association of Colleges and Secondary Schools, the New England State Association of Colleges and Secondary Schools, the North Central Association of Colleges and Secondary Schools, the Northwest Association of Colleges and Secondary Schools, the Southern Association of Colleges and Secondary Schools, or the Western College Association. (3-18-99)~~

~~02. Follow The Ethical Standards Of A Professional Counselor. The Board adopts the American Counseling Association (ACA) Code of Ethics as referenced in Section 004. All applicants will receive a copy of the ACA Code of Ethics. All licensees will be required to adhere to the ACA Code of Ethics. (3-13-02)~~

2420. -- 2494. (RESERVED).

245. REGISTERED INTERNS (Rule 245).

An individual pursuing Idaho licensure as a Professional Counselor may register with the Board as an Intern. An individual pursuing Idaho licensure as a Marriage and Family Therapist shall register with the Board as an Intern in compliance with section 54-3402, Idaho Code. ()

01. Requirements For Registration. ()

a. Possess a graduate degree in counseling, marriage and family therapy, or a closely related field from an accredited university or college. ()

b. Be actively pursuing postgraduate supervised experience. ()

c. Designate a Licensed Professional Counselor or Licensed Marriage and Family Therapist who is registered as a supervisor and who shall be responsible to provide supervision. ()

02. Registration. An individual applying for registration as a Counselor Intern or Marriage and Family Therapist Intern shall fully complete the application form as established by the Board and submit the designated fee as adopted by Board rule. ()

03. Practice. ()

a. A Registered Intern may only practice counseling or marriage and family therapy under the direct supervision of a Counselor Supervisor or Marriage and Family Therapist Supervisor who shall be responsible to ensure that a Registered Intern is competent to practice such counseling or marriage and family therapy as may be provided. ()

b. Only a Registered Intern may use the title Counselor Intern or Marriage and Family Therapist Intern. ()

c. An individual shall not practice as an intern for more than four (4) years from the original date of registration. ()

246. -- 249. (RESERVED).

250. FEES (Rule 250).

01. Application Fee. Application fee: (7-1-97)

a. Professional Counselor - Seventy-five dollars (\$75). (3-13-02)

b. Clinical Professional Counselor - Seventy-five dollars (\$75). (3-13-02)

- c. Pastoral Counselor - Seventy-five dollars (\$75). (3-13-02)
- ~~d. Conditional Counseling License - Seventy-five dollars (\$75). (3-18-99)~~
- ~~ed. Marriage and Family Therapist - Seventy-five dollars (\$75). (3-13-02)~~

02. Professional Counselor, Marriage And Family Therapist, And Pastoral Counselor Examination Or Reexamination Fee. The Professional Counselor, Marriage and Family Therapist and Pastoral Counselor license examination or reexamination fee shall be the fee as set by the provider of the approved examination. (3-13-02)

03. Original License Fee. Original License fee for Professional Counselor or Clinical Professional Counselor or Marriage and Family Therapist or Pastoral Counselor: (~~7-1-97~~)

- ~~a. Professional Counselor - Seventy-five dollars (\$75). (3-13-02)()~~
- ~~b. Clinical Professional Counselor - Seventy-five dollars (\$75). (3-13-02)~~
- ~~c. Pastoral Counselor - Seventy-five dollars (\$75). (3-13-02)~~
- ~~d. Conditional Counseling License - Seventy-five dollars (\$75). (3-18-99)~~
- ~~e. Marriage and Family Therapist - Seventy-five dollars (\$75). (3-13-02)~~

04. Annual Renewal Fee. Annual license renewal fee for Professional Counselor, Clinical Professional Counselor, Marriage and Family Therapist, or Pastoral Counselor, ~~and Conditional Counseling~~ - Sixty dollars (\$60). (~~3-13-02~~)()

05. Fees Are Non-Refundable. All fees are non-refundable. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

401. -- ~~449~~24. (RESERVED).

425. CONTINUING EDUCATION (Rule 425).

Every person holding an Idaho license as a Pastoral Counselor or a Marriage and Family Therapist must annually complete twenty (20) contact hours of continuing education prior to license renewal. ()

01. Contact Hours. The contact hours of continuing education shall be obtained in areas of study germane to the practice for which the license is issued as approved by the Board. ()

02. Documentation Of Attendance. It shall be necessary for the applicant to provide documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the applicant. This documentation must be maintained by the applicant and provided to the Board upon request by the Board or its agent. ()

03. Excess Hours. Continuing education hours accumulated during the twelve (12) months immediately preceding the license expiration date may be applied toward meeting the continuing education requirement for the next license renewal. No more than five (5) hours in excess of the required twenty (20) hours shall be carried forward. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) time. ()

04. Compliance Audit. The Board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the Board of

meeting the continuing education requirement be submitted to the Bureau. Failure to provide proof of meeting the continuing education upon request of the Board shall be grounds for disciplinary action in accordance with section 54-3407, Idaho Code. ()

426. -- 449. (RESERVED).

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.16.01 - RULES OF THE STATE BOARD OF DENTURITRY
DOCKET NO. 24-1601-0201
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-3309, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Inserts rules for Administrative Appeals, Incorporation by Reference; adds Bureau contact information; adds Public Records section; adds Bureau definition; adds the board may meet and have examinations at such other times as determined by the board; establishes the examination shall include a theory examination; establishes grading and reexamination requirements; establishes the reexamination fee shall be the same as the original examination fee.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: Adds a reexamination fee of \$300. Statute authorizing this fee is Section 54-3312, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1601-0201

~~002. (RESERVED).~~

003. WRITTEN INTERPRETATIONS (Rule 3).

The board may have written statements ~~which~~ that pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of

Occupational Licenses.

(7-1-93)()

003. ADMINISTRATIVE APPEALS (Rule 3).

Administrative Appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code.

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004. -- 009. (RESERVED) INCORPORATION BY REFERENCE (Rule 4).

These rules do not incorporate by reference any document other than those sections of Idaho Code so referenced.

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005. ADDRESS OF IDAHO BOARD OF DENTISTRY (Rule 5).

The office of the Board of Dentistry is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us. The Board's official web site is at www2.state.id.us/ibol/den.

()

006. PUBLIC RECORDS (Rule 6).

The records associated with the Board of Dentistry are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code.

()

007. -- 009. (RESERVED).

010. DEFINITIONS (Rule 10).

01. Board. The State Board of Dentistry, as prescribed in Section 54-3303(a), Idaho Code. (7-1-93)

02. Denturist Services. For purposes of the unconditional ninety (90) day guarantee prescribed in Section 54-3320(c), Idaho Code, denturist services include any and all prosthetic dental appliances and materials and/or services related to the furnishing or supplying of such a denture, including preparatory work, construction, fitting, furnishing, supplying, altering, repairing or reproducing any prosthetic dental appliance or device. (7-1-97)

03. Bureau. The Bureau of Occupational Licenses as prescribed in Sections 54-3309 and 67-2602, Idaho Code. ()

(BREAK IN CONTINUITY OF SECTIONS)

100. BOARD MEETINGS (Rule 100).

01. Dates. The board shall meet regularly ~~on the first Friday of~~ in April and November of each year and at such other times as may be determined by the board. (7-1-93)()

02. Place. Meetings shall be held at the Bureau of Occupational Licenses. (7-1-93)

03. Dates And Places. Dates and places may be changed through notification by the board at least ten (10) days prior to the regular meeting date or the date established for a meeting whichever is earlier. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

150. EXAMINATIONS (Rule 150).

01. Date Of Licensure Examination. The licensure examination will be held at least semi-annually ~~on the first Friday~~ in June and ~~the second Friday in~~ January and at such other times as may be determined by the Board.

(3-10-00)()

02. Place. All examinations will be administered at the time and place as designated by the board. (3-10-00)

03. Content. Examinations shall ~~be~~ include both a written theory examination and a practical demonstration of skills. (3-10-00)()

04. Grading. An applicant ~~to pass the examination~~ must obtain ~~an average percentage~~ score of seventy-five percent (75%) or better on each part of the examination in order to pass the examination. ~~The written and practical examinations shall carry equal weight.~~ (3-10-00)()

05. Re-examination. ()

a. Applicants who fail either part or all of the examination shall be required to make application and pay the required fees prior to being eligible to retake the failed part of the examination. ()

b. Applicants failing either part or all of the examination on the first attempt will not be required to complete any additional instruction prior to being eligible to make application and retake the examination. ()

c. Applicants failing either part or all of the examination on a second attempt and all subsequent attempts shall not be eligible to make application and retake the examination within one (1) year of the date of the examination failure. ()

(BREAK IN CONTINUITY OF SECTIONS)

250. FEES (Rule 250). The following fees are established by the board: (7-1-93)

01. License Application And Exam And Re-Examination Fee. ()

a. License application and examination fee - three hundred dollars (\$300). (7-1-93)

b. License application and re-examination fee - three hundred dollars (\$300). ()

02. Intern Application And Permit Fee. Intern application and permit fee - three hundred dollars (\$300). (7-1-93)

03. Initial License Fee. Initial license fee - three hundred dollars (\$300). (7-1-93)

04. Annual Renewal Fee. Annual renewal fee - three hundred dollars (\$300). The annual renewal fee must be accompanied with certification of the applicant having met the required continued education set forth in Section 54-3313, Idaho Code, and Section 350. (8-24-94)

05. Inactive License Fee. The fee for a renewal of an inactive license shall be fifty dollars (\$50). (3-10-00)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.17.01 - RULES OF THE STATE BOARD OF ACUPUNCTURE

DOCKET NO. 24-1701-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-4705, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Inserts rules for Incorporation by Reference; adds Bureau contact information; adds Public Records section; defines Bureau; updates qualification for licensure to be has received certification from NCCAOM; changes renewal of license to be in accordance with Section 67-2614, Idaho Code; establishes continuing education requirements; establishes waiver of continuing education requirements for an inactive license.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees or charges imposed or increased as a result of these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1701-0201

~~002. (RESERVED).~~

0032. WRITTEN INTERPRETATIONS (Rule 3).

The Board may, from time to time, issue written statements pertaining to the interpretation of the rules of this chapter. Such interpretations, if any, shall be available for public inspection and copying, at cost, in the main office of the Bureau of Occupational Licenses. (3-10-00)

0043. ADMINISTRATIVE APPEALS (Rule 4).

Administrative Appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (3-10-00)

004. INCORPORATION BY REFERENCE (Rule 4).

These rules do not incorporate by reference any document other than those sections of Idaho Code so referenced. ()

005. ADDRESS OF THE IDAHO STATE BOARD OF ACUPUNCTURE (Rule 5).

The office of the Board of Acupuncture is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main St., Suite 220, Boise, ID 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us. The Board's official web site is at www2.state.id.us/ibol/acu. (3-30-01)()

006. PUBLIC RECORDS (Rule 6).

The records associated with the Board of Acupuncture are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

006Z. -- 009. (RESERVED).

010. DEFINITIONS (Rule 10).

- 01. Board.** The State Board of Acupuncture as prescribed in Section 54-4704, Idaho Code. (3-10-00)
- 02. Technician Certificate.** The category of license granted to a qualified applicant who meets the requirements pursuant to Section 54-4708, Idaho Code. (3-30-01)
- 03. Certification.** The category of license granted to a qualified applicant who meets the requirements pursuant to Section 54-4707, Idaho Code. (3-30-01)
- 04. License.** Any license, certification or technician certificate issued to a qualified applicant pursuant to IDAPA 24.17.01, "Rules of the State Board of Acupuncture," promulgated by the Board, permitting said applicant to practice acupuncture in the state of Idaho. (3-10-00)
- 05. Practitioner.** A person to whom a license, certification or technician certificate has been issued pursuant to Title 54, Chapter 47, Idaho Code. (3-30-01)
- 06. Licensure/Licensed.** The category of license granted to a qualified applicant who meets the requirements pursuant to Section 54-4706, Idaho Code. (3-30-01)
- 07. Approved Acupuncture Program.** A formal full-time acupuncture educational program that has met the standards of the Accreditation Commission for Acupuncture and Oriental Medicine or an equivalent educational body. An acupuncture program may be established as having satisfied this requirement by obtaining: (3-30-01)
 - a.** Accreditation; or (3-30-01)
 - b.** Candidacy for accreditation; or (3-30-01)
 - c.** An equivalent evaluation performed by a private, state government, or foreign government agency recognized for that purpose by the NCCAOM (National Certification Commission for Acupuncture and Oriental Medicine) Eligibility Committee. (3-30-01)
- 08. Didactic Course Work.** Educational instruction in acupuncture that is physically obtained in a classroom or laboratory setting, and when such instruction is obtained from, and in the presence of, a person credentialed as a qualified educator of acupuncture. (3-30-01)

09. Clinical Practice. Practical experience in acupuncture that is physically obtained in a health care facility in order to meet the minimum requirements for licensure or certification. (3-30-01)

10. Bureau. The Bureau of Occupational Licenses as prescribed in Sections 54-4705 and 67-2602, Idaho Code. ()

(BREAK IN CONTINUITY OF SECTIONS)

100. APPLICATIONS (Rule 100).

Applications for licensure, certification and technician certificate shall be on forms ~~to be prepared and~~ approved by the Board. (3-10-00)()

(BREAK IN CONTINUITY OF SECTIONS)

200. QUALIFICATIONS FOR LICENSURE (Rule 200).

01. Requirements For Licensure. Applicants for licensure shall submit a complete application, required fee, and official certified documentation of either: (3-30-01)

a. ~~Successful completion of the requirements to be a candidate for Certification from~~ NCCAOM ~~certification~~; or (3-10-00)()

b. Graduation from an approved formal full-time acupuncture program of at least one thousand seven hundred twenty-five (1,725) hours of entry-level acupuncture education which includes a minimum of one thousand (1000) hours of didactic course work and five hundred (500) clinical hours practice; and (3-30-01)

c. Successful completion of an acupuncture internship, or other equivalent experience as approved by the Board; and (3-30-01)

d. Receipt of a passing grade on an NCCAOM Acupuncture certification examination; or (3-30-01)

e. Other demonstration of proficiency as uniformly required by the Board for other similarly qualified applicants for licensure; and (3-30-01)

f. Successful completion of a Blood Borne Pathogen course and comprehensive examination that incorporates clean needle techniques and OSHA procedures and requirements. (3-30-01)

02. Requirements For Certification. Applicants for certification shall submit a complete application, required fee and official certified documentation of either: (3-30-01)

a. Successful completion of the requirements for full membership of the American Academy of Medical Acupuncture or fellowship of the International Academy of Medical Acupuncture, Inc.; or (3-30-01)

b. Successful completion of a minimum of one hundred (100) hours of didactic course work, two hundred (200) hours of practice as a certified technician over a one (1) year period, twenty-five (25) case studies; and (3-30-01)

c. Receipt of a passing grade on a board approved examination that measures minimum competency; or (3-30-01)

d. Other demonstration of proficiency as uniformly required by the Board for other similarly qualified

applicants for certification; and (3-10-00)

e. Successful completion of a Blood Borne Pathogen course and comprehensive examination that incorporates clean needle techniques and OSHA procedures and requirements. (3-30-01)

03. Requirements For Acupuncture Technician Certificate. Applicants for Acupuncture technician Certificate shall submit a complete application, required fee, and official certified documentation of either: (3-30-01)

a. Successful completion of the requirements for clinical technician certificate from the International Academy of Medical Acupuncture, Inc.; or (3-10-00)

b. Successful completion of a minimum of one hundred (100) hours of didactic course work within one (1) academic year; and (3-30-01)

c. Successful completion of a Blood Borne Pathogen course and comprehensive examination that incorporates clean needle techniques and OSHA procedures and requirements; and (3-30-01)

d. Receipt of a passing grade on a board approved examination leading to an Acupuncture Technician Certificate, or other demonstration of proficiency as may be uniformly required for other similarly qualified applicants as approved by the Board. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

301. RENEWAL OR REINSTATEMENT OF LICENSE (Rule 301).

01. Expiration Date. All Acupuncture licenses and certificates expire ~~on June 30th of each year~~ and must be renewed annually ~~on or before July 1st~~ on forms ~~provided~~ approved by the Board in accordance with Section 67-2614, Idaho Code.. Licenses and certificates not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (~~3-30-01~~)()

02. Reinstatement. Any license or certificate cancelled for failure to renew may be reinstated ~~upon payment of a~~ in accordance with Section 67-2614, Idaho Code, with the exception that the reinstatement fee shall be two hundred fifty dollars (\$250) ~~reinstatement fee~~ and ~~in accordance with Section 67-2614, Idaho Code~~ the applicant shall submit proof of having met the required continuing education for each year the license or certificate was cancelled. (~~3-30-01~~)()

302. RENEWAL REQUIREMENT (Rule 302).

01. Active Status. Each renewal application must be accompanied by: (3-10-00)

a. The established fee; and (3-10-00)

b. ~~Renewal application~~ Certification of having attended and completed a minimum of fifteen (15) hours of acupuncture study or oriental medical theory and techniques within the previous twelve (12) months, as approved by the Idaho Board of Acupuncture. (~~3-10-00~~)()

c. Compliance with the continuing education (CE) requirements for licensees shall be reported annually. A CE course taken in any renewal year, but not claimed for CE credit in that year, may be utilized for credit in the following renewal year. ()

02. Inactive Status. A currently licensed or certified practitioner may request in writing to ~~be~~ have their license placed on inactive status and pay the inactive status fee. Such request must be made ~~no later than July 1st~~ prior to the expiration date of the license, otherwise the license shall be deemed cancelled for failure to renew.

(3-10-00)()

03. Definition Of Inactive Status. “Inactive” status means ~~a holder of~~ an Idaho Acupuncture license ~~which that~~ may be made active by paying the renewal ~~application~~ fee. Until payment of said fee, such individual may not practice acupuncture in the state of Idaho. (3-10-00)()

04. Waiving Continuing Education Requirements. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing in Idaho. Inactive license renewal notices and licenses will be marked “Inactive”. A licensee desiring active status must show acceptable fulfillment of continuing educational requirements for the current year and submit a fee equivalent to the difference between the inactive and active renewal fee. The continuing educational requirement and the fees will not be prorated for a partial year. ()

303. -- 39904. (RESERVED).

305. CONTINUING EDUCATION (Rule 305).

In order to further protect the public health and to facilitate the administration of the Acupuncture Act, the Board has formulated the following rules: ()

01. Subject Material. The subject material of the continuing education requirement shall be germane to the practice of acupuncture and: ()

a. Accepted by NCCAOM, offered by accredited schools of acupuncture and oriental medicine, or otherwise approved by the Board. ()

b. “Germane to the practice of acupuncture” shall be consistent with Section 54-4702(1)(4), Idaho Code. ()

02. Verification Of Attendance. It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any hours attended by the applicant. This verification shall be maintained by the licensee for no less than seven (7) years and provided to the Board upon the request of the Board or its agent. ()

03. Distance Learning And Independent Study. The Board may approve a course of study for continuing education credit that does not include the actual physical attendance of the applicant in a face-to-face setting with the course instructor. Distance Learning or Independent Study courses shall be eligible for continuing education credits only upon approval of the Board. ()

04. Requests for Approval. All requests for approval or pre-approval of educational programs must be made to the Board in writing, and must be accompanied by a statement that includes the name of the instructor or instructors, the date and time and location of the course, the specific agenda for the course, the number of continuing education credit hours requested, and a statement of how the course is believed to be pertinent to the practice of acupuncture. ()

305. -- 399. (RESERVED).

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD

DOCKET NO. 24-1801-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-4106, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

Updates Incorporation by Reference rule to reflect current publication date.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees or charges imposed or increased as a result of these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1801-0201

004. INCORPORATION BY REFERENCE (Rule 4).

The document titled "Uniform Standards of Professional Appraisal Practice (USPAP)", 2004~~2~~ Edition published by the Appraisal Foundation and effective January 1, 2004~~2~~, as referenced in Subsection 700, is herein incorporated by reference and is available for review at the Board's office and may be purchased from the Appraisal Foundation.

(~~3-13-02~~)()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.19.01 - RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL
CARE FACILITY ADMINISTRATORS

DOCKET NO. 24-1901-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-4205, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Further defines courses approved for continuing education; changes the requirement for renewal of a license to be in accordance with section 67-2614, Idaho Code; increases the license application fee to \$50 and deletes reference to recertification in annual renewal fee.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: Increases the application fee to \$50. Statute authorizing this fee is Section 54-4205(g).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1901-0201

401. CONTINUING EDUCATION (Rule 401).

01. Courses Approved. Courses of study in health and residential care administration sponsored or provided by accredited universities or colleges; and health or residential care seminars relevant to residential care administration sponsored or approved by national, state agencies, or associations will be acceptable to meet the

continuing education requirement. Other courses of study or seminars may be approved by the Board.

~~(3-15-02)~~(____)

02. Minimum Hours Required. Applicants for annual recertification/renewal shall be required to have a minimum of twelve (12) hours of continuing education courses within the preceding twelve (12) month period. First Aid and/or Cardio-Pulmonary Resuscitation courses shall not be considered for continuing education credit. (7-1-93)

03. Educational Hour - Defined. An hour of education will mean sixty (60) minutes. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

500. RENEWAL/RECERTIFICATION/REINSTATEMENT (Rule 500).

Licenses shall expire ~~on June 30 of each year and there will be no grace period for renewal~~ and be renewed annually in accordance with Section 67-2614, Idaho Code. The Board shall refuse to renew a residential care administrators license unless the required fee is accompanied by an affidavit signed by the applicant setting forth the applicant's completion of continuing education requirements. (7-1-93)(____)

01. Requirements For Reinstatement. Applicants seeking reinstatement of a license canceled for failure to renew within five (5) years of the cancellation period, must pay a twenty-five dollar (\$25) reinstatement fee plus the back year or years fees and shall provide verification of twelve (12) hours of continuing education. (7-1-98)

02. Beyond A Five Year Lapse. Beyond a five (5) year lapse, the applicant will be treated as a new applicant and application shall be made on the same forms as an application for an original license. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

600. FEES (Rule 600).

01. License Application Fee. License Application - ~~twenty-five~~ fifty dollars (\$250). (7-1-93)(____)

02. Annual ~~Recertification Or~~ Renewal Fee. Annual ~~Recertification or~~ Renewal Fee - seventy-five dollars (\$75). (7-1-93)(____)

03. Provisional/Temporary. Provisional/Temporary - forty dollars (\$40). (7-1-93)

04. Reinstatement Fee. Reinstatement - twenty-five dollars (\$25). (7-1-93)

05. Reissuance Of Lost License Fee. Reissuance of lost license - ten dollars (\$10). (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.19.01 - RULES OF THE BOARD OF EXAMINERS OF RESIDENTIAL
CARE FACILITY ADMINISTRATORS

DOCKET NO. 24-1901-0202

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2305, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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 temporary and proposed rulemaking:

Establishes that an applicant for examination shall be required to register with and pay the examination fee to NAB; deletes the contents of examination; establishes that a passing score on the examination shall be determined by NAB; deletes requirement for retakes; adds approved courses of study to qualify for licensure.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To be in compliance with deadlines to amendments to governing law or federal programs. The National Association of Board of Examiners of Long Term Care Administrators (NAB) provides all testing services to this Board. This rule establishes the testing provisions.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees or charges imposed or increased as a result of these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Rayola Jacobsen, (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

Rayola Jacobsen
Owyhee Plaza
1109 Main Street, Suite 220
Boise, Idaho 83702
(208) 334-3233
(208) 334-3945 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1901-0202

300. EXAMINATIONS (Rule 300).

01. Examination. The examination shall be the Residential Care Facility Administrators examination developed and administered by the National Association of Boards of Examiners of Long Term Care Administrators (NAB). Examination shall be administered at least semi-annually at such times and places as determined by NAB. (3-15-02)

02. Application And Deadline Date For Filing. ~~An application for examination must be accompanied by the examination fee and proof of completion of approved curriculum. Applications must be received at least thirty (30) days prior to the date of examination. An applicant for examination shall be required to register with NAB and pay any required examination fees directly to NAB.~~ (7-1-98)(5-16-02)T

03. Individuals Who Have Special Needs. Individuals who have special needs as defined by the American Disabilities Act must specify those needs or required services ~~as indicated on the application form~~ directly to NAB to receive consideration for reasonable accomodation. (7-1-93)(5-16-02)T

~~**04. Contents Of Exam.** The examination will consist of two (2) sections. (7-1-93)~~

~~**a.** Section One will include questions from all or some of the following topics: (7-1-98)~~

~~i. Business Planning and Marketing. (7-1-93)~~

~~ii. Fiscal Planning and Management. (7-1-93)~~

~~iii. Human Resource Planning. (7-1-93)~~

~~iv. Residential Health Services. (7-1-93)~~

~~v. Nutrition and Food Service. (7-1-93)~~

~~vi. Working with the Elderly. (7-1-93)~~

~~vii. Working with the Mentally Ill. (7-1-93)~~

~~viii. Social and Recreational Activities. (7-1-93)~~

~~ix. Legal Issues. (7-1-93)~~

~~x. Licensing Process. (7-1-93)~~

~~xi. Housekeeping. (7-1-93)~~

~~xii. Physical Maintenance and Fire Safety. (7-1-93)~~

~~xiii. Developmentally Disabled. (7-1-98)~~

~~**b.** Section Two will include questions from the Idaho Board and Care Act, Chapter 33, Title 39, Idaho Code, the Residential Care for the Elderly Act, Title 39, Chapter 35, Idaho Code, and the rules for licensed residential and assisted living facilities in Idaho, IDAPA 16.03.22 promulgated by the Idaho Department of Health and Welfare. (3-15-02)~~

054. Passing Score On Exam. An examination is passed by obtaining a passing score of ~~seventy percent (70%) or better on each section~~ as determined by NAB. ~~The application file of Applicants who fail to pass one (1) section of the examination must retake and pass that section within two (2) years from the date of the first examination or the application file will be terminated without further notice to the applicant,~~ and the applicant will be

required to begin the process as a new applicant except that no further temporary permits will be granted.

(7-1-98)(5-16-02)T

~~06. **Requirements For Retakes.** Individuals desiring to be reexamined must file a letter of intent with the board.~~ (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

400. EDUCATIONAL AND TRAINING REQUIREMENTS (Rule 400).

01. Approved Course.

a. The Certification Program for Residential Care Facility Administrators course, administered by the ~~National Residential Care Association~~ Idaho Assisted Living Association (IDALA) or the Assisted Living Federation of America (ALFA), is an approved course of study to qualify for licensure. (7-1-93)(5-16-02)T

b. Any Certification Program for Residential Care Facility Administrators provided by a state or national Residential Care Facility Administrator organization or a nationally or regionally accredited college or university shall be an approved course of study to qualify for licensure. (5-16-02)T

02. Approval Of Other Courses. Applicants may, in lieu of completion of the Certification Program for Residential Care Facility Administrators, submit documentation of other course content and/or college transcripts, Vo-ed transcripts etc., supporting successful completion of courses substantially meeting course content requirements listed in Subsection 300.04.a. These courses must be approved by the Board before equivalency will be given.

(7-1-93)

IDAPA 25 - OUTFITTERS AND GUIDES LICENSING BOARD

25.01.01 - RULES GOVERNING OUTFITTERS AND GUIDES LICENSING BOARD

DOCKET NO. 25-0101-0202

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 36-2107(b) and (d), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

The following changes are being proposed:

Rule 002.02 provides for a definition of "administrative noncompliance" to address repeated failure to apply for license renewal in a timely manner or repeated failures to file a complete application;

Rule 002.44 provides for administrative noncompliance to be included in the definition of unethical/unprofessional conduct;

Rule 002.46 provides that the "Trainees Under Supervision" are boat trainees;

Rule 003.02 clarifies that first aid cards must be in possession at all times while guiding;

Rule 004.01 also provides that first aid cards must be in possession at all times while guiding;

Rule 008.04 corrects a grammar error and includes proof of non-owner liability insurance as part of notification to the board when an outfitter utilizes equipment from another outfitter;

Rule 017 provides for a single deadline for review of outfitter license applications and provides that outfitter applications to amend licenses will be reviewed by the Board within 90 days from receipt of the completed application;

Rule 034.01 provides that an affidavit by the outfitter that the guide will have a valid first aid card while hunting must accompany guide applications;

Rule 054.04 provides that the outfitter's name shall be visible on boats being used by that outfitter;

Rule 063.04 provides for a reduction in the guide ratio for guided snowmachine activities;

Rule 064.01 provides that in addition to granting or denying licenses, the Executive Director may suspend or revoke temporary authorizations, licenses and license amendments with the concurrence of the Board, clarifies that first aid cards are grounds for license denial and provides that the Executive Director may issue a temporary authorization to an applicant pending final approval and issuance of a license.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking will be conducted at the public hearing and on other occasions as necessary and requested.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21th day of August, 2002.

Jake Howard, Executive Director
Outfitters and Guides Licensing Board
1365 North Orchard, Suite 172
Boise, Idaho 83706
(208) 327-7380 - FAX (208) 327-73820

THE FOLLOWING IS THE TEXT OF DOCKET NO. 25-0101-0201

002. DEFINITIONS.

The Act defines certain terminology applicable to its interpretation and administration (Idaho Code 36-2102). Further definitions, for the purposes of these Rules are: (4-1-92)

01. Act. Shall mean Idaho Code, Title 36, Chapter 21, commonly known as the Outfitters and Guides Act, as amended. (4-1-92)

02. Administrative Noncompliance. ()

a. Two (2) or more repeated failures to apply for license renewal in a timely manner; or ()

b. Two (2) or more repeated failures to file a complete application pursuant to Section 36-2113(a)(1), Idaho Code. ()

023. Authorized Person. An investigator or enforcement agent in the employ of the Board, a conservation officer of the Idaho Department of Fish and Game, or any local, state, or federal law enforcement officer. (4-1-92)

034. Board. The Idaho Outfitters and Guides Licensing Board. (4-1-92)

045. Board Meeting. The set schedule of meeting dates established for conduct of regular Board business on a calendar year basis. Additional meetings may be scheduled as necessary (See Section 071). (4-1-92)

056. Booking Agent. Any individual, firm, business, partnership, or corporation that makes arrangements for the use of the services of a licensed outfitter and receives compensation therefore. A booking agent does not supply personnel or facilities and services to outfitter clientele. (4-1-92)

067. Compensation. The receipt or taking of goods, services, or cash in exchange for outfitted or guided activities. A bona fide charging of out-of-pocket travel expenses by members of a recreational party shall not be deemed compensation. However, such out-of-pocket expenses may not include depreciation, amortization, wages, or other recompense. (4-1-92)

078. Completed Application. An application submitted for Board consideration which contains all of the material required to be submitted by the Board for that license category. (4-1-92)

089. Consideration. The receipt or taking of goods, services, or cash in exchange for the provision of facilities and services in the conduct of outfitted or guided activities. (4-1-92)

0910. Desert. A region of scarce rainfall and vegetation in areas often having great differences between day, night and seasonal temperatures. A desert is a land surface ranging from level, plateau land, or undulating to sharply breaking hill-lands and sand dunes that, in addition, may be broken by poor to well-defined, deeply entrenched drainage systems, rims, cliffs, and escarpments. (4-1-92)

101. Designated Agent. An individual who meets all qualifications for an outfitter's license who is employed as an agent by any person, firm, partnership, corporation, or other organization or combination thereof that is licensed by the Board to operate as an outfitter and who shall, together with the licensed outfitter, be responsible and accountable for the conduct of the licensed outfitter's operations. The name of each designated agent employed by an outfitter shall appear on the outfitter's bond. A designated agent may act as a guide if he possesses the qualifications of a guide as determined by the Board. (Previously referred to as Managing Agent). (4-1-92)

112. Drift Boats. Shall be substituted for and have the same meaning as "float boats" defined below. (4-1-92)

123. Enforcement Agent. An individual employed by the Board having the power of peace officers to enforce the provisions of the Idaho Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and the Rules promulgated thereunder. (4-1-92)

134. Facilities And Services. The provision of personnel, lodging (tent, home, lodge, or hotel/motel), transportation (other than by commercial carrier), guiding, preparation and serving of food and equipment, or any other accommodation for the benefit of clientele in the conduct of outdoor recreational activities as designed in Section 36-2102(b), Idaho Code. (4-1-92)

145. First Aid Card. A valid card issued by the American Red Cross to denote the individual whose name and signature appear thereon has successfully completed an applicable Red Cross course and is qualified to render appropriate, minimal first aid as prescribed by the American Red Cross, or other valid evidence showing successful completion of an equivalent course conducted by an organization acceptable to the Board. (4-1-92)

156. Fishing. Fishing activities on those waters and for those species described in the rules of the Idaho Department of Fish and Game, IDAPA 13.01.11, "Rules Governing Fish," general fishing seasons and any anadromous fishing rules; for purposes of the "Act", fishing is defined as follows: (4-1-92)

- a.** Anadromous fishing means fishing for salmon or steelhead trout. (4-1-92)
- b.** Float boat fishing means the use of floatboats without motors for the conduct of fishing as a major activity on those waters open to commercial activities as set forth in Section 059. (4-1-92)
- c.** Fly fishing means a licensed activity restricted to the use of fly fishing equipment and procedures, as defined by Idaho Department of Fish and Game rules. (4-1-92)
- d.** Incidental fishing means fishing conducted as a minor activity. (4-1-92)
- e.** Power boat fishing means the use of power boats in conduct of fishing as a major activity on those Idaho waters open to commercial outfitting activities as set forth in Section 059. (4-1-92)
- f.** Walk and wade fishing means fishing conducted along or in a river, stream, lake or reservoir, and may include the use of personalized flotation equipment, but does not include the use of watercraft. (4-1-92)

167. Float Boats. Watercraft (inflatable watercraft, dories, drift boats, canoes, cataracts, kayaks, sport yaks, or other small watercraft) propelled by, and moving with the stream flow, maneuvered by oars, paddles, sweeps, pike poles or by motors for downstream steering only. Downstream steering does not include holding or upstream travel of a watercraft with a motor. Excluded as float boats are personal flotation devices, innertubes, air mattresses, or similar devices. (4-1-92)

178. Guide. An individual who meets the criteria as set forth in Idaho Code 36-2102(c), and has further met the required qualifications as prescribed in the Rules to provide professional guided services to clientele in the pursuit and conduct of licensed activities. (4-1-92)

189. Guide License. A license issued by the Board to an individual who is employed by a licensed outfitter to furnish personal services for the conduct of outdoor recreational activities as defined in Idaho Code 36-2102(c). (4-1-92)

~~1920.~~ **Hazardous Excursions.** Outfitted or guided activities conducted outside municipal limits in a desert or mountainous environment which may constitute a potential danger to the health, safety, or welfare of participants involved. These activities shall include, but are not limited to: day or overnight trailrides, backpacking, technical mountaineering/rock climbing, cross-country skiing, backcountry alpine skiing, llama and goat packing, snowmobiling, survival courses, and motored and non-motored cycling, but does not include wagon rides or sleigh rides. (3-19-99)()

~~201.~~ **He/His/Him.** Shall mean either the male or female gender. (4-1-92)

~~212.~~ **Hunting.** The pursuit of any game animal or bird and all related activities including packing of client camp equipment, supplies, game meat and clients to and from a hunting camp. (3-30-01)

~~223.~~ **Incidental Activity.** Shall be and is the same as a minor activity. (4-1-92)

~~234.~~ **Incidental Amendment.** All outfitter license amendment requests that can be processed by the Board without requiring outside research or recommendation of a land managing agency or other agency before the Board takes final action on said amendment request. (4-1-92)

~~245.~~ **Investigator.** An individual employed by the Board to monitor compliance with the provisions of the Outfitters and Guides Act (Idaho Code, Title 36, Chapter 21) and Rules promulgated thereunder and issue warning tickets for violations thereof. An investigator shall not have arrest powers nor any other power of a peace officer. (4-1-92)

~~256.~~ **Major Activity.** A licensed activity, the nature of which requires a significant commitment of time and effort by an outfitter in its execution and is intended to provide a significant amount of income to an outfitter. (4-1-92)

~~267.~~ **Major Amendment.** All outfitter license amendment requests requiring Board research or recommendation of a land management agency or other agency before the Board takes final action on the amendment request. (4-1-92)

~~278.~~ **Minor Activity.** A licensed activity the nature of which must be carried out in conjunction with a major activity, but is not the primary purpose of the excursion. (3-15-02)

~~289.~~ **Mountainous.** A region receiving limited to abundant annual precipitation with an associated vegetative cover of grass, weeds, shrubs, or trees. Cool summer temperatures and cold winter temperatures prevail. A mountainous area is a land surface ranging from level to gently rolling low hills to elevated lands that are often broken with poor to well-developed, deeply entrenched drainage systems, rims, cliffs, and escarpments to steep-sided land masses of impressive size and height. (4-1-92)

~~2930.~~ **New Opportunity.** A proposed commercial outfitted activity to be conducted in an area where no similar commercial outfitted activity has been conducted in the past. (4-1-92)

~~301.~~ **Nonresident.** An individual, corporation, firm, or partnership who is not a resident of the state of Idaho. (See "Resident"). (4-1-92)

~~312.~~ **Nonuse.** Inactivity, such as incidental activity only, or an outfitter's making zero (0) use of major licensed activities for any two (2) of the three (3) preceding years. See Definitions, "Zero (0) use," and Subsection 024.01. (3-23-98)

~~323.~~ **Operating Area.** The area assigned by the Board to an outfitter for the conduct of outfitting activities. (4-1-92)

~~334.~~ **Operating Plan.** A detailed schedule or plan of operation which an outfitter proposes to follow in the utilization of licensed privileges, areas, or activities. (See Subsection 018.03). (4-1-92)

345. Outfitter. An individual, corporation, firm, partnership, or other organization or combination thereof that meets the criteria as set forth in Idaho Code 36-2102(b), and has further met the required qualifications as prescribed in the Rules to conduct an outfitting business in Idaho. (4-1-92)

356. Outfitter License. A license issued by the Board to an individual, partnership, corporation, or other duly constituted organization to conduct activities as defined in Section 36-2102(b), Idaho Code. The conduct of an outfitted operation on any land(s) is not authorized unless signed permission, a permit, or a lease is obtained from the land owner(s), or their agent(s), and filed with the Board. (3-15-02)

367. Out-Of-Pocket Costs. The direct costs attributable to a recreational activity. Such direct costs shall not include: (4-1-92)

- a. Compensation for either sponsors or participants; (4-1-92)
- b. Amortization or depreciation of debt or equipment; or (4-1-92)
- c. Costs of non-expendable supplies. (4-1-92)

378. Power Boats. All motorized watercraft used on Idaho waters open to commercial outfitting activities as set forth in Subsections 059.01 and 059.02. Excluded as power boats are hovercraft, jetskis or similar devices, and float boats using motors for downstream steering. (4-1-92)

389. Relinquishment Of License Privileges. The failure to re-apply at the expiration of a license; the loss through nonuse, inactivity, revocation, or voluntary surrender of a license; or other loss of license. (See Subsection 030.03). (3-23-98)

390. Resident. An individual, corporation, firm, or partnership who has resided in the state of Idaho for a period of six (6) months next preceding the time of application for license. (4-1-92)

401. Rules. The Rules of the Board. (4-1-92)

412. Stay Of Board Action. An order, pursuant to Idaho Code 67-5215(c), stopping or delaying the enforcement of a Board decision, order or action. (4-1-92)

423. Third Party Agreement. The allowing of the conduct of an outfitted or guided activity by the outfitter licensed to conduct those activities by any persons not directly employed by said outfitter. (See Section 023). (4-1-92)

434. Trainee. A person not less than sixteen (16) years of age who does not possess the necessary experience or skill qualifications required to obtain a guide license, but who is working toward obtaining the necessary experience or skill qualifications. This required training shall be recorded on a form provided by the Board. A trainee may not provide any direct guiding services for clients, but may assist while under direct supervision. (5-1-95)

445. Boat Trainee Under Supervision. ~~The A~~ boat trainee must be in a boat operated by a licensed boatman, or one in which the operation is closely monitored by a licensed boatman. The licensed boatman need not be in the same boat during training as long as the trainee's activity is closely monitored. (~~4-1-92~~)()

456. Unethical/Unprofessional Conduct. Any activity(ies) by an outfitter or guide which is inappropriate to the conduct of the outfitting or guiding profession. These activities include, but are not limited to: (3-30-01)

- a. An outfitter employing an unlicensed guide; (3-30-01)
- b. Providing false, fraudulent or misleading information to the Board; (3-30-01)
- c. Failure to obey an order of the Board; (3-30-01)

- d. Failure to provide services as advertised or contracted; (3-30-01)
- e. Harassment of the public in their use of Idaho's outdoor recreational opportunities; (3-30-01)
- f. Violation of state or federal fish and game laws; (3-30-01)
- g. Engaging in unlicensed activities or conducting outfitter/guide services outside the operating area for which the licensee is licensed; (3-30-01)
- h. Disregard for the conservation, maintenance or enhancement of fish, game, land and water resources; (3-30-01)
- i. Failure to pay a supplier of goods or services to the outfitter business; (3-15-02)
- j. Failure to pay state taxes; or (3-15-02)
- k. Operating in a manner which endangers the health, safety, or welfare of the public. (3-30-01)

467. Validated Training Form. An approved form bearing the "Great Seal of the State of Idaho" and the official stamp of the Board affixed thereon. (4-1-92)

478. Watercraft. A boat or vessel propelled mechanically or manually, capable of operating on inland water surfaces. Excluded as watercraft are hovercraft, jetskis, personal flotation devices (PFD's), or similar devices. (4-1-92)

489. Zero Use. No or negligible use by an outfitter of his licensed activity unless the lack of use is due to an act of nature or season or hunting or fishing restrictions by a state or federal agency that limit the ability of the outfitter to seek and accommodate clientele. (4-1-92)

003. QUALIFICATIONS.

An applicant for an outfitter and/or guide license must: (3-1-86)

01. Age. Be at least eighteen (18) years of age. (3-1-86)

02. First Aid. For a guide, or for an outfitter who wishes to guide, have a first aid card at all times while guiding and be aware of general emergency procedures. ~~(3-1-86)~~()

03. Knowledge. Have extensive, first-hand knowledge of the area and/or waters and/or activities involved in his proposed operation. When the application includes big game hunting, he must know the habits of the game sought and hunting techniques that are successful in the area, be able to care for meat and trophies, and be familiar with applicable game and firearm laws. (3-1-86)

004. LICENSE REQUIREMENTS.

Idaho law (Idaho Code, Title 36, Chapter 21) requires that: (10-15-88)

01. License. An outfitter and/or guide license and a valid first aid card while guiding must be secured and in the immediate possession of the licensee and produced upon request before commencing outfitting, guiding, or acting in any capacity as an outfitter or guide. The submission of a license application does not fulfill this requirement. ~~(10-15-88)~~()

02. Activities. An outfitter's license shall have set forth upon its face or an attachment thereto the operating area and the specific activities including client and harvest limitations or restrictions which the licensee is authorized to conduct. (3-23-98)

03. Other. A guide license shall specify the activities for which the licensee is qualified to guide. The licensee shall guide only within the operating area and for activities covered by the employing outfitter's license (see

Section 032). The employing outfitter(s)' operating area description shall not be attached to a guide license. (10-15-88)

04. Restrictions. It be deemed unlawful and a misdemeanor for any person to: (10-15-88)

a. Engage in the occupation of guiding unless said person is employed by a licensed Idaho outfitter and possesses a valid guide license issued by the Board; or (10-15-88)

b. Knowingly and willingly conspire to violate the provisions of Idaho Code, Title 36, Chapter 21, or the Rules promulgated thereunder. (10-15-88)

(BREAK IN CONTINUITY OF SECTIONS)

008. EMPLOYMENT OF OUTFITTERS.

An outfitter may guide for another outfitter or rent or lease equipment or services as follows: (10-15-88)

01. Other Outfitter. An outfitter may guide for another outfitter when properly employed by that outfitter, provided that both the employee and employer licenses contain a statement indicating Board approval for such guiding to occur. (10-15-88)

02. Other. If an outfitter is employed to guide activities not covered by his own guide license, he must first submit his qualifications to the Board for approval along with the certification required from the employing outfitter prescribed in Subsection 034.02. (10-15-88)

03. No Sharing Of Profits. While an outfitter is employed as a guide by another outfitter, there shall be no sharing of profits or equipment and/or animals other than leased equipment and/or leased animals. An outfitter when employed as a guide may only render personal services as would any other guide. (10-15-88)

04. Agreement. When an outfitter utilizes equipment from another outfitter or a guide in the provision of facilities, services and transportation to clientele, a written notice of usage shall be filed with the Board. ~~A including a current certificate or proof of non-owner liability insurance coverage by the outfitter which has been provided to the Board shall suffice as notification.~~ (12-30-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

015. FEES.

Prior to the issuance of a license, an applicant must submit the appropriate fee in the form of a certified check, cashier's check, money order, or outfitter's company check. The fee need not be submitted by a new applicant in order for the application to be considered complete but must accompany any renewal application. (4-1-92)

01. Late Fee. When a completed renewal application is filed with the Board after the last day of the license year, the following penalty shall apply: (3-30-01)

a. A completed application received by the Board ~~prior to fifteen (15) days after~~ the last day of the license year - no late fee shall apply. (3-30-01)(____)

b. A completed application received by the Board ~~fifteen (15) days after the last day of the license year through ninety (90) days~~ after the last day of the license year - a fifty dollar (\$50) late fee shall be paid before the license is issued. (3-30-01)(____)

e02. License Lapsed And Relinquished. A completed outfitter application received by the Board after ninety (90) days after the last day of the license year will not be accepted for licensure. The license will have lapsed and therefore is void and vacated. If a completed application is not received by the Board by ninety (90) days after the

last day of the license year, the license is relinquished.

~~(3-30-01)~~(____)

023. Refund Of Unused One Time Application Fees. All unused portions of one (1) time new outfitter, new designated agent, or new guide application fees shall be returned to the applicant. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

017. REVIEW OF OUTFITTER APPLICATIONS.

An outfitter application requesting activities and operating areas identical to a license held the previous year will be reviewed ~~by the Board by March 31, or~~ thirty (30) days from the date all materials required for a complete application are received, ~~whichever is later~~. An application requesting activities or areas in addition to those licensed the preceding license year, or an initial application, will be reviewed ~~by the Board by March 31, or~~ ninety (90) days from the date all materials are received, ~~whichever is later~~. (8-26-75)(____)

(BREAK IN CONTINUITY OF SECTIONS)

034. GUIDE APPLICATION REQUIREMENTS - GENERAL.

To be complete, an application for a guide license must:

(4-1-92)

01. First Aid Card. Be accompanied by ~~a copy (both sides) of a~~ an affidavit by the employing outfitter ~~that the applicant will have a valid first aid card while guiding. The Board will revoke a current guides license if forged or altered documents are submitted. Applications submitted with forged or altered first aid cards will be rejected and no license will be issued for that year.~~ (5-1-95)(____)

02. Signatures. Have the signature of the applicant and of the licensed outfitter(s) who wishes to employ the applicant as a guide, who shall certify that the applicant: (4-1-92)

a. Is qualified to perform the type of guiding activity(ies) for which he seeks licensing; i.e., hunting, boating, skiing, or other as may be applicable. (4-1-92)

b. Has extensive, first-hand knowledge of the operating area(s) and water(s) in or on which he will be guiding. (4-1-92)

c. If the guide is land based, the guide is able to read and understand a map and compass or operate a global positioning system (GPS) or other computerized map system. (3-30-01)

d. Is clean and well-mannered with a desire to please those whom he is called upon to serve. (4-1-92)

(BREAK IN CONTINUITY OF SECTIONS)

054. BOAT EQUIPMENT REQUIREMENTS.

Each float or power boat must have:

(4-1-92)

01. Life Jacket. A life jacket for each passenger and boatman. The life jackets must be of a type approved by the U.S. Coast Guard for use in boats carrying passengers for hire and must be maintained in good and serviceable condition. (4-1-92)

02. Fire Extinguisher. A fire extinguisher. (Does not apply to float boats without motors for steerage). (4-1-92)

03. Identification. Identification consisting of words, names, or letters indicating the current licensed outfitter. The identification shall be recorded with the Board on the outfitter application and shall be placed above the water line on each side of the bow or stern of the boat utilized by that outfitter in letters not less than three (3) inches in height, and be of a contrasting color. (Does not apply to single passenger boats or two (2) person inflatable boats).
(5-1-95)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

063. SNOWMOBILING.

All general Rules for outfitting and guiding shall apply to snowmobiling. In addition, the following general rules apply: (3-1-86)

01. Non-Groomed Trails. All machines shall be accompanied by at least one (1) guide for one (1) through five (5) snowmachines, two (2) guides for six (6) through twelve (12) snowmachines, and one (1) additional guide for each additional ten (10) snowmachines. The maximum number of snowmachines allowed in one (1) group shall not exceed thirty (30). One (1) guide shall lead and one (1) trail where more than five (5) snowmachines are involved. (3-1-86)

02. Groomed Trails. All machines shall be accompanied by at least one (1) guide for one (1) through fifteen (15) snowmachines, and two (2) guides for sixteen (16) through a total of thirty (30) snowmachines. One (1) guide shall lead and one (1) trail where more than fifteen (15) machines are involved. The maximum number of snowmachines allowed in one group shall not exceed thirty (30). (3-1-86)

03. Emergency Equipment. All snowmobiling tours shall have with them necessary emergency equipment, a first aid kit, tools, and spare parts for the machine(s) in use. (5-1-95)

04. Reduction In Guide Ratios. Upon application to the Board by the outfitter, the Board may reduce the number of guides on non-groomed trails to one (1) guide for six (6) through twelve (12) snowmachines and the number of guides on groomed trails to one (1) guide for sixteen (16) through thirty (30) snowmachines, if the guide has electronic communication for summoning assistance at all times during the excursion. (_____)

064. AUTHORIZATION FOR GRANTING, DENIAL AND REVOCATION OF LICENSES.

01. Executive Director Authorizations. The Executive Director is authorized to grant, ~~or~~ deny, suspend, or revoke temporary authorizations, licenses and license amendments, with the concurrence of the Board, under the following conditions: (3-30-01)(_____)

a. The Executive Director may grant all routine license applications and amendments where the applicant does not have any convictions for fish and game violations, falsified or otherwise invalid first aid cards, or other convictions of violations enumerated in Section 36-2113(a), Idaho Code, and otherwise qualify for licensure. The Executive Director may issue a temporary authorization to an applicant pending final approval and issuance of a license. The Executive Director may not waive fees. (3-30-01)(_____)

b. The Executive Director may grant all license applications which otherwise qualify for licensure, but which have convictions of violations enumerated in Section 36-2113(a), Idaho Code, which occurred five (5) years prior to the date of application, except that a license will not be granted by the Executive Director to an applicant who has a felony conviction of any nature, or conviction of any outfitter and guide law violation or conviction of a major fish and game violation. (3-30-01)

c. The Executive Director may grant a license with probationary status for conviction of minor fish and game violations. The Executive Director shall not grant a license to an applicant who has a conviction of a flagrant violation pursuant to Section. 36-2401(e), Idaho Code. (3-30-01)

d. The Executive Director may defer granting or denying any license to the Board for action by the Board. (3-30-01)

02. Board Conditions. The Board may grant or deny a license pursuant to the provisions of Sections 36-2109 and 36-2113, Idaho Code, under the following conditions: (3-30-01)

a. The Board may grant a license to an applicant with convictions of violations enumerated in Section 36-2113(a), Idaho Code, which are over five (5) years old and may or may not place the licensee on probation. (3-30-01)

b. The Board may grant a license to an applicant with convictions of violations enumerated in Section 36-2113(a), Idaho Code, which are less than five (5) years old and may or may not place the licensee on probation. (3-30-01)

c. The Board shall proceed with the denial of an applicant for a hunting or fishing outfitter or guide license or proceed with the revocation process on a licensee upon conviction of a flagrant violation pursuant to Section 36-1402(e), Idaho Code, unless unusual mitigating circumstances exist. (3-30-01)

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 67-4223, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

The Idaho Department of Parks and Recreation has completed a comprehensive review of our IDAPA rules governing the management and operations of State Parks. The purpose of the review was to align our IDAPA rules with a new statewide campground management system that is being implemented to improve public access to park services and the efficiency of park operations.

The change in Definition 010.03 further defines Campsite; the new Definition 010.04 defines Camping Unit; the new Definition 010.07 defines Designated Beach; the new Definition 010.08 defines Designated Roads and Trails; the old Definition 010.13 Vessel Length is repealed; the new Definition 010.13 defines Motorized Vehicle; the change in Definition 010.15 adds a reference to Program Manager; the new Definition 010.16 defines Primary Season; the change in Definition 010.17 identifies appropriate Idaho Code section; Rule 050 is repealed; the change in Rule 075 adds reference to enforcement; the changes in Rule 075.01 address enforcement of emergency rules and when they expire; Rule 075.02 is repealed; the change in Rule 100.02 describes penalty for non-compliance with laws and rules; the changes in Rule 150 describe compliance requirements for payment of fees and with speed and traffic rules and laws; the changes in Rule 150.01, 150.02, 150.03, 150.04, 150.05 and 150.06 identify appropriate Idaho Code sections; the change in Rule 150.07 provides that the operation of a motor vehicle within a campground is restricted to accessing campsites; the new Rule 175.02 describes day use hours; the change in Rule 200.01 describes occupancy restrictions for campsites; Rule 200.02 is repealed; the change in Rule 200.02 provides for decisions by the Park Manager; the change in Rule 200.03 provides for campsite reservation; Rule 200.07 is repealed; the changes in Rule 200.07 more clearly define campsite parking requirements; the changes in Rule 200.10 establish requirements for visitors; the change in Rule 201 excludes long term moorage rental requirements; the change in Rule 201.01.a describes mooring in properly signed locations; the change in Rule 201.01.b provides a limited period for moorage; Rules 201.01.c., 201.01.d., 201.01.e., and 201.01.f. are repealed; the change in Rule 201.02 establishes timeframe for moorage fee payment; the change in Rule 225.01.a. includes reference to applicable fees; the change in Rule 225.01.b. provides that Park Manager may set certain fees for resale items; the change in Rule 225.02 provides that park-specific fees charged will be established by Board policy; the change to Rule 225.03 provides that camping fees apply to day use facilities; the change to Rule 225.06 establishes the surcharge amount to be assessed when required fees are not paid; the changes to Rule 250.01 establish that Camping Fees include Motor Vehicle Entry Fees, that a Limited Income Discount applies to camping fees, more clearly defines waiver of fees for disabled veterans, establishes an extra vehicle charge, adds the fee for camping cabins, yurts and tepees, and the charge for additional people above the capacity of cabins, yurts or tepees to the fee table; Rule 250.02 is repealed; the change to Rule 250.02 more clearly defines non-refundable reservation fees and modifies reservation service fees; the changes to Rule 250.03 removes reference to purchase of annual passports prior to February 1 and reference to Individual Park Annual Passport; Rules 250.05, 250.06, 250.07 and 250.08 are repealed; Rule 250.04 provides that charges for returned checks will be passed on to the customer; the change to Rule 250.05.a. modifies a reservation service charge for group facilities; the change to Rule 250.05.c. modifies requirements for prepayment of group facility reservation fees; the change to Rule 250.05.d. provides for payment of cleaning/damage deposits prior to check-in; the change to Rule 250.05.e. provides that negotiated commercial group use fees will not fall below the cost of providing services; Rule 250.05.f. is repealed; Rule 250.08 is repealed; the change to the Rule 275 heading includes a reference to campsite, camping cabin, yurt and tepee reservations; the change to Rule 275.01 provides for the prepayment of applicable reservation fees; the change to Rule 275.02 redefines the requirements for individual campsite

reservations; the change to Rule 275.03 clarifies multiple campsite reservations; the change to Rule 275.04 addresses modification of reservations; the change to Rule 275.05 addresses reservation cancellations; the change to Rule 275.06 provides Park Manager authority for denial of reservations; Rules 275.07 and 275.08 are repealed; the change to Rule 300.01 provides a more clear definition of group use reservation processes; the change to Rule 300.02 clarifies responsibilities for group leaders; the change to Rule 300.03 provides for denial based on documented past behavior; the change to Rule 300.04 clarifies a rule reference; Reserved Rules 301 to 324 are repealed; Rule 325 is repealed; Reserved Rules 326 to 349 are repealed; Rule 350 is repealed; Reserved Rules 351 to 374 are repealed; Rule 375 is repealed; Reserved Rules 376 to 399 are repealed; Rule 400 is repealed; Reserved Rules 401 to 424 are repealed; the change to the Rule 450 heading establishes Waterfront Area Restrictions; the change to Rule 450.01 changes the description of swimming; the change to Rule 450.02 modifies restrictions for pets; the change to Rule 450.03 further defines restricted areas; the change to Rule 450.04 more clearly describes the use of ramps and docks; the change to Rule 450.05 adds an Idaho Code reference; the change to Rule 475 removes the reference to vehicles related to confinement of pets and that exercise areas for pets may be established by park employees; the change to Rule 500 provides for designation of proper livestock use areas through proper signing; the change to Rule 575 addresses the protection of wildlife as established in Board policy; new Rule 576 provides for the protection of historical, cultural and natural resources; the change to Rule 600 clarifies the authority for personal safety and use of firearms; the change to Rule 625 provides for the use of public notices; the change to Rule 650.03 provides direction for dealing with abandoned property.

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

This proposal includes no new or increased fees. It does however include a number of modifications that affect how existing fees are assessed and when they are collected. The proposal also includes deleting a number of park-specific fees that are enterprise driven in nature from the IDAPA rules and requires the Board to establish and maintain those enterprise fees by Board Policy. The purpose of these modifications is to improve the management and return on Department enterprise activities and improve alignment of our IDAPA rules with business rules required of the new statewide campground management system.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking will be conducted at the public hearing and on other occasions as necessary and requested.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact: Dean Sangrey, Division Administrator, Operations (208) 334-4180, ext. 250.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

Rick Collignon, Director
Idaho Department of Parks and Recreation
5657 Warm Springs Ave.,
Boise, ID 83716
PO Box 83720
Boise, ID 83720-0065
(208)334-4180 – FAX (208)334-5232

THE FOLLOWING IS THE TEXT OF DOCKET NO. 26-0101-0201

010. DEFINITIONS.

As used in this chapter: (1-1-94)

01. Board. The Idaho Park and Recreation Board, a bipartisan, six (6) member board, appointed by the Governor. (3-13-97)

02. Camping Day. The period between 2 p.m. of one (1) calendar day and 1 p.m. of the following calendar day. (7-1-99)

03. Campsite. Site designated for overnight camping, including camping cabins, yurts, and tepees. (~~3-13-97~~)()

04. Camping Unit. A single family unit including parents and siblings, or a party of no more than four (4) persons occupying one (1) vehicle with built-in sleeping accommodations or a maximum of two (2) tents. ()

045. Day Use. Use of any non-camping lands and or facilities between the hours of 7 a.m. and 10 p.m. unless otherwise posted. (~~3-13-97~~)()

056. Department. The Idaho Department of Parks and Recreation. (1-1-94)

07. Designated Beach. Waterfront areas designated by the Park Manager or designee for water based recreation activities. The length and width of each designated beach shall be visibly signed. ()

08. Designated Roads And Trails. Facilities recognizable by reasonable formal development, signing, or posted rules. ()

069. Director. The director and chief administrator of the department, or the designee of the director. (1-1-94)

0710. Dock And Boating Facility. Floats, piers and mooring buoys owned or operated by the department. (3-13-97)

0811. Extra Vehicle. An additional motorized vehicle (not in tow at time of entry) without built in sleeping accommodations registered to a camp site. (3-13-97)

0912. Group Use. Twenty-five (25) or more people, or any group needing special considerations or deviations from normal department rules or activities. (1-1-94)

13. Motorized Vehicle. Every vehicle that is self propelled except for vehicles moved solely by human power and motorized wheelchairs as defined in Section 49-123(g), Idaho Code. ()

104. Motorized Vehicle Entry Fee (MVEF). A fee charged for a motorized vehicle to enter a designated area for a non-camping visit. (3-13-97)

145. Park Or Program Manager. The person, designated by the director, responsible for administering and supervising particular lands, facilities, and staff that are under the jurisdiction of the department. (~~3-13-97~~)()

16. Primary Season. The time of the year when the majority of use occurs at a park facility. ()

127. Vessel. Every description of watercraft, including a seaplane on the water, used or capable of being used as a means of transportation on water, but not including float houses, diver's aids operated and designed primarily to propel a diver below the surface of the water, and nonmotorized devices not designed or modified to be used as a means of transportation on the water such as inflatable air mattresses, single inner tubes, and beach and water toys as defined in section 67-7003(22), Idaho Code. (~~3-13-97~~)()

138. Vessel Length. The distance measured at the centerline at the highest point above the waterline

from the fore-part of the outer hull at the bow to the aft-part of the outer hull at the stern, excepting any bowsprits, railings or extraneous or additional equipment. (3-13-97)

~~011. -- 049. (RESERVED).~~

050. ENFORCEMENT.

~~The director may designate employees of the department to be deputized as special deputies, pursuant to the provision of Section 67-2901(5), Idaho Code, for the purpose of enforcing penal and regulatory laws of the state. (3-13-97)~~

~~051. -- 074. (RESERVED).~~

075. AUTHORITY CONFERRABLE ON EMPLOYEES - ENFORCEMENT.

01. Director Authority. The director may, pursuant to Section 67-4239, Idaho Code, authorize any employee of the department to exercise any power granted to, or perform any duty imposed upon the director. (3-30-01)(____)

~~**02. Park Manager Authority.** The park manager or designee may establish and enforce emergency rules which apply to the public safety, use, and enjoyment or protection of natural, cultural, or other resources within lands administered by the department. Those rules shall be posted for public view and shall be consistent with established state laws and these rules. All state, county, and local laws are in effect and subject to enforcement within lands administered by the department. Emergency rules shall expire in one hundred twenty (120) days unless approved by the Board. (7-1-99)(____)~~

~~**02. Establishing And Posting Hours.** The park manager shall establish and post the hours for use areas so as to serve the general public and protect the area with the staff available. (3-13-97)~~

~~076. -- 099. (RESERVED).~~

100. PENALTIES FOR VIOLATIONS.

Failure of any person, persons, partnership, corporation, concessionaire, association, society, fraternal, social or other organized groups to comply with these rules shall constitute an infraction. (1-1-96)

01. Civil Claim. The penalty established in Section 100 of this chapter shall not prevent the department from filing a civil claim against a violator to collect damages incurred to lands, resources, or facilities administered by the department. (3-13-97)

~~**02. Violators.** Permanent department employees may remove any violator of the rules from land or facilities administered by the department, as a trespasser upon state land. Fees paid by a violator may be returned to the violator upon his removal. In addition to the penalty provided in Section 100 of this chapter, or any other existing laws of the state of Idaho, any person failing to comply with any section of these rules or federal, state, or local laws, rules, or ordinances applicable under the circumstances, shall be a trespasser upon state land and subject to expulsion from any state park area for a period of time not less than forty-eight (48) hours. (3-13-97)(____)~~

(BREAK IN CONTINUITY OF SECTIONS)

150. USE OF MOTORIZED VEHICLES.

All motorized vehicles shall stay on authorized established department roadways or parking areas except for trails and areas which are clearly identified by signs for off-road use. Drivers and vehicles operated within lands administered by the department shall be licensed or certified as required under state law. The ~~drivers~~ operators of all vehicles shall comply with the motor vehicle entry fee requirements, speed and traffic rules of the department, and all other federal, state, local laws, and ~~state~~ ordinances ~~and laws~~ governing traffic on public roads. (3-30-01)(____)

01. Use Of Parking Spaces For Persons With A Disability. Special zones and parking spaces within state parks are designated and signed for exclusive use by vehicles displaying a special license plate or card denoting legal handicap status as defined in Section 49-213, Idaho Code. (3-30-01)(____)

02. Overdriving Road Conditions And Speeding Prohibited. No person shall drive a vehicle at a speed greater than the posted speed or a reasonable and prudent speed under the conditions, whichever is less. Every person shall drive at a safe and appropriate speed when traveling on park roads, in congested areas, when pedestrians or bicyclists are present, or by reason of weather or hazardous highway conditions as defined in Section 49-654, Idaho Code. (3-30-01)(____)

03. Motorcycle Safety Helmets. Persons under eighteen (18) years of age shall wear a protective safety helmet when riding upon a motorcycle as operator or passenger within Idaho State Parks as defined in Section 49-666, Idaho Code. (3-30-01)(____)

04. Snowmobile Operation Limited. No person shall operate a snowmobile on any regularly plowed park road. Access on non-plowed roads and trails shall only be permitted when authorized by the park manager as defined in Section 49-669, Idaho Code. (3-30-01)(____)

05. Compliance With Posted Regulatory Signs Required. Persons operating vehicles within state parks are required to obey posted regulatory signs as defined in Section 49-807, Idaho Code. (3-30-01)(____)

06. Obedience To Traffic Direction Required. No person shall willfully fail or refuse to comply with any lawful order or directions of any park employee invested with authority to direct, control or regulate traffic within a state park as defined in Section 49-1419, Idaho Code. (3-30-01)(____)

07. Restrictions. ~~A#~~ The operation of motorized vehicles within a ~~specified~~ designated campground ~~are~~ is restricted to ingress and egress to a campsite. (7-1-93)(____)

08. Official Use. This rule does not prohibit official use of motorized vehicles by department employees anywhere within lands administered by the department. (1-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

175. PUBLIC BEHAVIOR.

01. Resisting And Obstructing A Park Employee Prohibited. Persons shall not willfully resist, delay, obstruct, or interfere with any park employee in his duties to protect the state's resources and facilities and to provide a safe place to recreate. (3-30-01)

02. Day Use. Between the hours of 10 p.m. and 7 a.m., unless otherwise posted, all persons not registered for the night or attending approved park activities are to leave the park. (____)

023. Quiet Hours. Within lands administered by the department, the hours between 10:00 p.m. and 7:00 a.m. shall be considered quiet hours unless otherwise posted. During that time, users are restricted from the production of noise that may be disturbing to other users. (1-1-94)

034. Noise. Amplified sound, poorly muffled vehicles, loud conduct or loud equipment are prohibited within lands administered by the department, except in designated areas or by authority of the park manager. (1-1-94)

045. Alcohol. State laws regulating alcoholic beverages and public drunkenness shall be enforced within lands administered by the department. (3-30-01)

056. Littering. Littering is prohibited within lands administered by the department. (1-1-94)

067. Smoking. State Park facilities are designated as “smoke free” areas. Persons shall not smoke within park structures or at posted outdoor areas. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

200. CAMPING.

01. Occupancy. Camping shall be permitted only in designated campsites with a maximums of: ~~eight (8) people, one (1) extra vehicle, two (2) tents, and one (1) motor vehicle or towed unit with built-in sleeping accommodations~~ one (1) camping unit per campsite, unless the site has been approved to accommodate a second unit by the Park Manager or designee. ~~Additional vehicle(s) may be parked at the site with permission of the park manager.~~ A campsite will be determined occupied only after the required camping fees have been paid and registration information completed. (3-10-00)(____)

02. Motorcycles. ~~Maximum of two (2) motorcycles constitute one (1) motor vehicle or towed unit with built-in sleeping accommodations.~~ (3-13-97)

03. Length Of Stay. Except as provided herein, no person, party or organization may be permitted to camp on any lands administered by the department for more than fifteen (15) days in any thirty (30) day period. Shorter or longer periods may be designated for any individual area by the ~~director~~ Park Manager or designee. (3-10-00)(____)

043. Saving Sites Registration Required. All camping fees must be paid and registration information completed prior to occupying a campsite. Saving campsites is prohibited. ~~The party registering for a campsite shall be the party that occupies it for the first night.~~ (1-1-94)(____)

054. Condition Of Campsite. Campers shall keep their ~~campground~~ site and other use areas clean. (7-1-93)(____)

065. Liquid Waste Disposal. All gray water and sewage wastes shall be held in self-contained units or collected in water-tight receptacles in compliance with state adopted standards and dumped in sanitary facilities provided for the disposal of such wastes. (3-30-01)

07. Unattended Sites. ~~Campers may not leave their camps unattended for longer than one (1) camping day, except by permission of the park manager.~~ (1-1-94)

086. Motorized Equipment. No generators or other motorized equipment emitting sound and exhaust are permitted to be operated during quiet hours. (7-1-93)

097. Campsite Parking. All boats, motorcycles, trailers, rigs and motorized vehicles shall fit entirely within the campsite parking spur provided with the assigned campsite. All equipment which does not fit entirely within the designated campsite parking ~~spur~~ area shall be parked outside the campground in an area designated by the Park Manager or designee. If no outside parking is available, the Park Manager or designee may require the party to register on a second campsite, shall be purchased if available. (1-1-94)(____)

#08. Equipment. All camping equipment and personal belongings of a camper shall be maintained within the assigned campsite perimeter. (3-13-97)

#09. Check Out. Campers are required to check out and leave a clean campsite by 1:00 p.m. of the day following the paid night of camping. (7-1-99)

120. Visitors. ~~Visitors to~~ Individuals visiting campers shall park ~~outside the campground, in~~ designated areas, except with permission of the Park Manager or designee. Visitors shall conform to established day use hours and motor vehicle entry fee requirements. (1-1-94)(____)

~~131.~~ **Responsible Party.** The individual purchasing a campsite is responsible for assuring compliance with the rules within this chapter. (1-1-94)

~~142.~~ **Camping Prohibited.** No camping is permitted outside designated campsites unless specifically authorized. (3-13-97)

201. BOATING FACILITIES.

The provisions of this section do not apply to department-operated marinas which provide moorage on a lease or long term rental basis. (~~3-13-97~~)(____)

01. Moorage And Use Of Marine Facilities. (~~3-13-97~~)

~~a.~~ No person or persons shall moor or berth a vessel of any type in a department-owned or operated park or marine area ~~except in designated facilities~~ that is signed for other use. (~~3-13-97~~)

~~b.~~ *In order to afford the general public the greatest possible use of marine facilities, continuous moorage at a facility by the same vessel, person or persons, Vessel moorage shall be limited to no more than fifteen (15) consecutive nights, unless otherwise posted by the park manager at any individual facility or area days in any thirty (30) day period.* (~~3-13-97~~)(____)

~~c.~~ *In order to maximize usable space at mooring facilities, boaters shall, whenever necessary, moor their vessels as close as reasonably possible to vessels already moored. Rafting of vessels is also permitted within posted limits, but is not mandatory.* (~~3-13-97~~)

~~d.~~ *Use of any state park marine facility shall be on a first-come, first-served basis only. Reserving or retaining space to moor or berth a vessel at any facility by means of a dinghy or any method other than occupying the space by the vessel to be moored is prohibited.* (~~3-13-97~~)

~~e.~~ *Dinghies shall be tied up only in designated spaces on moorage facilities.* (~~3-13-97~~)

~~f.~~ *Open flames or live coals, or devices containing or using open flames, live coals or combustible materials, including but not limited to barbecues, hibachis, stoves and heaters, are permitted on floats, docks, or piers only when placed on a fireproof base and the fire is located away from fuel tanks and/or fuel vents. In case of dispute related to fire safety, the park manager is authorized to allow or prohibit the use.* (~~3-13-97~~)

02. Moorage Fees. Vessels moored between ~~8:00~~ 10 p.m. and ~~8:00~~ 7 a.m. at designated facilities shall be charged an overnight moorage fee. (~~7-1-99~~)(____)

03. Use Of Onshore Campsites. If any person or persons from a vessel moored at a department boating facility also occupies any designated campsite onshore, the appropriate established fee for such campsite(s) shall be paid in addition to any moorage fee provided herein. (3-13-97)

04. Self-Registration. In those areas so posted, boaters shall register themselves for the use of marine facilities and onshore campsites, paying the appropriate moorage and campsite fees as provided for herein and in accordance with all posted instructions. (3-13-97)

202. -- 224. (RESERVED).

225. FEES AND SERVICES.

01. Authority. (3-13-97)

a. The board shall adopt fees for the use of lands, facilities, and equipment. Visitors shall pay all applicable fees. (~~3-13-97~~)(____)

b. Park Managers ~~shall~~ or designees may set fees for goods available for resale and services provided by staff that enhance the users experience unique to the individual park. ~~With the exception of those fees for services which are appropriately determined by negotiation on a case-by-case basis, all fees set by the park manager shall be clearly posted.~~ Fees for lands, facilities and equipment unique to an individual park will be posted at that site. (3-13-97)(____)

02. General Provisions. All fees in this chapter are maximum fees unless otherwise stated. Actual fees charged shall be ~~commensurate with the level of maintenance and operation of the facility or service for which the fee is charged~~ established by Board Policy. (3-10-00)(____)

03. Camping. Camping fees include the right to use designated campsites and facilities, and day use facilities for the period camp fees are paid. Utilities and facilities may be restricted by weather or other factors. (3-13-97)(____)

04. Group Use. (7-1-93)

a. Groups of twenty-five (25) persons or more, or any group needing special considerations or deviations from these rules shall have a permit. Permits may be issued after arrangements have been made for proper sanitation, population density limitations, safety of persons and property, and regulation of traffic. (1-1-94)

b. Permits for groups of up to two hundred fifty (250) people may be approved by the park manager with thirty (30) days advance notice. Permits for groups of two hundred fifty (250) to one thousand (1,000) may be approved by the director with forty-five (45) days advance notice. Groups over one thousand (1,000) may be approved by the board with sixty (60) days advance notice. The director may approve groups over one thousand (1,000) with thirty (30) days advance notice, if they are repeat users. (1-1-94)

c. The motorized vehicle entry fee may be charged to groups entering a designated area for a noncamping visit. (3-13-97)

05. Fees And Deposits. Fees and deposits may be required for certain uses or the reservation of certain facilities. (3-13-97)

06. Fee Collection Surcharge. A five dollar (\$5) surcharge may be assessed when department staff are compelled to collect fees at a self-collection facility added to all established fees when the registered owner of a motorized vehicle or camping unit fails to pay required fees prior to entering a park area or occupying a campsite. If the operator of the vehicle or responsible party is not present, all required fees in addition to the five dollar (\$5) surcharge will be assessed against the registered owner of the motorized vehicle or camping unit. (3-13-97)(____)

07. Admission Fees. A maximum per person fee of ten dollars (\$10) may be charged for internal park facilities which provide an educational opportunity or require special accommodations. (3-10-00)

08. Cooperative Fee Programs. The department may collect and disperse fees in cooperation with fee programs of other state and federal agencies. (3-10-00)

226. -- 249. (RESERVED).

250. FEE SCHEDULE.

01. Campsites.

CAMPSITES FEE TABLE	
Primitive Campsite (may include: table, grill, camp-spur, vault toilet, no water.)	\$7/day
Basic Campsite (may include: table, grill, camp-spur, central water, vault toilets.)	\$9/day

CAMPSITES FEE TABLE	
Developed Campsite (may include: table, grill, camp-spur, central water, flush toilets.)	\$12/day
Deluxe Campsite (designed to accommodate higher occupancy limits of up to twelve (12) persons)	\$22/day
Electric hookups at site	additional \$4/day
Sewer hookups at site	additional \$2/day
Use of campground showers by noncampers	\$3/person
Fee collection surcharge	\$5.00/occurrence
Camping fee includes MVEF (see Subsection 250.043 of this chapter).	
Limited Income Discount - Idaho residents showing proof of limited income (Medicaid card or other evidence approved by the board) may receive a camping fee discount of:	\$4/day
Resident Disabled Idaho Veterans - Campsite fees are waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability	
Extra Vehicle Charge	\$5/day
Camping Cabin, Yurt, or Teepee	\$72/night
Each additional person above the sleeping capacity of camping cabin, yurt or teepee	\$12 night

(3-13-97)()

~~02. Limited Income Discount.~~

LIMITED INCOME DISCOUNT TABLE.	
Idaho residents showing proof of limited income (Medicaid card or other evidence as approved by the board) may receive a discount of:	\$4.00/day

(7-1-99)

~~032. Reservation Service Charge Fees. Where reservations are available a non-refundable reservation service charge of six dollars (\$6) shall be charged. A non-refundable service charge of six dollars (\$6) will be assessed for each campsite reserved. This fee will be waived for campers with a current Idaho RV registration sticker and reimbursed to the Department by the RV Program. A service charge of ten dollars (\$10) will be assessed for the cancellation or modification of each campsite reserved that involves reducing the planned length of stay if notice is received more than twenty-four (24) hours in advance of the scheduled arrival time. Cancellations made less than twenty-four (24) hours in advance of the scheduled arrival time may require the forfeiture of the first nights camping fee.~~

(7-1-99)()

~~043. Motorized Vehicle Entry Fee (MVEF).~~

MOTORIZED VEHICLE ENTRY FEE (MVEF) TABLE.	
Daily charge per motorized vehicle	\$ 3
Daily charge per commercial motor coach (no annual pass available)	\$20
Statewide Annual State Park Passport per motorized vehicle	\$35

MOTORIZED VEHICLE ENTRY FEE (MVEF) TABLE.	
Statewide Annual State Park Passport per motorized vehicle if purchased prior to February 1 <u>Disabled Idaho Resident Veterans - The MVEF is waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability</u>	\$25.00
Individual Park Annual Passport per motorized vehicle (where offered)	\$25.00
Second Vehicle Annual Passport. <i>(The second vehicle passport shall be purchased at the same location as the first vehicle passport. A vehicle registration in the same owner's name is required).</i>	\$ 5

(3-10-00)()

05. ~~Eagle Island Waterslide Rides.~~

EAGLE ISLAND WATERSLIDE RIDES TABLE.	
Bracelet	10 rides for \$4.00
All day pass	\$8.00

(3-13-97)

06. ~~Yurts, Tepees, Cabins, Etc.~~

PARK YURTS, TEPEES CABINS, ETC. TABLE.	
Yurts, Tepees and Cabins	\$72/night
Each additional person above the sleeping capacity of the facility	\$12.00/night
Administrative/Cancellation Fee	\$15.00

(3-10-00)

07. ~~Back Country Yurts.~~

BACK COUNTRY YURTS TABLE	
Yurt rental fee (up to six (6) person)	\$72.00/night
Each additional person above the sleeping capacity of the facility	\$12.00/night
Administrative/Cancellation fee	\$30.00
Key deposit	\$20.00

(3-10-00)

08. ~~Extra Vehicle.~~ *Extra vehicles may be parked either within the camp spur (so long as it fits entirely within the spur) or in an overflow area for five dollars (\$5)/day.* (3-10-00)

094. **Special Charges.** *A fee of twenty dollars (\$20) shall be charged for each check returned for*

~~insufficient funds.~~ The cost to the agency for returned checks will be passed on to the customer. (3-10-00)()

#05. Group Facility Fees. (3-13-97)

a. A ~~minimum~~ reservation service charge of twenty-five dollars (\$25) shall be charged for each ~~group use~~ reservation of a designated group facility. Additional charges may be imposed by the Park Manager or designee depending upon the cost of providing services ~~(contact the park manager).~~ (3-10-00)()

b. Groups using overnight facilities shall be charged two dollars (\$2) per person per night camping fees. (3-13-97)

c. ~~The reservation service charge together with the first night group use fee~~ Unless other arrangements are made with the Park Manager or designee, all group facility use fees and any required applicable deposits are required to be prepaid to confirm a group use facility reservation. ~~The reservation service charge is non-refundable. First night group~~ All use fees shall be refunded if notice of cancellation is provided not later than 2 p.m., local time, ~~ten~~ twenty-one (21) days prior to date of scheduled arrival. During the primary season, the percent of fees refunded for cancellations made less than twenty-one (21) days prior to date of scheduled arrival will be based on the ability of the Park Manager or designee to register the cancelled sites to other parties. (3-10-00)()

d. Cleaning/damage deposits may be required for certain facilities. Where cleaning/damage deposits are required, they shall be paid ~~at the time of~~ prior to check-in. Cleaning/damage deposits shall be fully refunded if the facilities are left in the same condition in which they were accepted. (3-10-00)()

e. Commercial group use fees may be negotiated ~~(contact by~~ the park manager or designee) but shall never fall below the cost of providing services. (3-13-97)()

f. Fee Table.

FARRAGUT STATE PARK	
<i>(minimum fee per day)</i>	
<i>Thimbleberry</i>	\$ 90.00
<i>Kestrel</i>	\$150.00
<i>Nighthawk</i>	\$300.00
<i>Buttonhook-Larch</i>	\$ 70.00
<i>Buttonhook-Oceanspray</i>	\$ 90.00
<i>Buttonhook-Saw-Whet</i>	\$ 50.00
<i>Cleaning/Damage-Deposit</i>	\$100.00

HARRIMAN STATE PARK	
<i>Dormitory and Cookhouse</i>	
<i>Per person</i> <i>(fifteen (15) person minimum, forty (40) person maximum)</i>	\$12.00/night
<i>Cleaning/Damage-Deposit</i>	\$150.00

HARRIMAN STATE PARK	
Boy's House (Maximum capacity Seventy (70) persons)	
Up to four (4) hours	\$50.00
Full day	\$80.00
Cleaning/Damage deposit	\$50.00
Ranch Manager's House (Maximum capacity eight (8) persons)	
Cleaning/Damage deposit	\$250.00/night
	\$50.00

LIONHEAD UNIT OF PRIEST LAKE STATE PARK	
Group Camp (including kitchen and sleeping quarters)	\$175.00/day
RV hookups See fee schedule set by Subsection 250.01 of this chapter	
Cleaning/Damage Deposit	\$50.00

THREE MEADOWS GROUP CAMP WITHIN DWORSHAK STATE PARK	
Basic daily rate (includes lodge and two (2) sleeping cabins)	\$225.00
Lodge rental (day use only)	\$ 75.00/day
Additional sleeping cabins	\$ 50.00/night
Group leader cabin rental	\$ 50.00/night
Tent sites	\$ 9.00/night
RV sites	\$ 15.00/night
Cleaning/Damage Deposit	\$150.00
Notwithstanding the provisions of Section 300 of this chapter, reservation requests for group use facilities at Three Meadows Group Camp will be accepted by mail on and after October 1 for the following calendar year.	

(3-10-00)

#06. Boating Facilities.

BOATING FACILITIES FEE TABLE	
Vessel launching (per vessel/per day) (Annual park passport, daily MVEF, or payment of camping fees applies toward vessel launching fees)	\$3/ day
Overnight moorage --any length of vessel. (Applicable to persons who have paid for a park campsite and are not camping on the vessel)	\$5/night

BOATING FACILITIES FEE TABLE	
Overnight moorage --persons camping on vessel	
Any length vessel	\$8/night
Any length vessel moored at buoy	\$5/night

(3-10-00)()

~~12. RV Dump Station Fees.~~ (3-13-97)

~~a. A fee of three dollars (\$3) shall be charged for use of department dump stations.~~ (3-10-00)

~~b. Annual park passport, daily MVEF or payment of campsite fees shall apply toward use of RV dump stations.~~ (3-10-00)

~~1307. Modification Of Fees.~~ Additional fees or deposits may be required for certain uses or for the reservation of certain facilities. The department reserves the right to waive or reduce fees and charges for department sponsored promotions. (7-1-93)

~~1408. Sales Tax.~~ Applicable sales tax may be added to all sales excluding daily motor vehicle entrance fees. (3-10-00)

~~1509. Length Of Stay.~~ Fifteen (15) days in any thirty (30) day period. (7-1-93)

251. -- 274. (RESERVED).

275. CRITERIA FOR INDIVIDUAL CAMPSITE, CAMPING CABIN, YURT AND TEPEE RESERVATIONS FOR PARKS THAT HAVE A RESERVATION PROGRAM.

~~01. Confirmation Requirements.~~ ~~Reservation service charge plus first night campsite fee are~~ The prepayment of all applicable fees is required to confirm an individual campsite, camping cabin, yurt or tepee reservation. (3-13-97)()

~~02. Individual Campsite, Camping Cabin, Yurt and Tepee Reservations.~~ Reservations for individual campsites, camping cabins, yurts and tepees may be made up to eleven (11) months anytime between ninety (90) days in advance, but at least and two (2) days prior to the first day to be reserved scheduled date of arrival. Reservations may be accepted within less than two (2) days of the first day to be reserved prior to the scheduled date of arrival with the approval of the Park Manager or designee. (3-10-00)()

~~03. Multiple Or Group Campsite Reservations.~~ Reservations including ten (10) or more individual campsites may be made up to eleven (11) months in advance of the scheduled arrival date, with the approval of the Park Manager or designee. One (1) person may pay for all members of a group reservation or each group member may pay individually all applicable fees. No more than thirty percent (30%) of the total number of campsites may be reserved before the ninety (90) day individual campsite reservation window. (3-10-00)()

~~04. Reservation Service Charges Modifications.~~ ~~The reservation service charge and first night campsite fee for mail-in and telephone reservation requests must be received with the reservation request. A walk-in reservation can be made and paid for at any time, if an appropriate site is available.~~ A reservation service fee will be assessed for any modification to a previously made reservation that involves reducing the planned length of stay. This service fee will be assessed for each campsite involved. With the exception of the reservation service fees as defined in Subsection 250.02, all fees paid will be reimbursed at the time the reservation is modified. (3-13-97)()

~~05. Campsite Requests.~~ ~~Requests for a specific campsite can be honored if available at time of reservation.~~ Reservation Cancellations. A reservation service fee will be assessed for the cancellation of a reservation. This service fee will be assessed for each campsite involved. With the exception of the reservation service fees as defined in Subsection 250.02, all fees paid will be reimbursed at the time the reservation is cancelled.

(3-10-00)(____)

06. ~~Late Arrival.~~ ~~Reservations shall only be held until 1 p.m. of the day immediately following the first reserved night. Check-in time cannot be guaranteed in any reserved site prior to 2 p.m. on the designated date of arrival.~~ **Park Manager Authority.** The Park Manager or designee may deny a reservation to any individual whose prior documented behavior has violated department rules, whose in-park activities are incompatible with the park's operation, or whose in-park activity will violate department rules. (3-10-00)(____)

07. ~~Reservation Service Charge Non-Refundable.~~ ~~The reservation service charge is non-refundable and does not apply to the first night's campsite fee. First night campsite fee will be refunded if notice of cancellation is received forty-eight (48) hours prior to scheduled arrival date (not later than 2 p.m., local time, two (2) days preceding arrival).~~ (3-10-00)

08. ~~Reservations Non-Transferable.~~ ~~Reservations are not transferable.~~ (3-13-97)

276. -- 299. (RESERVED).

300. RESERVING GROUP USE FACILITIES.

01. ~~Generally.~~ Unless otherwise provided, ~~reservations~~ designated group use facilities may be ~~made reserved through the reservation system~~ up to eleven (11) months in advance but at least two (2) days prior to the first day to be reserved. ~~Reservations shall be on a first come, first served basis. A completed reservation form, the required reservation service charge, the first night group use fees and all required deposits must be received in the park no more than twenty (20) days after the park mails it to the applicant. In no case may a (mail) reservation be accepted if the completed reservation form and the required service charges and fees are not received by the park ten (10) calendar days before the reserved date. Individual campsites within designated group camping areas may be reserved by individual campers if they are not reserved by groups up to ninety (90) days prior to arrival.~~ (3-10-00)(____)

02. ~~Responsible Party.~~ A designated group leader shall be responsible for all facilities ~~and shall be on-site at all times.~~ A damage or cleaning deposit may be required by the Park Manager ~~or designee~~ as a condition of reservation. (7-1-93)(____)

03. ~~Park Manager Authority.~~ The Park Manager ~~or designee~~ may deny a reservation to any group whose prior ~~documented~~ behavior has violated department rules, whose in-park activities are incompatible with the park's operation, or whose in-park activity will violate department rules. (1-1-94)(____)

04. ~~Additional Information.~~ Additional information concerning group use reservations and definitions can be found in Subsection 250.086 of this chapter. (3-13-97)(____)

~~301.--324: (RESERVED):~~

~~325. RENTAL OF STATE OWNED COTTAGES WITHIN HEYBURN STATE PARK. TABLE.~~

Cottages with full utilities	\$85.00/night
Cottages with partial utilities	\$35.00/night
Rental to any person shall be for a minimum of five (5) days and a maximum of fourteen (14) days in any thirty (30) day period. A six dollar (\$6) nonrefundable reservation fee shall be charged, and provisions of Section 300 of this chapter apply. A cleaning/damage deposit of twenty five dollars (\$25) may be required.	

(3-10-00)

~~326.--349: (RESERVED):~~

~~350. RENTAL OF STATE-OWNED COTTAGE WITHIN LAKEVIEW VILLAGE ADJACENT TO PONDEROSA STATE PARK. TABLE.~~

In-season—(Memorial Day weekend through Labor Day weekend), two (2) night minimum	\$75.00/night
Off-season, two (2) night minimum	\$55.00/night
Six (6) night, seven (7) day package	\$300.00
Monthly	\$600.00
Reservations are available subject to the terms of Section 275 of this chapter. A cleaning/damage deposit may be required.	

(7-1-99)

~~351.—374. (RESERVED).~~

~~375. RENTAL RATES FOR MOBILE HOME SITES AND LONG TERM CAMPING SITES WITHIN LAKEVIEW VILLAGE ADJACENT TO PONDEROSA STATE PARK. TABLE.~~

Residential Lakefront Mobile Home Sites	
(Used more than six (6) months per year and outside of the summer season, May 1 through October 31)	\$275.00/month
or	\$3,300.00/year
Recreational Lakefront Mobile Home Sites	
(Used six (6) months or less per year during the summer season, May 1 through October 31)	\$225.00/month
or	\$2,700.00/year
Residential Non-Lakefront Mobile Home Sites	
(Used more than six (6) months per year and outside of the summer season, May 1 through October 31)	\$265.00/month
or	\$3,180.00/year
Recreational Non-Lakefront Mobile Home Sites	
(Used six (6) months or less per year during the summer season, May 1 through October 31)	\$215.00/month
or	\$2,580.00/year
Long-term camping sites, lakeside	\$325.00/month
Long-term camping sites, second-row	\$310.00/month

(7-1-99)

~~376.—399. (RESERVED).~~

~~400. RENTAL RATES FOR SHORT-TERM CAMPING SITES WITHIN LAKEVIEW VILLAGE
ADJACENT TO PONDEROSA STATE PARK. TABLE~~

Overnight camping (less than thirty (30) nights) (see Subsection 250.01. of this chapter).	\$16.00/night
Overnight camping (thirty (30) nights or more, paid in advance) shall be at the same rate as established in Section 375 of this chapter for long term camping sites with additional days pro rated at the monthly rate.	
Reservations are available subject to the terms of Section 275 of this chapter.	

(3-13-97)

~~4301. -- 424399. (RESERVED).~~

~~42500. PARK CAPACITIES.~~

~~Park managers may limit or deny access to an area whenever it has reached its designated capacity. Only if special arrangements for the public welfare have been made may the manager allow that capacity to be exceeded. (1-1-94)~~

~~42601. -- 449. (RESERVED).~~

~~450. SWIMMING AND BOATING WATER USE WATERFRONT AREA RESTRICTIONS.~~

~~01. **Swimming.** In waters located in or adjacent to lands administered by the department, swimming is authorized only in areas plainly marked for swimming. Swimming or water contact shall be at an individual's own risk. (1-1-94)(____)~~

~~02. **Glass Containers Restrictions On Designated Beaches.** No glass containers or pets are allowed on designated beaches or swim areas. The park manager may grant an exception to this provision in order to accommodate individuals with disabilities. (1-1-94)(____)~~

~~03. **Restricted Areas.** Vessels shall remain clear of designated swimming beaches and other areas signed and buoyed for public safety. The director may regulate or exclude boating from areas of heavy swimming use. (3-13-97)(____)~~

~~04. **Ramps And Docks.** Within lands administered by the department, no boat camping is allowed tied up to or on loading. The use of docks located next to boat ramps is limited to the active launching and loading of boats. The park manager may prohibit vessels from tying up to docks used by swimmers or water skiers. Docks for general public use may be used for vessel tie up and boat camping. (3-13-97)(____)~~

~~05. **Compliance With Laws.** Vessels operating on public waters administered by the department shall fully comply with the Idaho Safe Boating Act, Title 67, Chapters 70 and 75, Idaho Code and the rules promulgated thereunder. The director may establish rules prohibiting the use of boat motors or to limit the horsepower capacity on those vessels operating on waters administered by the department. (3-13-97)(____)~~

~~451. -- 474. (RESERVED).~~

~~475. PETS.~~

~~Pets are allowed within lands administered by the department only if confined in a vehicle or controlled on a leash not longer than six (6) feet in length. No person may allow their pet to create a disturbance which might be bothersome to other users. Excepting persons with disabilities who are assisted by guide animals, no person may permit their pet animals to enter or remain on any swim area or beach. Pet owners shall be responsible to clean up after their animals. Pets may not be left unattended. Areas for exercising pets or areas excluding pets off leash may be designated by the Park Manager or designee. Department employees may impound or remove any stray or unattended animals at the owner's expense. (1-1-94)(____)~~

476. -- 499. (RESERVED).

500. LIVESTOCK.

Grazing of livestock is not permitted within lands administered by the department. Exceptions may be made by the board for grazing permits or otherwise permitting the use of lands administered by the department for livestock. The use of saddle or other recreational livestock is prohibited on trails, roadways, and other areas unless designated through signing for that purpose or with permission of the Park Manager or designee. (1-1-94)()

(BREAK IN CONTINUITY OF SECTIONS)

575. PROTECTION OF WILDLIFE.

All molesting, injuring, or killing of any wild creature is strictly prohibited, except as provided by action of the board and as established in Board Policy. Persons in possession of wildlife, which may be legally taken within state park boundaries, shall comply with Idaho Fish and Game rules. (3-30-01)()

576. PROTECTION OF HISTORICAL, CULTURAL AND NATURAL RESOURCES.

The digging, destruction or removal of historical, cultural or natural resources is prohibited. Collection for scientific and education purposes will be through written permission of the Park Manager or designee only. ()

576.7. -- 599. (RESERVED).

600. PERSONAL SAFETY, FIREARMS.

No person may discharge firearms or any other projectile firing device, or otherwise purposefully or negligently endanger the life of any person or creature within any land administered by the department. All firearms brought onto lands administered by the department shall be unloaded at all times and either out of sight, or in a vehicle, except when used for legal hunting as authorized by the director in Section 575 in this chapter, or for exhibition or at designated ranges as authorized by the Director. (3-13-97)()

601. -- 625. (RESERVED).

625. ADVERTISEMENTS.

~~Within lands administered by the department,~~ Public notices, public announcements, advertisements, or other printed matter shall only be posted or distributed in a special area approved by the Park Manager or designee. Political advertising is strictly prohibited within any lands administered by the department. (1-1-94)()

626. -- 649. (RESERVED).

650. AUTHORIZED OPERATIONS.

No person, firm, or corporation may operate any concession, business, or enterprise within lands administered by the department without written permission or permit from the board. No person(s), partnership, corporation, association or other organized groups may: (1-1-94)

01. Beg Or Solicit For Any Purpose. (7-1-93)

02. Game Or Operate A Gaming Device Of Any Nature. (7-1-93)

03. Abandon Any Property. Leaving property on Department lands is prohibited unless registered in a campsite or permitted by the Park Manager or designee. Property left on Department lands for more than twenty-four (24) hours will be removed at the owner's expense. (7-1-93)()

04. Discriminate. Discriminate in any manner against any person or persons because of race, color, national origin, religion, gender, age or disability within lands administered by the department. (1-1-94)

IDAPA 27 - IDAHO STATE BOARD OF PHARMACY
27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY
DOCKET NO. 27-0101-0202
NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1717, 54-1719, and 37-2702, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

This change is needed to adapt to the legislation that eliminated the duplicate prescription blanks for Schedule II controlled substance drugs, which contained notice of the former seven-day requirement. The change will also clarify that the time restriction applies only to Schedule II controlled substances (a distinction which was lost when the rules were re-numbered). Most Schedule II prescriptions are filled in a very short time. The thirty-day change will allow for the few exceptions when patients are not in the immediate need of the prescription, e.g., methyphenidate, Dexedrine or completing a similar prescription before filling the new one.

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 change is not controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August 2002.

R.K. "Mick" Markuson, Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720, Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0202

458. TIME FOR FILLING PRESCRIPTION.

No person shall fill a prescription for a controlled substance listed in Schedule II unless # the prescription is tendered to him on or before the ~~seventh~~ thirtieth day following the date of issue. (7-1-93)()

IDAPA 27 - IDAHO STATE BOARD OF PHARMACY
27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY
DOCKET NO. 27-0101-0203
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1717 and 54-1719, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

The rulemaking clarifies that students enrolled in pharmacy technician training courses and volunteers at hospital pharmacies may register as pharmacy technicians and be authorized to act as pharmacy technicians even though they are not formally employed by the pharmacy. The proposed rule changes the definition of pharmacy technician to one who is employed or otherwise authorized to participate in preparing, compounding, distributing, or dispensing of medications at a pharmacy.

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, however, the Board did accept testimony from interested parties at its June board meeting and heard from pharmacy operators, students, and operators of pharmacy technician training courses.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

R.K. "Mick" Markuson
Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0203

251. PHARMACY TECHNICIANS.

01. Definition - Pharmacy Technician. Means an individual, registered with the Board who is ~~trained according to the written standards of the employer (pharmacist or pharmacy owner) and employed by the training pharmacist and/or training pharmacy owner~~ employed or otherwise authorized by a pharmacy registered with the Board to perform routine functions, that do not require the use of a licensed pharmacist's professional judgment, in connection with the preparing, compounding, distribution or dispensing of medications at such pharmacy, and who has been adequately trained therefor according to the written standards of such pharmacy. Such written standards shall be available to the Board and its designated personnel for inspection and/or approval. (4-5-00)(____)

02. Responsibility Of Pharmacy And Pharmacist -- Assignment of Functions. (4-5-00)

a. The pharmacy and the pharmacist-in-charge are each responsible for all aspects of the sale at retail and the dispensing of medications, drugs, devices, and other materials at the pharmacy, including the preparing, compounding, distribution or dispensing of medications. No pharmacy or pharmacist may allow assignment to, or permit performance by, any individual, other than a registered pharmacy technician ~~employed at the registered pharmacy~~, a registered pharmacist extern/intern, or a licensed pharmacist, of any functions connected to the preparing, compounding, distribution or dispensing of medications at the pharmacy. (4-5-00)(____)

b. The pharmacy or the pharmacist-in-charge may assign to, or allow performance by, a registered pharmacy technician ~~employed at the registered pharmacy~~, only of those functions connected with the preparing, compounding, distribution or dispensing of medications, which meet all of the following criteria: (4-5-00)(____)

i. The function is routine; (4-5-00)

ii. The function is one for which the pharmacy technician is adequately trained and supervised; and (4-5-00)

iii. The function does not require the use of a licensed pharmacist's professional judgment. (4-5-00)

c. Only a registered pharmacist may do any of the following (which, without limiting the scope of the term "professional judgment", is a non-exclusive list of actions requiring a licensed pharmacist's professional judgment): (4-5-00)

i. Receive a new prescription order verbally from a prescriber or other person authorized by law. (4-5-00)

ii. Perform evaluations and interpretations of a prescription and any needed clarifications prior to filling. (4-5-00)

iii. Consult with the prescriber concerning any necessary clarification regarding a patient and his prescription. (4-5-00)

iv. Interpret any clinical data in a patient's medication record system (e.g., drug usage, refill frequency, drug interactions, etc.) (7-1-93)

v. Perform professional consultation with any prescriber, nurse or other health care professional. (7-1-93)

vi. Supervise the packaging of drugs and check the completed procedure and product. (7-1-93)

vii. Issue the new prescription to the patient or his agent with consultation. (7-1-93)

viii. Supervise the activities of pharmacy technicians to insure that all such activities are performed completely, safely and without risk or harm to patients. (4-5-00)

d. A violation of the rules on pharmacy technicians by a pharmacist or a pharmacy is unprofessional

conduct, and is grounds for revocation or suspension of the pharmacist's license and/or the pharmacy registration issued under Sections 54-1722, 54-1723, 54-1724 or 54-1729, Idaho Code, or other appropriate disciplinary action. (4-5-00)

03. Supervision. Where a pharmacy technician performs one (1) or more functions in connection with the preparing, compounding, distribution or dispensing of, the pharmacy technician shall be under the supervision of a licensed pharmacist who, in addition to the pharmacy and the pharmacist-in-charge, shall be responsible for all aspects of the filled prescription including, but not limited to the following: (4-5-00)

a. Verifying drug selection, strength, dosage form and labeling against the prescription and the contents of stock container. (7-1-93)

b. Verifying selection of the proper prescription container. (7-1-93)

04. ~~Employee~~ Pharmacy Technician Ratio. The ratio of pharmacists to pharmacy technicians shall be not less than one (1) pharmacist for every two (2) pharmacy technicians in any practice setting. ~~(4-5-00)~~()

05. Responsibility Of Pharmacy Technicians. (4-5-00)

a. Pharmacy technicians shall perform all functions properly assigned to them with all necessary care. No pharmacy technician shall accept assignment of, or perform, any functions connected with the preparing, compounding, distribution or dispensing of medications unless such pharmacy technician is employed ~~or otherwise~~ authorized by the assigning pharmacy and such function meets all of the criteria set forth in Subsection 251.02.b. ~~(4-5-00)~~()

b. The Board of Pharmacy may initiate proceedings against pharmacy technicians who perform such tasks or functions connected with the preparing, compounding, distribution or dispensing of medications: (4-5-00)

i. That are not routine functions; (4-5-00)

ii. That the pharmacy technician is not adequately trained and supervised for; or (4-5-00)

iii. That require the use of a licensed pharmacist's professional judgment. Such persons may be charged by the appropriate authorities with practicing pharmacy without a license in violation of Section 54-1726, Idaho Code. (4-5-00)

c. The Board of Pharmacy may initiate proceedings against pharmacy technicians who perform such tasks or functions connected with the preparing, compounding, distribution or dispensing of medications in a negligent or improper manner or otherwise violate the rules on pharmacy technicians. Such violations shall be grounds for revocation or suspension of the pharmacy technician's registration, or other appropriate disciplinary action. (4-5-00)

06. Identification Of Pharmacy Technicians. (7-1-99)

a. All pharmacy technicians working as such in community pharmacies must be identified by a name badge designating that person as a pharmacy technician. The name badge must measure no less than one (1) inch by three (3) inches and must contain the individual's printed name directly above the title of pharmacy technician. The identification badge must be clearly visible at all times. Pharmacy technicians working in an institutional setting may be exempt from the above requirement only if the institution requires a specific badge of identification to be worn by the pharmacy technician. (4-5-00)

b. All pharmacy technicians must identify themselves as a pharmacy technician on any phone calls initiated or received by them while performing pharmacy functions. (7-1-99)

07. Registration Of Pharmacy Technician. (4-5-00)

a. Annual Registration. All pharmacy technicians shall register annually with the Board. The Board

will develop an appropriate annual registration notice and annual registration form to be mailed to all registered pharmacy technicians prior to June 1 of each year. The notice will state the annual pharmacy technician registration renewal fee. (4-5-00)

b. Initial Registration. Before commencing ~~employment~~ duties at a pharmacy as a pharmacy technician (including previously registered pharmacy technicians who are changing ~~employing~~ pharmacies), an individual must register with the Board, pay the registration fee, and have received a certificate of registration from the Board, provided however, an individual who has not previously had his registration as a pharmacy technician revoked or suspended may commence ~~employment~~ performing duties as a pharmacy technician immediately upon the completion and mailing of the registration form and applicable fee to the Board. The initial registration period shall be from the date of initial registration to the next annual registration date. (~~4-5-00~~)(____)

c. Contents of Registration Form. The annual registration form and the initial registration form shall be prepared by the Board, and shall require such information regarding the individual and the employing or authorizing pharmacy as the Board may reasonably require. In addition, registration shall include the statement of the pharmacy owner (or an authorized agent of the pharmacy owner), and of the pharmacist-in-charge that either: (~~4-5-00~~)(____)

i. The individual has been adequately trained by the pharmacist-in-charge, or by the pharmacy, to perform those routine functions in connection with the preparing, compounding, distribution or dispensing of medications as are, or will be, assigned to such individual; (4-5-00)

ii. The pharmacist-in-charge or the pharmacy owner has verified that such individual possesses adequate training to perform those routine functions in connection with the preparing, compounding, distribution or dispensing of medications as are, or will be, assigned to such individual; or (4-5-00)

iii. Such individual will be adequately so trained prior to the assignment of any routine functions in connection with the preparing, compounding, distribution or dispensing of medications. (4-5-00)

08. Discipline And Appeal. Any proceedings by the Board against any pharmacy technician shall comply in all respects with the Administrative Procedures Act, Chapter 52, Title 67, Idaho Code. (4-5-00)

IDAPA 27 - IDAHO STATE BOARD OF PHARMACY
27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY
DOCKET NO. 27-0101-0204
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-1717 and 54-1718, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

This rule change formalizes what has previously been an informal practice of allowing carryover of continuing education credits earned in June but not necessary for meeting the prior reporting period's education requirements. The proposed rule allows continuing education units earned during June of any given licensing period to be carried over into the next licensing period to the extent the pharmacist's total hours for the given licensing period exceed that required by the rules.

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 rule generally favors an existing practice that has been acceptable to the affected groups.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August 2002.

R.K. "Mick" Markuson
Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0204

134. AMOUNT OF CONTINUING EDUCATION.

The equivalent of one and one-half (1.5) continuing education unit (CEU) shall be required annually of each applicant for renewal of license. One (1) continuing education unit is the equivalent of ten (10) clock hours of participation in programs approved by the Board of Pharmacy. (7-1-93)

01. ACPE Or CME. At a minimum, eight clock hours (0.8 CEU) will be all or a combination of American Council of Pharmaceutical Education (ACPE) or Continuing Medical Education (CME) approved programs. (12-7-94)

02. Pharmacy Law. One clock hour (0.1 CEU) must be Board of Pharmacy approved jurisprudence (pharmacy law) programs. (7-1-93)

03. Non-ACPE Approved. A maximum of six clock hours (0.6 CEU) may be non-ACPE approved programs. (12-7-94)

04. Live Attendance. Three clock hours (0.3 CEU) of the required one and one-half (1.5) continuing education units (CEU) must be obtained by attendance at live continuing education programs. (7-1-97)

05. Carryover Of Certain Unused Units. Clock hours of CEU accrued during June of any given licensing period may be carried over into the next licensing period to the extent that a pharmacist's total clock hours of CEU for the given licensing period exceed the total CEUs required under these rules for the given licensing period. ()

IDAPA 27 - IDAHO STATE BOARD OF PHARMACY
27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY
DOCKET NO. 27-0101-0205
NOTICE OF RULEMAKING - TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 21, 2002.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule. The action is authorized pursuant to Sections 54-1717, 37-2725, and 37-2718, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the supporting reasons for temporary rulemaking:

This rulemaking recognizes revised controlled substance prescription forms authorized by House Bill No. 331 in the 2001 legislative session, as well as Senate Bill No. 1417 in the 2002 legislative session. The proposed rule changes outline the requirements for controlled substance prescription blank forms, as well as discipline to be assessed by the Board of Pharmacy in the event practitioners fail to follow the requirements of statute and rule with respect to controlled substance prescription blanks.

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

Adoption of the rule as a temporary rule with immediate effect is necessary to comply with deadlines set out in Senate Bill No. 1417 of the 2002 legislative session, which voided prior rules relating to controlled substance prescriptions effective June 30, 2002. The Board of Pharmacy is engaged in, and will continue, the process of negotiated rulemaking for promulgation of a permanent rule for review by the 2004 Legislature. Part of the negotiated rulemaking process will include an analysis of the efficacy of this temporary rule, after a period of time has elapsed with the rule in effect, and the possibility of revisions to the temporary rule, through the negotiated rulemaking process, to improve its functionality.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

DATED this 21st day of August 2002.

R.K. "Mick" Markuson, Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720, Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0205

433. DEFINITIONS - (H -- Z).

01. Hospital. The term "hospital" means an institution for the care and treatment of the sick and injured, approved by the Department of Health as proper to be entrusted with the custody of controlled substances and

the professional use of controlled substances under the direction of a practitioner. (7-1-93)

02. Individual Practitioner. The term “individual practitioner” means a physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted, by the state in which he practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner. (7-1-93)

03. Institutional Practitioner. The term “institutional practitioner” means a hospital or other person (other than an individual) licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which it practices, to dispense a controlled substance in the course of professional practice, but does not include a pharmacy. (7-1-93)

04. Laboratory. The term “laboratory” means a laboratory approved by the Idaho Board of Pharmacy as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and medical purposes and for purposes of instruction and administered by a person licensed by the state of Idaho to possess such substances. (7-1-93)

05. Name. The term “name” means the official name, common or usual name, chemical name, or brand name of a substance. (7-1-93)

06. Official Idaho Register. The term “Official Idaho Register” is defined as the official register issued by the Board of Pharmacy and contains the required information to record the sales or disposition of Schedule V substances, which book shall be in duplicate bearing the notice to the public on the reverse side of the original sheet which is permanently bound in the book and shall be retained for a period of two (2) years after the last dated entry. (7-1-93)

07. Owner. The term “owner” as defined in this act, with reference to a vehicle, means any person having any right, title or interest in it. (7-1-93)

08. Pharmacist. The term “pharmacist” means any pharmacist licensed by a State to dispense controlled substances, and shall include any other person (e.g., pharmacist-intern) authorized by a State to dispense controlled substances under the supervision of a pharmacist licensed by such State. (7-1-93)

09. Pharmacy. The term “pharmacy” means every store or other place of business where prescriptions are compounded, dispensed or sold by a pharmacist and prescriptions for controlled substances are received or processed in accordance with the federal law and the pharmacy laws and rules of this state. (7-1-93)

10. Prescription. The term “prescription” as used in this act, means a prescription for a controlled substance in Schedules III, IV, V, such prescription is an oral order given individually for the person for whom prescribed, directly from the prescriber or by the prescriber’s employee or agent to the pharmacist or indirectly by means of an order written in ink, indelible pencil, typewritten, or a computer generated hard copy, signed by the prescriber, and shall contain the address of the prescriber, his federal registry number, the name and address of the patient, the name and quantity of the drug prescribed, directions for use, and shall be dated as of the date on which it is written. Written prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all essential respects to federal and state laws, regulations and rules. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these rules. ~~Pre-printed blanks supplied by manufacturers are not permitted.~~ (8-4-94)(8-21-02)T
Persons receiving controlled substances shall be positively identified.

11. Register, Registration. The terms “register” and “registration” refer only to registration required and permitted by Section 37-2717, Idaho Code. (7-1-93)

12. Registrant. The term “registrant” means any person who is registered. (7-1-93)

13. Readily Retrievable. The term “readily retrievable” means that certain records are kept by automatic data processing systems or other electronic or mechanized record keeping systems in such a manner that they can be separated out from all other records in a reasonable time and/or records are kept on which certain items

are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records. (7-1-93)

14. Sale. The term “sale” as used in this act, includes barter, exchange, or gift, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant or employee. (7-1-93)

15. Transport. The term “transport” as used in this act, with reference to controlled substances, includes “conceal”, “convey”, and “carry”. (7-1-93)

16. Vehicle. The term “vehicle” as used in this act, any vehicle or equipment used for the transportation of persons or things. (7-1-93)

17. Physician, Veterinarian, Dentist, Podiatrist, Osteopath, Optometrist, Pharmacist. As used in this act, these terms or any similar designation, means persons who hold valid, unrevoked licenses to practice their respective professions in this state, issued by their respective examining boards in this state. (12-7-94)

18. Physician. The term “physician” includes only persons licensed under Chapter 18 of Title 54, Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

470. REQUIREMENTS FOR PRESCRIPTION FORM -- DISCIPLINE OF PRACTITIONERS.

01. Prescription Form. Any prescription for a Controlled Substance, including any prescription blank used for a Controlled Substance prescription, shall conform to the requirements of Section 37-2725, Idaho Code. (8-21-02)T

02. Discipline Of Practitioners. A practitioner who issues a prescription for a Controlled Substance which does not comply with the requirements of Section 37-2725, Idaho Code, shall be subject to discipline by the Board as follows: (8-21-02)T

a. Definition of “offense” – For purposes of this Subsection 470.02, the term “offense” shall mean clear evidence of a pattern of prescription writing by a practitioner in violation of the requirements of Section 37-2725, Idaho Code. (8-21-02)T

b. First offense - a letter, with a representative copy or copies of prescriptions giving rise to the letter, shall be sent certified mail with a return receipt requested to the practitioner at the practitioner’s registration address describing the offense and the basis for required action, with a copy of the letter and prescription sent to the practitioner’s respective licensing board. The practitioner shall thereafter have thirty (30) days from the date of mailing to come into compliance with the requirements of Section 37-2725, Idaho Code. If, after such thirty (30) day period, the practitioner fails to comply with the requirements of Section 37-2725, Idaho Code, the practitioner’s licensing board shall be notified of such failure and given an opportunity to take appropriate action within thirty (30) days of receiving notice from the Board of Pharmacy and shall immediately notify the Board of Pharmacy when such action is taken. If the Board of Pharmacy is not notified of an action taken by the licensing board within such thirty (30) day period, the Board of Pharmacy shall take disciplinary action under Subsection 470.02.c. (8-21-02)T

c. Second offense - suspension of the practitioner’s controlled substance registration for a period of one (1) week pursuant to Section 37-2718, Idaho Code, along with an administrative fine pursuant to Section 37-2719, Idaho Code, equal to the costs of prosecution and administrative costs of bringing the suspension action including, but not limited to, attorney’s fees and costs and costs of hearing transcripts. The practitioner shall be mailed notice of the offense and notice that the Board will commence the action for suspension of registration, such notice to be sent certified mail with a return receipt requested to the practitioner at the practitioner’s registration address. Practitioners who wish to avoid the suspension action may do so by sending to the Board a written explanation for the offense along with a written plan of action setting forth how the practitioner will avoid offenses in

the future and a payment of one hundred dollars (\$100) within thirty (30) days of mailing of notice of the offense. The practitioner shall have thirty (30) days from the date of mailing of the notice of offense to come into compliance with the requirements of Section 37-2725, Idaho Code. If, after such thirty (30) day period, the practitioner fails to comply with the requirements of Section 37-2725, Idaho Code, the Board of Pharmacy shall take disciplinary action under Subsection 470.02.d. (8-21-02)T

d. Third offense - suspension of the practitioner's Controlled Substance registration for a period of thirty (30) days pursuant to Section 37-2718, Idaho Code, along with an administrative fine pursuant to Section 37-2719, Idaho Code, equal to the costs of prosecution and administrative costs of bringing the action including, but not limited to, attorney's fees and costs and costs of hearing transcripts. The practitioner shall be mailed notice of the offense and notice that the Board will commence the action for suspension or registration, such notice to be sent certified mail with a return receipt requested to the practitioner at the practitioner's registration address. Practitioners who wish to avoid the suspension action may do so by sending to the Board a written explanation for the offense along with a written plan of action setting forth how the practitioner will avoid offenses in the future and a payment of five hundred dollars (\$500) within thirty (30) days of mailing of notice of the offense. The practitioner shall thereafter have thirty (30) days from the date of mailing of the notice of offense to come into compliance with the requirements of Section 37-2725, Idaho Code. If, after such thirty (30) day period, the practitioner fails to comply with the requirements of Section 37-2725, Idaho, the Board of Pharmacy shall take disciplinary action under Subsection 470.02.e. (8-21-02)T

e. Fourth offense - suspension or revocation of the practitioner's Controlled Substance registration pursuant to Section 37-2718, Idaho Code, for such period as the Board, in its discretion, may determine based on the circumstances, along with an administrative fine pursuant to Section 37-2719, Idaho Code, equal to the costs of prosecution and administrative costs of bringing the action including, but not limited to, attorney's fees and costs and costs of hearing transcripts. The practitioner shall be mailed notice of the offense and notice that the Board will commence the action for suspension of registration, such notice to be sent certified mail with a return receipt requested to the practitioner at the practitioner's registration address. (8-21-02)T

f. Offenses subject to discipline under this Subsection 470.02 shall accumulate for each subsequent offense that occurs within six (6) months of the date the practitioner is sent notice of the prior offense. An offense occurring more than six (6) months after the date the practitioner receives notice of any immediately prior offense shall be deemed a first offense. (8-21-02)T

g. Prescribing or dispensing Controlled Substances by a practitioner whose registration has been suspended or revoked hereunder shall be deemed a separate offense of the Board rule and applicable statute and shall be subject to separate action by the Board. (8-21-02)T

470~~1~~. -- 490. (RESERVED).

IDAPA 31 - PUBLIC UTILITIES COMMISSION

31.21.01 - CUSTOMER RELATIONS RULES FOR GAS, ELECTRIC AND WATER PUBLIC UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION (THE UTILITY CUSTOMER RELATIONS RULES)

DOCKET NO. 31-2101-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given of the Idaho Public Utilities Commission's proposed rulemaking. This action is authorized pursuant to Section 61-515, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be scheduled only if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

The hearing site will be accessible to persons with disabilities. Request for accommodations must be made not later than five (5) days prior to the hearing, to the Commission's address set out below.

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

The Commission's Customer Relations Rules describe conditions for a utility to require a deposit from customers and to terminate service for non-payment. The proposed changes to Rule 101 provide additional reasons for a utility to require a deposit from a residential customer or applicant. The proposed changes to Rule 311 allow a utility to terminate service after normal business hours if the utility is unable to access the customer's meter during normal business hours.

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.0811, informal negotiated rulemaking was conducted by workshops attended by representatives of utility companies affected by the rule changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Beverly Barker, Consumer Assistance Administrator, at (208) 334-0302. Anyone may submit written comments regarding these proposed rules.

All written comments and data concerning the proposed rules must be delivered to the Commission Secretary at the address identified below or must be postmarked on or before October 23, 2002.

Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED at Boise, Idaho this 20th day of August, 2002.

Jean D. Jewell Commission Secretary Idaho Public Utilities Commission PO Box 83720 Boise, ID 83720-0074 Telephone: (208) 334-0338 FAX: (208) 334-3762	Street Address for Express Mail 472 West Washington Street Boise, ID 83702-5983
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-2101-0201

101. DEPOSIT REQUIREMENTS (RULE 101).

01. Residential Customers. No utility shall demand or hold a deposit from any current residential customer or applicant for residential service without proof that the customer or applicant is likely to be a credit risk or to damage the property of the utility. A ~~history of late payment or~~ lack of previous history with the utility does not, in itself, constitute such proof. A utility shall not demand or hold a deposit under this rule as a condition of service from a residential customer or applicant unless one or more of the following criteria applies: (7-1-93)(____)

a. The customer or applicant has outstanding a prior residential service account with the utility ~~or any other nonmunicipal utility (whether regulated or unregulated)~~ that accrued within the last four (4) years and at the time of application for service remains unpaid and not in dispute. (7-1-93)(____)

b. The customer's or applicant's service from ~~any the utility described in the previous sentence~~ has been terminated within the last four (4) years for one (1) or more of the following reasons: (7-1-93)(____)

i. Nonpayment of any undisputed delinquent bill; (7-1-93)

ii. Misrepresentation of the customer's or applicant's identity for the purpose of obtaining utility service; (7-1-93)

iii. Failure to reimburse the company for damages due to negligent or intentional acts of the customer; or (7-1-93)

iv. Obtaining, diverting or using service without the authorization or knowledge of the utility. (7-1-93)

c. Information provided by the applicant upon application for service is materially false or materially misrepresentative of the applicant's true status. (7-1-93)

d. The applicant did not have service with the utility for a period of at least twelve (12) consecutive months during the last four (4) years, and does not pass an objective credit screen. (____)

e. The applicant requests service at a residence where a former customer who owes a past due balance for service incurred at that location still resides. (____)

f. The utility has given the customer two (2) or more written final notices of termination within the last twelve (12) consecutive months. (____)

02. Small Commercial Customers. A utility shall not demand or hold a deposit as a condition of service from any current small commercial customer or applicant for small commercial service unless one or more of the following criteria apply: (7-1-93)

a. Any of the criteria listed in Rule Subsection 101.01 of this rule are present. (7-1-93)

b. The applicant is applying for service for the first time from that utility. (7-1-93)

c. ~~The customer fails to establish good credit.~~ (7-1-93)

03. Bankrupt Customers. If an applicant for service or a customer, either residential or small commercial, has sought any form of relief under the Federal Bankruptcy Laws, has been brought within the jurisdiction of the bankruptcy court for any reason in an involuntary manner, or has had a receiver appointed in a state court proceeding, then deposit may be demanded as allowed by the Federal Bankruptcy Act of 1978, as amended, and, in particular, 11 USC 366, or as directed by the state court. (7-1-93)

102. OTHER DEPOSIT STANDARDS PROHIBITED -- RESIDENTIAL CUSTOMERS (RULE 102).

A utility shall not require a deposit or other guarantee as a condition of new or continued residential utility service based upon residential ownership or location, income level, source of income, employment tenure, nature of occupation, ~~commercial credit records~~, race, creed, sex, age, national origin, marital status, number of dependents, or any other criterion not authorized by these rules. Rules governing deposits shall be applied uniformly. ~~(7-1-93)(_____)~~

(BREAK IN CONTINUITY OF SECTIONS)

105. AMOUNT OF DEPOSIT (RULE 105).

01. Amount Of Deposit. A deposit allowed pursuant to Rule 101 as a condition of service shall not exceed one-sixth (1/6) the amount of reasonably estimated billing for one year at rates then in effect. For customers who use gas service for space heating purposes only, the deposit shall not exceed the total of the two (2) highest months' bills during the previous twelve (12) consecutive months, adjusted for currently effective rates. ~~This estimate is to~~ Deposit amounts shall be based upon the use of service at the premises during the prior year or upon the type and size of customer's equipment using the utility's service. ~~(7-1-93)(_____)~~

02. Installment Payments Of Deposit. The utility shall provide the applicant an opportunity to pay the deposit in two (2) installments. The applicant shall be allowed to pay one-half (1/2) of the deposit amount at the time of application, with the remaining installment payable in one (1) month. ~~(7-1-93)~~

(BREAK IN CONTINUITY OF SECTIONS)

310. INSUFFICIENT GROUNDS FOR TERMINATION OF SERVICE (RULE 310).

No customer shall be given notice of termination of service nor shall the customer's service be terminated if:

~~(7-1-93)~~

01. Unpaid Bill Less Than Fifty Dollars. The customer's unpaid bill cited as grounds for termination totals less than fifty dollars (\$50) or two (2) months' charges for service, whichever is less. ~~(7-1-93)~~

02. Unpaid Bill Not Customer's. The unpaid bill cited as grounds for termination is for utility service to any other customer (unless that customer has a legal obligation to pay the other customer's bill) or for any other class of service. ~~(7-1-93)~~

~~**03. Failure To Pay On Written Guarantee.** The reason cited for termination is failure to pay on a written guarantee as provided for in Rule 103. ~~(7-1-93)~~~~

~~**043. Non-Utility Service Or Goods.** An unpaid bill results from the purchase of non-utility goods or services. ~~(7-1-93)~~~~

311. RESTRICTIONS ON TERMINATION OF SERVICE -- OPPORTUNITY TO AVOID TERMINATION OF SERVICE (RULE 311).

01. When Termination Not Allowed. ~~Unless the customer affected has consented in writing, s~~Service shall not be terminated on any Friday after ~~12:00 noon~~ 2 p.m., or on Saturday, Sunday, legal holidays recognized by the State of Idaho, or after ~~12:00 noon~~ 2 p.m. on any day immediately preceding any legal holiday, or at any time when the utility's ~~business offices are~~ is not open for business, except as authorized by Rules 303.01 and 303.02. Service may be terminated between the hours of 4 p.m. and 9 p.m., Monday through Thursday, if the utility is unable to gain access to the customer's meter during normal business hours. Unless otherwise authorized by this rule, Rules 303.01 and 303.02, or the affected customer in writing, sservices may be terminated only between the hours of 8:00 a.m. and 4:00 p.m., ~~except as authorized by Rules 303.01 and 303.02.~~ ~~(7-1-93)(_____)~~

02. Personnel To Authorize Reconnection. Each utility shall have personnel available after the time of termination who are authorized to reconnect service if the conditions cited as grounds for termination are corrected to the utility's satisfaction. Service shall be reconnected as soon as possible, but no later than twenty-four (24) hours after the utility's conditions are satisfied and the customer requests reconnection. (7-1-93)(____)

03. Opportunity To Prevent Termination Of Service. Immediately preceding termination of service, the employee designated to terminate service shall identify himself or herself to the customer or other responsible adult upon the premises and shall announce the purpose of the employee's presence. This employee shall have in his or her possession the past due account record of the customer and shall request any available verification that the outstanding bills are satisfied or currently in dispute before this Commission. Upon presentation of evidence that outstanding bills are satisfied or currently in dispute before this Commission, service shall not be terminated. The employee shall be authorized to accept full payment, or, at the discretion of the utility, partial payment, and in such case shall not terminate service. Nothing in this rule prevents a utility from proceeding with termination of service if the customer or other responsible adult is not on the premises at the time of termination. (7-1-93)(____)

04. Notice Of Procedure For Reconnecting Service. The employee of the utility designated to terminate service shall give to the customer or leave in a conspicuous location at the service address affected a notice showing ~~the employee's Company employee number~~, the time of and grounds for termination, steps to be taken to secure reconnection, and the telephone numbers of utility personnel or other authorized representatives who are available to authorize reconnection. (7-1-93)(____)

05. No Termination While Complaint Pending. Except as authorized by order of the Commission or of the Judiciary, service shall not be terminated for failure to pay amounts in dispute while a complaint filed pursuant to Rule 402 is pending before this Commission or while a case placing at issue payment for utility service is pending before a court in the state of Idaho. (7-1-93)

IDAPA 33 - IDAHO REAL ESTATE COMMISSION

33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

DOCKET NO. 33-0101-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2002.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2007, Idaho Code.

PUBLIC HEARING: Public hearing concerning this rulemaking will be held as follows:

Time: October 24, 2002, at 10:00 a.m.
Place: The Idaho Real Estate Commission
633 North Fourth Street
Boise, Idaho 83702

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

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

The proposed rules changes simply delete definitions that were moved to statute on July 1, 2002. Also, there will be a change in the requirement regarding display of license certificates in branch offices.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(B), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: These changes comply with effective dates of amendments to Idaho statute.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:
No new fees.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need for temporary rulemaking. Additionally, the rule changes here are simple.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Donna Jones, (208) 334-3285 ext. 232.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

Donna M. Jones
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 633 N. Fourth St., Boise, ID 83702
PO Box 83720
Boise, ID 83720-0077
(208) 334-3285
(208) 334-2050 (fax)
Toll Free (866) 447-5411

THE FOLLOWING IS THE TEXT OF DOCKET NO. 33-0101-0201

~~007. -- 009.~~ (RESERVED).

010. DEFINITIONS.

As used in these rules, and in the Idaho Real Estate License Law, Chapter 20, Title 54, Idaho Code, the following words or phrases shall have the following meaning: (3-15-02)

01. Active Licensee. *A person who holds a real estate license that has not been inactivated, expired, suspended, terminated or revoked.* (3-15-02)

02. Expired License. *The status of a license when the license period has elapsed and the license is not renewed in accordance with Section 54-2018, Idaho Code, and no provisional license is granted as provided by Section 54-2023(7), Idaho Code, and before the license is terminated in accordance with Section 54-2018(3), Idaho Code.* (3-15-02)

03. Inactive Licensee. *A person who holds a real estate license which is not expired, suspended, terminated or revoked, and who is not authorized to act as or affiliate with a designated broker.* (3-15-02)

04. Revoked License. *A license that has been permanently revoked by issuing authority.* (3-15-02)

05. Surrendered License. *A license that has been voluntarily terminated or surrendered by a licensee who, at the time of the voluntary termination or surrender, was under investigation or named in a formal administrative complaint.* (3-15-02)

06. Suspended License. *A license that has been temporarily suspended by the issuing authority.* (3-15-02)

~~007. -- 099.~~ (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

200. BRANCH OFFICES.

The ~~will~~ licenses of each licensee current license certificates for the branch office, the branch manager, and for each sales associate conducting business from ~~any licensed~~ the branch office shall be prominently displayed ~~in~~ or available for public inspection at the branch office ~~at all times.~~ (3-15-02)(7-01-02)T

IDAPA 33 - IDAHO REAL ESTATE COMMISSION

33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

DOCKET NO. 33-0101-0202 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2002.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2007, Idaho Code.

PUBLIC HEARING: Public hearing concerning this rulemaking will be held as follows:

Time: October 24, 2002, at 10:00 a.m.
Place: The Idaho Real Estate Commission
633 North Fourth Street
Boise, Idaho 83702

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 temporary and proposed rulemaking:

These rules eliminate the requirement that IREC collect a \$10 "administration fee" for handling the Errors and Omissions Group Insurance applications, reflecting the fact that IREC has out-sourced that function. Additionally, the rules eliminate the requirement that licensees file their "certificates of coverage" with the Commission, providing for self-certification subject to audit by the Commission.

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

These changes eliminate a fee and simplify filing requirements, thus conferring a benefit.

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

No new fees are added, and, in fact, a fee is being eliminated.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Donna Jones, (208) 334-3285 ext. 232.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

Donna M. Jones
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720-0077
(208) 334-3285; (208) 334-2050 (fax)
Toll Free (866) 447-5411

THE FOLLOWING IS THE TEXT OF DOCKET NO. 33-0101-0202

117. CERTIFICATION OF MANDATORY ERRORS AND OMISSIONS INSURANCE.

Every licensee, upon obtaining or renewing an active real estate license in the state of Idaho, including nonresident and reciprocal licensees, shall have in effect and maintain a policy of errors and omissions insurance when required by Section 54-2013, Idaho Code, to cover all activities contemplated under Chapter 20, Title 54, Idaho Code and shall certify such coverage to the Commission in the form and manner prescribed by statute and in these rules. (3-15-02)

01. Certification Of Licensees Under Group Insurance Plan. Licensees covered under the Group Insurance Plan, as provided for in Section 118 of these rules, shall be deemed to have satisfied the certification requirement of Section 117, ~~upon the Commission receiving payment of the appropriate premium and a ten dollar (\$10) administrative fee from the licensee.~~ The effective date of coverage, however, shall be the day of final license approval. ~~(3-15-02)(9-1-02)T~~

02. Certification Of Licensees Obtaining Independent Coverage. Licensees obtaining independent coverage, as provided for in Section 119 of these rules, shall ~~provide to the Commission~~ obtain a Certificate of Coverage, signed by an authorized agent or employee of the insurance carrier, which certificate shall be in a form approved by the Commission, reflecting proof of insurance meeting the requirements established by the Commission. Upon request by the Commission the licensee shall produce for inspection the Certificate of Insurance. ~~(3-15-02)(9-1-02)T~~

(BREAK IN CONTINUITY OF SECTIONS)

120. CERTIFICATION A PREREQUISITE FOR LICENSE ISSUANCE OR RENEWAL.

No applicant for an original active license or for renewal of an active license shall be issued such active license unless ~~proper payment of insurance premiums and any fees have been received by the Commission if the licensee is with the Group Plan, or unless he has first filed with the Commission the Certificate of independently obtained coverage required by Subsection 117.02~~ the applicant has certified to the Commission, in the form and manner approved by the commission, that he is in compliance with the insurance requirements of this chapter. This certification of compliance by the applicant shall satisfy the filing requirement of Section 54-2013, Idaho Code. ~~(3-15-02)(9-1-02)T~~

121. FAILURE TO MAINTAIN INSURANCE.

Failure of a licensee to obtain and maintain insurance ~~through the Group Plan or failure to file the certificate of independently obtained~~ coverage required by Subsection 117.02 shall result in inactivation of any active license issued pursuant to Idaho Real Estate License Law or denial of any application for issuance or renewal of an active license. Failure to maintain insurance as required herein shall be deemed insufficient application for licensure under Section 67-5254, Idaho Code. ~~(3-15-02)(9-1-02)T~~

01. Notice Of Noncompliance. Within five (5) working days of the date the Commission is notified that a licensee does not have required coverage, the Commission shall notify the affected licensee of noncompliance. Notice shall be sent by certified mail to the licensee's business or residence address, as reflected in the Commission's records, and a copy of the notice shall be sent to the licensee's broker, if any. The notice shall provide that the licensee has ten (10) days in which to comply with the law and these rules regarding errors and omissions insurance. Failure to comply at the end of ten (10) days shall result in the license being automatically inactivated. (3-15-02)

02. Reactivation. Any licensee whose license has been inactivated for failure to comply with these rules shall be entitled to activate said license, relating back to and including the date of inactivation, provided that, within thirty (30) days of the date of inactivation, the licensee or Group Plan Administrator files with the Commission a certificate of coverage showing that such coverage has been and is currently in effect on and from the date of inactivation, with no lapse in coverage. Further, the licensee must submit required documents and fees to activate said license. In the event the certificate of coverage shows an effective date later than the date of inactivation, said license

shall be activated as of the effective date of said insurance, as reflected in the certificate of coverage, and upon submission of any required documents and fees. (3-15-02)

03. Failure To Maintain Insurance. Failure of a licensee to maintain errors and omissions insurance or failure of a licensee to submit or cause to be submitted a certificate of coverage as required by Section 54-2013, Idaho Code, and in accordance with these rules and while engaging in the business of real estate broker or real estate salesperson, as defined in Sections 54-2002 and 54-2004, Idaho Code, shall constitute a violation of these rules, and shall be grounds for disciplinary action as provided in Sections 54-2059 and 54-2060, Idaho Code, including but not limited to the assessment of civil fines. (3-15-02)

122. FALSIFICATION OF CERTIFICATES.

Any licensee who, acting alone or in concert with others, wilfully or knowingly causes or allows a certificate of coverage to be filed with, or produced to, the Commission which is false, fraudulent, or misleading, shall be subject to disciplinary action, including but not limited to suspension or revocation of license, in accordance with Chapter 52, Title 67, Idaho Code; provided, however, that nothing herein shall entitle such licensee to notice and hearing on the automatic inactivation of license provided for in Subsection 121.01. (~~3-15-02~~)(9-1-02)T

IDAPA 33 - IDAHO REAL ESTATE COMMISSION

33.01.02 - RULES OF PRACTICE AND PROCEDURE OF THE IDAHO REAL ESTATE COMMISSION GOVERNING CONTESTED CASES

DOCKET NO. 33-0102-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 15, 2002.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2007, Idaho Code.

PUBLIC HEARING: Public hearing concerning this rulemaking will be held as follows:

Time: October 24, 2002 at 10:00 a.m.
Place: The Idaho Real Estate Commission
633 North Fourth Street
Boise, Idaho 83702

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

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

This rules chapter governs the practice and procedure before the Commission in contested cases. New rules now distinguish the functions of investigator, prosecutor, and adjudicator and define the roles and prohibited contacts for each; set forth the procedure for submission of the Executive Director's investigation report to the Commissioners; expand the scope of discovery; and clarify rights to disqualify the hearing officer designated by the agency.

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:

These changes are needed to comply with amendments to statute, and, insofar as they clarify and expand discovery rights, they confer 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 of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Donna Jones, (208) 334-3285 ext. 232.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

Donna M. Jones
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720-0077
(208) 334-3285; (208) 334-2050 (fax)
Toll Free (866) 447-5411

THE FOLLOWING IS THE TEXT OF DOCKET NO. 33-0102-0201

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Sections 54-20207, 54-2097, and 67-5206(2), ~~67-5206(3), 67-5206(4), and 67-5206(5)~~ Idaho Code. ~~(7-1-93)~~(8-15-02)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 33.01.02, "Rules of Practice and Procedure of the Idaho Real Estate Commission," ~~IDAPA 33.01.02, "Rules~~ Governing Contested Cases". (8-15-02)T

02. Scope. These rules govern formal actions, contested cases and rulemaking before the Idaho Real Estate Commission. ~~(7-1-93)~~(8-15-02)T

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference. (8-15-02)T

0075. OFFICE -- OFFICE HOURS -- MAILING ADDRESS ~~AND~~ -- STREET ADDRESS.

01. Office Hours. The ~~Idaho Real Estate Commission's~~ office hours are 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. (8-15-02)T

02. Mailing Address. The ~~Commission's~~ mailing address is P.O. Box 83720, Boise, Idaho, 83720-0077. (8-15-02)T

03. Street Address. The Commission's street address is 633 North Fourth Street, Boise, Idaho, 83702. (8-15-02)T

04. Telephone Numbers. The Commission can be reached by telephone at (208) 334-3285 and by fax at (208) 334-2050. A toll-free number for JTRS Relay Service (telecommunications for the hearing impaired) is 1-800-377-3529. ~~(7-1-96)~~(8-15-02)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with these rules are subject to the provisions of the Public Records Act, Title 9, Idaho Code. (8-15-02)T

0047. FINDINGS.

The Idaho Real Estate Commission finds that due to the size of this agency, the frequency and nature of its proceedings, it is in the best interests of the Commission and those it serves to decline to adopt the Attorney General's Administrative Procedures Rules, particularly regarding contested cases, IDAPA 04.11.01, Sections 000 through 799. Further, the Commission has promulgated and adopted its own Rules of Practice and Procedure, which are set forth herein, IDAPA 33.01.02, Rules of the Idaho Real Estate Commission. (7-1-93)

008. -- 009. (RESERVED).

00510. DEFINITIONS.

~~As used in this chapter:~~ ~~(7-1-93)~~

- 01. Administrative Code.** The Idaho administrative code established in Chapter 52, Title 67, Idaho Code. (7-1-93)
- 02. Agency.** The Idaho Real Estate Commission as created in Chapter 20, Title 54, Idaho Code. (7-1-93)
- 03. Agency Head.** ~~The Idaho Real Estate Commission created in Chapter 20, Title 54, Idaho Code.~~ The body of individuals appointed pursuant to Section 54-2005, Idaho Code, and in whom ultimate legal authority of the Commission is vested. (7-1-93)(8-15-02)T
- 04. Chairman.** Chairman of the Idaho Real Estate Commission. (7-1-93)
- 05. Commission.** Idaho Real Estate Commission. (7-1-93)
- 06. Contested Case.** A proceeding which results in the issuance of an order. (7-1-93)
- 07. Executive Director.** Executive director of the Idaho Real Estate Commission. (7-1-93)
- 08. Hearing Officer.** Person appointed by the executive director to hear contested cases before the agency. (7-1-93)
- 09. License.** A real estate broker, associate broker or salesman, corporate, limited liability company or partnership license as provided in Chapter 20, Title 54, Idaho Code. (7-1-96)
- 10. Order.** An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (7-1-93)
- 11. Party.** Each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party. (7-1-93)
- 12. Person.** Any individual, partnership, corporation, limited liability company, association, governmental subdivision or agency, or public or private organization or entity of any character. (7-1-96)
- 13. Provision Of Law.** The whole or a part of the state or federal constitution, or of any state or federal: (7-1-93)
- a.** Statute; or (7-1-93)
- b.** Rule or decision of the court. (7-1-93)
- 14. Rule.** The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Chapter 52, Title 67, Idaho Code, and that implements, interprets, or prescribes: (7-1-93)
- a.** Law or policy; or (7-1-93)
- b.** The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include: (7-1-93)
- i.** Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; (7-1-93)
- ii.** Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; (7-1-93)
- iii.** Intra-agency memoranda; or (7-1-93)

iv. Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule. (7-1-93)

15. Rulemaking. The process for formulation, adoption, amendment or repeal of a rule. (7-1-93)

~~006. CITATION.~~

~~The official citation of this chapter is IDAPA 33.01.02.000 et seq. For example, this sections's citation is IDAPA 33.01.02, Subsection 006. In documents submitted to the agency or issued by the agency, these rules may be cited as RPP (Rules of Practice and Procedure) and action number. For example, this rule may be cited as RPP 006. (7-1-93)~~

SUBSECTION 007 HAS BEEN MOVED TO AND RENUMBERED TO SECTION 005

011. -- 099. (RESERVED).

~~008~~100. FILING OF DOCUMENTS -- NUMBER OF COPIES.

All documents required to be filed with the agency under this chapter shall be filed with the executive director of the Idaho Real Estate Commission and shall include the original document and two (2) copies. (7-1-93)

~~009. EFFECTIVE DATE.~~

~~Unless otherwise indicated, the effective date of every rule in this chapter is July 1, 1993. (7-1-93)~~

~~010~~1. REFERENCE TO AGENCY.

Reference to the agency in these rules includes the Commission, executive director, or hearing officer appointed by the agency. (7-1-93)

~~012~~102. LIBERAL CONSTRUCTION.

The rules in this chapter shall be liberally construed to secure just, speedy, and economical determination of all issues presented to the agency. Except as required by a specific rule or by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary, or not in the public interest. Unless required by statute, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. ~~(7-1-93)~~(8-15-02)T

~~012~~103. COMMUNICATIONS WITH AGENCY.

All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the officer designated by the agency. Unless otherwise provided by statute, rule, order or notice, documents are considered filed when received by the officer designated to receive them, not when mailed. (7-1-93)

~~013~~104. SERVICE BY AGENCY.

The agency may serve summonses, administrative complaints, and other documents by certified mail, return receipt requested, to a party's last known mailing address or by personal service upon the party, pursuant to Idaho Rules of Civil Procedure or by state statute. The agency must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. ~~(7-1-93)~~(8-15-02)T

~~014~~105. COMPUTATION OF TIME.

Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not Saturday, Sunday or a legal holiday. (7-1-93)

~~015~~106. FEES AND REMITTANCES.

Fees and remittances to the agency must be paid by money order, bank draft or check payable to agency. Remittances in currency or coin are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. (7-1-93)

016107. INFORMAL PROCEEDINGS.

The agency recognizes, and this rule encourages, the use of informal proceedings to settle or determine compliance with agency rules or other matters. The agency staff, acting through the executive director, may informally resolve matters under authority of this rule when such action does not require an order issued by the Commission. Persons affected by an agency action under this rule shall possess the right to a formal proceeding as provided under this chapter. (7-1-93)

017108. FORMAL PROCEEDINGS.

Formal proceedings governed under this chapter are initiated by the filing of an administrative complaint, petition, or other pleading before the agency. (~~7-1-93~~)(8-15-02)T

109. -- 149. (RESERVED).

**RULES 150 THROUGH 153 -- SUBMISSION OF REPORT TO AGENCY HEAD
FOR ISSUANCE OF ADMINISTRATIVE COMPLAINT**

150. NOTICE/INVESTIGATION.

The Executive Director of the Commission, upon receipt of information or a written complaint from the public or as otherwise authorized by law, shall perform an investigation of the facts surrounding an alleged violation of the Real Estate License Law, Brokerage Representation Act or administrative rules of the Commission. (8-15-02)T

151. INVESTIGATION/REPORT.

If, as a result of the investigation, the Executive Director determines a potential violation has occurred, the Executive Director shall prepare a written report for submission and review by the agency head for its determination whether to authorize the filing of an administrative complaint governed by the Real Estate License Law and the Commission's Rules of Practice and Procedure Governing Contested Cases. (8-15-02)T

152. REPORT CONTENTS AND PROCEDURE.

The report submitted by the Executive Director to the agency head shall be in writing and signed by the executive director and shall contain a summary of alleged relevant facts determined through the investigation and a summary of potential violations committed by a licensee or other individual. Such report shall also contain a statement indicating whether a settlement had been offered prior to seeking authorization to file an administrative complaint. The report shall not disclose names, locations or other identifying information regarding the accused, nor shall the report make any reference to the penalty that Commission staff will seek or to the terms of any offered or potential settlement that may be negotiated in future. (8-15-02)T

153. CONSIDERATION OF REPORT.

The agency head shall consider the Executive Director's report in executive session, in accordance with Sections 67-2345 and 9-340C(9), Idaho Code, and shall exclude any Commission staff, including the Executive Director, any Commission prosecuting attorney, and any other person who was involved in the investigation being reported or may be involved in the prosecution of any administrative complaint that may be authorized. The decision whether to authorize the filing of an administrative complaint or whether to provide further directions to the Executive Director concerning the matter shall be made in open session. (8-15-02)T

154. -- 199. (RESERVED).

RULES ~~018200~~ THROUGH ~~029211~~ -- PARTIES TO CONTESTED CASES

~~018200. PARTIES TO CONTESTED CASES LISTED.~~

Parties to contested cases before the agency are called petitioners, complainants, respondents, or intervenors. On reconsideration or appeal the parties shall be called by their original titles. (7-1-93)

~~019201. PETITIONERS.~~

Persons who seek affirmative relief from the agency or to modify, amend or stay existing orders or rules of the agency, or to clarify their rights or obligations under law administered by the agency are called "petitioners". (7-1-93)

~~0202.~~ COMPLAINANTS.

The agency when it charges a person(s) is called "complainant". (7-1-93)

~~021203.~~ RESPONDENTS.

Persons against whom administrative complaints are filed or about whom investigations are initiated are called "respondents". (~~7-1-93~~)(8-15-02)T

~~02204.~~ INTERVENORS.

Persons who are permitted to participate as parties pursuant to Sections ~~42350~~ through ~~45353~~ are called "intervenors". (~~7-1-93~~)(8-15-02)T

~~023205.~~ RIGHTS OF PARTIES AND OF AGENCY STAFF.

All parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (7-1-93)

~~024206.~~ INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES.

The initial pleading of each party at the formal stage of a contested case must name the party's representative(s) for service and state the representative's(s') address(es) for purposes of receipt of all official documents. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party's representative, the person signing the pleading will be considered the party's representative. (7-1-93)

~~025207.~~ TAKING OF APPEARANCES -- PARTICIPATION BY AGENCY STAFF.

The presiding officer at a formal hearing or prehearing conference will take appearances to identify the representatives of all parties or other persons. In all proceedings in which the agency staff will participate, or any report or recommendation of the agency staff (other than a recommended order prepared by a hearing officer) will be considered or used in reaching a decision, at the timely request of any party the agency staff must appear at any hearing and participate in the same manner as a party. (7-1-93)

~~026208.~~ REPRESENTATION OF PARTIES AT HEARING.

01. Appearances And Representation. To the extent authorized or required by law, appearances and representation of parties or other persons at formal hearing or prehearing conference must be as follows: (7-1-93)

- a. A natural person may represent himself or herself or be represented by a duly authorized employee or attorney. (7-1-93)
- b. A partnership may be represented by a partner, duly authorized employee, or attorney. (7-1-93)
- c. A corporation may be represented by an officer, duly authorized employee, or attorney. (7-1-93)
- d. A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. (7-1-93)
- e. A limited liability company may be represented by a member, a manager or a duly authorized employee or attorney. (7-1-96)

02. Representatives. The representatives of parties at hearing, and no other persons or parties appearing before the agency, are entitled to examine witnesses and make or argue motions. (7-1-93)

~~027209.~~ SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS.

From the time a party files its initial pleading in a contested case, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties' representatives unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The presiding officer may order parties to serve past or future documents filed in the case upon persons not parties to the proceedings before the agency. (7-1-93)

~~028~~210. WITHDRAWAL OF PARTIES.

Any party may withdraw from a proceeding in writing or at hearing. (7-1-93)

~~029~~211. CONDUCT REQUIRED.

Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. (7-1-93)

212. -- 249. (RESERVED).

RULES ~~030~~250 THROUGH ~~035~~255 -- PLEADINGS IN GENERAL

~~032~~50. PLEADINGS LISTED -- MISCELLANEOUS.

Pleadings in contested cases are called petitions, administrative complaints, motions, answers, and consent agreements. All pleadings except motions, exceptions, and those made by the agency shall be verified. Affidavits or declarations under penalty of perjury may be filed in support of any pleading. (~~7-1-93~~)(8-15-02)T

~~032~~51. PETITIONS -- DEFINED -- FORM AND CONTENTS.

- 01. Pleadings Defined.** All pleadings requesting the following are called "petitions": (7-1-93)
- a.** License, right, or authority; (7-1-93)
 - b.** Modification, amendment or stay of existing orders or rules; (7-1-93)
 - c.** Clarification, declaration or construction of the law administered by the agency or of a party's rights or obligations under law administered by the agency; (7-1-93)
 - d.** Affirmative relief, order, or rule; (7-1-93)
 - e.** Rehearing, or (7-1-93)
 - f.** Intervention; (7-1-93)
- 02. Petitions.** Petitions must: (7-1-93)
- a.** Fully state the facts upon which they are based; (7-1-93)
 - b.** Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and (7-1-93)
 - c.** State the relief desired. (7-1-93)

~~032~~52. ADMINISTRATIVE COMPLAINTS -- DEFINED -- FORM AND CONTENTS.

- 01. Administrative Complaints Defined.** A# pleadings charging other person(s) with acts or omissions under law administered by the agency ~~are~~ is called an "administrative complaints". (~~7-1-93~~)(8-15-02)T
- 02. Form And Contents.** Administrative Complaints must: (~~7-1-93~~)(8-15-02)T
- a.** Be in writing; (7-1-93)
 - b.** Fully state the acts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions and the dates when they occurred; (7-1-93)
 - c.** Refer to statutes, rules, orders or other controlling law involved; (7-1-93)

- d. State the relief desired; and (7-1-93)
- e. State the name of the person complained against (the respondent). (7-1-93)

03253. MOTIONS -- DEFINED -- FORM AND CONTENTS.

01. Motions Defined. All other pleadings requesting the agency to take any other action in a contested case, except consent agreements or pleadings specifically answering other pleadings, are called "motions". (7-1-93)

02. Form and Contents. Motions must: (7-1-93)

- a. Fully state the facts upon which they are based; (7-1-93)
- b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; (7-1-93)
- c. State the relief sought. (7-1-93)

03. Other. If the moving party desires oral argument or hearing on the motion, it must state so in the motion. (7-1-93)

03254. ANSWERS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING.

All pleadings responding to administrative complaints, petitions, or motions are called "answers".

~~(7-1-93)~~(8-15-02)T

01. Answers To Pleadings Other Than Motions. Answers to administrative complaints or petitions must be filed and served on all parties of record within twenty-one (21) days after service of the pleading being answered, unless order or notice modifies the time within which answer may be made. When an answer is not timely filed under this rule, the presiding officer shall take such action upon the default as set forth in Section 087. Answers must admit or deny each material allegation of the administrative complaint or petition. Any material allegation not specifically admitted shall be considered to be denied. ~~(7-1-93)~~(8-15-02)T

02. Answers To Motions. Answers to motions shall be filed by a party within fourteen (14) days of its service unless otherwise ordered. The person or party answering the motion must do so with all deliberate and reasonable speed. (7-1-93)

03255. CONSENT AGREEMENTS -- DEFINED -- FORM AND CONTENTS.

Agreements between the agency or agency staff and another person(s) in which one (1) or more person(s) agree to engage in certain conduct required by law or to refrain from engaging in certain conduct prohibited by law, are called "consent agreements". Consent agreements are intended to require compliance with existing law. (7-1-93)

01. Requirements. Consent agreements must: (7-1-93)

- a. Recite the parties to the agreement; and (7-1-93)
- b. Fully state the conduct proscribed or prescribed by the consent agreement. (7-1-93)

02. Additional. In addition, consent agreements may: (7-1-93)

- a. Recite the consequences of failure to abide by the consent agreement; (7-1-93)
- b. Provide for payment of civil or administrative penalties authorized by law; (7-1-93)
- c. Provide for loss of rights, licenses, awards or authority; (7-1-93)
- d. Provide for other consequences as agreed to by the parties; and (7-1-93)

in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names)).

(Signature) (7-1-93)

~~04304.~~ DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS.

Defective, insufficient or late pleadings may be returned or dismissed. (7-1-93)

~~04305.~~ AMENDMENTS TO PLEADINGS.

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. (7-1-93)

~~306. -- 349.~~ (RESERVED).

RULES ~~042350~~ THROUGH ~~045353~~ -- INTERVENTION

~~042350.~~ ORDER GRANTING INTERVENTION NECESSARY.

Persons who claim a direct and substantial interest in a proceeding may petition for an order from the presiding officer granting intervention to become a party. (7-1-93)

~~04351.~~ FORM AND CONTENTS OF PETITIONS TO INTERVENE.

Petitions to intervene must comply with Section 031. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it. (7-1-93)

~~04352.~~ TIMELY FILING OF PETITIONS TO INTERVENE.

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing or prehearing conference, whichever is earlier, unless a different time is provided by order or notice. (7-1-93)

~~04353.~~ GRANTING PETITIONS TO INTERVENE.

If a petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding. (7-1-93)

~~354. -- 399.~~ (RESERVED).

RULES ~~046400~~ THROUGH ~~048402~~ -- DECLARATORY RULINGS AND ORDERS

~~046400.~~ FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS.

Any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the agency must substantially comply with this rule. (7-1-93)

- 01. Form.** The petition shall: (7-1-93)
 - a.** Identify the petitioner and state the petitioner's interest in the matter; (7-1-93)
 - b.** State the declaratory ruling that the petitioner seeks; and (7-1-93)
 - c.** Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. (7-1-93)
- 02. Legal Assertions.** Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (7-1-93)

~~047~~401. NOTICE OF PETITION FOR DECLARATORY RULING.

Notice of petition for declaratory ruling may be issued in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition. (7-1-93)

~~048~~402. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER.

01. Final Agency Action. The agency's decision on a petition for declaratory ruling on the applicability of any statute, rule or order administered by the agency is a final agency action decided by order. (7-1-93)

02. Content. The order issuing the declaratory ruling shall contain or must be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a final agency action issuing a declaratory ruling; (7-1-93)

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this declaratory ruling may appeal to district court by filing a petition in the District Court in the county in which: (7-1-93)

i. A hearing was held; (7-1-93)

ii. The declaratory ruling was issued; or (7-1-93)

iii. The party appealing resides. (7-1-93)

c. This appeal must be filed within twenty-eight (28) days of the service date of the declaratory ruling. See Section 67-5273, Idaho Code. (7-1-93)

~~403. -- 449.~~ (RESERVED).

RULES ~~049~~450 THROUGH ~~053~~461 -- HEARING OFFICERS AND PRESIDING OFFICERS

~~049~~450. APPOINTMENT OF HEARING OFFICERS.

A hearing officer is a person other than the agency head appointed to ~~hear~~ serve as the presiding officer in a contested cases on behalf of the agency. Agency heads are not hearing officers, even if presiding at contested cases. The term "hearing officer" as used in these rules refers to only to officers subordinate to the agency head. (~~7-1-93~~)(8-15-02)

~~050~~451. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES.

Pursuant to Section 67-5252, Idaho Code, ~~hearing~~ parties have the right to seek disqualification of the presiding officer as follows: (8-15-02)T

01. Disqualification Without Cause. Any party shall have the right to one (1) disqualification without cause of any person designated to serve as presiding officer by filing a petition for disqualification within fourteen (14) days after receipt of notice indicating that the person will preside in the contested case. (8-15-02)T

02. Disqualification For Cause. Any party shall have a right to move to disqualify the person serving or designated to serve as presiding officers ~~are subject to disqualification~~ for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified. Any party may promptly petition for the disqualification for cause of a ~~hearing~~ presiding officer after receiving notice that the ~~officer~~ person will preside at a contested case or upon discovering facts establishing grounds for the disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting the designation ~~by~~ of a presiding officer. (8-15-02)T

03. Determination Of Petition. A ~~hearing officer~~ person whose disqualification is requested for cause

shall determine in writing whether to grant the petition for disqualification, stating facts and reasons for the hearing officer's determination. (8-15-02)T

04. Disqualification Of Agency Heads. Requests for the ~~D~~disqualification of agency heads, ~~if allowed, will be~~ shall be determined pursuant to Sections 59-704 and 67-5252(4), Idaho Code. ~~(7-1-93)~~(8-15-02)T

05. Notice Designating Presiding Officer. The notice designating the person to serve as presiding officer shall contain a notice of the parties' rights to petition for disqualification of the person, the grounds upon which disqualification may be sought, and the time periods within which any petition seeking disqualification must be filed. (8-15-02)T

~~051~~452. SCOPE OF AUTHORITY OF HEARING OFFICERS.

The scope of hearing officers' authority may be restricted in the appointment by the agency. (7-1-93)

01. Scope Of Authority. Unless the agency otherwise provides, hearing officers have the standard scope of authority, which is: (7-1-93)

a. Authority to schedule cases assigned to the hearing officer, including authority to issue notices of prehearing conference and of hearing, as appropriate; (7-1-93)

b. Authority to schedule and compel discovery, when discovery is authorized before the agency; (7-1-93)

c. Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, and otherwise oversee the orderly presentations of the parties at hearing; and (7-1-93)

d. Authority to issue a written decision of the hearing officer, including a narrative of the proceedings before the hearing officer and findings of fact, conclusions of law, and recommended orders by the hearing officer. (7-1-93)

~~052~~453. PRESIDING OFFICER(S).

One (1) or more members of the Commission, the executive director, or duly appointed hearing officers may preside at the hearing as authorized by statute or rule. When more than one (1) officer sits at the hearing, they may all jointly be presiding officers or may designate one (1) of them to be the presiding officer. (7-1-93)

~~053~~454. EX PARTE COMMUNICATIONS.

A presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). (7-1-93)

455. ADJUDICATORY FUNCTIONS.

Where Section 54-2058, Idaho Code assigns to the Commission both the authority to initiate formal administrative complaints against a licensee or other individual for practicing without a license, and the authority to decide the merits of such complaints, the Commission is required to perform two (2) distinct functions: prosecutorial/investigative and adjudicatory. In light of these dual functions, Rules 455 through 460 set forth procedures to be followed by the agency head, Commission attorneys, Commission staff (including the Executive Director) and hearing officers in processing these complaints or responding to citizen inquiries. (8-15-02)T

01. Prosecutorial/Investigative Function. The investigative function can be performed exclusively by Commission prosecuting attorneys and Commission staff. The agency head or its individual members may participate in or supervise investigations preceding its decision whether to authorize the filing of an administrative complaint and shall determine whether an administrative complaint may be filed; however, the agency head or its individual members shall not participate in the prosecution of any administrative complaint. The investigative function includes gathering of evidence outside of formal contested case proceedings and presentation of allegations or evidence to the agency head for determination whether to authorize the filing of an administrative complaint. The prosecutorial function includes presentation of evidence or argument and briefing on the record in a formal contested case

proceeding. (8-15-02)T

02. Adjudicatory Function. The adjudicatory function is performed by the agency head. The adjudicatory function includes: (8-15-02)T

a. Deciding whether to authorize the filing of an administrative complaint upon the basis of allegations submitted in the Executive Director's report, as provided for in Section 54-2058(1), Idaho Code; (8-15-02)T

b. Deciding whether to accept a consent agreement or other settlement of an administrative complaint; and (8-15-02)T

c. Deciding the merits of an administrative complaint following presentation of evidence in formal contested case proceedings. The adjudicatory function also includes Commission administrative attorneys' advice to the agency head in the performance of any adjudicatory functions. (8-15-02)T

456. PUBLIC INQUIRIES ABOUT OR RECOMMENDATIONS FOR COMMISSION ISSUANCE OF AN ADMINISTRATIVE COMPLAINT.

This rule sets forth procedures to be followed by the agency head, its individual members, Commission attorneys, Commission staff and hearing officers upon receipt of a public inquiry whether the Commission will file administrative complaint, or of a recommendation that the Commission should file an administrative complaint. (8-15-02)T

01. Agency Head. When the public contacts the agency head, or an individual member of the agency head, to inquire whether an administrative complaint should be filed by the Commission staff or to recommend that an administrative complaint be filed, the agency head or its individual members may: (8-15-02)T

a. Explain the Commission's procedures; (8-15-02)T

b. Explain the Commission's jurisdiction or authority (including the statutes or rules administered by the Commission); and (8-15-02)T

c. Direct the public to appropriate personnel who can provide assistance in submitting allegations to Commission staff for investigation. (8-15-02)T

d. The agency head or its members may also discuss whether given allegations would, in the agency head's or member's opinion, warrant the issuance of an administrative complaint or warrant direction to staff to pursue further investigation. No statement of the agency head or its members in response to a public inquiry constitutes a finding of fact or other decision on the underlying matter. (8-15-02)T

02. Commission Administrative Attorney. When the public contacts the Commission's administrative attorney to inquire whether an administrative complaint should be issued by the Commission or to recommend that an administrative complaint be issued, the administrative attorney may: (8-15-02)T

a. Explain the Commission's procedures; (8-15-02)T

b. Explain the Commission's jurisdiction or authority (including an explanation of the statutes or rules administered by the Commission); and (8-15-02)T

c. Direct the public to appropriate personnel who can provide assistance in submitting allegations to Commission staff for investigation. (8-15-02)T

03. Commission Prosecuting Attorney. The Commission's prosecuting attorney may discuss whether given allegations would, in the attorney's opinion, warrant the issuance of an administrative complaint or warrant direction to staff to pursue further investigation. The Commission is not bound by the attorney's advice or recommendations, and the attorney should notify the public that the neither the Commission staff nor the agency head is obligated to follow the attorney's advice or recommendations. (8-15-02)T

04. Commission Staff. When the public contacts the Commission staff to inquire whether an administrative complaint should be issued or to recommend that an administrative complaint be issued, a member of the Commission's staff authorized to respond to public inquiries about administrative complaints may: (8-15-02)T

a. Explain the Commission's procedures; (8-15-02)T

b. Explain the Commission's jurisdiction or authority (including an explanation of the statutes or rules administered by the Commission); (8-15-02)T

c. Direct the public to appropriate personnel who can provide assistance in submitting allegations to Commission staff for investigation; and (8-15-02)T

d. Express an opinion whether given allegations would, in the Commission staff's opinion, warrant the issuance of an administrative complaint or warrant Commission staff's further investigation. (8-15-02)T

e. The Commission is not bound by the Commission staff's advice or recommendations, and the Commission staff should notify the public that the Commission is not obligated to follow the Commission staff's advice or recommendations. (8-15-02)T

05. Hearing Officers. When the public contacts a hearing officer to inquire whether an administrative complaint should be issued by the Commission or to recommend that an administrative complaint be issued, the hearing officer should not discuss the matter, but should refer the member of the public to other Commission personnel. (8-15-02)T

457. CONSIDERATION OF CONSENT AGREEMENT OR OTHER SETTLEMENTS BEFORE AN ADMINISTRATIVE COMPLAINT IS FILED.

This rule sets forth procedures to be followed when a consent agreement or other settlement is negotiated before an administrative complaint is filed. (8-15-02)T

01. Negotiations. As authorized by the Commission, an attorney assigned to a prosecutorial/investigative role or the Commission staff may negotiate consent agreements or other settlements with any person who might later be the subject of an administrative complaint. No member of the agency head, no attorney assigned to advise or assist the agency head in its adjudicatory function (administrative attorney), and no hearing officer may participate in these negotiations, but the agency head may have rules or guidelines for issuance of consent agreements and other settlements, or may have other general policy statements available to guide individual negotiations. (8-15-02)T

02. Presentation Of Agreement To Agency Head. Any consent agreement or other settlement agreement negotiated pursuant to this rule must be presented to the agency head for hearing and approval. Any agreement presented to the agency head must be served on all parties and on the Commission staff. (8-15-02)T

03. Agency Head Consideration Of Agreement. A consent agreement or other settlement agreement that is presented to the agency head for approval must be reviewed under this rule. The agency head must accept or reject the agreement. In rejecting an agreement, the agency head may indicate how the agreement may be modified to be acceptable, or inform the parties what further information is required for the agency head's consideration of the agreement. When an agreement is rejected, no matter recited in the rejected agreement may be used as an admission against a party in any later proceeding before the Commission, and any such matter must be proven by evidence independent of the agreement. (8-15-02)T

458. PROCEDURES AFTER THE AGENCY HEAD HAS AUTHORIZED FILING OF AN ADMINISTRATIVE COMPLAINT AND BEFORE THE AGENCY HEAD HAS CONSIDERED THE MERITS OF THE COMPLAINT.

This rule sets forth procedures to be followed by the agency head, its individual members, Commission prosecuting attorneys, Commission administrative attorneys, Commission staff and hearing officers after the agency head has authorized the filing of an administrative complaint, while investigation or discovery is underway, while a hearing is conducted, and before the recommended order of the hearing officer is submitted to the agency head. (8-15-02)T

01. The Agency Head. (8-15-02)T

a. Prohibited Contacts--Allowable Managerial Reporting. Except as authorized by statute, neither the agency head nor its individual members shall discuss the substance of the administrative complaint ex parte with any party or with any representative of the party or with Commission prosecuting attorneys or Commission staff involved in the prosecution or investigation of the complaint. The agency head may request periodic progress reporting on staff preparation from the Executive Director or other staff member involved in the investigation/prosecution so long as such progress reports do not relate to the substance of the complaint. For example, the agency head may ask whether the Commission staff will be prepared to present its case by a given date. As required to perform statutory supervisory duties, the agency head may approve or disapprove expenditures associated with the prosecution, authorize retention of experts or outside counsel for the prosecution, address policy issues that may affect the prosecution, and otherwise discharge the agency head's statutory management and supervisory duties. (8-15-02)T

b. Allowed Contacts. The agency head may discuss the substance of the administrative complaint with Commission administrative attorneys and Commission staff who are not involved in the prosecution or investigation of the administrative complaint. (8-15-02)T

02. The Commission Attorney. (8-15-02)T

a. Prosecutorial/Investigative Attorneys. Except as specifically authorized by these rules, no Commission attorney involved in the investigation or prosecution of an administrative complaint shall discuss the substance of the complaint ex parte with the agency head or its members, a hearing officer assigned to hear the administrative complaint, or with any Commission administrative attorney assigned to advise or assist the agency head or to advise or assist a hearing officer assigned to hear the complaint. (8-15-02)T

b. Administrative Attorneys. Except as specifically authorized by these rules, no Commission attorney assigned to advise or assist the agency head or hearing officer shall discuss the substance of the administrative complaint ex parte with any representative of any party or with Commission prosecuting attorneys or Commission staff involved in the prosecution or investigation of the complaint. A Commission administrative attorney assigned to advise or assist the agency head or hearing officer may discuss the substance of the complaint with the hearing officer or agency head. (8-15-02)T

03. The Commission Staff. (8-15-02)T

a. Prosecutorial/Investigative Staff. Except as specifically authorized by these rules, no member of the Commission staff involved in the investigation or prosecution of the administrative complaint shall discuss the substance of the administrative complaint ex parte with the agency head or its members, a hearing officer assigned to hear the administrative complaint, or with any Commission administrative attorney assigned to advise or assist the agency head or to advise or assist a hearing officer assigned to hear the complaint, except as specifically provided for in these Rules. (8-15-02)T

b. Advisory Staff. Except as specifically authorized in these rules, no Commission staff assigned to advise or assist the agency head or hearing officer shall discuss the substance of the administrative complaint ex parte with any representative of any party or with Commission attorneys or Commission staff involved in the prosecution or investigation of the administrative complaint. Commission staff assigned to advise or assist the agency head or hearing officer may discuss the substance of the administrative complaint with the hearing officer or agency head. (8-15-02)T

04. Hearing Officers. Hearing officers may discuss the substance of the administrative complaint with attorneys of the Commission assigned to advise or assist the hearing officer and with other hearing officers. No hearing officer shall discuss the substance of the administrative complaint ex parte with any party or representative of any party or with Commission administrative or prosecuting attorneys or Commission staff involved in the prosecution or investigation of the complaint. (8-15-02)T

459. HEARING OFFICERS.

No hearing officer may discuss the substance of an administrative complaint ex parte with any Commission

prosecuting or administrative attorney or Commission staff involved in the investigation or prosecution of the complaint, with any representative of any party, or with any member of the public at large at any stage of the Commission's consideration of the complaint or pending judicial review of the Commission's decision in the complaint, except as allowed in these rules. A hearing officer may consult with any other hearing officer. A hearing officer may consult with a Commission attorney assigned to advise or assist the hearing officer. The agency head may appoint as a hearing officer the Commission attorney who will advise or assist the agency head in consideration of the complaint, but this Commission attorney cannot participate in the prosecution of the complaint or have ex parte contact with any party to the complaint or the Commission's prosecutorial/investigative staff. (8-15-02)T

460. AGENCY HEAD'S CONSIDERATION OF RECOMMENDED ORDER.

This rule sets forth procedures to be followed by the agency head, Commission prosecuting and administrative attorneys, Commission staff, and hearing officers after the hearing officer's recommended order has been placed before the agency head for review. (8-15-02)T

01. The Agency Head. In considering the hearing officer's recommended order, the agency head may consult with an administrative attorney assigned to advise or assist the agency head and with Commission staff who did not participate in the investigation or prosecution of the administrative complaint. The agency head shall not discuss the substance of the complaint ex parte with any representative of any party or with Commission prosecuting attorneys or Commission staff involved in the prosecution or investigation of the administrative complaint. (8-15-02)T

02. The Commission Attorney. (8-15-02)T

a. Prosecutorial/Investigative Attorneys. No Commission attorney involved in the investigation or prosecution of an administrative complaint shall consult with the agency head or its members considering the hearing officer's recommended order, except as provided in specifically provided in these rules. A Commission prosecuting attorney who was involved in the investigation or prosecution of the administrative complaint may attend public meetings of the Commission that consider administrative complaints and may respond to questions from the agency head so long as the meetings have been noticed to all parties and all parties have the same opportunity to respond to questions from the agency head as the Commission's prosecutorial/investigative attorneys. (8-15-02)T

b. Administrative Attorneys. A Commission administrative attorney assigned to advise or assist the agency head in consideration of the administrative complaint may consult with the agency head in preparation for or while the agency head is considering the hearing officer's recommended order or draft final order. (8-15-02)T

03. The Commission Staff. (8-15-02)T

a. Prosecutorial/Investigative Staff. No member of the Commission staff involved in the investigation or prosecution of the administrative complaint shall consult with the agency head, or its individual members, in its consideration of the recommended order, but a member of the Commission staff who participated in the investigation or prosecution of the complaint may provide technical computations at the direction of the agency head as provided for by these rules. (8-15-02)T

b. Advisory Staff. Any member of the Commission staff assigned to advise or assist the Commission may consult with the agency head at the agency head's direction. (8-15-02)T

04. Hearing Officers. No hearing officer shall consult with any person other than the agency head or attorneys assigned to advise or assist the agency head during the agency head's consideration of the hearing officer's recommended order. (8-15-02)T

461.-- 499. (RESERVED).

RULES ~~054~~500 THROUGH ~~056~~502 -- PREHEARING CONFERENCES

~~054~~500. PURPOSES OF PREHEARING CONFERENCES.

The presiding officer may by order or notice issued to all parties convene a prehearing conference in a contested case

for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. (7-1-93)

05501. NOTICE OF PREHEARING CONFERENCE.

Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. (7-1-93)

056502. ORDERS RESULTING FROM PREHEARING CONFERENCE.

The presiding officer may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a prehearing conference. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. (7-1-93)

503. -- 549. (RESERVED).

RULES 057550 THROUGH 064560 -- DISCOVERY

057550. KINDS AND SCOPE OF DISCOVERY LISTED.

The kinds of discovery recognized and authorized by these rules in contested cases are depositions, requests for admission, production requests, statutory inspection, survey, audit and investigation, and subpoenas. Unless otherwise provided by statute, rule, order or notice, when discovery is authorized before the agency, the scope of discovery, other than statutory inspection, survey, audit and investigation, is governed by the Idaho Rules of Civil Procedure. (7-1-93)(8-15-02)T

058551. WHEN DISCOVERY AUTHORIZED.

~~No party is entitled to engage in discovery unless the party moves to compel discovery and the agency issues an order directing that the discovery be allowed, or upon agreement of all parties to the discovery that discovery may be conducted. Parties may agree between or among themselves to provide for discovery without reference to an agency's statutes, rules of procedure, or orders. Otherwise no party before the agency is entitled to engage in discovery unless discovery is authorized before the agency, the party moves to compel discovery, and the agency issues an order directing that the discovery be answered.~~ The presiding officer shall provide a schedule for discovery in the order compelling discovery, but the order compelling and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. The ~~agency or agency~~ commission or commission staff may conduct statutory inspection, ~~examination, investigation, etc.~~ survey, audit and investigation as authorized by Section 54-2058, Idaho Code, at any time without filing a motion to compel discovery. (7-1-93)(8-15-02)T

552. RIGHTS TO DISCOVERY RECIPROCAL.

All parties to a proceeding have a right of discovery of all other parties to a proceeding as allowed by Rule 551 and the agency's authorizing statutes and rules. Rules 552 through 599 set forth the scope of various forms of discovery when those forms of discovery are authorized before the agency, but do not create an independent right of discovery. The presiding officer may by order authorize or compel necessary discovery authorized by statute or rule. (8-15-02)T

059553. DEPOSITIONS.

Depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency. (7-1-93)

060. REQUESTS FOR ADMISSION.

~~Requests for admission may be undertaken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency.~~ (7-1-93)

554. PRODUCTION REQUESTS AND REQUESTS FOR ADMISSION.

Production requests and requests for admission may be submitted in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency.

(8-15-02)T

~~061555~~. SUBPOENAS.

The agency may issue subpoenas as authorized by statute, upon a party's motion or upon its own initiative. The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms. (7-1-93)

556. STATUTORY INSPECTION, SURVEY, AUDIT AND INVESTIGATION.

This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, survey, audit and investigation as authorized in Section 54-2058, Idaho Code. This statutory right of an agency is independent of and cumulative to any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, survey, audit or investigation, may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights of deposition, production request, request for admission, and subpoena, can be used by parties only in connection with formal proceedings before the agency. (8-15-02)T

557. ANSWERS TO PRODUCTION REQUESTS AND TO REQUESTS FOR ADMISSION.

Answers to production requests and to requests for admission shall be filed or served as provided by the order compelling discovery. Answers must conform to the requirements of the Idaho Rules of Civil Procedure. The order compelling discovery may provide that voluminous answers to requests need not be served so long as they are made available for inspection and copying under reasonable terms. (8-15-02)T

~~062558. NOTICE OF DEPOSITIONS, REQUESTS FOR ADMISSION, RESPONSES, OBJECTIONS TO REQUESTS FOR ADMISSION FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS.~~

Notice of ~~depositions, requests for admission~~ any discovery in a contested case, their response or objection, shall be filed or served as provided by the order compelling discovery. Responses must conform to the requirements of the Idaho Rules of Civil Procedure. (~~7-1-93~~)(8-15-02)T

~~063559~~. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY.

The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery. (7-1-93)

~~064560~~. PROTECTIVE ORDERS.

As authorized by statute or rule, the agency may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. (7-1-93)

561. -- 599. (RESERVED).

RULES ~~065600~~ THROUGH ~~077612~~ -- HEARINGS -- MISCELLANEOUS PROCEDURE

~~065600~~. NOTICE OF HEARING.

Notice of the place, date and hour of hearing shall be served on all parties at least twenty-one (21) days before the time set for hearing, unless the agency finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must comply with the requirements for pleadings under these rules. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number or docket number, the names of the presiding officers who will hear the case, the name, address and telephone number of the person to whom inquires about scheduling, hearing facilities, etc., should be directed. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy. (7-1-93)

~~06601~~. HOW HEARINGS HELD.

Hearings may be held in person or by telephone or television or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. (7-1-93)

~~067602~~. CONDUCT AT HEARINGS.

All persons attending a hearing must conduct themselves in a respectful manner. Smoking is not permitted at hearings. (7-1-93)

068603. PRELIMINARY PROCEDURE AT HEARING

Before taking evidence the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements as necessary or appropriate to explain a party's presentation. (7-1-93)

069604. STIPULATIONS.

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented at hearing or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The agency is not bound to adopt a stipulation of the parties, but may do so. If the agency rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. (7-1-93)

07605. ORDER OF PROCEDURE.

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. (7-1-93)

071606. TESTIMONY UNDER OATH.

All testimony presented in formal hearings will be given under oath. Before testifying each witness must swear or affirm that the testimony the witness will give before the agency is the truth, the whole truth, and nothing but the truth. (7-1-93)

072607. PARTIES AND PERSONS WITH SIMILAR INTERESTS.

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. (7-1-93)

073608. CONTINUANCE OF HEARING.

The presiding officer may continue proceedings for further hearing. (7-1-93)

074609. RULINGS AT HEARINGS.

The presiding officer rules on motions and objections presented at hearing. When the presiding officer is a hearing officer, the presiding officer's rulings may be reviewed by the agency head in determining the matter on its merits and the presiding officer may refer or defer rulings to the agency head for determination. (7-1-93)

075610. ORAL ARGUMENT.

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. (7-1-93)

07611. BRIEFS -- MEMORANDA -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE PRESIDING OFFICER.

In any contested case, any party may ask to file briefs, memoranda, proposed orders of the parties or statements of position, and the presiding officer may request briefs, proposed orders of the parties, or statements of position. The presiding officer may issue a proposed order and ask the parties for comment upon the proposed order. (7-1-93)

077612. PROCEDURE ON PREHEARING MOTIONS.

The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. If oral argument or hearing on a motion is requested and denied, the presiding officer must state the grounds for denying the request. Unless otherwise provided by the presiding officer, when a motion has been filed, all parties seeking similar substantive or procedural relief must join in the motion or file a similar motion within seven (7) days after receiving the original motion. The party(ies) answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the last motion or joinder pursuant to the requirements of the previous sentence in which to respond. (7-1-93)

613. -- 649. (RESERVED).

RULES ~~078650~~ THROUGH ~~082654~~ -- EVIDENCE IN CONTESTED CASES

~~078650~~. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE.

Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence.

(7-1-93)

~~079651~~. DOCUMENTARY EVIDENCE.

Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original if available.

(7-1-93)

~~080652~~. OFFICIAL NOTICE -- AGENCY STAFF MEMORANDA.

Official notice may be taken of any facts that could be judicially noticed in the courts of Idaho. Parties shall be notified of the specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. Parties must be given an opportunity to contest and rebut the facts or material officially noticed.

(7-1-93)

~~081653~~. DEPOSITIONS.

Depositions may be offered into evidence.

(7-1-93)

~~082654~~. OBJECTIONS.

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. When a party objects to the admission of evidence, the presiding officer will rule on the objection, or, if the presiding officer is a hearing officer, the presiding officer may receive the evidence subject to later ruling by the agency head or refer the matter to the agency head.

(7-1-93)

~~655. -- 699.~~ **(RESERVED).**

RULES ~~083700~~ THROUGH ~~084701~~ -- SETTLEMENTS

~~083700~~. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS.

Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record.

(7-1-93)

~~084701~~. SETTLEMENT NOT BINDING.

The presiding officer is not bound by settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law.

(7-1-93)

~~702. -- 749.~~ **(RESERVED).**

RULES ~~085750~~ THROUGH ~~086751~~ -- RECORD FOR DECISIONS

~~08750~~. RECORD FOR DECISION.

01. Requirement. The agency shall maintain an official record for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case.

(7-1-93)

- 02. Contents.** The record for a contested case shall include: (7-1-93)
- a.** All notices of proceedings; (7-1-93)
 - b.** All petitions, administrative complaints, motions, and answers filed in the proceeding; ~~(7-1-93)~~(8-15-02)T
 - c.** All intermediate or interlocutory rulings of hearing officers or the agency head; (7-1-93)
 - d.** All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); (7-1-93)
 - e.** All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; (7-1-93)
 - f.** All evidentiary rulings on testimony, exhibits, or offers of proof; (7-1-93)
 - g.** All staff memoranda or data submitted in connection with the consideration of the proceeding; (7-1-93)
 - h.** A statement of matters officially noticed; and (7-1-93)
 - i.** All recommended orders, final orders, and orders on reconsideration. (7-1-93)

~~086751~~. RECORDING OF HEARINGS.

All hearings shall be recorded on audiotape or videotape at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. (7-1-93)

~~752~~ -- ~~799~~. (RESERVED).

**RULES ~~087800~~ THROUGH ~~092805~~ --
DEFAULTS, AGENCY ORDERS, AND REVIEW OF AGENCY ORDERS**

~~087800~~. DEFAULT PROCEEDINGS.

If the respondent fails to file an answer to an administrative complaint or petition within the time required by these rules, or if a party fails to appear at the time and place set for hearing, upon proof of service upon the defaulting party, the presiding officer shall serve upon all parties notice of a proposed default order. The notice shall include a statement of the grounds for the proposed order. Within seven (7) days after service of the proposed order, the party against whom it was issued may file a written petition requesting the proposed order be vacated. The petition shall state the grounds relied upon. The presiding officer shall either issue or vacate the default order promptly after expiration of the time within which the party may file a petition. Notwithstanding the above, the presiding officer shall have authority to receive evidence at the hearing where a party fails to appear after having been served with notice of hearing. ~~(7-1-93)~~(8-15-02)T

~~08801~~. RECOMMENDED ORDERS.

01. Definition. Recommended orders are orders issued by a ~~person other than the agency head that hearing officer and~~ will become a final order of the agency only after review of the agency head ~~(or the agency head's designee) pursuant to Section 67-5244, Idaho Code.~~ ~~(7-1-93)~~(8-15-02)T

02. Content. Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a recommended order of the hearing officer. It will not become final without action of the agency head. Any party may file a petition for reconsideration of this recommended order with the hearing officer

issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (7-1-93)

b. Within twenty-one (21) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position on any issue in the proceeding. (7-1-93)

c. Written briefs in support of or taking exceptions to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have twenty-one (21) days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (7-1-93)

03. Findings And Conclusions. Recommended orders shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. (7-1-93)

~~089~~02. FINAL ORDERS.

01. Definition. Final orders are orders issued by the agency head pursuant to Section 67-5246, Idaho Code. (7-1-93)

02. Content. Every final order issued by the agency head must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a final order of the agency. Any party may file a motion for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code. (7-1-93)

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (7-1-93)

i. A hearing was held; (7-1-93)

ii. The final agency action was taken; or (7-1-93)

iii. The party seeking review of the order resides. (7-1-93)

c. An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (7-1-93)

03. Findings And Conclusions. Recommended orders shall include findings of fact and conclusions of law. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. (7-1-93)

~~098~~03. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION.

A hearing officer issuing a recommended order may modify the recommended order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended order by withdrawing the recommended order and issuing a substitute recommended order. The agency head may modify or amend a final order of the agency at

any time before notice of appeal to district court has been filed or the expiration of the time for appeal to district court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it. (7-1-93)

~~091804~~. CLARIFICATION OF ORDERS.

Any party or person affected by an order may petition to clarify any order, whether recommended or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal the order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration. (7-1-93)

~~092805~~. STAY OF ORDERS.

Any party or person affected by an order may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion. (7-1-93)

~~806. -- 849.~~ (RESERVED).

RULES ~~093850~~ THROUGH ~~094851~~ -- APPEAL TO DISTRICT COURT

~~093850~~. PERSONS WHO MAY APPEAL.

Pursuant to Section 67-5270, Idaho Code, any party aggrieved by a final order of an agency in a contested case may appeal to district court. Pursuant to Section 67-5271, Idaho Code, a person is not entitled to judicial review of an agency action in district court until that person has exhausted all administrative remedies available with the agency, but a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable in district court if review of the final agency action would not provide an adequate remedy. (7-1-93)

~~094851~~. NOTICE OF APPEAL.

The notice of appeal must be filed with the agency and with the district court and served on all parties. (7-1-93)

01. Filing. Pursuant to Section 67-5272, Idaho Code, appeals may be filed in the district court of the county in which: (7-1-93)

- a. The hearing was held; (7-1-93)
- b. The final agency action was taken; or (7-1-93)
- c. The party seeking review of the agency action resides. (7-1-93)

02. Time. Pursuant to Section 67-5273, Idaho Code, a petition for judicial review of a final order in a contested case must be filed within twenty-eight (28) days: (7-1-93)

- a. Of the service date of the final order; (7-1-93)
- b. Of the denial of the petition for reconsideration; or (7-1-93)
- c. The failure within twenty-one (21) days to grant or deny the petition for reconsideration. (7-1-93)

~~095. -- 199.~~ (RESERVED).

~~RULE 200 -- RULEMAKING~~

~~200. RULEMAKING.~~

~~All procedural matters of rulemaking by or before the Idaho Real Estate Commission shall be governed by IDAPA 04.11.01.800 et seq., "Idaho Rules of Administrative Procedure of the Attorney General". (7-1-93)~~

~~201. -- 999.~~ (RESERVED).

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

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

Rule 006 - Incorporation By Reference is being amended to update a publication date of the document "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," to the new edition.

Rule 035 - Trusts--Residency Status is being amended to address the residency status of a qualified funeral trust as enacted by House Bill 455, Section 63-3015, Idaho Code passed by the 2002 Legislature.

Rule 075 - Tax On Individuals, Estates, and Trusts -- In General is being promulgated to provide general information on computing the tax for individuals, estates, and trusts and to serve as a lead in for Rules 076 through 079, which will identify the tax rates and income tax brackets starting with calendar year 1987.

Rule 076 - Tax On Individuals, Estates, and Trusts --Taxable Years Beginning in 1987 Through 1999 is being promulgated to identify the tax rates and income tax brackets for tax years beginning in 1987 through 1999.

Rule 077 - Tax On Individuals, Estates, and Trusts --Taxable Years Beginning in 2000 is being promulgated to identify the tax rates and income tax brackets for tax years beginning in 2000.

Rule 078 - Tax On Individuals, Estates, and Trusts --Taxable Years Beginning in 2001 is being promulgated to identify the tax rates and income tax brackets for tax years beginning in 2001.

Rule 079 - Tax On Individuals, Estates, and Trusts --Taxable Years Beginning in 2002 is being promulgated to identify the tax rates and income tax brackets for tax years beginning in 2002.

Rule 105 - Adjustments To Taxable Income -- Additions Required Of All Taxpayers is being amended to incorporate changes made by House Bill 440, Section 63-3022, Idaho Code, passed by the 2002 Legislature. The word "business" is being deleted from the phrase "business activities not taxable in Idaho" to be consistent with the code change to the capital loss carryover deduction.

Rule 106 - Adjustments To Taxable Income -- Additions Required Only Of Corporations is being amended to delete Subsection 106.02, relating to the interest expense attributable to nonbusiness income. This adjustment is applicable to other multistate taxpayers not only corporations. The information is being moved to a new rule to alleviate confusions and inconsistencies that could result.

Rule 107 - Adjustments To Taxable Income -- Adjustments Required Only Of Taxpayers Reporting Nonbusiness Income is being promulgated to more properly list the adjustment for deductions related to nonbusiness income as an adjustment required only of multistate corporations, S corporations and partnerships. A reference to Income Tax Rules 330 and 335 is also included.

Rule 116 - Expenses Other Than Interest Attributable to Tax-Exempt Income is being promulgated to address expenses other than interest expense that are attributable to tax-exempt interest or dividend income. Treasury Regulation Section 1.265-1 was used as a model for information included in this new rule.

Rule 120 - Adjustments to Taxable Income -- Subtractions Available To All Taxpayers is being amended to incorporate the changes made in HB 442, passed by the 2002 Legislature. The changes renumbered the code section and clarified that long term care insurance premiums are allowed as a deduction to the extent that they have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes.

Rule 121 - Adjustments to Taxable Income -- Subtractions Available Only To Individuals is being amended to modify terms used in the rule to be consistent with those used in the statute that allow the deduction for health insurance costs not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. The rule will also amend the term 'Native American' to 'American Indian'.

Rule 130 - Deduction Of Certain Retirement Benefits is being amended to delete information that appears to be inconsistent with provisions in Section 63-3022A, Idaho Code, with regard to qualifying for certain retirement benefits when the individual is disabled.

Rule 170 - Idaho Capital Gains Deduction -- In General is being amended to modify examples in the rule required by passage of legislation in 2001 that modified the capital gains deduction percentage for taxable year 2001 only. The amendments will clearly identify that the 80% deduction was allowed for 2001 only and that after 2001, the deduction returns to 60%.

Rule 173 - Idaho Capital Gains Deduction -- Pass-Through Entities is being amended to clarify the capital gains deduction percentage change was for 2001 only. The amendments to the examples will clearly identify that the 80% deduction was allowed for 2001 only and that after 2001, the deduction returns to 60%.

Rule 180 - Deduction For Donation of Technological Equipment is being amended to make the rule consistent with House Bill 442, passed by the 2002 Legislature. Section 63-3022J, Idaho Code, was amended to clarify that donations of technological equipment could not reduce "Idaho taxable income" to less than zero.

Rule 190 - Idaho Medical Savings Accounts is being amended to remove information on submitting information returns consistent with changes made by the 2002 Legislature in SB 1302a and to replace it with information on how to identify the designated account as a medical savings account.

Rule 193 - Health Insurance Costs is being promulgated to clarify Section 63-3022P, Idaho Code, which allows a deduction for health insurance costs. The rule will help clarify which costs are considered deducted or accounted for, which social security Medicare payments qualify, and how the deduction is affected if the costs are claimed as an itemized deduction.

Rule 201 - Net Operating Loss Carrybacks And Carryovers is being amended to correct a reference to Income Tax Rule 201 and not Rule 210.

Rule 254 - Nonresident And Part-Year Resident Individuals -- Subtractions Allowed In Computing Idaho Adjusted Income is being amended to make it consistent with 2002 Legislation that amended Sections 63-3022, 63-3022P, and 63-3022Q, Idaho Code. The rule will also clarify that the deduction for health insurance costs cannot already be deducted or accounted for by the taxpayer for Idaho income tax purposes. The rule will also amend the term 'Native American' to 'American Indian'.

Rule 580 - Special Rules -- Special Industries is being amended to update a publication date of the document "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," to the new edition.

Rule 582 - Special Rules -- Financial Institutions is being amended to update a publication date of the document "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," to the new edition.

Rule 717 - Idaho Investment Tax Credit -- Replacement Property is being repealed as no longer needed since the statute for tax years prior to 1995 has generally expired.

Rule 745 - Credit for Qualifying New Employees -- Revenue-Producing Enterprise is being amended because of House Bill 377a passed in 2001, which modified the credit for qualifying new employees. The rule will modify the

information in the title to add tax years beginning after 2001 to the effective dates.

Rule 746 - Credit For Qualifying New Employees -- Calculations Used To Determine The Credit and Credit Carryover is being amended because of House Bill 377a passed in 2001, which modified the credit for qualifying new employees. The rule will modify the information in the title to add tax years beginning after 2001 to the effective dates.

Rule 747 - Credit For Qualifying New Employees -- Net Income Of A Revenue-Producing Enterprise is being amended because of House Bill 377a passed in 2001, which modified the credit for qualifying new employees. The rule will modify the information in the title to add tax years beginning after 2001 to the effective dates.

Rule 748 - Credit For Qualifying New Employees -- Record-Keeping Requirements is being amended to more specifically identify which Department of Labor reports must be retained to document the credit earned or claimed. Subsection 748.02 regarding records retention is being deleted as no longer necessary since IDAPA 35.02.01. "Administration and Enforcement Rules," Rule 200 covers the requirements. The rule also expands the effective dates to include tax years beginning after 2001. The title and Section 01 of the rule are also amended to be more consistent with Rule 758.

Rule 758 - Credit For Qualifying New Employees -- Record-Keeping Requirements is being amended to more specifically identify which Department of Labor reports must be retained to document the credit earned or claimed. Subsection 758.02 regarding records retention is being deleted as no longer necessary since IDAPA 35.02.01. "Administration and Enforcement Rules," Rule 200 covers the requirements. Section 01 of the rule is also amended to be more consistent with Rule 748.

Rule 792 - Transfer of Credit -- Posting Bond is being amended to provide that the Tax Commission will require the transferor to post a bond or security only if, after receiving the request to transfer the credit, it is deemed necessary by the Tax Commission.

Rule 799 - Priority Order Of Credits is being amended to add the grocery credit allowed to part-year residents to the list of nonrefundable credits and to correct a reference to an Idaho Code section that was renumbered.

Rule 815 - Extensions Of Time is being amended to refer to new Rule 817 for the exception to calculating interest on payments not made by the due date because of a disaster. These amendments were necessary due to HB 454 passed by the 2002 Legislature.

Rule 817 - Extensions of Time As Disaster Relief is being promulgated to address extensions of time for taxpayers adversely affected by any type of disaster declared by the President or governor as provided by Section 63-114, Idaho Code.

Rule 820 - Corporate Estimated Payments -- In General is being amended to include capital loss carryovers in the subsection addressing net operating loss carryovers.

Rule 825 - Corporate Estimated Payments -- Interest on Underpayment is being promulgated to address the computation of interest on the underpayment of corporate estimated payments. The rule addresses the fact that net operating loss and capital loss carrybacks to a year do not result in a recomputation of interest on underpayment of estimated taxes.

Rule 830 - Information Returns is being amended to delete Form MSA-1 from the list of information returns required to be filed with the Tax Commission consistent with SB 1302a passed by the 2002 Legislature, which deleted this requirement.

Rule 880 - Credits And Refunds is being amended to be consistent with 2002 Legislative changes to Sections 63-3068 and 63-3072, Idaho Code, to address the statute of limitations in the case of a duplicate return and to define what constitutes a duplicate return.

Rule 895 - Period of Limitation On Assessment And Collection of Tax is being amended to be consistent with 2002 Legislative changes to Sections 63-3068 and 63-3072, Idaho Code, to address the statute of limitations in the case of

a duplicate return and to define what constitutes a duplicate return.

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 rule is of a general application rather than applicable to identifiable groups or interests.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning a proposed rule, contact Janice Boyd, (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 October 23, 2002.

DATED this 21st day of August, 2002.

Janice Boyd, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36, Boise, ID 83722
(208) 334-7530 / FAX (208) 334-7844

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-0201

006. INCORPORATION BY REFERENCE (Rule 006).

These rules incorporate by reference the following documents, which may be obtained from the main office of the Idaho State Tax Commission: (3-15-02)

01. MTC Special Industry Regulations. This document is found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," ~~October, 2000~~ July 27, 2001 Edition, published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rules 580 and 581 of these rules. (3-15-02)(____)

02. MTC Recommended Formula For The Apportionment And Allocation Of Net Income Of Financial Institutions. This document is found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," ~~October, 2000~~ July 27, 2001 Edition, published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rule 582 of these rules. (3-15-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

035. TRUSTS -- RESIDENCY STATUS (Rule 035).

01. Resident Trusts. A trust other than a qualified funeral trust is treated as a resident trust if three (3) or more of the following conditions exist: (3-20-97)(____)

a. The domicile or residency of the grantor is in Idaho; (3-20-97)

- b. The trust is governed by Idaho law; (3-20-97)
- c. The trust has real or tangible personal property located in Idaho; (3-30-01)
- d. The domicile or residency of a trustee is in Idaho; (3-20-97)
- e. The administration of the trust takes place in Idaho. Administration of the trust includes conducting trust business, investing assets of the trust, making administrative decisions, record keeping and preparation and filing of tax returns. (3-20-97)

02. Qualified Funeral Trusts. A qualified funeral trust is treated as a resident trust under Section 63-3015, Idaho Code, if: ()

a. At the time of the initial funding of the trust, the trust was required to be established under the laws of Idaho; or ()

b. The requirement in Subsection 035.02.a. did not exist, but a funeral home or cemetery located in Idaho was identified to provide services or merchandise under the terms of a preneed contract requiring the establishment of the trust. ()

023. Nonresident Trusts. If the trust does not qualify as a resident trust, it is treated as a nonresident trust. The tax liability of a nonresident trust is computed in the same manner as a nonresident individual. (3-20-97)

034. Residency Status Of A Trust. For purposes of determining the residency status of a trust, no distinction is made between inter vivos trusts and testamentary trusts, or between revocable trusts and irrevocable trusts. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

046. -- 09974. (RESERVED).

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS - IN GENERAL (Rule 075).
Section 63-3024, Idaho Code. ()

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate, beginning with calendar year 1987, are identified in Rules 076 through 090 of these rules. For taxable years beginning after December 31, 1999, the Idaho income tax brackets are adjusted for inflation. ()

02. Tax Computation. ()

a. The tax rates and income tax brackets listed in Rules 076 through 090 of these rules are those for a single individual or married individuals filing separate returns. ()

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household shall be twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. ()

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax would be computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount would then be multiplied by two (2). ()

076. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS -- TAXABLE YEARS BEGINNING IN 1987 THROUGH 1999 (RULE 076).
Section 63-3024, Idaho Code. ()

01. Taxable Income Less Than One Thousand Dollars (\$1,000). The tax is two percent (2%) of the taxable income. ()

02. Taxable Income At Least One Thousand Dollars (\$1,000) But Less Than Two Thousand Dollars (\$2,000). The tax is twenty dollars (\$20), plus four percent (4%) of the amount over one thousand dollars (\$1,000). ()

03. Taxable Income At Least Two Thousand Dollars (\$2,000) But Less Than Three Thousand Dollars (\$3,000). The tax is sixty dollars (\$60), plus four and one-half percent (4.5%) of the amount over two thousand dollars (\$2,000). ()

04. Taxable Income At Least Three Thousand Dollars (\$3,000) But Less Than Four Thousand Dollars (\$4,000). The tax is one hundred five dollars (\$105), plus five and one-half percent (5.5%) of the amount over three thousand dollars (\$3,000). ()

05. Taxable Income At Least Four Thousand Dollars (\$4,000) But Less Than Five Thousand Dollars (\$5,000). The tax is one hundred sixty dollars (\$160), plus six and one-half percent (6.5%) of the amount over four thousand dollars (\$4,000). ()

06. Taxable Income At Least Five Thousand Dollars (\$5,000) But Less Than Seven Thousand Five Hundred Dollars (\$7,500). The tax is two hundred twenty-five dollars (\$225), plus seven and one-half percent (7.5%) of the amount over five thousand dollars (\$5,000). ()

07. Taxable Income At Least Seven Thousand Five Hundred Dollars (\$7,500) But Less Than Twenty Thousand Dollars (\$20,000). The tax is four hundred twelve dollars and fifty cents (\$412.50), plus seven and eight-tenths percent (7.8%) of the amount over seven thousand five hundred dollars (\$7,500). ()

08. Taxable Income Of Twenty Thousand Dollars (\$20,000) Or More. The tax is one thousand three hundred eighty-seven dollars and fifty cents (\$1,387.50), plus eight and two-tenths percent (8.2%) of the amount over twenty thousand dollars (\$20,000). ()

077. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS -- TAXABLE YEARS BEGINNING IN 2000 (Rule 077).
Section 63-3024, Idaho Code. ()

01. Taxable Income Less Than One Thousand Twenty-Two Dollars (\$1,022). The tax is one and nine-tenths percent (1.9%) of the taxable income. ()

02. Taxable Income At Least One Thousand Twenty-Two Dollars (\$1,022) But Less Than Two Thousand Forty-Four Dollars (\$2,044). The tax is nineteen dollars and forty-two cents (\$19.42), plus three and nine-tenths percent (3.9%) of the amount over one thousand twenty-two dollars (\$1,022). ()

03. Taxable Income At Least Two Thousand Forty-Four Dollars (\$2,044) But Less Than Three Thousand Sixty-Six Dollars (\$3,066). The tax is fifty-nine dollars and twenty-eight cents (\$59.28), plus four and four-tenths percent (4.4%) of the amount over two thousand forty-four dollars (\$2,044). ()

04. Taxable Income At Least Three Thousand Sixty-Six Dollars (\$3,066) But Less Than Four Thousand Eighty-Eight Dollars (\$4,088). The tax is one hundred four dollars and twenty-five cents (\$104.25), plus five and four-tenths percent (5.4%) of the amount over three thousand sixty-six dollars (\$3,066). ()

05. Taxable Income At Least Four Thousand Eighty-Eight Dollars (\$4,088) But Less Than Five Thousand One Hundred Ten Dollars (\$5,110). The tax is one hundred fifty-nine dollars and forty-four cents (\$159.44), plus six and four-tenths percent (6.4%) of the amount over four thousand eighty-eight dollars (\$4,088). ()

06. Taxable Income At Least Five Thousand One Hundred Ten Dollars (\$5,110) But Less Than

Seven Thousand Six Hundred Sixty-Six Dollars (\$7,666). The tax is two hundred twenty-four dollars and eighty-five cents (\$224.85), plus seven and four-tenths percent (7.4%) of the amount over five thousand one hundred ten dollars (\$5,110). ()

07. Taxable Income At Least Seven Thousand Six Hundred Sixty-Six Dollars (\$7,666) But Less Than Twenty Thousand Four Hundred Forty-Two Dollars (\$20,442). The tax is four hundred thirteen dollars and ninety-nine cents (\$413.99), plus seven and seven-tenths percent (7.7%) of the amount over seven thousand six hundred sixty-six dollars (\$7,666). ()

08. Taxable Income Of Twenty Thousand Four Hundred Forty-Two Dollars (\$20,442) Or More. The tax is one thousand three hundred ninety-seven dollars and seventy-four cents (\$1,397.74), plus eight and one-tenth percent (8.1%) of the amount over twenty thousand four hundred forty-two dollars (\$20,442). ()

078. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS -- TAXABLE YEARS BEGINNING IN 2001 (Rule 078).
Section 63-3024, Idaho Code. ()

01. Taxable Income Less Than One Thousand Fifty-Six Dollars (\$1,056). The tax is one and six-tenths percent (1.6%) of the taxable income. ()

02. Taxable Income At Least One Thousand Fifty-Six Dollars (\$1,056) But Less Than Two Thousand One Hundred Thirteen Dollars (\$2,113). The tax is sixteen dollars and ninety cents (\$16.90), plus three and six-tenths percent (3.6%) of the amount over one thousand fifty-six dollars (\$1,056). ()

03. Taxable Income At Least Two Thousand One Hundred Thirteen Dollars (\$2,113) But Less Than Three Thousand One Hundred Sixty-Nine Dollars (\$3,169). The tax is fifty-four dollars and ninety-three cents (\$54.93), plus four and one-tenth percent (4.1%) of the amount over two thousand one hundred thirteen dollars (\$2,113). ()

04. Taxable Income At Least Three Thousand One Hundred Sixty-Nine Dollars (\$3,169) But Less Than Four Thousand Two Hundred Twenty-Six Dollars (\$4,226). The tax is ninety-eight dollars and twenty-five cents (\$98.25), plus five and one-tenth percent (5.1%) of the amount over three thousand one hundred sixty-nine dollars (\$3,169). ()

05. Taxable Income At Least Four Thousand Two Hundred Twenty-Six Dollars (\$4,226) But Less Than Five Thousand Two Hundred Eighty-Two Dollars (\$5,282). The tax is one hundred fifty-two dollars and thirteen cents (\$152.13), plus six and one-tenth percent (6.1%) of the amount over four thousand two hundred twenty-six dollars (\$4,226). ()

06. Taxable Income At Least Five Thousand Two Hundred Eighty-Two Dollars (\$5,282) But Less Than Seven Thousand Nine Hundred Twenty-Three Dollars (\$7,923). The tax is two hundred sixteen dollars and fifty-seven cents (\$216.57), plus seven and one-tenth percent (7.1%) of the amount over five thousand two hundred eighty-two dollars (\$5,282). ()

07. Taxable Income At Least Seven Thousand Nine Hundred Twenty-Three Dollars (\$7,923) But Less Than Twenty-One Thousand One Hundred Twenty-Nine Dollars (\$21,129). The tax is four hundred four dollars and nine cents (\$404.09), plus seven and four-tenths percent (7.4%) of the amount over seven thousand nine hundred twenty-three dollars (\$7,923). ()

08. Taxable Income Of Twenty-One Thousand One Hundred Twenty-Nine Dollars (\$21,129) Or More. The tax is one thousand three hundred eighty-one dollars and thirty cents (\$1,381.30), plus seven and eight-tenths percent (7.8%) of the amount over twenty-one thousand one hundred twenty-nine dollars (\$21,129). ()

079. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS -- TAXABLE YEARS BEGINNING IN 2002 (Rule 079).
Section 63-3024, Idaho Code. ()

01. Taxable Income Less Than One Thousand Eighty-Seven Dollars (\$1,087). The tax is one and six-tenths percent (1.6%) of the taxable income. ()

02. Taxable Income At Least One Thousand Eighty-Seven Dollars (\$1,087) But Less Than Two Thousand One Hundred Seventy-Three Dollars (\$2,173). The tax is seventeen dollars and thirty-eight cents (\$17.38), plus three and six-tenths percent (3.6%) of the amount over one thousand eighty-seven dollars (\$1,087). ()

03. Taxable Income At Least Two Thousand One Hundred Seventy-Three Dollars (\$2,173) But Less Than Three Thousand Two Hundred Sixty Dollars (\$3,260). The tax is fifty-six dollars and fifty cents (\$56.50), plus four and one-tenth percent (4.1%) of the amount over two thousand one hundred seventy-three dollars (\$2,173). ()

04. Taxable Income At Least Three Thousand Two Hundred Sixty Dollars (\$3,260) But Less Than Four Thousand Three Hundred Forty-Six Dollars (\$4,346). The tax is one hundred one dollars and four cents (\$101.04), plus five and one-tenth percent (5.1%) of the amount over three thousand two hundred sixty dollars (\$3,260). ()

05. Taxable Income At Least Four Thousand Three Hundred Forty-Six Dollars (\$4,346) But Less Than Five Thousand Four Hundred Thirty-Three Dollars (\$5,433). The tax is one hundred fifty-six dollars and forty-six cents (\$156.46), plus six and one-tenth percent (6.1%) of the amount over four thousand three hundred forty-six dollars (\$4,346). ()

06. Taxable Income At Least Five Thousand Four Hundred Thirty-Three Dollars (\$5,433) But Less Than Eight Thousand One Hundred Forty-Nine Dollars (\$8,149). The tax is two hundred twenty-two dollars and seventy-three cents (\$222.73), plus seven and one-tenth percent (7.1%) of the amount over five thousand four hundred thirty-three dollars (\$5,433). ()

07. Taxable Income At Least Eight Thousand One Hundred Forty-Nine Dollars (\$8,149) But Less Than Twenty-One Thousand Seven Hundred Thirty Dollars (\$21,730). The tax is four hundred fifteen dollars and fifty-nine cents (\$415.59), plus seven and four-tenths percent (7.4%) of the amount over eight thousand one hundred forty-nine dollars (\$8,149). ()

08. Taxable Income Of Twenty-One Thousand Seven Hundred Thirty Dollars (\$21,730) Or More. The tax is one thousand four hundred twenty dollars and sixty cents (\$1,420.60), plus seven and eight-tenths percent (7.8%) of the amount over twenty-one thousand seven hundred thirty dollars (\$21,730). ()

080. -- 099. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

105. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED OF ALL TAXPAYERS (Rule 105).
Section 63-3022, Idaho Code. (3-20-97)

01. State And Local Income Taxes. As provided in Section 63-3022(a), Idaho Code, add state and local income taxes deducted in computing taxable income. This includes taxes paid to states other than Idaho and their political subdivisions, and amounts paid by an S corporation on capital gains, built-in gains, and excess net passive income. (3-15-02)

02. Net Operating Loss Deduction. As provided in Section 63-3022(b), Idaho Code, add any net operating loss deduction included in taxable income. (7-1-99)

03. Capital Loss Carryover Deduction. As provided in Section 63-3022(i), Idaho Code: (3-30-01)

a. A corporation shall add a capital loss deducted in computing taxable income if the capital loss occurred during a taxable year when the corporation did not transact business in Idaho, unless the corporation was part of a unitary group with at least one (1) member of the group taxable by Idaho for that taxable year. (7-1-99)

b. An individual shall add a capital loss deducted in computing taxable income if the capital loss was incurred in an ~~business~~ activity not taxable by Idaho at the time it was incurred. (~~3-20-97~~)()

04. Interest And Dividend Income Exempt From Federal Taxation. As provided in Section 63-3022M, Idaho Code, add certain interest and dividend income that is exempt from federal income tax. For example, add interest income from state and local bonds that is exempt from federal income tax pursuant to Section 103, Internal Revenue Code. (7-1-99)

a. Interest from bonds issued by the state of Idaho or its political subdivisions is exempt from Idaho income tax and, therefore, is not required to be added to taxable income. (3-20-97)

b. If a taxpayer has both Idaho and non-Idaho state and municipal interest income, expenses not allowed pursuant to Sections 265 and 291, Internal Revenue Code, shall be prorated between the Idaho and non-Idaho interest income as provided in Subsections 105.04.b.i. and 105.04.b.ii. The addition to taxable income required for non-Idaho state and municipal interest income shall be offset by the expenses prorated to that interest income. The allowable offset may not exceed the reportable amount of interest income. An unused offset may not be carried back or carried over. A schedule showing the interest and related offsets shall be attached to the return. (4-5-00)

i. Expenses prorated to Idaho state and municipal interest income shall be based on the ratio of Idaho state and municipal interest income to total state and municipal interest income. (7-1-98)

ii. Expenses prorated to non-Idaho state and municipal interest income shall be based on the ratio of non-Idaho state and municipal interest income to total state and municipal interest income. (7-1-98)

05. Interest Expense Attributable To Tax-Exempt Interest Income. As provided by Section 63-3022M, Idaho Code, a taxpayer shall add interest expense on indebtedness incurred to purchase or carry certain obligations that produce tax-exempt interest income. Because this addition serves to offset the tax-exempt interest income, it is often referred to as an interest expense offset related to tax-exempt interest income. See Rule 115 of these rules for the computation of the interest expense offset related to tax-exempt interest. (7-1-99)

106. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF CORPORATIONS (Rule 106).
Section 63-3022, Idaho Code. (~~3-20-97~~)

~~**01. Dividends Received Deduction.** As provided in Section 63-3022(d), Idaho Code, add the federal dividends received deduction subtracted in computing taxable income. (7-1-99)()~~

~~**02. Interest Expense Attributable To Nonbusiness Activities.** *If dividends or interest income is determined to be nonbusiness income, a multistate corporation's interest expense may be nonbusiness interest expense. This nonbusiness interest expense shall be added to taxable income. Because this addition serves to offset nonbusiness dividends and interest income, it is often referred to as a nonbusiness interest expense offset. For purposes of this subsection, interest expense means the aggregate interest expense deductible in determining taxable income less reductions required by Section 63-3022M, Idaho Code. Dividends and interest income do not include income that is exempt from Idaho income tax pursuant to Section 63-3022(f), Idaho Code. See Section 63-3027, Idaho Code, and Rules 330 and 335 of these rules for the definitions of business income and nonbusiness income. This addition or offset of nonbusiness interest expense is the lesser of-* (7-1-99)~~

~~**a.** The interest expense less the sum of business dividends and business interest income; or (3-20-97)~~

~~**b.** The sum of nonbusiness dividends and nonbusiness interest income. (3-20-97)~~

107. ~~(RESERVED)~~ ADJUSTMENTS TO TAXABLE INCOME -- ADJUSTMENTS REQUIRED ONLY OF TAXPAYERS REPORTING NONBUSINESS INCOME (Rule 107).

Section 63-3027(a)(4), Idaho Code. All deductions relating to the production of nonbusiness income shall be allocated with the income produced. See Section 63-3027, Idaho Code, and Rules 330 and 335 of these rules for the definitions of business income and nonbusiness income. ()

(BREAK IN CONTINUITY OF SECTIONS)

116. EXPENSES OTHER THAN INTEREST ATTRIBUTABLE TO TAX-EXEMPT INCOME (Rule 116).

Section 63-3022M, Idaho Code. ()

01. Directly Allocable Expenses. Expenses, other than interest, that are directly allocable to exempt interest or dividend income, shall be allocated to such income and no deduction shall be allowed for such allocated expenses. ()

02. Indirectly Allocable Expenses. If an expense is indirectly allocable to both a class of nonexempt income and exempt interest or dividend income, a reasonable proportion of such expense determined in the light of all the facts and circumstances in each case shall be allocated to each class. No deduction shall be allowed for expenses indirectly allocated to exempt interest or dividend income. ()

1167. -- 119. (RESERVED).

120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (Rule 120).

Section 63-3022, Idaho Code. (3-20-97)

01. State And Local Income Tax Refunds. Subtract from taxable income state and local income tax refunds included in taxable income, unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (3-15-02)

02. Idaho Net Operating Loss. As provided in Section 63-3022(c), Idaho Code, subtract the Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and Rules 200 through 210 of these rules. An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. (7-1-99)

03. Income Not Taxable By Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax, if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

04. Donated Technological Equipment. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, subtract the fair market value of technological equipment donated to qualifying institutions. (4-5-00)

05. Long-Term Care Insurance. As provided in Section ~~63-3022Q~~ ~~63-3022P~~, Idaho Code, a deduction from taxable income is allowed for fifty percent (50%) of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho

income tax purposes.

~~(3-15-02)~~(____)

121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (Rule 121).

Section 63-3022, Idaho Code.

(3-20-97)

01. Income Not Taxable By Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

a. Certain income earned by ~~Native Americans~~ Indians. See Rule 033 of these rules. ~~(3-20-97)~~(____)

b. Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. (3-20-97)

02. Military Compensation For Service Performed Outside Idaho. As provided in Section 63-3022(h), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. (3-30-01)

03. Standard Or Itemized Deduction. As provided in Section 63-3022(j), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If itemized deductions are limited pursuant to the Internal Revenue Code, they are also limited for Idaho income tax purposes. (3-30-01)

a. If state and local income taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income taxes added back shall be computed by dividing the amount of limited itemized deductions by total itemized deductions before the limitation. This percent shall be rounded to the nearest whole percent. For example, sixty-six and one-half percent (66.5%) shall be rounded to sixty-seven percent (67%). Sixty-six and four-tenths percent (66.4%) shall be rounded to sixty-six percent (66%). This percent is then applied to state and local income taxes to determine the Idaho state and local income tax addback. See Rule 105 of these rules. (3-15-02)

b. If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (7-1-99)

c. For taxable year 1999 the standard deduction allowed on a married filing joint return shall be increased by one hundred fifty dollars (\$150). (3-30-01)

d. For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return shall be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. (3-30-01)

04. Social Security And Railroad Retirement Benefits. As provided in Section 63-3022(l), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. (3-30-01)

a. The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. (7-1-99)

b. The term railroad retirement benefits means Tier I, Tier II, and supplemental benefits paid by the Railroad Retirement Board. Supplemental benefits, for purposes of this rule, include railroad unemployment and sickness benefits. (7-1-99)

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022(m), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-30-01)

06. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. (3-20-97)

07. Insulation Of An Idaho Residence. As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the insulation of an Idaho residence. (3-20-97)

08. Alternative Energy Devices. As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence. (3-20-97)

09. Household And Dependent Care Services. As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. (3-20-97)

10. Household Deduction For Elderly Or Developmentally Disabled Dependents. As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. (3-20-97)

11. Reparations To Displaced Japanese Americans. As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. (3-20-97)

12. Capital Gains. As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified property. (3-20-97)

13. Adoption Expenses. As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. (3-20-97)

14. Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to and interest earned on an Idaho medical savings account. (4-5-00)

15. Idaho College Savings Program. As provided in Section 63-3022(n), Idaho Code, a deduction from taxable income is allowed for qualifying contributions to a college savings program. (3-15-02)

16. Health Insurance Costs. A deduction from taxable income is allowed for the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care, as defined in Section 63-3022P, Idaho Code, for the taxpayer, the spouse or dependents of the taxpayer not otherwise deducted or ~~excluded~~ accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (~~3-15-02~~)()

(BREAK IN CONTINUITY OF SECTIONS)

130. DEDUCTION OF CERTAIN RETIREMENT BENEFITS (Rule 130).

Section 63-3022A, Idaho Code. (3-20-97)

01. Qualified Benefits. Subject to limitations, the following benefits qualify for the deduction: (3-20-97)

a. Civil service retirement annuities paid by the United States Government. (3-20-97)

b. Retirement benefits paid as a result of participating in the firemen's retirement fund of the state of Idaho as authorized by Title 72, Chapter 14, Idaho Code. A fireman is entitled to benefits from this fund only if he established eligibility as a paid fireman prior to October 1, 1980. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. (3-20-97)

c. Retirement benefits paid as a result of participating in a policeman's retirement fund of an Idaho city as previously authorized by Sections 50-1501 through 50-1524, Idaho Code. A policeman is entitled to benefits from a city policeman's retirement fund if he was employed by a city as a policeman prior to April 12, 1967 or if he was required to participate in the fund by city ordinance. Retirement benefits paid by the public employee's retirement system do not qualify for the deduction. (3-20-97)

d. Retirement benefits paid by the United States Government to a retired member of the military services. (3-20-97)

02. Unremarried Widow. An unremarried widow of a retired civil service employee, retired policeman, retired fireman, or retired member of the military services, who is sixty-five (65) or older, or sixty-two (62) and disabled, is eligible for the deduction, even though the deceased spouse was not eligible at the time of death. (3-20-97)

~~**03. Disabled Individual.** For purposes of this deduction, an individual is classified as disabled if he is retired and receives qualified benefits pursuant to a disability provision of the retirement fund. (3-20-97)~~

~~**043. Married Individuals Filing Separate Returns.** Married individuals who elect to file married filing separate are not entitled to the deduction allowed by Section 63-3022A, Idaho Code. (7-1-98)~~

054. Publication of Maximum Deduction. The maximum deduction that may be subtracted when computing Idaho taxable income shall be published each year in the instructions for preparing Idaho individual income tax returns. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

170. IDAHO CAPITAL GAINS DEDUCTION -- IN GENERAL (Rule 170).

Section 63-3022H, Idaho Code. (3-20-97)

01. Losses From Nonqualified Property. Losses from property not qualifying for the Idaho capital gains deduction may not be netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. However, the Idaho capital gains deduction may not exceed the capital gain net income included in Idaho taxable income. See Subsection 170.04 for an explanation of the capital gain net income limitation. (3-15-02)

02. Losses From Qualified Property. (7-1-99)

a. Losses from property qualifying for the Idaho capital gains deduction shall be netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. (7-1-99)

b. A capital loss carryover from property qualifying for the Idaho capital gains deduction shall be

netted against current year gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. If a taxpayer has a capital loss carryover consisting of qualified and nonqualified property, the qualified capital loss carryover shall be the proportion that the qualified capital loss bears to the total capital loss shown on the return in the prior year multiplied by the capital loss carryover. (7-1-99)

03. Examples. (3-20-97)

a. A taxpayer sells two (2) parcels of Idaho real property that qualify for the deduction. These are the only sales during the taxable year. A capital gain of seven thousand five hundred dollars (\$7,500) is recognized on the sale of Parcel A. A capital loss of five thousand dollars (\$5,000) is recognized on the sale of Parcel B. Since both parcels are qualified property, the gain and loss are netted, resulting in capital gain net income from qualified property of two thousand five hundred dollars (\$2,500) ~~and an Idaho capital gains deduction of one thousand five hundred dollars (\$1,500).~~ For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or two thousand dollars (\$2,000). ~~After 2001, the capital gains deduction returns to sixty percent (60%) or one thousand five hundred dollars (\$1,500).~~ (3-15-02)(____)

b. A taxpayer recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock that he has held for more than one (1) year. These are the only sales during the taxable year. In this case, since the long-term capital loss is not from qualified property, the loss on the sale of stock does not reduce the gain from qualified property for purposes of computing the deduction. The entire gain from qualified property of twenty thousand dollars (\$20,000) is eligible for the Idaho capital gains deduction; ~~resulting in a deduction of twelve thousand dollars (\$12,000).~~ For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or sixteen thousand dollars (\$16,000). ~~After 2001, the capital gains deduction returns to sixty percent (60%) or twelve thousand dollars (\$12,000).~~ (3-15-02)(____)

04. Capital Gain Net Income Limitation. (3-15-02)

a. The Idaho capital gains deduction is allowed only if the taxpayer reports capital gain net income, as defined in Section 1222(9), Internal Revenue Code, on his federal income tax return. In addition, the Idaho capital gains deduction may not exceed the capital gain net income included in taxable income. (3-15-02)

b. Example. A taxpayer recognizes a capital gain of five thousand dollars (\$5,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock. These are the only sales during the taxable year. Sixty percent (60%) of the capital gain net income from qualified property is greater than the capital gain net income included in the taxpayer's taxable income. Therefore, the taxpayer's Idaho capital gains deduction is limited to the capital gain net income included in taxable income of two thousand five hundred dollars (\$2,500), not sixty percent (60%) of the capital gain net income from the qualified property. For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property. This deduction is also limited to the capital gain net income included in Idaho taxable income. (3-15-02)(____)

05. Ordinary Income Limitation. The Idaho capital gains deduction may not include any gains treated as ordinary income pursuant to the Internal Revenue Code. For example, any gain from the sale, exchange, or involuntary conversion of certain depreciable property treated as ordinary income pursuant to Section 1245, Internal Revenue Code, may not be included when computing the Idaho capital gains deduction. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

173. IDAHO CAPITAL GAINS DEDUCTION -- PASS-THROUGH ENTITIES (Rule 173).
Section 63-3022H, Idaho Code. (3-20-97)

01. In General. (3-20-97)

a. Qualified property held by an S corporation or partnership may be eligible for the Idaho capital gains deduction. The deduction is claimed on the return of an individual shareholder or individual partner. (3-20-97)

b. Partnerships and S corporations electing to pay the tax for an individual pursuant to Section 63-3022L, Idaho Code, are not allowed to claim a capital gains deduction. (4-5-00)

02. Limitation Of Interest In Pass-Through Entity. (3-20-97)

a. An individual may claim an Idaho capital gains deduction on the pass-through gain from qualified property of an S corporation or partnership only to the extent that he held his interest in income of the S corporation or partnership for the required holding period. A shareholder's interest in income of the S corporation is his pro rata share of the income or loss. A partner's interest in income of the partnership is his distributive share of partnership profits. The individual must also meet any gross income limitations specified in Section 63-3022H(3), Idaho Code, for that type of property. (3-20-97)

b. Example. A shareholder in an S corporation had a twenty-five percent (25%) interest in income in year one (1). At the beginning of year two (2), the shareholder's ownership interest increased to fifty percent (50%). Fifteen (15) months later the S corporation recognizes a capital gain on the sale of Idaho real property held since year one (1). The shareholder reports fifty percent (50%) of the gain on his tax return for the year of sale, but is entitled to a capital gains deduction on only twenty-five percent (25%) of the total gain. His capital gains deduction is limited to twenty-five percent (25%) of the gain since he did not hold his fifty percent (50%) ownership interest for the full eighteen (18) months preceding the date of the sale of the property. (3-15-02)

03. Multistate Entities. A nonresident shareholder of an S corporation or a nonresident partner of a partnership required to allocate and apportion income as set forth in Section 63-3027, Idaho Code, shall compute his Idaho capital gains deduction on his interest in income of that portion of the qualifying capital gains allocated or apportioned to Idaho. (3-20-97)

04. Examples. (3-20-97)

a. XYZ Farms, a multistate partnership, sold a parcel of Idaho farmland purchased seven (7) years ago. The sixty thousand dollar (\$60,000) gain is determined to be business income and is included in income apportionable to Idaho. The partnership has a seventy-five percent (75%) Idaho apportionment factor. The three (3) nonresident partners share equally in the partnership profits. Each partner may claim an Idaho capital gains deduction of nine thousand dollars (\$9,000), computed as follows: $(\$60,000 \times 75\% = \$45,000 \text{ gain apportioned to Idaho} \times 1/3 = \$15,000 \text{ attributable to each partner} \times 60\% = \$9,000 \text{ capital gains deduction allowable on each partner's nonresident return})$. For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or twelve thousand dollars (\$12,000). After 2001, the capital gains deduction returns to sixty percent (60%) or nine thousand dollars (\$9,000). (~~3-15-02~~)()

b. XYZ Farms, a multistate partnership, sold a parcel of Idaho real estate held for investment for the past seven (7) years. The sixty thousand dollar (\$60,000) gain is determined to be nonbusiness income and is allocated to Idaho. The three (3) nonresident partners share equally in the partnership profits. Each partner may claim an Idaho capital gains deduction of twelve thousand dollars (\$12,000), computed as follows: $(\$60,000 \text{ gain allocated to Idaho} \times 1/3 = \$20,000 \text{ partner's share} \times 60\% = \$12,000 \text{ Idaho capital gains deduction allowable on each partner's nonresident return})$. For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or sixteen thousand dollars (\$16,000). After 2001, the capital gains deduction returns to sixty percent (60%) or twelve thousand dollars (\$12,000). (~~3-15-02~~)()

c. A resident partner's capital gain is not limited by the apportionment factor of the pass-through entity. Therefore, in both of the examples in Subsections 173.04.a. and 173.04.b., a resident partner may claim an Idaho capital gains deduction of twelve thousand dollars (\$12,000), or sixteen thousand dollars (\$16,000) for taxable year 2001 only. (~~3-15-02~~)()

(BREAK IN CONTINUITY OF SECTIONS)

180. DEDUCTION FOR DONATION OF TECHNOLOGICAL EQUIPMENT (Rule 180).

Section 63-3022J, Idaho Code.

(3-20-97)

01. Limitations. The deduction for donations of technological equipment is limited to the Idaho taxable income of the taxpayer. Any amount in excess of Idaho taxable income is not allowed as a carryback or carryover. ~~(3-20-97)~~(____)

02. Fair Market Value. Fair market value is determined pursuant to Section 170, Internal Revenue Code. (3-20-97)

03. Pass-Through Of Deduction. (3-20-97)

a. See Rule 128 of these rules for the general rules relating to deductions of pass-through entities. (3-20-97)

b. The limitations in Subsection 180.01 apply at the entity level. The deduction may not exceed the amount of pass-through income less deductions of the entity making the contribution. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

190. IDAHO MEDICAL SAVINGS ACCOUNTS (Rule 190).

Section 63-3022K, Idaho Code.

(7-1-98)

01. ~~Submitting Information Returns.~~ ~~Information returns reporting Idaho medical savings account information shall be submitted to the Tax Commission by the depository on Idaho Form MSA-1, or on magnetic media if filing two hundred fifty (250) or more returns. Depositories reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information.~~ **Designation As A Medical Savings Account.** An account must be designated by a depository as a medical savings account to qualify as an Idaho medical savings account. To be designated as a medical savings account, the words medical savings account or MSA must be clearly listed on the statement provided to the account holder and be included in one (1) of the following:

~~(7-1-98)~~(____)

a. The name of the account; (____)

b. The title of the account; (____)

c. The description of the account; or (____)

d. The designation of the account. (____)

02. Withdrawal To Reimburse The Account Holder. (4-5-00)

a. A withdrawal from an Idaho medical savings account to reimburse the account holder for expenses he paid is not a withdrawal to pay eligible medical expenses to the extent the account balance at the time the expense was paid was less than the withdrawal. (4-5-00)

b. Example. A taxpayer's Idaho medical savings account had a balance of three hundred dollars (\$300) on March 1. On that day, he paid a medical expense costing four hundred dollars (\$400) using funds from his regular checking account. On March 10 the taxpayer deposited two hundred dollars (\$200) into his medical savings account. On March 11 he withdrew four hundred dollars (\$400) from his medical savings account to reimburse himself for the medical expense payment. Only three hundred dollars (\$300) of the withdrawal qualifies as a payment of eligible medical expenses. The taxpayer may deduct two hundred dollars (\$200) for the contribution to the account. However, he must include one hundred dollars (\$100) in Idaho taxable income in addition to paying a penalty of ten dollars (\$10). (7-1-98)

03. Pretax Contributions. Health benefits paid with pretax contributions, such as those paid pursuant to a salary reduction agreement, are considered paid by the employer and do not qualify as an expense paid by the employee. Health benefits paid with after-tax dollars are considered paid by the employee and qualify as an expense paid by the employee. (3-20-97)

04. Contributions That Exceed The Amount Deductible. An account holder is limited in the amount he can contribute to his Idaho medical savings account each year to the amount deductible for that year. The maximum amount deductible is two thousand dollars (\$2,000), four thousand dollars (\$4,000) for a joint account. Contributions to an Idaho medical savings account that exceed the limitation for that year and that are not withdrawn as a deposit in error within thirty (30) days from the date of deposit, shall be subject to tax and the distribution penalty if withdrawn for purposes other than the payment of eligible medical expenses. (4-5-00)

05. Death Of A Spouse. If an Idaho medical savings account is established for married individuals as a joint account, no contributions shall be made for an account holder who is deceased. In the year of death, one-half (1/2) of the contributions made up to the date of death shall be attributed to each account holder. If the amounts are less than the maximum contribution of two thousand dollars (\$2,000), the surviving account holder may make contributions so that his total contributions for the year total two thousand dollars (\$2,000). For example, a married couple contributes three thousand dollars (\$3,000) to their medical savings account in January. In April of that year, the husband dies. The contributions made to the date of death will be attributed to each spouse with the result that each spouse is considered to have contributed one thousand five hundred dollars (\$1,500). Because the wife has not met the maximum deduction of two thousand dollars (\$2,000), she can contribute another five hundred dollars (\$500) in that year. ()

191. -- 1992. (RESERVED).

193. HEALTH INSURANCE COSTS (Rule 193).
Section 63-3022P, Idaho Code. ()

01. In General. The amount paid by an individual taxpayer for health insurance costs that are not otherwise deducted or accounted for is allowed as a deduction from taxable income. ()

02. Costs Deducted Or Accounted For. A deduction is not allowed for health insurance costs otherwise deducted or accounted for. Examples of health insurance costs otherwise deducted or accounted for are costs: ()

a. Paid out of an Idaho medical savings account; ()

b. Paid through a cafeteria plan or other salary-reduction arrangement when these costs are paid out of pretax income; ()

c. Deducted as business expenses. ()

03. Social Security Medicare Part A. ()

a. The payroll tax paid for Medicare A is not considered a medical expense under Section 213, Internal Revenue Code and, therefore, does not qualify for the Idaho deduction for health insurance costs. This applies to individuals who are covered by Social Security or are government employees who paid Medicare tax. ()

b. The amount of premiums a taxpayer pays to voluntarily enroll in Medicare A is deductible under Section 213, Internal Revenue Code, and qualifies for the Idaho deduction for health insurance costs. This applies to individuals who are not covered under Social Security or who were not government employees who paid Medicare tax. ()

04. Social Security Medicare Part B. Amounts paid for Medicare B, which is a supplemental medical insurance, qualify for the deduction allowed under Section 213, Internal Revenue Code, and qualify for the Idaho deduction for health insurance costs. ()

05. Medical Payments Coverage And Personal Injury Protection Of Automobile Insurance. The portion of automobile insurance that covers medical payments coverage or personal injury protection does not qualify for the Idaho deduction for health insurance costs because the insurance coverage is not restricted to the taxpayer, the taxpayer's spouse, or the dependents of the taxpayer. This insurance provides protection to the driver and passengers of the policyholder's car or other injured parties. ()

06. Costs Claimed as Itemized Deductions. If a taxpayer elects to itemize deductions for Idaho purposes and his medical expenses exceed the seven and one-half percent (7.5%) adjusted gross income limitation, health insurance costs claimed as an itemized deduction qualify for the Idaho deduction only to the extent that the premiums exceed the amount deducted. If the taxpayer does not elect to itemize deductions for Idaho purposes, or if the taxpayer is unable to deduct medical expenses as an itemized deduction due to the seven and one-half percent (7.5%) adjusted gross income limitation, the full amount of health insurance costs, not otherwise deducted or accounted for, qualifies for the Idaho deduction. ()

a. An individual paid ten thousand dollars (\$10,000) for health insurance costs and six thousand dollars (\$6,000) for additional medical expenses. The taxpayer claimed the total medical expenses as an itemized deduction. The federal seven and one-half percent (7.5%) adjusted gross income limitation was five thousand dollars (\$5,000). After the federal limitation, the taxpayer received a medical expense deduction of eleven thousand dollars (\$11,000). (Sixteen thousand dollars (\$16,000) total medical expenses less the limitation of five thousand dollars (\$5,000)). The taxpayer may not claim the Idaho deduction for the health insurance costs since the eleven thousand dollar (\$11,000) federal medical expense deduction is more than the ten thousand dollar (\$10,000) health insurance costs. ()

b. An individual paid ten thousand dollars (\$10,000) for health insurance costs and six thousand dollars (\$6,000) for additional medical expenses. The taxpayer claimed the total medical expenses as an itemized deduction. The federal seven and one-half percent (7.5%) adjusted gross income limitation is fourteen thousand dollars (\$14,000). After the federal limitation, the taxpayer received a medical expense deduction of two thousand dollars (\$2,000). (Sixteen thousand dollars (\$16,000) total medical expenses less the limitation of fourteen thousand dollars (\$14,000)). The taxpayer may claim eight thousand dollars (\$8,000) as the Idaho deduction for health insurance costs, since the two thousand dollar (\$2,000) federal medical expense deduction was less than the ten thousand dollar (\$10,000) health insurance costs. ()

c. An individual paid ten thousand dollars (\$10,000) for health insurance costs and six thousand dollars (\$6,000) for additional medical expenses. The taxpayer claimed the total medical expenses as an itemized deduction. The federal seven and one-half percent (7.5%) adjusted gross income limitation was twenty thousand dollars (\$20,000). After the federal limitation, the taxpayer received no medical expense deduction. The taxpayer may claim ten thousand dollars (\$10,000) as the Idaho deduction for health insurance costs, since no medical expense deduction was allowed. ()

d. An individual paid ten thousand dollars (\$10,000) for health insurance costs and six thousand dollars (\$6,000) for additional medical expenses. For federal income tax purposes, the taxpayer claimed the total medical expenses as an itemized deduction. The taxpayer did not itemize deductions for Idaho income tax purposes, instead he claimed the Idaho standard deduction. The taxpayer may claim ten thousand dollars (\$10,000) as the Idaho deduction for health insurance costs, since he did not claim itemized deductions for Idaho income tax purposes. ()

194. -- 199. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (Rule 201). (7-1-99)
Section 63-3022(c), Idaho Code.

01. Definitions For Purposes Of Net Operating Loss Carrybacks And Carryovers. (3-20-97)

a. The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income. (3-20-97)

b. A net operating loss is absorbed when it has been fully subtracted from Idaho taxable income, as modified by Section 63-3021, Idaho Code. (4-5-00)

02. Adjustments To Net Operating Losses. (3-20-97)

a. Adjustments to a net operating loss shall be determined pursuant to the law applicable to the loss year. (3-20-97)

b. Adjustments to a net operating loss deduction may be made even though the loss year is closed due to the statute of limitations. (3-20-97)

03. Adjustments In Carryback And Carryover Years. (3-20-97)

a. Adjustments to income, including modifications pursuant to Section 63-3021, Idaho Code, in a carryback or carryover year shall be made for purposes of determining, how much, if any, of the net operating loss may be carried over to subsequent years. (4-5-00)

b. Adjustments are made pursuant to the law applicable to the carryback or carryover year. (4-5-00)

c. Adjustments may be made even though the year is closed due to the statute of limitations. (3-20-97)

04. Net Operating Loss Carrybacks. (3-20-97)

a. The net operating loss carryback allowed for the entire carryback period shall not exceed one hundred thousand dollars (\$100,000) per taxpayer. Each corporation that has a net operating loss and is included in a unitary group is limited to a maximum carryback of one hundred thousand dollars (\$100,000). (4-5-00)

b. Except as provided in Subsection 201.04.c., the net operating loss carryback shall be applied as follows: (4-5-00)

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss carryback is applied to the third preceding taxable year and if not absorbed, the difference applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the fifteen (15) succeeding taxable years, in order, until absorbed. (4-5-00)

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, the net operating loss carryback is applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. (4-5-00)

c. If the taxpayer makes a valid election to forego the carryback period as provided in Subsection 201.05, the provisions of Subsection 201.04.b. shall not apply and the net operating loss carryover shall be applied as follows: ~~(3-30-01)~~()

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss is subtracted in the fifteen (15) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, the net operating loss is subtracted in the twenty (20) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)

05. Timing And Method Of Electing To Forego Carryback. (3-30-01)

a. Net operating losses incurred in taxable years beginning prior to January 1, 2001. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection shall be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (3-30-01)

- i. The name, address, and taxpayer's social security number or employer identification number; (3-20-97)
- ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(c)(1), Idaho Code, to forego the carryback provision; and (7-1-99)
- iii. The amount of the net operating loss. (3-20-97)

b. Net operating losses incurred in taxable years beginning on or after January 1, 2001. The election must be made by the due date of the Idaho loss year return, including extensions. Once the completed Idaho return is filed, the extension period expires. The election shall be made by either attaching a copy of the federal election to forego the federal net operating loss carryback to the Idaho income tax return for the taxable year of the loss or following the requirements of Subsection 201.05.a. (3-30-01)

c. If the election is made on an amended or original return filed subsequent to the time allowed in Subsections 201.05.a. and 201.05.b., it is considered untimely and the net operating loss shall be applied as provided in Subsection 201.04.b. (3-30-01)

06. Order In Which Losses Are Applied In A Year. Loss carryovers are deducted before deducting any loss carrybacks applicable to the same taxable year. (3-20-97)

07. Documentation Required When Claiming A Net Operating Loss Deduction. A taxpayer claiming a net operating loss deduction for a taxable year must file with his return for that year a concise statement setting forth the amount of the net operating loss deduction claimed and all material and pertinent facts, including a detailed schedule showing the computation of the net operating loss and its carryback or carryover. (3-20-97)

08. Conversion Of C Corporation To S Corporation. A net operating loss carryback or carryover from a taxable year in which a corporation is a C corporation cannot be carried to a taxable year in which the corporation is an S corporation. However, an S corporation subject to the tax on built-in gains is allowed to deduct a net operating loss carryover from a taxable year in which the corporation was a C corporation against its net recognized built-in gain. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

254. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUBTRACTIONS ALLOWED IN COMPUTING IDAHO ADJUSTED INCOME (Rule 254).

Section 63-3026A(6), Idaho Code. (3-20-97)

01. Net Operating Loss Carryover. Subtract the net operating loss carryover allowed by Section 63-3022(c), Idaho Code, to the extent the loss was incurred while residing in or domiciled in Idaho or to the extent the loss was from ~~business~~ activity taking place in Idaho. A net operating loss incurred from an ~~an business~~ activity not taxable by Idaho may not be subtracted. (~~7-1-99~~)(____)

02. State And Local Income Tax Refunds. Subtract state and local income tax refunds included in Idaho total income. (3-15-02)

03. Income Not Taxable By Idaho. Subtract income that is exempt from Idaho income taxation by a

law of the state of Idaho or of the United States, if that income is included in Idaho total income and has not been previously subtracted. Income not taxable by Idaho includes: (3-15-02)

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

c. Certain income earned by ~~Native Americans~~ **Indians**. An enrolled member of a federally recognized Indian tribe who lives on a federally recognized Indian reservation is not taxable on income derived within the reservation. See Rule 033 of these rules. (~~7-1-98~~)(____)

d. Certain income earned by transportation employees covered by Title 49, Sections 11502, 14503 or 40116, United States Code. See Rule 045 of these rules. (7-1-99)

04. Military Pay. Subtract qualified military pay included in Idaho total income earned for military service performed outside Idaho. Qualified military pay means all compensation paid by the United States for services performed while on active duty as a full-time member of the United States Armed Forces which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more. A nonresident does not include his military pay in Idaho total income and, therefore, makes no adjustment. See Rule 032 of these rules for information regarding the residency status of members of the United States Armed Forces. (3-15-02)

05. Social Security And Railroad Retirement Benefits. Subtract social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code, to the extent the benefits are included in Idaho total income. See Subsections 121.04.a. and 121.04.b. of these rules. (3-15-02)

06. Household And Dependent Care Expenses. Subtract the allowable portion of household and dependent care expenses that meets the requirements of Section 63-3022D, Idaho Code, if incurred to enable the taxpayer to be gainfully employed in Idaho. To determine the allowable portion of household and dependent care expenses, calculate a percentage by dividing Idaho earned income by total earned income. Multiply the qualified expenses by the percentage. Earned income is defined in Section 32(c)(2), Internal Revenue Code. (3-20-97)

07. Insulation And Alternative Energy Device Expenses. Subtract expenses related to the installation of insulation or alternative energy devices that meet the requirements of Section 63-3022B or 63-3022C, Idaho Code. (3-20-97)

08. Deduction For Dependents Sixty-Five Or Older Or With Developmental Disabilities. Subtract one thousand dollars (\$1,000) for each person who meets the requirements of Section 63-3022E, Idaho Code. The deduction may be claimed for no more than three (3) qualifying dependents. If a dependent has not lived in the maintained household for the entire taxable year, the allowable deduction is eighty-three dollars (\$83) for each month the dependent resided in the maintained household during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. (3-20-97)

09. Adoption Expenses. Subtract the allowable portion of adoption expenses that meets the requirements of Section 63-3022I, Idaho Code. To determine the allowable portion, calculate a percentage by dividing Idaho total income by total income. Multiply the deduction allowable pursuant to Section 63-3022I, Idaho Code, by the percentage. (3-15-02)

10. Capital Gains Deduction. Subtract the Idaho capital gains deduction allowed by Section 63-3022H, Idaho Code. (3-20-97)

11. Idaho Medical Savings Account. (7-1-98)

a. Subtract contributions to an Idaho medical savings account that meet the requirements of Section 63-3022K, Idaho Code. (7-1-98)

b. Subtract interest earned on an Idaho medical savings account to the extent included in Idaho total income. (3-15-02)

12. Technological Equipment Donation. Subtract donations of technological equipment allowed by Section 63-3022J, Idaho Code. See Rule 180 of these rules. (3-20-97)

13. Worker's Compensation Insurance. As allowed by Section 63-3022(m), Idaho Code, a self-employed individual may subtract the premiums paid for worker's compensation for coverage in Idaho to the extent not previously subtracted in computing Idaho taxable income. (3-30-01)

14. Idaho College Savings Program. Subtract the contributions to a college savings program that meet the requirements of Section 63-3022(n), Idaho Code. (3-15-02)

15. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. To determine the allowable portion of the deduction for certain retirement benefits, calculate a percentage by dividing the qualified retirement benefits included in Idaho gross income by the qualified retirement benefits included in federal gross income. Multiply the deduction allowable pursuant to Section 63-3022A, Idaho Code, and Rule 130 of these rules, by the percentage. (3-30-01)

16. Health Insurance Costs. Subtract the allowable portion of the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care as defined in Section 63-3022P, Idaho Code, for the taxpayer, spouse or dependents of the taxpayer not otherwise deducted or ~~excluded~~ accounted for by the taxpayer for Idaho income tax purposes. To determine the allowable portion of the amounts paid for medical care insurance, calculate a percentage by dividing Idaho total income by total income. Multiply the deduction allowable pursuant to Section 63-3022P, Idaho Code, by the percentage. ~~See Rule 193 of these rules.~~ ~~(3-15-02)~~(____)

17. Long-Term Care Insurance. As provided in Section ~~63-3022Q~~ ~~63-3022P~~, Idaho Code, a deduction from taxable income is allowed for the allowable portion of premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer that have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. To determine the allowable portion, calculate a percentage by dividing Idaho total income by total income. Multiply the deduction allowable pursuant to Section ~~63-3022Q~~ ~~63-3022P~~, Idaho Code, by the percentage. ~~(3-15-02)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

580. SPECIAL RULES -- SPECIAL INDUSTRIES (Rule 580).
Section 63-3027(s), Idaho Code. (3-20-97)

01. Adoption Of MTC Special Industry Regulations. This rule incorporates by reference the MTC special industry regulations ~~found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," October, 2000 Edition, published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20007 as adopted in Subsection 006.01 of these rules (Rule 006).~~ Copies of the MTC special industry regulations may also be obtained from the main office of the Idaho State Tax Commission. The following special industries shall apportion income in accordance with the applicable MTC regulation: ~~(3-15-02)~~(____)

a. Construction Contractors. The apportionment of income derived by a long-term construction contractor shall be computed in accordance with MTC Regulation IV.18.(d). as adopted July 10, 1980; (3-20-97)

b. Airlines. The apportionment of income derived by an airline shall be computed in accordance with MTC Regulation IV.18.(e). as adopted July 14, 1983; (3-20-97)

c. Railroads. The apportionment of income derived by a railroad shall be computed in accordance with MTC Regulation IV.18.(f). as adopted July 16, 1981; (3-20-97)

d. Trucking Companies. The apportionment of income derived by motor common carriers, motor contract carriers, or express carriers that primarily transport tangible personal property of others shall be computed in accordance with MTC Regulation IV.18.(g). as amended July 27, 1989, for taxable years beginning on or after January 1, 1997. (7-1-98)

e. Television and Radio Broadcasting. The apportionment of income derived from television and radio broadcasting shall be computed in accordance with MTC Regulation IV.18.(h). as amended April 25, 1996, for taxable years beginning on or after January 1, 1995. (3-20-97)

f. Publishing. The apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material shall be computed in accordance with MTC Regulation IV.18.(j). as adopted July 30, 1993, for taxable years beginning on or after January 1, 1995. (3-20-97)

g. Financial Institutions. See Rule 582 of these rules for the apportionment of income by a financial institution for taxable years beginning on or after January 1, 1998. (7-1-98)

02. References. See Rule 581 of these rules for the applicability of references used in the MTC special industry regulations and the calculation of the apportionment percentage. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

582. SPECIAL RULES -- FINANCIAL INSTITUTIONS (Rule 582).

Section 63-3027(s), Idaho Code.

(7-1-98)

01. Adoption Of MTC Recommended Formula For The Apportionment And Allocation Of Net Income Of Financial Institutions. This rule incorporates by reference the MTC "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" as adopted ~~November 17, 1994, and found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendation to the States," October, 2000 July 27, 2001 Edition, published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001~~ in Subsection 006.02 of these rules (Rule 006). A copy of this regulation may be obtained from the main office of the Idaho State Tax Commission. (~~3-15-02~~)()

02. Definition Of Financial Institution. For purposes of Section 2(h) of the "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" the term financial institution means a person that predominantly deals in money or moneyed capital in substantial competition with the business of national banks. For purposes of this rule, the following definitions apply: (7-1-99)

a. Predominantly means over fifty percent (50%) of a taxpayer's gross income is attributable to dealings in money or moneyed capital in substantial competition with the business of national banks. Generally, the determination of predominance will be made based upon the division of gross income for the year in issue. However, the classification of a taxpayer as a financial institution or as a nonfinancial institution will not be changed based upon an occasional year in which its gross income does or does not exceed the fifty percent (50%) level. For the classification of a taxpayer as a financial or nonfinancial institution to be changed, there must be a shift in the predominant character of the gross income for two (2) consecutive years and the average of the corporation's gross income in the current and the immediately preceding two (2) years must fail or satisfy the predominance test. If substantial amounts of gross income arise from an incidental or occasional sale of an asset of the taxpayer, such gross income shall be excluded for purposes of this subsection. For example, gross income from the sale of a headquarters building shall be excluded. (7-1-98)

b. Deals in means conducting transactions in the course of a trade or business on its own account as

opposed to brokering the capital of others. (7-1-98)

c. Money or moneyed capital includes, but is not limited to, coin, cash, currency, mortgages, deeds of trust, conditional sales contracts, loans, commercial paper, installment notes, credit cards, and accounts receivable. (7-1-98)

d. In substantial competition means that a corporation and national banks both engage in seeking and securing in the same locality capital investment of the same class which are substantial in amount, even though the terms and conditions of the business transactions of the same class are not identical. It does not mean there must be competition as to all phases of the business of national banks, or competition as to all types of loans or all possible borrowers. The activities of a corporation need not be identical to those performed by a national bank in order to constitute substantial competition; It is sufficient if there is competition with some, but not all, bases of the business of national banks, or capital is invested in particular operations or investments like those of national banks. (7-1-98)

03. Entities Presumed To Be Financial Institutions. The following entities are presumed to be financial institutions as defined in Subsection 582.02: (7-1-98)

a. Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended; (7-1-98)

b. A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, Title 12, Sections 21 et seq., United States Code; (7-1-98)

c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, Title 12, Section 1813(b)(1), United States Code; (7-1-98)

d. Any bank or thrift institution incorporated or organized under the laws of any state; (7-1-98)

e. Any corporation organized under the provisions of Title 12, Sections 611 to 631, United States Code; (7-1-98)

f. Any agency or branch of a foreign depository as defined in Title 12, Section 3101, United States Code; (7-1-98)

g. Any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in Subsections 582.03.a. through 582.03.f. other than an insurance company exempted from tax by Section 41-405, Idaho Code; and (7-1-98)

h. A corporation or other business entity that, in the current tax year and immediately preceding two (2) tax years, derived more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a finance lease shall mean any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. (7-1-98)

04. Exclusion From Rule. The Tax Commission is authorized to exclude any person from the application of Subsection 582.01 upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in Subsections 582.03.a. through 582.03.f. and 582.03.h. (7-1-98)

05. Financial Institutions Described In Section 63-3023(b), Idaho Code. (7-1-99)

a. Transacting business. If an entity described in Section 63-3023(b), Idaho Code, does not maintain an office within Idaho and carries on only the activities listed in Section 63-3023(b)(1) through (4), Idaho Code, it is not deemed to be transacting business within Idaho. The fact that the entity is also a financial institution as defined in

this rule will not change the result of Section 63-3023(b), Idaho Code. (7-1-99)

b. Calculation of apportionment factor attributes. A financial institution described in Section 63-3023(b), Idaho Code, that is a member of a unitary group of corporations with at least one member subject to Idaho income tax, shall include its property, payroll, and sales amounts in the denominators of the unitary group's factors. The calculation of the amount included in the denominators shall be computed as provided in the MTC Recommended Formula for Financial Institutions. Because such a financial institution is not deemed to be transacting business within Idaho, the financial institution will have zero (0) for its Idaho numerators of the apportionment factors and will not have an Idaho corporate income tax liability. A financial institution that is transacting business within Idaho shall compute its Idaho numerator and denominator amounts as provided in the MTC Recommended Formula for Financial Institutions. (7-1-99)

06. Act Defined. For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references to [Act] in the MTC Recommended Formula for Financial Institutions refers to the Idaho Income Tax Act. (7-1-99)

07. The Apportionment Percentage. References in Section 1(b) of the MTC Recommended Formula for Financial Institutions to the computation of the apportionment percentage being determined by adding the taxpayer's receipts factor, property factor, and payroll factor together and dividing the sum by three (3) shall be replaced with adding two (2) times the taxpayer's sales factor, the taxpayer's property factor, and the taxpayer's payroll factor together and dividing the sum by four (4) as required by Section 63-3027(i), Idaho Code. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

~~717. IDAHO INVESTMENT TAX CREDIT -- REPLACEMENT PROPERTY (Rule 717).
Section 63-3029B, Idaho Code. (3-20-97)~~

~~1995- 01. In General. The replacement property provisions apply to property acquired prior to January 1, 1995. (3-20-97)~~

~~02. Replacement Property Defined. Replacement property means property that: (7-1-98)~~

~~a. Is newly acquired, constructed, reconstructed, erected or placed into service; and (7-1-98)~~

~~b. Performs the same or similar functions as the property being replaced. (7-1-98)~~

~~03. Technical Obsolescence. Replacement property is presumed to have been acquired, constructed, reconstructed, erected or placed into service for reasons other than technical obsolescence. The taxpayer claiming the credit for replacement property shall have the burden of proving that the replacement property was acquired, constructed, reconstructed, erected, or placed into service only for reasons of technical obsolescence of existing property or property previously used in the taxpayer's trade or business. If any other reason for purchasing an asset exists, such as the need to replace worn out equipment, normal replacement cycles, relocations, etc., the property does not qualify. (3-20-97)~~

~~7187. -- 719. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

745. CREDIT FOR QUALIFYING NEW EMPLOYEES -- REVENUE-PRODUCING ENTERPRISE (Rule 745).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2000 and after 2001. (3-15-02)(____)

01. In General. A revenue-producing enterprise means an Idaho business that begins with a natural resource and produces, assembles, fabricates, manufactures, or processes a value-added product. A revenue-producing enterprise includes a business that conducts or is engaged in the following: (3-30-01)

- a.** Farming activities identified in Section 464, Internal Revenue Code, that result in a value-added product; (3-30-01)
- b.** Mining; (3-30-01)
- c.** Logging; (3-30-01)
- d.** Extracting a natural resource. (3-30-01)

02. Nonqualifying Activities. Examples of businesses that do not qualify as a revenue-producing enterprise include a business performing the following activities: (3-30-01)

- a.** Retail sales; (3-30-01)
- b.** Professional or managerial services; (3-30-01)
- c.** Repair services or other service related activities; (3-30-01)
- d.** The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing; (3-30-01)
- e.** The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining, or manufacturing; (3-30-01)
- f.** Transportation activities, unless they are an integral part of a qualifying activity; (3-30-01)
- g.** Activities that consume a natural resource in a process, but do not add value to the natural resource. (3-30-01)

03. Examples. (3-30-01)

a. A taxpayer's Idaho business included buying wool in raw form, processing the wool into yarn, and using the yarn to manufacture articles of clothing. The taxpayer's business activity qualifies as a revenue-producing enterprise. (3-30-01)

b. A taxpayer's Idaho business includes buying the yarn to manufacture articles of clothing. The taxpayer's activity does not qualify as a revenue-producing enterprise due to the fact the taxpayer did not begin with a natural resource. (3-30-01)

c. A taxpayer's Idaho business includes cutting lumber in a forest, transporting the logs to a sawmill, processing the logs into plywood, and selling the plywood to a furniture manufacturer. The taxpayer's cutting, transporting and processing activities qualify as a revenue-producing enterprise. The selling activity does not qualify. (3-30-01)

d. A taxpayer's Idaho business includes buying plywood to manufacture furniture. The taxpayer's activity does not qualify as a revenue-producing enterprise due to the fact the taxpayer did not begin with a natural resource. (3-30-01)

e. A taxpayer's Idaho business includes training horses. Because the Idaho business does not result in a value-added product, but rather provides a service, the taxpayer's business activity does not qualify as a revenue-producing enterprise. (3-30-01)

f. A taxpayer's Idaho business includes using water in a process to produce electricity. Because the

Idaho business does not begin with a natural resource that is made into a value-added product, but rather uses the natural resource in a process, the taxpayer's Idaho business activity does not qualify as a revenue-producing enterprise. (3-30-01)

g. A taxpayer's Idaho business includes growing potatoes and operating a long-haul trucking business unrelated to the potato operations. Only the portion of the Idaho business involved in activities necessary to the growing of potatoes qualifies as a revenue-producing enterprise. (3-30-01)

04. Multiple Activities. (3-30-01)

a. If a taxpayer is engaged in both a revenue-producing enterprise and other activities, and at least fifty percent (50%) of the taxpayer's total Idaho employees are performing personal services in the revenue-producing enterprise, the taxpayer may treat the entire Idaho business as a revenue-producing enterprise. (3-30-01)

b. If a taxpayer is engaged in both a revenue-producing enterprise and other activities, and less than fifty percent (50%) of the taxpayer's total Idaho employees are performing personal services in the revenue-producing enterprise, the taxpayer must calculate qualifying new employees and the net income limitation based on that portion of the Idaho business that qualifies as a revenue-producing enterprise. (3-30-01)

05. Seasonal Or New Business. An individual employed in a seasonal or new business that was in operation during the taxable year for less than nine (9) months does not qualify as a new employee. (3-30-01)

06. Unitary Taxpayers. The activities of a taxpayer that qualify as a revenue-producing enterprise shall be determined separately for each corporation that is a member of the unitary group. (3-30-01)

746. CREDIT FOR QUALIFYING NEW EMPLOYEES -- CALCULATIONS USED TO DETERMINE THE CREDIT AND CREDIT CARRYOVER (Rule 746).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2000 and after 2001.
(3-15-02)(____)

01. In General. The number of new employees is used to compute the credit earned in the taxable year. To compute the credit for qualifying new employees, the taxpayer shall first calculate the number of employees in the revenue-producing enterprise. (3-30-01)

02. Calculating Number Of Employees. (3-30-01)

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Section 63-3029E(1)(a), Idaho Code, are included when computing the number of employees for a taxable year. (3-30-01)

b. Idaho Department of Labor Reports. The taxpayer should begin with his Idaho Department of Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (3-30-01)

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (3-30-01)

03. Calculating The Number Of New Employees. (3-30-01)

a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (3-30-01)

i. The number of employees for the prior taxable year; or (3-30-01)

ii. The average of the number of employees for the three (3) prior taxable years. (3-30-01)

b. If the taxpayer treats the entire business as a revenue-producing enterprise under Subsection 745.04.a. of these rules, the calculations in Subsections 746.03.i. and 746.03.ii. shall be made on a consistent basis.

The number of employees for the prior taxable year and the average for the three (3) prior taxable years shall be made presuming the entire business was a revenue-producing enterprise for those years. (3-30-01)

04. Computing The Credit Earned. The number of new employees shall be rounded to the nearest tenth (.1) and must equal or exceed one (1) or no credit is earned. The credit earned is the lesser of the following: (3-30-01)

a. The number of new employees multiplied by five hundred dollars (\$500); or (3-30-01)

b. The net income of the revenue-producing enterprise, as determined pursuant to Rule 747 of these rules, multiplied by three and one-quarter percent (3.25%). (3-30-01)

05. Limitations. This credit and all other credits may not exceed forty-five percent (45%) of the income tax liability in the year earned or claimed. The credit for taxes paid to other states, grocery credit, and the credit for maintaining a home for a family member age sixty-five (65) or older or developmentally disabled dependents are not subject to this limitation. See Section 63-3029H, Idaho Code, and Rule 799 of these rules for the priority order of credits. (3-15-02)

06. Carryover. To claim the carryover, the taxpayer must maintain the employment level on which the credit was computed during the three (3) succeeding taxable years to which the unused credit is carried. If the employment level that generated the credit decreases, the taxpayer is not required to recapture the credit claimed in previous taxable years. However, the taxpayer shall recompute the credit based on the reduced employment level to determine the correct amount of carryover. (3-30-01)

07. Pass-Through Entities. See Rule 785 of these rules for pass-through entities and the calculation of credits. (3-15-02)

08. Unitary Taxpayers. (3-30-01)

a. A corporation may not use the credit for qualifying new employees earned by another member of the unitary group. See Rule 365 of these rules. (3-30-01)

b. Each corporation in a unitary group that claims the credit for qualifying new employees is subject to Section 63-3029H, Idaho Code, and Rule 799 of these rules for the priority order of credits. (3-15-02)

747. CREDIT FOR QUALIFYING NEW EMPLOYEES -- NET INCOME OF A REVENUE-PRODUCING ENTERPRISE (Rule 747).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2000 and after 2001.
(3-15-02)(_____)

01. Entire Idaho Business Qualifies As A Revenue-Producing Enterprise. If the entire Idaho business qualifies as a revenue-producing enterprise or the taxpayer treats the entire business as a revenue-producing enterprise under Subsection 745.04.a. of these rules, the net income shall be calculated as follows: (3-30-01)

a. Proprietorships. The amount of income from Idaho activities that is reported as net profit or net loss on Schedule C or Schedule F. (3-30-01)

b. C Corporations. The amount of Idaho taxable income, reported on Idaho Form 41, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-30-01)

c. S Corporations. The amount of Idaho taxable income reported on Idaho Form 41S, modified to restore the deduction of income reported by shareholders on their Idaho income tax returns and before addition of compensation or income attributable to individual shareholders who do not report this income on Idaho income tax returns. (3-30-01)

d. Partnerships. The amount of Idaho taxable income reported on Idaho Form 65, modified to restore

the deduction of income reported by partners on their Idaho income tax returns and before addition of compensation or income attributable to individual partners who do not report this income on Idaho income tax returns. (3-30-01)

02. Idaho Business With Multiple Activities. (3-30-01)

a. If the Idaho business has multiple activities resulting in only a portion of the business qualifying as a revenue-producing enterprise, and the taxpayer does not treat the entire business as a revenue-producing enterprise under Subsection 745.04.a. of these rules, the net income shall be calculated for the portion of the Idaho business that qualifies as a revenue-producing enterprise based on the number of employees in the revenue-producing enterprise compared to the number of employees in the entire business. The number of employees in the revenue-producing enterprise shall be calculated in accordance with Subsection 746.02 of these rules. (3-30-01)

b. If the calculation of net income in Subsection 747.02.a. does not fairly represent the net income of the revenue-producing enterprise, the taxpayer may propose or the Tax Commission may require an alternative method. (3-30-01)

03. Unitary Taxpayers. Each corporation included in a unitary combined group shall use its Idaho taxable income as determined pursuant to Section 63-3027, Idaho Code, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-30-01)

748. CREDIT FOR QUALIFYING NEW EMPLOYEES -- ~~DOCUMENTATION~~ RECORD-KEEPING REQUIREMENTS (Rule 748).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2000 and after 2001. (3-15-02)(____)

01. Adequate Records Information Required. ~~The~~ Each taxpayer must ~~maintain adequate~~ retain and make available, on request, records to document the credit earned or claimed, ~~including~~ The records must include all of the following: (3-30-01)(____)

a. The Employer Quarterly Unemployment Insurance Tax Reports and the Unemployment Insurance Wage Reports filed with the Idaho Department of Labor ~~reports~~; (3-30-01)(____)

b. Payroll records and reports documenting length of employment and hours worked; (____)

b.c. The computation of the number of qualifying new employees; (3-30-01)

e.d. The qualification as a revenue-producing enterprise; (3-30-01)

d.e. The computation of the credit; (3-30-01)

e.f. The computation of net income; (3-30-01)

f.g. The continued maintenance of adequate employment levels into carryover years; and (3-30-01)

g.h. The computation of any carryovers. (3-30-01)

02. Records Retention. ~~These records must be maintained for as long as the credit may be carried over or until further assessments or deficiency determinations are barred by a period of limitation, whichever is longer.~~ (3-30-01)

032. Failure To Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

758. CREDIT FOR QUALIFYING NEW EMPLOYEES -- RECORD-KEEPING REQUIREMENTS (Rule 758).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001. (3-15-02)

01. Information Required. Each taxpayer must retain and make available, on request, records to document ~~the computation of~~ the credit earned or claimed. The records must include all of the following: (3-15-02)()

a. The Employer Quarterly Unemployment Insurance Tax Reports and the Unemployment Insurance Wage Reports filed with the Idaho Department of Labor ~~reports~~; (3-15-02)()

b. Payroll records and reports documenting length of employment and hours worked; ()

b.c. The computation of the number of qualifying new employees; (3-15-02)

ed. The computation of the credit; (3-15-02)

de. The computation of net income; (3-15-02)

ef. The continued maintenance of adequate employment levels into carryover years; and (3-15-02)

fg. The computation of any carryovers. (3-15-02)

02. Records Retention. ~~Any records used in the computation of the credit must be maintained for as long as the credit may be carried over or until further assessments or deficiency determinations are barred by a period of limitation, whichever is longer.~~ (3-15-02)

032. Failure To Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

792. TRANSFER OF CREDIT -- POSTING BOND (Rule 792).

Section 63-3029J, Idaho Code. (3-15-02)

01. Posting Bond Or Security. ~~Prior to obtaining the written statement from the Tax Commission confirming the amount of credit and the carryover period, the transferor shall post a bond or security as the Tax Commission may require to secure any liability related to the transferred credit. Section 63-3029J, Idaho Code, provides that prior to obtaining the written statement from the Tax Commission that the transferor may transfer the credit, the transferor may be required to secure any liability by posting a bond or security as the Tax Commission may require. The Tax Commission will require the transferor to post a bond or security only if after receiving the request to transfer credit, the Tax commission deems the requirement necessary.~~ (3-15-02)()

02. Waiver Of Bond Or Security. ~~If the Tax Commission requires the transferor to secure the liability by posting a bond or security, the transferor may request that the Tax Commission waive the bond requirement if the taxpayer transferor shows that he is financially responsible. A notice of denial of the bond waiver shall be treated in accordance with Section 63-3045, Idaho Code. A notice of denial of the bond waiver shall be subject to review in accordance with Section 63-3045B, Idaho Code.~~ (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

799. PRIORITY ORDER OF CREDITS (Rule 799).

Section 63-3029HP, Idaho Code. (3-20-97)()

01. Tax Liability. Tax liability is the tax imposed by Sections 63-3024, 63-3025, and 63-3025A, Idaho Code. (3-20-97)

02. Nonrefundable Credits. A nonrefundable credit is allowed only to reduce the tax liability. A nonrefundable credit not absorbed by the tax liability is lost unless the statute authorizing the credit includes a carryover provision. Nonrefundable credits apply against the tax liability in the following order of priority: (3-20-97)

a. Credit for taxes paid to other states as authorized by Section 63-3029, Idaho Code; (3-20-97)

b. For part-year residents only, the grocery credit as authorized by Section 63-3024A, Idaho Code; ()

bc. Credit for contributions to Idaho educational institutions as authorized by Section 63-3029A, Idaho Code; (3-20-97)

ed. Investment tax credit as authorized by Section 63-3029B, Idaho Code; (3-20-97)

de. Credit for contributions to Idaho youth facilities, rehabilitation facilities, and nonprofit substance abuse centers as authorized by Section 63-3029C, Idaho Code; (3-30-01)

ef. Credit for equipment using postconsumer waste or postindustrial waste as authorized by Section 63-3029D, Idaho Code; (3-30-01)

fg. Natural resource conservation credit as authorized by Section 63-3024B, Idaho Code; (3-30-01)

gh. Promoter-sponsored event credit as authorized by Section 63-3620C, Idaho Code; (3-15-02)

hi. Credit for qualifying new employees as authorized by Sections 63-3029E and 63-3029F, Idaho Code; (3-15-02)

ij. Credit for Idaho research activities as authorized by Section 63-3029G, Idaho Code; (3-15-02)

jk. Broadband equipment investment credit as authorized by Section 63-3029I, Idaho Code; and (3-15-02)

kl. Incentive investment tax credit as authorized by Section 63-3029J, Idaho Code. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

815. EXTENSIONS OF TIME (Rule 815).

Section 63-3033, Idaho Code. (3-20-97)

01. Taxpayers Abroad. An extension granted by the Internal Revenue Service when a taxpayer has not yet met either the bona fide resident test or the physical presence test pursuant to Section 911, Internal Revenue Code, but expects to qualify after the two (2) month extension, is accepted as a valid extension for Idaho filing purposes. A copy of the approved federal extension form must accompany the Idaho income tax return. (7-1-99)

02. Individuals In Combat Zone. Section 7508, Internal Revenue Code, applies to individuals who are serving in a combat zone or who are hospitalized as a result of serving in a combat zone. In this case, returns are not due until one hundred eighty (180) days after the period of qualified service or qualified hospitalization, whichever occurs last. (3-20-97)

03. Interest. Interest accrues on the portion of the tax not withheld or paid from the due date until the date the return is filed and the full amount of tax is paid. ~~However, the~~ See Rule 817 of these rules for the exception when extensions are allowed under Section 63-114, Idaho Code. A taxpayer will not receive interest on amounts

withheld or on corporation estimated tax in excess of the actual tax liability. See Section 63-3073, Idaho Code. (7-1-99)()

~~816. -- 819.~~ (RESERVED).

817. EXTENSIONS OF TIME AS DISASTER RELIEF (Rule 817).
Section 63-114, Idaho Code. ()

01. In General. Section 63-114, Idaho Code, allows the Tax Commission to grant an extension of time for up to one (1) year from the due date to file returns or make payments in the following situations: ()

a. When a taxpayer is adversely affected by a disaster declared by the President of the United States or by a governor of a state or territory of the United States: ()

b. When a taxpayer is entitled to an extension under Section 7508A, Internal Revenue Code, due to a Presidentially declared disaster or a terroristic or military action. ()

02. Penalties And Interest. If an extension of time to file a return or pay tax is allowed under Section 63-114, Idaho Code, penalties and interest will not apply during the extension period. If the taxpayer fails to file by the extended due date, penalties as provided under Section 63-3046, Idaho Code, and interest shall apply after the extended due date to the date of payment. ()

~~818. -- 819.~~ (RESERVED).

820. CORPORATE ESTIMATED PAYMENTS -- IN GENERAL (Rule 820).
Section 63-3036A, Idaho Code. (3-20-97)

01. Estimated Tax. The term estimated tax means the corporation's anticipated tax as imposed by this Chapter including the permanent building fund tax, plus any recapture of Idaho ~~investment~~ income tax credits, less the sum of any income tax credits. Estimated payments and non-income tax credits are not included as a credit. (7-1-98)()

02. Computation Of Estimated Payments. (3-20-97)

a. Estimated tax is paid in four (4) payments. Each estimated payment shall be twenty-five percent (25%) of the lesser of the tax required to be reported on the taxpayer's return filed for the preceding taxable year or ninety percent (90%) of the tax required to be paid on the current year's return. (3-20-97)

b. The tax required to be reported on the preceding year's return and the tax required to be paid on the current year's return means Idaho taxable income multiplied by the corporate income tax rate with a minimum of twenty dollars (\$20), plus the permanent building fund tax, plus the recapture of ~~investment~~ income tax credits, less income tax credits excluding estimated payments. (7-1-98)()

c. An estimated payment is not required if an Idaho return was not required for the previous taxable year. (3-20-97)

03. Revised Income Estimate. If, after making one or more estimated payments for a taxable year, a corporation makes a new estimate of its current year income, it shall recompute its estimated tax. If the corporation has paid its new estimated tax in prior estimated payments, no payment is due. (3-20-97)

04. Net Operating Loss Or Capital Loss Carryover. The allowable net operating loss carryover or capital loss carryover shall be deducted from income for the period before the estimated tax is computed. (3-20-97)()

(BREAK IN CONTINUITY OF SECTIONS)

825. CORPORATE ESTIMATED PAYMENTS -- INTEREST ON UNDERPAYMENT (Rule 825). ()
Section 63-3046A, Idaho Code.

01. In General. If a taxpayer is required to pay estimated taxes as provided in Section 63-3036A, Idaho Code, and fails to pay the amount of estimated taxes due, interest shall be due on the underpaid estimated taxes. ()

02. Net Operating Loss And Capital Loss Carrybacks. If the tax due for the taxable year is reduced after the application of a net operating loss carryback or a capital loss carryback, the interest on underpayment of estimated tax shall not be recomputed. ()

8256. -- 829. (RESERVED).

830. INFORMATION RETURNS (Rule 830). (3-20-97)
Section 63-3037, Idaho Code.

01. In General. Information returns are not required to be filed with the Tax Commission except as follows: (3-20-97)

a. Form 1098, Mortgage Interest Statement, if the property was located in Idaho. (4-5-00)

b. Form 1099-A, Acquisition or Abandonment of Secured Property, if the property was located in Idaho. (4-5-00)

c. Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, if the property was located in Idaho or the service was performed in Idaho. (4-5-00)

d. Form 1099-C, Cancellation of Debt, if the secured property was located in Idaho. (4-5-00)

e. Form 1099-MISC, Miscellaneous Income, if it was issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. (4-5-00)

f. Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax was withheld. (4-5-00)

g. Form 1099-S, Proceeds From Real Estate Transactions, if it was issued for transactions related to property located in Idaho. (4-5-00)

h. ~~Form MSA-1, Idaho Medical Savings Accounts.~~ (7-1-98)

i. Form W-2G, Certain Gambling Winnings, if the gambling took place in Idaho. (7-1-98)

02. Submitting Returns. Information returns shall be submitted to the Tax Commission on federal Form 1099 or magnetic media. Taxpayers reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information. (3-20-97)

03. Due Date Of Information Returns. Information returns shall be made on a calendar year basis. The due date is the last day of February, following the close of the calendar year. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

880. CREDITS AND REFUNDS (Rule 880). (3-20-97)
Section 63-3072, Idaho Code.

01. Overpayment. The term overpayment includes: (3-20-97)

- a. A voluntary and unrequested payment greater than an actual tax liability. (3-20-97)
- b. An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)
- c. All amounts erroneously or illegally assessed or collected. (3-20-97)
- d. The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. (3-20-97)
- 02. Timely Claim Required For Refund.** (3-20-97)
- a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period. (3-20-97)
- b. The claim for a credit or refund must be in writing and set forth each legal or factual basis in sufficient detail to inform the Tax Commission of the basis of the claim. The Tax Commission may require a taxpayer to submit a written declaration that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. (3-20-97)
- c. When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund. (3-20-97)
- 03. Amended Returns As Refund Claims.** A properly signed amended tax return shall constitute a claim for refund. The taxpayer must clearly set forth the amount claimed and explain why and how the original return is amended. (3-15-02)
- 04. Closed Issues.** The Tax Commission shall deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination. (3-20-97)
- 05. Limitations On Refunds Of Withholding And Estimated Payments.** The Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. See Section 63-3072(c), Idaho Code. The Tax Commission may not refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. (3-15-02)
- 06. Reduction Or Denial Of Refund Claims.** If the Tax Commission determines that a refund claim is in error, the Tax Commission shall deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission shall give notice of the denial by a Notice of Deficiency in the manner required by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors. (3-20-97)
- 07. Amended Federal Return.** Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer's Idaho return for which an issue is pending on his federal return or return filed with another state, the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution. (7-1-98)
- 08. Combined Reports -- Final Federal Determination And Change Of Filing Method.** If the Idaho period of limitations is open due to a final federal determination, a corporate taxpayer may not adjust its Idaho return to include a previously omitted corporation or to exclude any corporation previously included in a combined report.

(3-20-97)

09. Duplicate Returns. If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer shall submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3072(b), Idaho Code. ()

(BREAK IN CONTINUITY OF SECTIONS)

895. PERIOD OF LIMITATION ON ASSESSMENT AND COLLECTION OF TAX (Rule 895).
Sections 63-3068 and 63-3069A, Idaho Code. (3-30-01)

01. Federal Determination. The additional one (1) year period of limitation provided in Sections 63-3068(f) and 63-3068(j), Idaho Code, does not begin to run if the final federal determination is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. The Internal Revenue Service and other taxing agencies are not representatives of taxpayers. (3-20-97)

02. State Or Territory Determination. The additional one (1) year period of limitation provided in Section 63-3069A(2)(b), Idaho Code, does not begin to run if the final determination of income tax due to another state or territory is delivered to the Tax Commission by someone other than the taxpayer or the taxpayer's representative. Taxing agencies of other states or territories are not representatives of taxpayers. (3-30-01)

03. Protest Of A Notice Of Deficiency. If a taxpayer protests a Notice of Deficiency, the expiration of the period of limitations provided in Section 63-3068, Idaho Code, is suspended. (3-20-97)

04. Waiver Of The Period Of Limitation. If a taxpayer executes a waiver to extend the period of limitation, the waiver shall state the taxpayer's name as shown on the tax return. If a group return is filed, the waiver shall apply to each corporation included in the combined group. (3-20-97)

05. Duplicate Returns. If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer shall submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3072(b), Idaho Code. ()

IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0202

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Sales Tax Rule 048 - Manufactured Homes (Mobile Homes) And Modular Buildings is being amended to clarify sales of used modular buildings are not exempted from tax by Section 63-3622R, Idaho Code.

Sales Tax Rule 085 - Sales To And Purchases By Nonprofit Organizations is being amended to clarify senior citizen centers that qualify for the exemption passed by the 2002 Legislature enacted by HB 494. It also clarifies that a long-term care facility does not qualify for the exemption.

Sales Tax Rule 133 - Radio And Television Broadcast Equipment is being promulgated to clarify that a business qualifying for the exemption in Section 63-3622S, Idaho Code, may produce either radio or television programs. The rule clarifies that cable companies do not produce television programs and would not qualify for the exemption.

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 proposed changes are of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted, 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 October 23, 2002.

DATED this 21st day of August, 2002.

Jim Husted, Tax Policy
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-0202

048. MANUFACTURED HOMES (MOBILE HOMES) AND MODULAR BUILDINGS (Rule 048).

01. New Manufactured Home. When a manufactured home is sold at retail for the first time, it is subject to sales tax on fifty-five percent (55%) of the purchase price. The purchase price of a new manufactured home shall include all component parts. Set up and transportation fees charged by the dealer shall be included in the purchase price. No trade-in allowance is permitted. (7-1-93)

02. ~~New~~ Modular Building. When a modular building is sold at retail ~~for the first time~~, it is subject to sales tax on fifty-five percent (55%) of the purchase price including all component parts. No trade-in allowance is permitted. (~~7-1-93~~)()

03. Used ~~Modular Buildings Or~~ Manufactured Home. ~~A modular building or~~ Only the sale of a new manufactured home is subject to sales tax ~~only once~~. After the ~~unit has been sold at first sale at retail of a~~ manufactured home, any subsequent retail sale of the unit shall be a sale of a used ~~modular building or~~ manufactured home. The sale of a used ~~modular building or~~ manufactured home is exempt from tax, whether or not the original retail sale was subject to sales taxes and without regard to whether the sale is made for use within or without Idaho or whether sold by a dealer. A dealer who sells both new and used ~~modular buildings or~~ manufactured homes must maintain adequate records to establish which sales are taxable and which are exempt for sales tax audit purposes. (~~7-1-93~~)()

04. Sale Of Office Trailer. An office trailer does not qualify as a manufactured home, because it is not designed for use as a dwelling, nor does it qualify as a modular building, because it is not designed to be affixed to real property. When an office trailer is sold at retail, it is subject to sales tax on one hundred percent (100%) of the purchase price, including all furniture, fixtures, and appliances, whether the office trailer is new or used. (7-1-93)

05. Component Parts. Component parts include items incorporated by the manufacturer which remain unchanged at the time of the original retail sale, such as sinks, cabinetry, closet doors, central heating and cooling, garbage disposals, water heaters, and carpeting. Refrigerators, ranges, draperies, and wood burning stoves placed in the unit by the manufacturer are considered to be component parts. (7-1-93)

06. Noncomponent Parts. All fixtures, furniture, furnishings, appliances, and attachments not incorporated as a component part of a new modular building or manufactured home shall be subject to tax separately and distinctly from the sales price of such modular building or manufactured home. Such items shall be separately stated on the sales invoice and tax shall be assessed on the separately stated items on their full retail value. (7-1-93)

07. Repairs. Repairs to or renovations of used modular buildings or manufactured homes are repairs to real property, whether or not the unit is affixed to real property and whether or not the unit is held for resale. Materials used to repair or renovate a used modular building or manufactured home shall be subject to sales tax at the time of purchase or use tax at the time of use. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

085. SALES TO AND PURCHASES BY NONPROFIT ORGANIZATIONS (Rule 085).

01. In General. The Sales Tax Act does not provide any general exemption for, charitable or nonprofit organizations, corporations, associations or other entities. Specific statutory provisions provide exemptions for some charitable organizations. Unless an exemption is clearly granted to a specific organization or to specific sales or purchases by a specific organization or a class of organization, no exemption applies. Special rules apply to religious organizations. See Rule 086 of these rules. (3-6-00)

02. Educational Institutions. Sales to and purchases made by non-profit educational institutions, as defined in Section 63-3622O, Idaho Code, are exempt from Idaho sales or use taxes. (3-6-00)

03. Health Related Entities. Sales to and purchases made by the specific health related entities listed in Section 63-3622O, Idaho Code, are exempt from Idaho sales or use taxes. Health related organizations not named are not entitled to any exemption from sales and use taxes as a health related entity. (3-6-00)

04. Hospitals. In addition to the health related entities listed in Section 63-3622O, Idaho Code, hospitals which are nonprofit institutions licensed for the care of ill persons are exempt. To qualify for the exemption the hospital must be a facility defined in Section 39-1301(a), Idaho Code, and licensed as provided in Chapter 13, Title 39, Idaho Code, or an equivalent law in another state. Hospitals operated for profit do not qualify for this exemption, nor do nursing homes, clinics, doctors' offices, or similar facilities unless the organization qualifies for an exemption under Section 63-3622O, Idaho Code. (3-6-00)

05. Idaho Foodbank Warehouse, Inc. The Idaho Foodbank Warehouse, Inc. is a nonprofit corporation which gathers food and food products at one (1) central location for distribution to food banks throughout Idaho. All sales to, donations to, and purchases by the Idaho Foodbank Warehouse, Inc., are exempt from sales and use taxes. (3-6-00)

a. Example 1: The XYZ Corporation purchases food from a grocer to donate to the Idaho Foodbank Warehouse, Inc. The XYZ Corporation must pay sales tax on the purchase since they are not purchasing the food for resale and no other exemption applies. (3-6-00)

b. Example 2: The Idaho Food Bank Warehouse, Inc. purchases office supplies. No tax is due on the purchase. (3-6-00)

06. Food Banks And Soup Kitchens. Food banks or soup kitchens are nonprofit organizations, other than the Idaho Foodbank Warehouse, Inc., which, as one of their regular activities, furnish food to others without charge. Sales to, donations to, and purchases of food or tangible personal property used by food banks and soup kitchens other than the Idaho Foodbank Warehouse, Inc. to grow, store, prepare, or serve food are exempt from sales and use taxes. However, there is no exemption from the sales tax if goods are purchased with the intent and purpose of donation to a qualified organization. This exemption does not extend to the sale, purchase, or use of licensed motor vehicles by food banks or soup kitchens. (3-6-00)

a. Example 1: A grocer removes food from his inventory of goods held for resale to donate to a food bank or soup kitchen. The grocer is exempt from the use tax on his cost of the inventory donated. (3-6-00)

b. Example 2: The XYZ Corporation purchases food from a grocer to donate to a food bank. The XYZ Corporation is not purchasing the food items for resale, and no other exemption from sales tax applies. Sales tax must be paid on the purchase. (7-1-93)

c. Example 3: A food bank purchases a licensed motor vehicle. The purchase is subject to sales tax because the motor vehicle is not used to grow, prepare, or serve food. (3-6-00)

07. Red Cross. Sales to the American Red Cross are exempted from state sales tax by federal law. (7-1-93)

08. Nonsale Clothiers. Nonprofit organizations, one of whose primary functions is to provide clothing to the needy without charge, may purchase the clothing without paying tax. Only clothing qualifies for the exemption. Other purchases by the organization are taxable. Clothing may also be removed from a resale inventory and donated to these organizations exempt from use tax. However, there is no exemption from the sales tax if goods are purchased with the intent and purpose of donation to a qualified organization. (3-6-00)

a. Example 1: A department store removes clothing from resale merchandise to donate to a nonprofit, nonsale clothier. The store is exempt from the use tax on the cost of the inventory donated. (7-1-93)

b. Example 2: A nonprofit, nonsale clothier purchases clothing and bed sheets from a department store to give to the needy. No tax is due on the clothing, but the store must charge the organization sales tax on the bed sheets. (7-1-93)

09. Exemption Certificate. The organizations listed in this rule may make purchases without paying sales tax to the vendor by completing an exemption certificate. See Rule 128 of these rules. (3-6-00)

10. Literature. The sale, purchase, use, or other consumption of literature, pamphlets, periodicals, tracts, books, tapes, audio CDs, and other literature which is produced in a machine readable format that are both published and sold by an entity qualified under Section 501(c)(3) of the Internal Revenue Code are exempt from the tax if no part of the net earnings benefits any individual or shareholder. (3-6-00)

11. Sales By Nonprofit Organizations. An exemption from sales tax on sales to one of the foregoing entities does not constitute an exemption from the requirements to collect and remit tax when the entity makes taxable sales to purchasers not exempt from tax. When an exempt organization qualifies as a retailer the organization must register with the State Tax Commission, obtain a seller's permit, and collect and remit sales taxes on sales as defined in Section 63-3612, Idaho Code, in the same manner and in accordance with the same statutes and rules which govern all other retailers in the state. There are two (2) exceptions to this rule. (3-6-00)

a. Sales of places to sleep by the Idaho Ronald McDonald house are exempt from sales taxes. (3-6-00)

b. Sales of admissions by an entity qualified under Section 501(c)(3) of the Internal Revenue Code, or by an organization conducting an exempt function defined in Section 527 of the Internal Revenue Code when: (3-6-00)

i. The event is not predominately recreational or commercial; and (3-6-00)

ii. Any entertainment value included in the admission charge is minimal when compared to the charge for admission; and (3-6-00)

iii. Such entity has paid a sales or use tax on taxable purchases or tangible personal property or services consumed during the event. (3-6-00)

12. Senior Citizen Centers. Beginning July 1, 2002, sales to certain senior citizen centers are exempt from sales tax. The definition of "senior citizen center" in Section 63-3622O, Idaho Code, is the same as the definition of a "multipurpose senior center" as defined in the Older Americans Act, Title 42, Section 3002, United States Code. To qualify for the exemption the center must have been granted exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code. Long-term care facilities do not qualify for this exemption. ()

(BREAK IN CONTINUITY OF SECTIONS)

131. -- ~~999~~132. (RESERVED).

133. RADIO AND TELEVISION BROADCAST EQUIPMENT (Rule 133). Sales and purchases of equipment primarily and directly used in the production and broadcasting of radio and television programs are exempt pursuant to Section 63-3622S, Idaho Code. To qualify for the exemption, a business must be primarily devoted to both producing and broadcasting either radio or television programs. Businesses that provide television or radio programs only to paid subscribers are not broadcasters and cannot claim this exemption. ()

134. -- 999. (RESERVED).

IDAPA 35 - STATE TAX COMMISSION

35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-0201

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

Motor Fuels Rule 100 - Use Tax On Gasoline is being deleted because of 2002 legislative changes to Section 63-2421, Idaho Code, as enacted by House Bill 732 which make this rule no longer necessary.

Motor Fuels Rule 115 - When The Gasoline Tax Rate Increases, Use Conversion Factor To Adjust Annual Gaseous Fuels Permit Fees is being amended to update code references enacted by the 2002 Legislature. House Bill 732 moved the imposition of the tax on gasoline from Section 63-2405, Idaho Code, to Section 63-2402, Idaho Code. Information that had been in paragraph form has been placed in a table to make it easier to understand.

Motor Fuels Rule 130 - Distributor's Fuel Tax Reports is being amended to clarify in Section 130.01 how fuel distributors are to report deductions for ethanol and biodiesel.

Motor Fuels Rule 170 - Additional Information is being amended to correct a reference to Sales and Use Tax Rule 075 that was renumbered to Sales and Use Tax Rule 128.

Motor Fuels Rule 200 - Use Tax On Special Fuels is being deleted as no longer necessary because of House Bill 732, passed by the 2002 Legislature which amended Section 63-2421, Idaho Code.

Motor Fuels Rule 230 - Special Fuels Subject To Use Tax Reporting is being amended because of 2002 legislative changes to Section 63-2421, Idaho Code, in House Bill 732 that combined the fuel use tax reporting for gasoline and special fuels under motor fuels.

Motor Fuels Rule 250 - Refund Claims--Reporting is being amended to add a subsection to make consumers aware of the statute of limitations found in Section 63-2410(5)(c), Idaho Code, for filing fuel tax refund claims.

Motor Fuels Rule 280 - Nontaxable Uses Of Motor Fuels is being amended to change the term "IFTA carriers" to "IFTA licensee" in Subsection 280.01 because not all IFTA licensees are carriers. Subsections 280.02 and 280.03 are being deleted because Sections 63-2410 and 63-2423, Idaho Code, are clear and need no clarification in rule. A statement has been added to clarify that IFTA licensees must claim IFTA nontaxable miles on their IFTA return.

Motor Fuels Rule 510 - Application And Reporting Of The Petroleum Transfer Fee is being amended in Subsection 510.07 regarding reporting requirements because of 2002 legislation that moved the imposition of the tax on gasoline from Section 63-2405, Idaho Code, to Section 63-2402, Idaho Code, and deleted Section 63-2416, 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 proposed changes are of a simple nature.

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

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 October 23, 2002.

DATED this 21st day of August, 2002.

Randy Nilson, Tax Policy
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0105-0201

~~100. USE TAX ON GASOLINE (Rule 100).~~

~~**01. Use Tax.** The tax imposed by Section 63-2402, Idaho Code, is a use tax complementary to the principal tax imposed by Section 63-2405, Idaho Code. It does not apply to any gasoline upon which the tax has already been paid by a licensed distributor. The tax shall be paid by the user filing with the State Tax Commission a report of the number of gallons used that are subject to this tax and by remitting the amount of tax due under this section. (3-30-01)~~

~~**02. Reporting.** The report shall be made on forms prescribed by the State Tax Commission and may be attached to the taxpayer's Idaho income tax return, if such return is required. The amount of fuels tax due on gasoline will be offset against any refund due from other motor fuels taxes or income tax refund shown on the return. If a person is not required to file an Idaho income tax return, and is subject to the tax imposed by Section 63-2402, Idaho Code, the tax shall be reported annually, on a calendar year basis, in the manner and form required by the State Tax Commission. (3-30-01)~~

~~**03. Due Date.** The use tax due for each calendar year shall be due on or before April 15 of the immediately succeeding calendar year. A person may pay any fuels tax due by filing Form 75 annually or for any time period that is not less than one (1) month. (3-30-01)~~

~~**101. -- 104. (RESERVED).**~~

(BREAK IN CONTINUITY OF SECTIONS)

115. WHEN THE GASOLINE TAX RATE INCREASES, USE CONVERSION FACTOR TO ADJUST ANNUAL GASEOUS FUELS PERMIT FEES (Rule 115).

~~**01. Gasoline Tax Rate Increase Conversion Factors.** When the gasoline tax rate increases, the following conversion factors for each vehicle weight class should be multiplied by the new tax rate for gasoline found in Idaho Code, Section 63-2405, Idaho Code, and rounded to nearest dollar to adjust the annual gaseous fuels permit fees. (7-1-97)(____)~~

~~**a.** A conversion factor of two hundred thirty eight (238) for vehicles weighing zero (0) to eight thousand (8,000) lbs. (7-1-97)~~

b. A conversion factor of three hundred fifty-seven (357) for vehicles weighing eight thousand and one (8,001) to sixteen thousand (16,000) lbs. (7-1-97)

c. A conversion factor of seven hundred fourteen (714) for vehicles weighing sixteen thousand and one (16,001) to twenty six thousand (26,000) lbs. (7-1-97)

d. A conversion factor of eight hundred thirty-three (833) for vehicles weighing twenty six thousand and one (26,001) lbs. and above. (7-1-97)

<u>VEHICLE WEIGHT</u>	<u>CONVERSION FACTOR</u>
<u>Zero (0) to eight thousand (8,000) lbs</u>	<u>Two hundred thirty-eight (238)</u>
<u>Eight thousand and one (8,001) to sixteen thousand (16,000) lbs</u>	<u>Three hundred fifty-seven (357)</u>
<u>Sixteen thousand and one (16,001) to twenty-six thousand (26,000) lbs</u>	<u>Seven hundred fourteen (714)</u>
<u>Twenty-six thousand and one (26,001) and above</u>	<u>Eight hundred thirty-three (833)</u>

()

(BREAK IN CONTINUITY OF SECTIONS)

130. DISTRIBUTOR'S FUEL TAX REPORTS (Rule 130).

01. Monthly Reports. Every licensed distributor shall file with the State Tax Commission a monthly tax report and supporting detailed schedules on forms prescribed by the State Tax Commission. The distributor must keep detailed inventory records. All reports which require the reporting of the number of gallons of motor fuels and other petroleum products shall be stated in gross gallons. With respect to the quantity of motor fuels and other petroleum products received during the month, the distributor shall include a listing of each person from inside and/or outside Idaho supplying motor fuels and petroleum products to the distributor during the month and the number of gallons supplied by each supplier, on a load by load basis. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the State Tax Commission may require: (3-30-01)

- a.** The beginning inventory of motor fuels and other petroleum products on the first day of the month; (7-1-98)
- b.** The total quantity of motor fuels and other petroleum products received during the month; (7-1-98)
- c.** The total quantity of motor fuels and other petroleum products disbursed to licensed distributors tax not collected or exported, and motor fuel sold to the Idaho National Guard during the month; (3-30-01)
- d.** The total quantity of motor fuels and other petroleum products transferred or relabeled from one (1) fuel type to another; (7-1-98)
- e.** The casualty loss documented with satisfactory written explanation of proof of loss; (7-1-98)
- f.** The ending inventory of motor fuels and other petroleum products on the last day of the month; (7-1-98)
- g.** The gross taxable gallons of motor fuels and other petroleum products; (7-1-98)
- h.** The tax-paid purchases; (7-1-98)

- i. The net taxable gallons; (7-1-98)
- j. The gallons of ethanol and biodiesel reported in ethanol and biodiesel blends. ()
- ~~j~~k. The gallons after deduction of a one percent (1%) or two percent (2%) allowance, whichever is appropriate. See Rule 140 of these rules; (7-1-99)
- ~~k~~l. The tax computation; (7-1-98)
- ~~l~~m. The bad debt amounts, refer to Rule 140 of these rules; (7-1-98)
- ~~m~~n. The gaseous fuels permit fees; (7-1-98)
- ~~n~~o. The net tax due; (7-1-98)
- 02. Report Due And Payment Required.** The report shall be due on or before the last day of the month following the month to which the report relates. Supporting detailed schedules required by the State Tax Commission must accompany the report, together with all documentation and the payment of any tax, transfer fee, penalty or interest due. See Rule 010 of these rules relating to method of payment and requirement for payments of one hundred thousand dollars (\$100,000) or more. (7-1-99)
- 03. Machine Tabulated Data.** Machine tabulated data will be accepted in lieu of detailed schedules on State Tax Commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the State Tax Commission with a copy of the format and must be granted written authorization to use that format. (7-1-98)
- 04. Supplemental Reports.** In addition to the monthly report, a supplemental report may be filed in those cases involving additional shipments of motor fuels and other petroleum products to the distributor. The supplemental report may be filed only when the distributor is diligent in reporting shipments in the monthly report. Only shipments received within the last five (5) days of the month may be reported in a supplemental report. Shipments received before that date will be subject to penalty if reported in the supplemental report. If a supplemental report is filed, the State Tax Commission will impose interest, but the report will not be subject to penalty. The supplemental report must be postmarked on or before the tenth day of the month following the month in which a report from which shipments were omitted was due. (7-1-98)
- 05. Timely Reporting.** Any petroleum product shipments that are: (7-1-98)
- a. Reported on a timely supplemental report shall be subject to interest but are not subject to penalty. (7-1-98)
- b. Not reported on a timely monthly or supplemental report shall be subject to interest and may be subject to penalty. (7-1-99)
- 06. Motor Fuels-Receipts.** All gasoline, gasohol, aircraft engine fuel, and undyed diesel fuel received by a distributor are subject to the fuels tax and transfer fee. All receipts of dyed diesel fuel and other petroleum products that are not subject to the special fuels tax are subject to the transfer fee. The special fuels tax is not imposed on gaseous fuels when the fuels are received. Refer to Rule 105 of these rules for the taxation and reporting of gaseous fuels used in motor vehicles. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

170. ADDITIONAL INFORMATION (Rule 170).

- 01. Undyed Diesel Fuel Used For Heating Purposes.** The consumer must apply directly to the State

Tax Commission for a refund of the special fuels taxes paid on purchases of undyed diesel fuel which are used for heating a dwelling or building. The distributor may assist the consumer who is claiming a refund of the special fuels tax from the State Tax Commission by: (7-1-98)

- a. Properly documenting information on the sales invoice; and (7-1-98)
- b. Providing the customer with a Form 75-HF "Heating Fuel Only". (7-1-98)

02. Red-Dyed High-Sulfur Fuel. It is illegal to use red-dyed high-sulfur fuel in the supply tank of a licensed, or required to be licensed, motor vehicle in this state. (7-1-98)

03. Red-Dyed Low-Sulfur Fuel. The Internal Revenue Code does allow certain types of users to purchase tax-exempt red-dyed low-sulfur diesel fuel for use in their vehicles. The use of untaxed low-sulfur red-dyed diesel fuel in motor vehicles may be subject to Idaho's special fuels tax if the motor vehicles are not owned or leased, and operated by the federal government, state of Idaho, or any of its political subdivisions such as a city, county, or fire district. The red-dyed low-sulfur diesel fuel may be used: (7-1-98)

- a. By state and local governments (political subdivisions of the state) for their exclusive use; (7-1-98)
- b. In the engine of a train; (7-1-98)
- c. In a school bus while the bus is engaged in the transportation of students and school employees; (7-1-98)
- d. By a qualified local bus while the bus is engaged in furnishing intracity passenger land transportation for compensation, if the bus is available to the general public, operates along scheduled, regular routes, has a seating capacity of at least twenty (20) adults (not including the driver), and is under contract with, or receiving more than a nominal subsidy from, any state or local government to furnish such transportation; and (7-1-98)
- e. By an intercity bus to furnish, for some level of compensation, passenger transportation that is available to the general public, and the transportation is scheduled and follows regular routes, or the seating capacity of the bus is at least twenty (20) adults (not including the driver). (7-1-98)
- f. The buses identified in Subsections 170.03.d. and 170.03.e. above are available to the general public if the buses are available for hire to more than a limited number of persons, groups, or organizations. (7-1-98)

04. Motor Fuels Exemption From Sales Tax. Any sale of motor fuels by any fuel distributor which is subject to motor fuels tax is exempt from Idaho sales tax under Chapter 36, Title 63, Idaho Code. If fuel, including dyed diesel fuel, is sold without the motor fuels tax, the sale is subject to Idaho state sales tax unless exempted under the Idaho Sales Tax Act and Rules. Sales of fuel delivered into bulk storage tanks, where the motor fuels tax is not charged, are exempt from Idaho sales tax only if the distributor has taken from the purchaser a sales tax exemption certificate in the manner required by IDAPA 35.01.02, "Idaho Sales and Use Tax Administrative Rules," 75 Rule 128. However, if the fuel delivered into a bulk storage tank is used exclusively for home heating purposes, a sales tax exemption certificate is not required. (7-1-98)(____)

(BREAK IN CONTINUITY OF SECTIONS)

~~200. USE TAX ON SPECIAL FUELS (Rule 200).~~

The tax imposed by Section 63-2416, Idaho Code, is a use tax complementary to the principal tax imposed by that section. In the case of special fuels used to operate or propel motor vehicles, which do not display a temporary permit issued by the Idaho Transportation Department or are not licensed under IFTA, or to operate non-commercial motor boats within Idaho, and on which the Idaho special fuels tax was not paid at the time of purchase, the special fuels tax must be paid in the manner provided in Section 63-2421, Idaho Code, and Rule 230 of these rules. Motor vehicles which display a temporary permit shall pay the special fuels tax in the manner provided in Section 63-2439, Idaho Code, and Rule 400 of these rules. Motor vehicles licensed under IFTA shall pay the fuels tax in the manner provided

~~in that agreement.~~

~~(3-15-02)~~

~~2040.~~ -- 229. (RESERVED).

230. SPECIAL MOTOR FUELS SUBJECT TO USE TAX -- REPORTING (Rule 230).

Any person who has purchased tax-exempt ~~special~~ motor fuels and subsequently uses the ~~special~~ motor fuels in a licensed motor vehicle, not subject to Rule 400 of these rules, upon highways in Idaho, shall annually report to the State Tax Commission the amount of ~~special~~ motor fuels tax due. ~~(7-1-98)()~~

01. Reporting. A person who wishes to pay their fuel taxes due more frequently may file Form 75 for any time period that is not less than one (1) month. The report shall be made on forms prescribed by the State Tax Commission and may be made together with the claimant's Idaho income tax return, if such a return is required. The amount of fuels tax due on ~~special~~ motor fuels may be off-set against any refund due from other motor fuels taxes or income taxes. In the case of persons not required to file an income tax return, the amount of ~~special~~ motor fuels tax due or any refund claim shall be filed for a time period of not less than one (1) month on forms provided by the State Tax Commission for that purpose. See Rule 250 of these rules. ~~(7-1-98)()~~

02. Lack Of Records To Compute Fuel Consumption Rate. In the event that the ~~special~~ motor fuels consumer fails to keep sufficiently detailed records to determine ~~special~~ motor fuels consumed by its motor vehicles, the consumption rates found in Subsection 290.01 of these rules shall be presumed to be correct. ~~(3-30-01)()~~

03. Fuel Records. If the ~~special~~ motor fuels consumer fails to keep sufficiently detailed records to determine taxable gallons, all tax-exempt ~~special~~ motor fuels purchased will be subject to the fuels tax unless the number of such gallons placed into the supply tank of the licensed or required to be licensed motor vehicle can be determined. ~~(7-1-98)()~~

231. -- 249. (RESERVED).

250. REFUND CLAIMS -- REPORTING (Rule 250).

01. Refund Claim. Consumers claiming refunds of motor fuels taxes may file the claim together with their Idaho income tax return in the manner required for gasoline tax refunds, under Section 63-2410, Idaho Code, or in the case of claimants not required to file an income tax return, in the manner required by Section 63-2410(5)(b), Idaho Code. ~~(7-1-98)~~

02. Minimum Filing Period For Refund Claims. Any taxpayer entitled to a refund of motor fuels taxes may file a refund claim which covers a time period of not less than one (1) month. ~~(7-1-98)~~

03. Refund May Be Claimed Only By Final Consumer. Refunds of motor fuels taxes may be claimed on Form 75 by the person who purchased and used the motor fuels upon which the tax has been paid and for which a refund may be claimed. In the case of all partnerships and any corporations filing Idaho Form 41S, relating to S Corporations, any refund of motor fuels taxes paid by the partnership or S Corporation must be claimed by the partnership or corporation. The refund may not be applied to the individual returns filed by partners or shareholders. ~~(7-1-98)~~

04. Statute Of Limitations. For limitations of time for consumers to file refund claims for motor fuels taxes, see Section 63-2410(5)(c), Idaho Code. ~~()~~

045. Refund May Be Filed Separately. Refunds of motor fuels taxes are claimed using Form 75 and must be filed by the final purchaser and user of the motor fuels in conjunction with that person's Idaho income tax return or separately as a stand-alone refund claim. ~~(7-1-98)~~

056. Refund Applied To Taxes Due. Any refund due to a consumer will be applied first to any liability due under any law administered by the State Tax Commission, including any liability under IFTA, which is due and unpaid at the time the claim is filed. In addition, no refund will be paid if the claimant has failed to file any tax return required to be filed with the State Tax Commission. Any balance of the refund exceeding taxes due shall be paid as a refund to the entity filing the return. ~~(7-1-98)~~

(BREAK IN CONTINUITY OF SECTIONS)

280. **REFUND TO CONSUMERS FOR NONTAXABLE USES OF MOTOR FUELS (Rule 280).**

~~01. Refunds For Nontaxable Uses Of Motor Fuels Must Be Claimed On Form 75.~~ The Idaho Form 75 must be used to claim a fuels tax refund for all nontaxable uses of Idaho tax-paid motor fuels, except for refunds claimed by IFTA ~~carriers~~ licensees for nontaxable miles which must be claimed on the licensee's IFTA return. (7-1-98)()

~~02. Exempt Uses Of Gasoline. The exempt uses of gasoline include operating stationary engines, commercial motor boats, equipment and vehicles other than motor vehicles.~~ (7-1-98)

~~03. Exempt Uses Of Special Fuels. In general, any use of special fuels is exempt, except propelling or operating a motor vehicle on a highway.~~ (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

510. **APPLICATION AND REPORTING OF THE PETROLEUM TRANSFER FEE (Rule 510).**

01. **Application.** (6-23-94)

a. The Petroleum Transfer Fee applies to the receipt of any petroleum or petroleum product within this state. The amount of the fee is one cent (\$.01) for each gallon of petroleum or petroleum product received. The fee shall be paid by the distributor who receives any petroleum or petroleum product not excluded from the fee, unless the fee has previously been paid on the same petroleum or petroleum product. (7-1-99)

b. The legal incident of the fee is on the distributor required to report it to the State Tax Commission. The fee is not required to be separately stated on any invoice, receipt, or other billing document. A choice to state separately the fee does not change its legal incidence or its nature. (6-23-94)

02. **Receipt Of Petroleum Products.** Receipt of petroleum or petroleum products shall be determined according to Section 63-2403, Idaho Code. (7-1-99)

03. **Exemption To Application Of The Transfer Fee.** The Petroleum Transfer Fee does not apply to petroleum or petroleum products that are: (6-23-94)

a. Returned to the refinery or pipeline terminal. (6-23-94)

b. Exported from this state. No fuel will be considered exported, unless the distributor can prove the export by documentation required by Rule 140 of these rules. (7-1-99)

c. Received by a railroad or railroad corporation or any employee of them. Petroleum or petroleum products sold by a licensed distributor to a railroad or railroad corporation or any employee of them is subject to the Petroleum Transfer Fee unless the petroleum or petroleum products are "received" by the railroad or railroad corporation as defined in Section 63-2403, Idaho Code. The exclusion for railroad employees applies only when the activity relating to the fuel is part of their employment with the railroad or railroad corporation. (7-1-99)

d. Received in retail containers of fifty-five (55) gallons or less or petroleum products to be packaged or repackaged into retail containers of fifty-five (55) gallons or less, if such containers are intended to be transferred to the ultimate consumer of the petroleum or petroleum products. (6-23-94)

04. **Casualty Loss And Shrinkage Not Deductible.** All petroleum and petroleum products received in this state that are not within an exemption or exclusion listed in this rule are subject to the fee, without further

deductions or discounts despite the product's use. The deductions allowed to motor fuel distributors for fuel lost by fire or similar casualty, see Section 63-2407(3), Idaho Code; and the two percent (2%) discount for cost of collection and loss by shrinkage or evaporation, see Section 63-2407(4), Idaho Code; are not deductions applicable to the Petroleum Transfer Fee. (7-1-99)

05. Petroleum And Petroleum Products. The products subject to the Petroleum Transfer Fee are crude oil or any fraction of it that is liquid at a temperature of sixty (60) degrees Fahrenheit and a pressure of fourteen and seven tenths (14 7/10) psi. These products are all products refined from crude oil including but not limited to motor gasoline, alcohol blended fuels, such as gasohol and E-85, including the alcohol content of blended fuel, diesel fuel (#1 - #6), biodiesel, heating oil, aviation fuel, naphtha, naphtha-type jet fuel, kerosene-type jet fuel (JP#1 - #8), motor oil, brake fluid, tractor fuel, distillate fuel oil, stove fuel, unfinished oils, turpentine substitutes, lamp fuel, diesel oils (#1 - #6), engine oils, railroad oils, kerosene, commercial solvents, lubricating oils, fuel oil, boiler fuel, refinery fuel, industrial fuel, bunker fuel, residual fuel oil, road oils, and transmission fluids. (7-1-99)

06. Licensed Distributors And Limited Licenses. Any person holding a distributor's license issued by the State Tax Commission under Section 63-2427A, Idaho Code, is also licensed for the Petroleum Transfer Fee. No additional license is required. Any person who receives any petroleum or petroleum product in this state, but who is not a licensed distributor nor required to obtain a license under Section 63-2427A, Idaho Code, shall apply to the State Tax Commission for a limited license. The limited license is only for reporting the Petroleum Transfer Fee and is not a license for any purpose under Chapter 24, Title 63, Idaho Code. (7-1-99)

07. Reporting Requirements. (6-23-94)

a. Distributors licensed under Section 63-2427A, Idaho Code, shall report and pay the Petroleum Transfer Fee with the distributor's report required by Section 63-2406, Idaho Code. For fuel subject to the taxes imposed by Sections 63-2405~~2~~, and 63-2408 ~~and 63-2416~~, Idaho Code, the Petroleum Transfer Fee shall be included in the report in which the distributor is required to report the tax on the same fuel. (~~7-1-99~~)(____)

b. Persons holding a limited license shall file a monthly report with the State Tax Commission on forms prescribed by the State Tax Commission on or before the last day of the month following the month to which the report relates. (7-1-99)

c. The provisions of Rule 130 of these rules, apply to reports of the Petroleum Transfer Fee. (7-1-99)

08. Payment. (6-23-94)

a. Payment of the fee is due on the due date of the report. For method of payment, including required use of electronic funds transfer, see Rule 010 of these rules. (6-23-94)

b. Any partial payment or collection of amounts shown due or required to be shown due on a distributor's report, plus any additional amount of penalty or interest due, shall be allocated between the motor fuels tax and the Petroleum Transfer Fee in the same proportion that the liability for the tax and the fee bear to the total liability. (6-23-94)

09. Incorporation Of Other Relevant Rules. Section 41-4908, Idaho Code, incorporated by reference various provisions of the Income Tax Act, Chapter 30, Title 63, Idaho Code, to apply to the administration and enforcement of the Petroleum Transfer Fee. For applying and construing those sections as they apply to the Petroleum Transfer Fee, the Administration and Enforcement Rules relating to those sections of the Income Tax Act are adopted as part of these rules, as if set out in full. In addition, Administration and Enforcement Rule 110, (IDAPA 35.02.01.110) relating to requests for declaratory rulings, is adopted as part of these rules, as if set out in full. (7-1-97)

IDAPA 35 - STATE TAX COMMISSION
35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0105-0202
NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Section(s) 63-105, Idaho Code.

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

DATE: Wednesday, October 9, 2002
TIME: 2:00 p.m.
PLACE: Conference Room 1CR5
State Tax Commission
800 Park Blvd. Plaza IV, Boise, ID

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

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

Motor Fuels Rule 292 - Calculation of Refunds for Nontaxable Uses of Motor Fuels in Motor Vehicles is being amended to add a standard power take-off (PTO) or auxiliary engine allowance for concrete pumping trucks and a new subsection to show the requirements for claiming a refund of the special fuels tax for special fuels consumed by a motor vehicle while idling off-highway.

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 proposed changes are of a simple nature.

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

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 October 23, 2002.

DATED this 21st day of August, 2002.

Randy Nilson, Tax Policy
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530
FAX (208) 334-7844

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0105-0202

292. CALCULATION OF REFUNDS FOR NONTAXABLE USES OF MOTOR FUELS IN MOTOR VEHICLES. (RULE 292).

- 01. Fuel Records Required For Refund Claims.** ()
- a.** Special fuels users may be eligible for a fuels tax refund of tax-paid special fuels if their motor vehicles have any combination of the following: ()
- i.** ~~Accrued~~ nontaxable miles; ~~or have~~ ()
- ii.** Operated power take-off (PTO) equipment- or auxiliary engines; or ()
- iii.** Consumed special fuels while idling off-highway. ()
- b.** Gasoline users may be eligible for a gasoline tax refund of tax-paid gasoline if their motor vehicles have an auxiliary engine. ()
- c.** Records must be kept as described in: ()
- i.** Subsection 290.01 of these rules- for intrastate special fuel users; and ~~(4-5-00)~~()
- ii.** Rule 420 of these rules and the International Fuel Tax Agreement (IFTA) Manuals for IFTA licensees. ()
- 02. Motor Fuels Users Not Eligible To Claim Refunds Under This Rule.** The following motor fuel users who operate motor vehicles in Idaho are not eligible for refunds granted in this rule: ()
- a.** Interstate special fuels users whose vehicles: ()
- i.** Have two (2) axles and a gross vehicle weight or registered gross vehicle weight over twenty-six thousand (26,000) pounds; or ()
- ii.** Have three (3) axles or more regardless of weight; or ()
- iii.** Are used in combination, when the weight of such combination is over twenty-six thousand (26,000) pounds gross vehicle weight or registered gross vehicle weight; and ()
- b.** Not licensed under IFTA and based in: ()
- i.** Idaho and registered under the International Registration Plan; or ()
- ii.** Another jurisdiction. ()
- c.** All intrastate motor fuel users who operate motor vehicles that are not registered or required to be registered. This type of refund should be claimed on Form 75 under unlicensed equipment. ()

023. Nontaxable Miles Defined. Nontaxable miles are miles driven on roads which are not open to the public, not maintained by a governmental entity, located on private property that are maintained by the property owner, or defined in Subsection 292.034. Miles driven on a construction site ~~would~~ may also be considered nontaxable miles and may be eligible for a special fuels tax refund. See Rule 130 of these rules regarding application of Idaho Sales and Use Taxes. ~~(4-5-00)~~()

034. Additional Nontaxable Roadways. Roadways defined in Section 63-2401, Idaho Code, include those constructed and maintained by the United States Forest Service, the United States Bureau of Land Management, the Idaho Department of Lands, or forest protective associations with which the state of Idaho has contracted or become a member pursuant to Chapter 1, Title 38, Idaho Code. The special fuels user must maintain

records documenting nontaxable miles traveled on roadways that qualify for exclusion under this provision, unless using the “standard MPG” for its industry found in Subsection 290.02 of these rules. When special fuels users compute their special fuels tax liability or refund, they may exclude from total taxable miles traveled in Idaho the miles traveled on these roadways if the cost of maintaining the roadway pursuant to a contract or permit is primarily borne by them or if the special fuel user is a subcontractor of a prime contractor required by contract to bear the primary cost of maintaining the roadway. (3-15-02)

045. Calculation. Determine the number of taxable miles driven in Idaho following the procedure established in Subsection 290.01 of these rules. Divide this number by the actual MPG, the statutory MPG established by Subsection 290.01 of these rules, or the industry standard MPG provided by Subsection 290.02 of these rules. Subtract this number of gallons from the total Idaho tax-paid gallons purchased for the subject vehicles. (4-5-00)

056. Power-Take-Off And Auxiliary Engine Allowances (Allowances). Power take-off (PTO) allowances are available for special fuels powered vehicles. Auxiliary engine allowances are available for both special fuels and gasoline powered vehicles. ~~(4-5-00)~~()

a. Standard Allowances for Special Fuels. Nontaxable gallons of special fuels may be claimed when special fuels are used for purposes other than to operate or propel a motor vehicle and the fuel is drawn from the main supply tank of the motor vehicle. Examples of uses that qualify for allowances are turning a vehicle-mounted cement mixer or off-loading product. (4-5-00)

b. Standard Allowances for Gasoline. Nontaxable gallons of gasoline may be claimed when gasoline is used in an auxiliary engine and the fuel is drawn from the main supply tank of the licensed motor vehicle. No claim for gasoline is allowed when gasoline is used by the licensed motor vehicle’s main engine even to operate the motor vehicle’s PTO unit. (3-15-02)

c. Rates for Standard Allowances. The number of gallons of fuel actually delivered into the fuel tank of the vehicle may be reduced by the following allowances: (4-5-00)

i. Allowances based on unit quantities:

Allowance Type	Allowance Rates	x	Unit Quantities
Gasoline/fuel oil	0.00015 gallons	x	Gallons pumped
Bulk cement	0.1858 gallons	x	Tons pumped
Refrigeration unit/reefer	0.75 gallons	x	Hours unit operated
Tree length timber/logs	0.0503 gallons	x	Tons Hauled
Tree length timber/logs	3.46 gallons	x	Hours unit operated
Carpet cleaning	0.75 gallons	x	Hours unit operated
<u>Concrete Pumping</u>	<u>0.142857 gallons</u>	<u>x</u>	<u>Yards pumped</u>

~~(3-15-02)~~()

ii. Allowances based on percentages:

Allowance Type	Percentage Per Gallon	x	Gallons Consumed
Concrete mixing	30%	x	Gallons consumed
Garbage compaction	25%	x	Gallons consumed

(3-15-02)

067. Non-Standard Allowances. A request for an allowance not listed in Subsection 292.05 or greater than those listed must be submitted by the taxpayer to the State Tax Commission for approval before being used. Taxpayers must request approval of the proposed allowance in writing with a copy of the supporting calculations used to compute the proposed allowance. Taxpayers must send requests for approval to:

FUELS TAX POLICY
IDAHO STATE TAX COMMISSION
P. O. BOX 36
BOISE, ID 83722-0036410

The Idaho State Tax Commission may request additional information or documentation as needed in order to make a determination on the request. (4-5-00)()

08. Nontaxable Use Of Special Fuels Consumed In A Motor Vehicle While Idling Off-Highway. A refund of the special fuels tax may be claimed for special fuels consumed in a motor vehicle while idling off-highway. ()

a. Section 63-2423, Idaho Code, allows a refund of special fuels consumed for any purpose other than propelling or operating a motor vehicle upon an Idaho highway. Special fuels consumed in highway operations also include special fuels consumed by a motor vehicle while stationary or parked on a highway. Section 63-2401, Idaho Code, states a highway includes every place that is open to the public for the purpose of vehicular travel and is maintained by a governmental agency. Section 63-2401, Idaho Code, includes public roadside facilities (rest stops) that are next to Idaho roads and open to the traveling public for rest and relaxation. A highway does not include locations on private property; some examples are parking lots at truck stops and warehouses. ()

b. To document your nontaxable use of special fuels consumed by a motor vehicle while idling off-highway, the following information must be submitted: ()

i. The electronically recorded date and place for each occurrence of special fuels consumed by a motor vehicle while idling off-highway: ()

ii. The motor vehicle's unit and fleet numbers for each occurrence of special fuels consumed by a motor vehicle while idling off-highway: ()

iii. The motor vehicle's computer or meter readings showing the time when off-highway idling activity started and stopped for each occurrence of special fuels consumed by a motor vehicle while idling off-highway: ()

iv. The motor vehicle's computer or meter readings showing the number of gallons of special fuels consumed during the period of off-highway idling for each occurrence of special fuels consumed by a motor vehicle while idling off-highway: ()

v. The total special fuels consumed while idling off-highway for each motor vehicle for the period of the refund claim; or ()

vi. The total special fuels consumed while idling off-highway for each fleet for the period of the refund claim. ()

c. Assumptions or projections from assumptions cannot be used to document special fuels refund claims for special fuels consumed in a nontaxable manner by a motor vehicle while idling off-highway. ()

079. Nontaxable Gallons Of Fuel Claimed By Non-IFTA Licensees. Refunds of the nontaxable gallons of fuel for non-IFTA licensees should be calculated based on the following criteria: ()

a. The nontaxable gallons of fuel claimed by non-IFTA licensees may be: ()

- i. ~~The allowance gallons listed in Subsections 292.056 and 292.067; and/or~~ ()
- ii. ~~The gallons calculated under Subsection 292.045;~~ ()
- iii. The gallons calculated under Subsection 292.07; or ()
- iv. Any combination of Subsections 292.09.a.i. through 292.09.a.iii. ()

b. Only actual MPGs, computed by adjusting total fuel as defined in Subsection 292.01 of these rules by the allowance gallons, and/or the gallons calculated under Subsection 292.08, may be used to calculate a fuels tax refund ~~based on both that also includes nontaxable miles and allowances.~~ ()

c. Fuels tax refunds based solely on an allowance and/or special fuels consumed while idling off-highway may be calculated without regard to mileage and fuel consumption (MPG) information. ~~(4-5-00)~~()

§810. IFTA Licensees Qualifying For Power Take-Off (PTO) And Auxiliary Engine Allowances (Allowances) And/Or Special Fuels Consumed By A Motor Vehicle While Idling Off-Highway. Allowances listed in Subsection 292.056 or established as provided in Subsection 292.067 and/or special fuels consumed by a motor vehicle while idling off-highway may be granted for IFTA licensees by recomputing the total gallons of fuel consumed in all jurisdictions. IFTA licensees claiming refunds of Idaho fuels tax resulting from the allowances established in Subsections 292.056 and 292.067 and/or special fuels consumed by a motor vehicle while idling off-highway, must file the claim on an Idaho Fuels Use Report Form 75 with the relevant supplemental worksheet. ~~(4-5-00)~~()

a. The IFTA licensee must recompute the total taxable fuel for Idaho by deducting the gallons determined by the allowances and/or the gallons of special fuels consumed by a motor vehicle while idling off-highway in all jurisdictions from the total number of gallons of fleet fuel consumed that was reported on the IFTA return. Using the new net gallons consumed, recompute the fleet miles per gallon. Apply the new fleet miles per gallon to the reported Idaho taxable miles to calculate the corrected Idaho taxable gallons. To calculate the Idaho nontaxable gallons available for refund, the licensee must subtract the recomputed taxable gallons for Idaho from the original taxable gallons reported for Idaho. This nontaxable gallon figure is then entered on the line labeled nontaxable gallons on the Form 75. ~~(4-5-00)~~()

b. ~~Additionally, a~~ copy of the IFTA tax return for the period subject to the refund claim and a statement or worksheet showing how ~~allowance~~ the refund claim was calculated and/or the information required in Subsection 292.08 for special fuels consumed by a motor vehicle while idling off-highway must be included as an attachment to the Form 75. All refund claims are subject to review and audit, therefore, adequate documentation must be retained by the licensee. ~~(4-5-00)~~()

c. IFTA licensees that used an assumed MPG when preparing their original IFTA return may not claim any additional refund granted in Subsection 292.10. ~~(4-5-00)~~()

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - RULES GOVERNING ADMINISTRATION AND ENFORCEMENT

DOCKET NO. 35-0201-0201

NOTICE OF RULEMAKING - PROPOSED RULES

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

Rule 310 - Interest On Amounts Of Tax Accruing Or Unpaid is being amended to add a subsection to the rule identifying the interest rate for the calendar year 2003.

Rule 400 - Penalties -- General Rules is being amended to add a subsection addressing net operating loss and capital loss carrybacks and their effect on computing penalties.

Rule 704 - Disclosure Of Information -- Government Agencies And Officials is being amended to update code references and to add agencies and officials with whom information may be exchanged.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, (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 October 23, 2002.

DATED this 21st day of August, 2002.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0201-0201

310. INTEREST ON AMOUNTS OF TAX ACCRUING OR UNPAID (Rule 310).
Section 63-3045, Idaho Code. (3-20-97)

01. July 1, 1981, Through December 31, 1993. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of the period from July 1, 1981, through December 31, 1993, subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is twelve percent (12%) simple interest. (3-20-97)

02. Calendar Year 1994. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 1994 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is seven percent (7%) simple interest. See Revenue Ruling 93-64. (3-20-97)

03. Calendar Year 1995. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 1995 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is nine percent (9%) simple interest. See Revenue Ruling 94-61. (3-20-97)

04. Calendar Year 1996. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 1996 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is eight percent (8%) simple interest. See Revenue Ruling 95-67. (3-20-97)

05. Calendar Year 1997. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 1997 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is nine percent (9%) simple interest. See Revenue Ruling 96-49. (3-20-97)

06. Calendar Year 1998. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 1998 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is eight percent (8%) simple interest. See Revenue Ruling 97-41. (3-19-99)

07. Calendar Year 1999. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 1999 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is seven percent (7%) simple interest. See Revenue Ruling 98-50. (4-5-00)

08. Calendar Year 2000. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 2000 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is eight percent (8%) simple interest. See Revenue Ruling 99-41. (4-5-00)

09. Calendar Year 2001. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 2001 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is eight percent (8%) simple interest. See Revenue Ruling 2000-45. (2-23-01)

10. Calendar Year 2002. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 2002 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is seven percent (7%) simple interest. See Revenue Ruling 2001-49. (3-15-02)

11. Calendar Year 2003. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of calendar year 2003 subject to assessment of interest pursuant to Section 63-3045, Idaho Code, is five percent (5%) simple interest. See Revenue Ruling 2002-61. ()

(BREAK IN CONTINUITY OF SECTIONS)

400. PENALTIES -- GENERAL RULES (Rule 400).
Section 63-3046, Idaho Code. (3-20-97)

01. Penalty Presumed Appropriate. If a taxpayer becomes liable to pay the Internal Revenue Service

a penalty similar to one provided in Section 63-3046, Idaho Code, it shall be presumed the penalty is appropriate as part of the related state tax deficiency. (3-20-97)

02. Credits To Be Considered. The penalties referred to in this rule apply to the net amount of the tax due after applicable credits. (3-20-97)

03. Net Operating Loss And Capital Loss Carrybacks. If the tax due for the taxable year is reduced after the application of a net operating loss carryback or a capital loss carryback, the penalty shall be computed on the tax due prior to the application of the carryback. ()

034. Minimum Penalty. A ten dollar (\$10) minimum penalty applies to each penalty imposed by Subsection (a), (b), (c)(1), (d) or (e) of Section 63-3046 and by Section 63-3033, Idaho Code. For example, if a taxpayer fails to file only one (1) withholding tax statement, which generally results in a penalty of two dollars (\$2) pursuant to Section 63-3046(e)(1), Idaho Code, a penalty of ten dollars (\$10) will be applied. (3-15-02)

045. Dishonored Checks. The charge provided by Section 63-3046(h), Idaho Code, for each dishonored check or instrument is: (2-23-01)

- a. Ten dollars (\$10) if dishonored prior to July 1, 2001. (2-23-01)
- b. Twenty dollars (\$20) if dishonored on or after July 1, 2001. (2-23-01)
- c. This charge may be added even if sufficient funds are in the taxpayer's account after the date of dishonor. (2-23-01)

(BREAK IN CONTINUITY OF SECTIONS)

704. DISCLOSURE OF INFORMATION -- GOVERNMENT AGENCIES AND OFFICIALS. (Rule 704). Sections 39-7805, 50-1049, 63-2442, 63-3077, 63-3077A, 63-3077B, and 63-3077C, 63-3634A, and 67-4917C, Idaho Code. (~~4-5-00~~)()

01. Legislature. The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission shall disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (3-20-97)

02. Government Agencies Or Officials. The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (3-20-97)

03. Exchange Of Information. Information may be exchanged between the Tax Commission and: (4-5-00)

- a. The Internal Revenue Service, as allowed by Section 63-3077(1)(a), Idaho Code; (~~4-5-00~~)()
- b. Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(~~a~~b), Idaho Code; (~~4-5-00~~)()
- c. County assessors, limited to information relating to the taxpayer's residence or domicile, Section 63-3077(~~4~~), Idaho Code; (~~3-20-97~~)()
- d. Department of Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)

- e. Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)
- f. Multistate Tax Commission, as allowed by Section 63-3077(1)(~~a~~), Idaho Code; ~~(2-23-01)~~()
- g. Idaho Transportation Department ~~of Transportation~~, relating to fuels tax as allowed by Section 63-2442, Idaho Code, and relating to residency information as allowed by Section 63-3634A, Idaho Code; ~~(2-23-01)~~()
- h. Financial Management Services of the U. S. Department of the Treasury, as allowed by Section 63-3077(1)(a), Idaho Code; ~~and~~ ~~(2-23-01)~~()
- i. Governing entity of the International Fuels Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; ~~(2-23-01)~~()
- j. Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, Section 63-3077C, Idaho Code; ()
- k. Attorney General, as limited by Section 39-7805, Idaho Code; ()
- l. Resort cities, as allowed by Section 50-1049, Idaho Code; and ()
- m. Auditorium districts, as allowed by Section 67-4917C, Idaho Code. ()

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

37.02.03 - WATER SUPPLY BANK RULES

DOCKET NO. 37-0203-0201

NOTICE OF RULEMAKING

TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 9, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby give that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 42-1762, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

The purpose of this rulemaking is to amend Rule 35 to provide for deposit of water bank rental funds received from federal agencies into the federal grant fund.

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

Compliance with deadlines in amendments to governing law or federal programs; and conferring a benefit.

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

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary proposed rule, contact Norman C. Young at (208) 327-7910.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 14th day of August, 2002.

Joe Jordan, Chairman
Idaho Water Resource Board
1301 N. Orchard
Boise, Idaho 83706
(208) 327-7910 (office)
(208) 327-7866 (Fax)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 37-0203-0201

035. HANDLING OF MONEY ASSOCIATED WITH THE BOARD'S WATER SUPPLY BANK (Rule 35). Payments received by the Department from the sale or rental of water rights from the Board's water supply bank shall be handled as follows: (7-1-93)

01. Credited Amount. Ten percent (10%) of the gross amount received from the sale or rental of a water right from the Board's water supply bank shall be credited to the Water Administration Account created by Section 42-238a, Idaho Code, or to the federal grant fund if the payment is received from a federal agency, for administrative costs of operating the Water Supply Bank. (~~7-1-93~~)(8-9-02)T

02. Excess Funds. Any funds in excess of the amount needed to compensate the owner of the water right in accordance with the resolution accepting the water right into the Board's water supply bank and the administrative charge of Rule Subsection 035.01 shall be credited to the Water Management Account created by Section 42-1760, Idaho Code, for use by the Board for the purposes of Rule 1. (7-1-93)

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

37.03.03 - RULES AND MINIMUM STANDARDS FOR THE CONSTRUCTION AND USE OF INJECTION WELLS

DOCKET NO. 37-0303-0202

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Sections 42-3913, 42-3914, and 42-3915 Idaho Code, and 40 CFR Parts 9, 144, 145, and 146, Underground Injection Control Regulations for Class V Injection Wells, Revision; Final Rule, published in the Federal Register, Tuesday, December 7, 1999.

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

**October 30, 2002, 7:00pm
Idaho Department of Water Resources
1301 North Orchard, Boise, ID**

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

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

The Environmental Protection Agency promulgated revisions to the Class V Underground Injection Control (UIC) regulations, adding new federal requirements to the Idaho Department of Water Resources' Waste Disposal and Injection Well Program. The purpose of the proposed rulemaking is primarily to implement the new federal requirements concerning large capacity cesspools and motor vehicle waste disposal wells.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Injection Well permitting and inventory fees are increased pursuant to Section 42-3905, Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the majority of proposed changes are federal requirements and are not negotiable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mark Slifka at 208-327-7887.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 20th day of August, 2002.

Joseph L. Jordan, Chairman
Idaho Water Resource Board
1301 North Orchard
Boise, ID 83706
208-327-7880
208-327-7886 (fax)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 37-0303-0201

000. ~~(RESERVED)~~ LEGAL AUTHORITY.

This Chapter is adopted under the legal authority of Sections 42-3913, 42-3914, and 42-3915, Idaho Code. ()

001. TITLE AND SCOPE (Rule 1).

01. Title. These rules will be cited as IDAPA 37.03.03 "Rules and Minimum Standards for the Construction and Use of Injection Wells". ()

02. Scope. ~~The waste disposal and injection well statutes, Title 42, Chapter 39, Idaho Code, declare "the ground waters of this state to be a public resource which must be protected against unreasonable contamination or deterioration of quality to preserve such waters for diversion to beneficial uses". To implement the objectives of these statutes, the Idaho Water Resource Board pursuant to Sections 42-3913, 42-3914, and 42-3915 Idaho Code, hereby promulgates~~ These rules and minimum standards are for construction and use of injection wells in the state of Idaho. Upon promulgation, these rules apply to all injection wells (see Rule Subsection 025.01). The construction and use of Class I, II, III or IV injection wells are prohibited by these rules. Class IV wells are also prohibited by federal law. These rules and minimum standards for construction and use of injection wells shall apply to all injection wells in the state of Idaho, including Indian lands to the extent not otherwise preempted by federal law administered by the United States Environmental Protection Agency (EPA). ~~(7-1-93)~~()

002. ~~(RESERVED)~~ WRITTEN INTERPRETATIONS (Rule 2).

Written interpretations of these rules, if any, in the form of explanatory comments accompanying the notice of proposed rulemaking, the review of comments submitted in the adoption of these rules, and any declaratory rulings issued subsequent to adoption of these rules are available from the Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098. ()

003. ADMINISTRATIVE APPEALS (Rule 3).

Any person aggrieved by the Director's decision shall have the right to a hearing before the Idaho Water Resource Board pursuant to Rule Subsection 014.01. of these rules. Challenges to these rules may be filed pursuant to Title 67, Chapter 52, Idaho Code, or actions taken under these rules may be appealed pursuant to Section 42-1701A, Idaho Code. ~~(7-1-93)~~()

004. INCORPORATION BY REFERENCE (Rule 4).

01. Incorporated Document. IDAPA 37.03.03 adopts and incorporates by reference those ground water quality standards found in Section 200 of IDAPA 58.01.11, "Ground Water Quality Rule," of the Department of Environmental Quality. ()

02. Document Availability. Copies of the incorporated document may be found at the central office of the Idaho Department of Water Resources, 1301 N. Orchard, Boise, Idaho, 83706-2237 or online through the department or state websites. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (Rule 5).

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

02. Mailing Address. The mailing address for the central office is Idaho Department of Water Resources, 1301 N. Orchard, Boise, Idaho, 83706-2237. (Mailing addresses are subject to change.) ()

03. Street Address. The central office of the Idaho Department of Water Resources is located at 1301 N. Orchard, Boise, Idaho. (Street addresses are subject to change.) ()

006. PUBLIC RECORDS ACT COMPLIANCE (Rule 6).

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 1, Idaho Code. ()

~~0047.~~ -- 009. (RESERVED).

010. DEFINITIONS (Rule 10).

01. **Abandonment.** The discontinuance of the use of an injection well. See “permanent abandonment,” “temporary abandonment,” and “unauthorized abandonment”. (7-1-93)

02. **Applicant.** Any owner or operator submitting an application for permit to construct, modify or maintain an injection well to the Director of the Department of Water Resources. (7-1-93)

03. **Aquifer.** Any *geologic* formation that will yield water to a well in sufficient quantities to make production of water from the formation reasonable for a beneficial use, except when the water in such formation results solely from fluids deposited through an injection well. (~~7-1-93~~)()

04. **Beneficial Use.** ~~A use of water that is reasonable and necessary to the user and is consistent with the interests of the public in the best utilization of water supplies. Beneficial uses include but are not limited to domestic, agricultural, municipal and industrial supplies, stock water, and fish propagation. One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, stockwatering and fish propagation uses, as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water.~~ (~~7-1-93~~)()

05. **Best Management Practice (BMP).** A practice or combination of practices determined to be the most effective and practicable means of preventing or reducing contamination of ground water and surface water by injection well operation, to achieve water quality goals and protect beneficial uses of ground water. (7-1-93)

06. **Casing.** A conduit required by these rules and Well Construction Standards Rules to maintain the well opening and prevent contamination of ground water. (7-1-93)

07. **Cesspool.** An injection well that receives sanitary waste without benefit of a treatment system or treatment device such as a septic tank. Cesspools have open bottom and/or perforated sides. ()

078. **Coliform Bacteria.** All of the aerobic and facultative anaerobic, gram-negative, non-spore forming, rod-shaped bacteria that either ferment lactose broth with gas formation within forty-eight (48) hours at thirty-five degrees celsius (35C), or produce a dark colony with a metallic sheen within twenty-four (24) hours on an Endo-type medium containing lactose. (7-1-93)

089. **Construct.** To create a new injection well or to convert any structure into an injection well. (7-1-93)

~~0910.~~ **Contaminant.** Any chemical, ion, radionuclide, synthetic organic compound, micro-organism, waste or other substance which does not occur naturally in ground water or which naturally occurs at a lower concentration. (7-1-93)

101. **Contamination.** The direct or indirect introduction of any contaminant into ground water, caused in whole or in part by human activity. (7-1-93)

12. **DEQ.** The Idaho Department of Environmental Quality. ()

~~143.~~ **Deep Injection Well.** An injection well which is more than eighteen (18) feet in vertical depth below land surface, and is identical to the statutory phrase, “waste disposal and injection well”. (7-1-93)

124. **Department.** The Idaho Department of Water Resources. (7-1-93)

135. **Director.** The Director of the Idaho Department of Water Resources. (7-1-93)

146. **Draft Permit.** The completed Application for Permit with permit conditions, compliance schedules

and monitoring requirements attached. (7-1-93)

157. Drinking Water Source. An aquifer which contains water having less than ten thousand (10,000) mg/l total dissolved solids and has not been exempted from this designation by the Director of the Department of Water Resources pursuant to Rule 75. (7-1-93)

~~**16. Drinking Water Standards.** Refers to current "Idaho Rules for Public Drinking Water Systems" as adopted by the Idaho Department of Environmental Quality (DEQ). They are identical to standards in Part 40 Chapter 141 and 142 of the Code of Federal Regulations. It consists of primary and secondary maximum contaminant levels (MCLs) (see definition). (7-1-93)~~

18. Drywell. An injection well completed above the water table so that its bottom and sides are typically dry except when receiving fluids. ()

19. EPA. The United States Environmental Protection Agency. ()

~~**1720. Endangerment.** Injection of any fluid which exceeds drinking ground water quality standards that may result in the presence of any contaminant in ground water which supplies or can reasonably be expected to supply any public or non-public water system, and if the presence of such contaminant may result in such a system not complying with any state primary drinking ground water quality standard or may otherwise adversely affect the health of persons or result in a violation of ground water quality standards that would adversely affect beneficial uses. (7-1-93)()~~

~~**1821. Fluid.** Any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gaseous or any other form or state. (7-1-93)~~

~~**1922. Formation.** A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is mappable at the earth's surface or traceable in the subsurface. (7-1-93)~~

~~**203. Ground Water.** Any water that occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (7-1-93)()~~

~~**24. Ground Water Quality Standards.** Standards found in IDAPA 58.01.11, "Ground Water Quality Rule," Section 200. ()~~

~~**215. Hazardous Waste.** Any substance defined by Part IDAPA 58.01.05, "Rules and Standards for Hazardous Waste," (40 Chapter CFR 261.3) of the Code of Federal Regulations. (7-1-93)()~~

26. IWRB. Idaho Water Resource Board. ()

~~**227. Injection.** The subsurface emplacement of fluids. The purpose of injection by Class V wells is the temporary or permanent disposal or storage of fluids into subsurface geologic formations. (7-1-93)()~~

~~**238. Injection Well.** Any excavation or artificial opening into the ground which meets the following three (3) criteria: (7-1-93)~~

~~a. It is a bored, drilled or dug hole, or is a driven mine shaft or a driven well point; and (7-1-93)~~

~~b. It is deeper than its largest straight-line surface dimension; and (7-1-93)~~

~~c. It is used for or intended to be used for injection. (7-1-93)~~

~~**249. Irrigation Waste Water.** Water diverted for irrigation but not applied to crops, or runoff of irrigation tail water from the cropland as a result of irrigation. (7-1-93)~~

~~**30. Large Capacity Cesspools.** Any cesspool used by a multiple dwelling, community or regional system for the disposal of sanitary wastes (for example: a duplex or an apartment building) or any cesspool used by or~~

intended to be used by twenty (20) or more people per day (for example: a rest stop, campground, restaurant or church). ()

2531. Maintain. To allow, either expressly or by implication, an injection well to exist in such condition as to accept or be able to accept fluids. Unless a well has been abandoned pursuant to the criteria contained in these rules it is considered to be capable of accepting fluids. (7-1-93)

2632. Maximum Contaminant Level (MCL). Means the maximum permissible level of a contaminant in ground water that is delivered to any user of a public water system. MCLs are the basis of the drinking water standards and the ground water quality standards as applied to injection well operation and protection of beneficial uses of ground water. Primary MCLs are required drinking ground water quality standards that also constitute waste disposal and injection well operational standards at the wellhead. Secondary MCLs are suggested drinking ground water quality standards that, in addition to primary MCLs, are indicators of unreasonable contamination of ground water when detected at points of diversion for beneficial use. (7-1-93)()

2733. Modify. To alter the construction of an injection well, but does not include cleaning or redrilling operations which neither deepen nor increase the dimensions of the well. (7-1-93)

34. Motor Vehicle Waste Disposal Wells. Injection wells that receive or have received fluids from vehicle repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (transmission and muffler repair shop), or any facility that does any vehicular repair work. ()

2835. Operate. To allow fluids to enter an injection well by action or inaction of the operator. (7-1-93)

2936. Operator. Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity that operates or proposes to operate any injection well. (7-1-93)

307. Owner. Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity owning land on which any injection well exists or is proposed to be constructed. (7-1-93)

318. Perched Aquifer. Ground water separated from an underlying main body of ground water by an unsaturated zone. (7-1-93)

329. Permanent Abandonment. The discontinuance of use of an injection well in accordance with current IDAPA 37.03.09, Rules for "Well Construction Standards". Permanent abandonment requires plugging the well bore with bentonite grout, cement grout, concrete, puddling clay, or other impermeable material to prevent the upward or downward migration of fluids. (7-1-93)()

3340. Person. Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of right and duties (Idaho Code 30-101 EPHA). (7-1-93)

41. Point Of Beneficial Use. The top or surface of a drinking water source, directly below an injection well, where water is available for a beneficial use. ()

3542. Point Of Diversion For Beneficial Use. A location such as a producing well or spring where ground water is taken under control and diverted for a beneficial use. (7-1-93)

343. Point Of Injection. The deepest point below land surface from which injected fluids leave the bore, hole or shaft of an last accessible sampling point prior to waste being released into the subsurface environment through a Class V injection well. For example, the point of injection for a Class V septic system might be the distribution box. For a drywell, it is likely to be the well bore itself. (7-1-93)()

~~3644.~~ **Radioactive Material.** Any material, solid, liquid or gas which emits radiation spontaneously. Radioactive geologic materials occurring in their natural state are not included. (7-1-93)

~~3745.~~ **Radioactive Waste.** Any fluid which contains radioactive material in concentrations which exceed those established for discharges to water in an unrestricted area by ~~the Board of Environmental Quality~~ 10 CFR 20.1302.(b)(2)(i) and Table 2 in Appendix B of 10 CFR 20. (7-1-93)()

46. Remediation Project. Means removal, treatment or isolation of a contaminant from ground water through directed efforts or the removal or treatment of a contaminant in ground water through management practices or the construction of barriers, trenches and other similar facilities for prevention of contamination. For the purposes of these rules, all wells or groups of wells associated with a "Remediation Project" may be administered as one (1) "well" at the discretion of the Director. ()

~~3847.~~ **Replacement Well.** An injection well constructed to replace an existing injection well, authorized for use under these rules, that meets the following criteria: (7-1-93)

- a. The replacement well is located within two hundred (200) feet of the existing injection well. (7-1-93)
- b. The injected fluids are from the same source as the fluids injected through the existing injection well. (7-1-93)
- c. The injected fluids are of equal or better quality than the fluids injected through the existing well. (7-1-93)
- d. Construction features of the replacement well are similar to the features of the existing well and meet or exceed minimum well construction standards. (7-1-93)
- e. The distance between the point of injection and the nearest boundary of the receiving aquifer is at least as great as that distance for the existing injection well. (7-1-93)
- f. The existing injection well is abandoned by an approved method within thirty (30) days of completion of construction of the replacement well. (7-1-93)

~~3948.~~ **Sanitary Waste.** Any ~~fluid generated through domestic activities, such as food preparation, cleaning and personal hygiene~~ liquid or solid waste originating from humans and human activities, such as wastes collected from toilets, showers, wash basins, floor drains, sinks used for cleaning domestic areas, sinks used for food preparation, clothes washing operations, and sinks or washing machines where food and beverage serving dishes, glasses, and utensils are cleaned. Sources of these wastes may include single or multiple residences, hotels and motels, restaurants, bunkhouses, schools, ranger stations, campgrounds, picnic grounds, day-use recreation areas, commercial and industrial facilities provided the waste is not mixed with commercial or industrial waste. (7-1-93)()

~~409.~~ **Schedule Of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the standards. (7-1-93)

50. Septic System. An injection well that is used to inject sanitary waste below the surface. A septic system is typically comprised of a septic tank and subsurface fluid distribution system or disposal system. ()

~~451.~~ **Shallow Injection Well.** An injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface. (7-1-93)

~~452.~~ **State.** The state of Idaho. (7-1-93)

53. Subsurface Fluid Distribution System. An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground, usually part of a septic system. ()

4354. Surface Runoff Water. Runoff water from the natural ground surface and cropland. Runoff from urbanized areas such as streets, parking lots, airports, and runoff from animal feedlots, agricultural processing facilities and similar facilities is not included within the scope of this phrase. (7-1-93)

4455. Temporary Abandonment. The prevention of injection by use of a removable or retrievable device, such as a packer or cap. (7-1-93)

456. Unauthorized Abandonment. The permanent abandonment of any injection well that has not received the approval of the Department prior to abandonment, or was not abandoned in a method approved by the Director. (7-1-93)

4657. Unreasonable Contamination. Endangerment of a drinking water source or the health of persons or other beneficial uses by injection. See "endangerment". (7-1-93)

4758. Water Quality Standards. Refers to those standards found in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements" and IDAPA 58.01.11, "Ground Water Quality Rule". (7-1-93)()

48. Wellhead. ~~That point, downstream of any filters or treatment devices, where fluids enter the injection well.~~ (7-1-93)

59. Well. For the purposes of these rules, "well" means "injection well." ()

011. -- 024. (RESERVED).

025. CLASSIFICATION OF INJECTION WELLS - AUTHORIZATIONS, PROHIBITIONS AND EXEMPTIONS (Rule 25).

01. Classification Of Injection Wells. For the purposes of these rules, injection wells are classified as follows: (7-1-93)

a. Class I - Wells used to inject hazardous, ~~waste or other~~ radioactive, industrial, ~~and~~ or municipal wastes beneath the lowermost formation containing a drinking water source. (7-1-93)(7-1-02)T

b. Class II - Wells used to inject fluids which are brought to the surface with conventional oil and gas production, utilized for enhanced recovery of oil or gas, or stored as liquid hydrocarbons at standard temperature and pressure in the injection formation. (7-1-93)

c. Class III - Wells which inject for the extraction of minerals unless used for solution mining in conventional mines. (7-1-93)

d. Class IV - Wells used to inject hazardous or radioactive wastes into or above a formation which contains a drinking water source. (7-1-93)

e. Class V - All injection wells not included in Classes I, II, III, or IV. (7-1-93)

02. Subclassification. Class V wells are subclassified as follows: (7-1-93)

a. *5A5-Electric Power Generation. (7-1-93)

b. *5A6-Geothermal Heat. (7-1-93)

c. *5A7-Heat Pump Return. (7-1-93)

d. 5A8-Aquaculture Return Flow. (7-1-93)

- e. *5A19-Cooling Water Return. (7-1-93)
 - f. 5B22-Saline Water Intrusion Barrier. (7-1-93)
 - g. *5D2-Storm Runoff. (7-1-93)
 - h. 5D3-Improved Sinkholes. (7-1-93)
 - i. *5D4-Industrial Storm Runoff. (7-1-93)
 - j. *5F1-Agricultural Runoff Waste. (7-1-93)
 - k. *5G30-Special Drainage Water. (7-1-93)
 - l. 5N24-~~Low-level~~ Radioactive Waste Disposal. (~~7-1-93~~)()
 - m. *5R21-Aquifer Recharge. (7-1-93)
 - n. 5S23-Subsidence Control. (7-1-93)
 - o. 5W9-Untreated Sewage. (7-1-93)
 - p. 5W10-Cesspools. (7-1-93)
 - q. *5W11-Septic Systems (General). (7-1-93)
 - r. *5W12-Water Treatment Plant Effluent. (7-1-93)
 - s. *5W20-Industrial Process Water. (7-1-93)
 - t. 5W31-Septic Systems (Well Disposal). (7-1-93)
 - u. *5W32-Septic System (Drainfield). (7-1-93)
 - v. *5X13-Mine Tailings Backfill. (7-1-93)
 - w. 5X14-Solution Mining. (7-1-93)
 - x. 5X15-In-Situ Fossil Fuel Recovery. (7-1-93)
 - y. 5X16-Spent Brine Return Flow. (7-1-93)
 - z. *5X25-Experimental Technology. (7-1-93)
 - aa. *5X26-Aquifer Remediation. (7-1-93)
 - bb. *5X27-Other Wells. (7-1-93)
 - cc. *5X28-~~Service Station~~ Motor Vehicle Waste Disposal Wells. (~~7-1-93~~)()
 - dd. 5X29-Abandoned ~~Drinking~~ Water Wells. (~~7-1-93~~)()
- * Wells in these subclasses are currently inventoried in Idaho.
- 03. Authorizations, Prohibitions And Exemptions. (7-1-93)**
 - a. These rules prohibit the permitting, construction or use of any Class I, II, III or IV injection well.

(7-1-93)

b. Prohibition of injection of hazardous and of radioactive wastes (Class IV) - Construction of a well to be used for injection of hazardous wastes or of radioactive wastes into or above a drinking water source, or injection of hazardous wastes or of radioactive wastes through an existing injection well into or above a drinking water source is prohibited. (7-1-93)

c. Construction and use of Class V deep injection wells may be authorized by permit as approved by the Director in accordance with these rules. (7-1-93)(____)

d. Construction of large capacity cesspools or motor vehicle waste disposal wells is prohibited. Construction and use of other Class V shallow injection wells are authorized by these rules without permit provided that: (7-1-93)(____)

i. Required inventory information is submitted to the Director pursuant to Rule 30. (7-1-93)

ii. Use of the shallow injection well shall not result in unreasonable contamination of a drinking water source or cause a violation of service or ground water quality standards that would affect a beneficial use. (7-1-93)(____)

e. Class V shallow injection wells used for the disposal of waste water as defined in Idaho Department of Environmental Quality Rule, IDAPA 58, Title 01, Chapter 03, "Individual/Subsurface Sewage Disposal Rules," are exempt from the authorization requirements of these rules, but are subject to the IDAPA 58.01.03.000, et seq., "Individual/Subsurface Sewage Disposal Rules," Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code. (7-1-93)

f. State or local entities involved in highway and street construction and maintenance are exempt from the permit requirements for shallow ~~e~~Class V wells, but shall comply with ~~the inventory~~ all other requirements of these rules. (7-1-93)(____)

g. Mine tailings backfill (5X13) wells are authorized by rule as part of mining operations because ~~F~~federal studies show the threat of endangerment from use of these wells is low. They are therefore exempt from the ~~drinking ground~~ water quality standards and permitting requirements of these rules provided that their use is limited to the injection of mine tailings only. The use of any 5X13 well(s) shall not result in water quality standards at points of diversion for beneficial use being exceeded or otherwise affect a beneficial use. Should water quality standards be exceeded or beneficial uses be affected, the Director may order the wells to be put under the permit requirements of these rules, or the wells may be required to be remediated or closed. As a condition of their use, the Director may require the construction and sampling of monitoring wells ~~and the conduction of monitoring activities~~ by the owner/operator. 5X13 wells are subject to the inventory requirements of Rule Subsection 030.01. (7-1-93)(____)

h. All large capacity cesspools must be properly abandoned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a large capacity cesspool is found to be a threat to the ground water resources as described in Subsection 030.03. (____)

i. All motor vehicle waste disposal wells must be properly abandoned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a motor vehicle waste disposal well is found to be a threat to the ground water resources as described in Subsection 030.03. (____)

026. -- 029. (RESERVED).

030. INVENTORY INFORMATION AND PERMIT REQUIREMENTS - CLASS V SHALLOW INJECTION WELLS (Rule 30).

01. ~~Inventory Information~~ Authorization. As a condition of authorization, all owners or operators of ~~existing~~ shallow Class V injection wells that dispose of nonhazardous and nonradioactive wastes are required to submit a Shallow Injection Well Inventory Form to the Department no later than thirty (30) days prior to commencement of construction for each new well. Forms are available from any Department office or at the

Department website: www.idwr.state.id.us. State or local government entities involved in highway and street construction and maintenance shall submit the following inventory information *to the Director within one (1) year of the effective date of these rules:* (7-1-93)(____)

- a. Facility name and location; and (7-1-93)
- b. County in which the injection well(s) is (are) located; and (7-1-93)
- c. Ownership of the well(s); and (7-1-93)
- d. Name, address and phone number of legal contact; and (7-1-93)
- e. Type or function of the well(s); and (7-1-93)
- f. Number of wells of each type; and (7-1-93)
- g. Operational status of the well(s). (7-1-93)

02. ~~Authorization Inventory Fees.~~ *As a condition of authorization to construct a new shallow Class V injection well for the disposal of nonhazardous and nonradioactive wastes, the owner or operator of the proposed injection well shall submit, in addition to the information requested under Rule Subsection 030.01, the location of the well by legal description to the nearest ten (10) acre tract, or by highway milepost where the injection well is owned or operated by a state or local entity involved in highway and street construction and maintenance. For shallow injection wells constructed after July 1, 1997, the Shallow Injection Well Inventory Form shall be accompanied by a fee as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. New shallow injection wells used for the disposal of storm water from building roof or foundation drains are exempt from Shallow Injection Well Inventory Form filing requirements and fees of this chapter. State or local government entities are exempt from Shallow Injection Well Inventory Form filing fees of this chapter for wells associated with highway and street construction and maintenance, but shall comply with all other requirements of these rules.* (7-1-93)(____)

03. Permit Requirements. If operation of a shallow Class V injection well is causing or may cause unreasonable contamination of a drinking water source, or cause a violation of the ground water quality standards at a place of beneficial use, the Director shall require immediate cessation of the injection activity. Where a Class V injection well is owned or operated by an entity other than a state or local entity involved in highway and street construction and maintenance, the Director may authorize continued operation of the well through a permit that specifies the terms and conditions of acceptable operation. (7-1-93)(____)

04. Permanent Abandonment. *The Director* Owners or operators of shallow injection wells shall *be notified* notify the Director not less than thirty (30) days prior to permanent abandonment of any shallow injection well. Permanent abandonment shall be accomplished in accordance with procedures approved by the Director. An Injection Well Abandonment Form shall be submitted with each notification. (7-1-93)(____)

05. Inter-Agency Cooperation. The Department may seek the assistance of other government agencies, including cities and counties, health districts, highway districts, and other departments of state government to inventory, monitor and inspect shallow injection wells, where local assistance is needed to prevent deterioration of ground water quality, and where injection well operation overlaps with water quality concerns of other agencies or local governing entities. Assistance is to be negotiated through a memorandum of understanding between the Department and the local entity, agency, or department, and is subject to the approval of the Director. (7-1-93)(____)

031. -- 034. (RESERVED).

035. APPLICATION FOR PERMIT TO CONSTRUCT, MODIFY OR MAINTAIN AN INJECTION WELL (Rule 35).

01. Application Requirements For All Class V Wells, Except Those Class V Wells Authorized Without Permit. (7-1-93)

a. No ~~deep injection wells~~ person shall continue to ~~be maintained~~ or use ~~an unauthorized injection well~~ after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit under Rule 25 shall be constructed, modified or maintained after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit shall continue to be used after the expiration of the permit issued for such well unless another application for permit therefor has been received by the Director. All applications for permit shall be on forms furnished by the Director. (7-1-93)(____)

b. ~~One (1) Each~~ application for permit to construct, modify or maintain ~~each an~~ injection well, as required by these rules, shall be accompanied by a filing fee ~~of fifty dollars (\$50) per well~~ as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. (7-1-93)(____)

02. Application Information Required. An applicant shall submit ~~the~~ following information ~~shall be submitted~~ to the Director for all injection wells to be authorized by permit, unless the Director determines that it is not needed in whole or in part, and issues a written waiver to the applicant: (7-1-93)(____)

- a. Facility name and location; (7-1-93)
- b. Name, address and phone number of the well operator; (7-1-93)
- c. Class, subclass and function of the injection well (see Rule 25); (7-1-93)
- d. Latitude/longitude or ~~Legal~~ description of the well location to the nearest ten (10) acre tract; (7-1-93)(____)
- e. Ownership of the well; (7-1-93)
- f. County in which the injection well is located; (7-1-93)
- g. Construction information for the well; (7-1-93)
- h. Quantity and general character of the injected fluids; (7-1-93)
- i. Status of the well (to be constructed, active, temporarily abandoned, etc.); (7-1-93)
- j. A topographic map or aerial photograph extending one (1) mile beyond property boundaries, depicting: (7-1-93)
 - i. Location of the injection well and associated facilities described in the application; (7-1-93)
 - ii. Locations of other injection wells; (7-1-93)
 - iii. Approximate drainage area, if applicable; (7-1-93)
 - iv. Hazardous waste facilities, if applicable; (7-1-93)
 - v. All wells used to withdraw drinking water; (7-1-93)
 - vi. All other wells, springs and surface waters. (7-1-93)
- k. Distance and direction to nearest domestic well; (7-1-93)
- l. Depth to ground water; and (7-1-93)(____)
- m. Alternative methods of waste disposal. (7-1-93)

03. Additional Information. The Director may require the following ~~Additional information that may~~

- ~~be required~~ for Class V injection wells to assess potential effects of injection: ~~(7-1-93)~~(____)
- a.** A topographic map~~(s)~~ showing locations of the following within a two (2) mile radius of the injection well: ~~(7-1-93)~~(____)
- i. All wells producing water; (7-1-93)
 - ii. All exploratory and test wells; (7-1-93)
 - iii. All other injection wells; (7-1-93)
 - iv. Surface waters (including man-made impoundments, canals and ditches); (7-1-93)
 - v. Mines and quarries; (7-1-93)
 - vi. Residences; (7-1-93)
 - vii. Roads; (7-1-93)
 - viii. Bedrock outcrops; and ~~(7-1-93)~~(____)
 - ix. Faults and fractures. (7-1-93)
- b.** Additional maps or aerial photographs of suitable scale to accurately depict the following: (7-1-93)
- i. Location and surface elevation of the injection well described in this permit; (7-1-93)
 - ii. Location and identification of all facilities within the property boundaries; (7-1-93)
 - iii. Locations of all wells penetrating the proposed injection zone or within a one-quarter (1/4) mile radius of the injection well; (7-1-93)
 - iv. Maps and cross sections depicting all underground sources of drinking water to include vertical and lateral limits within a one-quarter (1/4) mile radius of the injection well, their position relative to the injection zone and the direction of water movement: local geologic structures; regional geologic setting. (7-1-93)
- c.** A comprehensive report of the following information: (7-1-93)
- i. A tabulation of all wells penetrating the proposed injection zone, listing owner, lease holder and operator; well identification (permit) number; size, weight, depth and cementing data for all strings of casing; (7-1-93)
 - ii. Description of the quality and quantity of fluids to be injected; (7-1-93)
 - iii. Geologic, hydrogeologic, and physical characteristics of the injection zone and confining beds; ~~(7-1-93)~~(____)
 - iv. Engineering data for the proposed injection well; (7-1-93)
 - v. Proposed operating pressure; (7-1-93)
 - vi. A detailed evaluation of alternative disposal practices; (7-1-93)
 - vii. A plan of corrective action for wells penetrating the zone of injection, but not properly sealed or abandoned; and ~~(7-1-93)~~(____)
 - viii. Contingency plans to cope with all shut-ins or well failures to prevent the migration of

unacceptable fluids into underground sources of drinking waters. (7-1-93)

d. Name, address and phone number of person(s) or firm(s) supplying the technical information and/or designing the injection well; (7-1-93)

e. Proof that the applicant is financially responsible, through a performance bond or other appropriate means, to abandon the injection well in accordance with the conditions of the permit; ~~(7-1-93)~~()

f. ~~Latitude/longitude coordinates.~~ (7-1-93)

04. Other Information. The Director may require of any applicant such additional information as may be necessary to demonstrate that the proposed or existing injection well will not endanger drinking water sources. The Director will not complete the processing of an application for which additional information has been requested until such time as the additional information is supplied. The Director may return any incomplete application and will not process such application until such time as the application is received in complete form. (7-1-93)

036. -- 039. (RESERVED).

040. APPLICATION PROCESSING (Rule 40).

01. Draft Permit. After all application information is received and evaluated, the Director will prepare a draft permit or denial, which will include the application for permit, permit conditions or reasons for denial, and any compliance schedules or monitoring requirements. Closed-loop heat exchange wells (Subclass 5A7), as described by Rule Subsection 040.05 are exempt from the draft permit provisions of this rule. In preparing the draft permit or denial, the Director shall consider the following factors: (7-1-93)

a. The availability of economic and practical alternative means of disposal; (7-1-93)

b. The application of best management practices to the facilities and/or area draining into the well; (7-1-93)

c. The availability of economical, practical means of treating or otherwise reducing the amount of contaminants in the injected fluids; (7-1-93)

d. The quality of the receiving ground water, its category, its present and future beneficial uses or interconnected surface water; (7-1-93)

e. The location of the injection well with respect to drinking water supply wells; and ~~(7-1-93)~~()

f. Compliance with the IDAPA 58.01.11, "Ground Water Quality Rule". ()

02. Public Notice. The Director will provide public notice of any draft permit to construct, maintain or modify a Class V injection well by means of a legal notice in a newspaper of general circulation in the county in which the well is located. The Director may give additional notice as necessary to adequately inform the interested public and governmental agencies. There shall be a period of at least thirty (30) days following publication for any interested person to submit written comments and to request a fact-finding hearing. The hearing will be held by the Director if deemed necessary. (7-1-93)

03. Review By The Directors Of Other State Agencies. The Directors of other state agencies, as determined by the Director, shall be provided the opportunity to review and comment on draft permits. Comments shall be submitted to the Director within thirty (30) days of the public or legal notice. (7-1-93)

04. Fact-Finding Hearings. At the Director's discretion, or upon motion of any interested individual, the Director may elect to hold a fact-finding hearing. Said hearing will be held at a location in the geographical area of the injection well, and may consider related groups of draft permits. Notice of said hearing will be provided at least thirty (30) days in advance of the hearing by regular mail to the applicant and to the person or persons requesting the hearing. Public notice of the fact-finding hearing will be made by means of press release to a newspaper of general

circulation in the county of the application. (7-1-93)

05. Closed-Loop Heat Exchange Wells (Subclass 5A7). A closed-loop heat exchange well used solely for disposal of heat pump water at a rate not exceeding fifty (50) gpm does not require a draft permit. Public notification of the application shall be by a posted notice at the regional office of the Department where the application is made, or other method approved by the Director, and shall contain the following standard operating conditions: Rules for Construction and Use of Injection Wells shall be followed. Violation of the standards stated in Rule Subsection 050.04 is adequate cause for cancellation of the permit; Injection shall be restricted to heat pump water; A closed loop system shall be maintained to prevent contamination of the injected fluids. A protected air vent may be installed if needed, and a sampling port is required; Additives shall be used in the water only if approved by the Department of Water Resources; Should the use of the well lead to degradation of the quality of the ground water, this permit may be canceled; A well log shall be submitted to the Department within thirty (30) days of the completion of the well. Permits for large capacity closed loop heat exchange wells injecting over fifty (50) gpm will be processed with a draft permit and public notice as described in these rules. (7-1-93)(____)

041. -- 044. (RESERVED).

045. THE DIRECTOR'S ACTION ON DRAFT PERMITS AND DURATION OF APPROVED PERMITS (Rule 45).

The roll of the Director is to determine whether or not the injection wells and their respective owners or operators are in compliance with the intent of these rules, thus protecting the ground waters of the state against unreasonable contamination or deterioration of quality and preserving them for diversion to beneficial uses. (7-1-93)

01. Consideration. The Director will consider the following factors in taking final action on draft permits: (7-1-93)

- a.** The likelihood and consequences of the injection well system failing; (7-1-93)
- b.** The long term effects of such disposal or storage; (7-1-93)
- c.** The recommendations and related justifications of the Directors of other state agencies and the public; (7-1-93)(____)
- d.** The potential for violation of drinking ground water quality standards at the point of injection; or water quality standards at places the point of beneficial use; and (7-1-93)(____)
- e.** Compliance with the Idaho Ground Water Quality Plan. (____)

02. Issuance Of Permit. After considering the draft permit for construction, modification, or maintenance, and all matters relating thereto, the Director shall issue a permit if the standards and criteria of Rule 50 will be met and drinking water sources will not otherwise be unreasonably affected. If the Director finds that the standards and criteria cannot be met or that drinking ground water or other groundwater sources cannot otherwise be protected from unreasonable contamination at all times, the draft permit may be denied or a permit may be issued with conditions designed to protect drinking ground water sources. The Director's decision shall be in writing and a copy shall be mailed by regular mail to the applicant and to all persons who commented in writing on the draft permit or appeared at a hearing held to consider the draft permit. (7-1-93)(____)

03. Permit Conditions And Requirements. Any permit issued by the Director shall contain conditions to insure that drinking ground water sources will be protected from waste, unreasonable contamination, or deterioration of ground water quality that could result in violations of the ground water quality standards. In addition to specific construction, operation, maintenance and monitoring requirements that the Director finds necessary, each permit shall be subject to the standard conditions and requirements of this rule. (7-1-93)(____)

04. Construction Requirements. (7-1-93)

a. Well drillers or other persons involved with the construction of any injection well requiring a permit shall not commence construction on the facility until a certified copy of the approved permit is obtained from

the Director. (7-1-93)

b. Deep injection wells shall be constructed by a licensed water well driller to conform with the current Minimum Well Construction Standards and the conditions of the permit, except that a driller's license is not required for the construction of a driven mine shaft or a dug hole. (7-1-93)

c. Shallow injection wells authorized by permit shall be constructed in accordance with the conditions of the permit. Rule-authorized shallow injection wells shall be constructed as shown or described in the inventory submittal. (7-1-93)()

d. Injection wells shall be constructed to prevent the entrance of any fluids other than specified in the permit. (7-1-93)

e. Injection wells shall be constructed to prevent waste of artesian fluids or movement of fluids from one aquifer into another. (7-1-93)

f. When construction or modification of an injection well has been completed, the owner or operator shall inform the Director of completion on a form provided by the Department. (7-1-93)

g. A sampling port shall be provided ~~at the wellhead~~ if the injection well system is enclosed. (7-1-93)()

h. All new injection wells constructed into alluvial formations shall have a minimum ten (10) foot separation from the bottom of the well and seasonal high ground water. ()

i. Injection wells installed into fractured basalt are exempt from separation distances. ()

ii. The Director may reduce separation distance requirements if the quality of injected fluids are improved through additional treatment or BMPs. ()

05. Operational Conditions. (7-1-93)

a. The injection well shall not be used until the construction, operation and maintenance requirements of the permit are met and provisions are made for any required inspection, monitoring and record keeping. (7-1-93)

b. Injection of any contaminant as defined in Rule 50 into a present or future drinking or other ground water source that may cause a health hazard or adversely affect a designated and protected use is prohibited. (7-1-93)

c. The injection well owner or operator shall develop approved procedures to detect constructional or operational failure in a timely fashion, and shall have contingency plans to cope with the well failure. (7-1-93)

d. Authorized representatives of the Department shall be allowed to enter, inspect and/or sample: (7-1-93)

i. The injection well and related facilities; (7-1-93)

ii. The owner or operator's records of the injection operation; (7-1-93)

iii. Monitoring instrumentation associated with the injection operation; and (7-1-93)

iv. The injected fluids. (7-1-93)

e. The injection facilities shall be operated and maintained to achieve compliance with all terms and conditions of this permit. (7-1-93)

i. Proper operation and maintenance includes effective performance, adequate funding, operator

staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures; (7-1-93)

ii. If compliance cannot be met, the owner shall take corrective action (See ~~Enforcement Rule 065~~ or terminate injection. (7-1-93)(____)

f. The owner shall mitigate any adverse effects resulting from non-compliance with the terms and conditions of the permit. (7-1-93)

g. If the injection well was constructed prior to issuance of the permit, the well shall be brought into compliance with the terms and conditions of the permit in accordance with the schedule of compliance issued by the Director. (7-1-93)

h. The permit shall not convey any property rights. (7-1-93)

06. Conditions Of Permanent And Temporary Abandonment. (7-1-93)

a. Notice of abandonment for wells to be permanently abandoned shall be submitted on a form provided by the Director not less than ~~ten~~ thirty (~~10~~) ~~working~~ days prior to commencement of the abandonment activity. (7-1-93)(____)

b. The method of permanent abandonment for all injection wells shall be approved by the Director prior to commencement of the abandonment activity and shall be in accordance with current well construction standards. Permanent abandonment requires plugging the well bore with bentonite grout, cement grout, concrete, or other impermeable material to prevent the upward or downward migration of fluids. (7-1-93)(____)

c. Notice of completion of permanent abandonment shall be submitted to the Director within thirty (30) days of completion. (7-1-93)

d. All deep injection wells that are to be permanently abandoned shall be plugged with cement grout or other impervious material in such a manner as to prevent movement of fluids into or between drinking or other ground water sources in accordance with current Well Construction Standards and/or the conditions of the permit. (7-1-93)

e. Following permanent cessation of use, or where an injection well is not completed, the Director shall be notified. Abandonment procedures or other action, as prescribed by the Director, shall be conducted. (7-1-93)

f. The injection well owner or operator shall maintain the financial responsibility to insure that the injection operation is abandoned as prescribed. (7-1-93)

g. Temporary abandonment, including use of a welded steel plate to cover the well opening, or a packer to occlude the well bore does not exempt the owner or operator from the requirement to obtain a permit. A well that is permitted as temporarily abandoned must receive a new permit in order to inject fluids. (7-1-93)

07. Duration Of Approved Permits. The length of time that a permit may be in effect for Class V wells requiring permits shall not exceed ten (10) years. Class V injection well permits may be cancelled at any time for cause by the Director. (7-1-93)(____)

046. -- 049. (RESERVED).

050. STANDARDS FOR THE QUALITY OF INJECTED FLUIDS AND CRITERIA FOR LOCATION AND USE (Rule 50).

01. General. These standards, which are minimum standards that are to be adhered to for all deep injection wells and shallow injection wells requiring permits and rule-authorized wells not requiring permits, are based on the premise that if the injected fluids meet *primary maximum contaminant levels (MCLs) for drinking water*

~~standards for physical, chemical and radiological contaminants at the wellhead~~ ground water quality standards for physical, chemical and radiological contaminants, and if ground water produced from adjacent points of diversion for beneficial use meets the water quality standards as defined by Rule ~~Subsection~~ 010.47, then that aquifer will be protected from unreasonable contamination and will be preserved for diversion to beneficial uses. The Director may, however, when it is deemed necessary, require specific injection wells to be constructed and operated in compliance with additional requirements, such as best management practices (BMPs), so as to protect the ground water resource from deterioration and preserve it for diversion to beneficial use. (7-1-93)(____)

~~02.~~ **Waivers.** A waiver of one (1) or more standards may be granted by the Director if it can be demonstrated by the applicant that the contaminants in injected fluid will not endanger a ~~drinking water or~~ ground water source for any present or future beneficial use. (7-1-93)(____)

023. Standards For Quality Of Fluids Injected By Class V Wells ~~Requiring Permits.~~ (7-1-93)(____)

a. ~~Drinking~~ Ground water quality standards for chemical and radiological contaminants in injected fluids. After the effective date of these standards, the following limits shall not be exceeded in injected fluids from a well when such fluids will or are likely to reach a drinking water source: (7-1-93)(____)

i. Chemical contaminants. The concentration of each chemical contaminant in the injected fluids shall not exceed the ~~primary maximum contaminant level of the drinking ground water quality~~ standards for that chemical contaminant, or the concentration of each contaminant in the receiving water, whichever requirement is less stringent; and (7-1-93)(____)

ii. ~~Radiochemical~~ Radiological contaminants. Radiochemical levels of the injected fluids ~~at the wellhead~~ shall not exceed those levels specified by the ~~primary maximum contaminant levels in the drinking water ground water quality~~ standards. (7-1-93)(____)

b. Restrictions on injection of fluids containing biological contaminants. The following restrictions apply to biological contaminants included in the ~~primary maximum contaminant levels of the drinking water ground water quality~~ standard in injected fluids. Coliform bacteria: injected fluids containing coliform bacteria are subject to the following restrictions: (7-1-93)(____)

i. Contamination of ground water produced at any existing point of diversion for beneficial use, or any ~~place~~ point of beneficial use developed in the future, by injected fluids is prohibited; (7-1-93)(____)

ii. The Director may ~~recommend~~ require the use of best management practices (BMPs) to reduce the concentration of coliform bacteria in the injected fluids; (7-1-93)(____)

iii. The Director may require the use of ~~well~~ water treatment technology, including ozonation and chlorination devices, sand filters, and settling pond specifications to reduce the concentration of coliform bacteria in injected fluids; (7-1-93)(____)

iv. Ground water produced from points of diversion for beneficial use adjacent to injection wells that dispose of fluids containing coliform bacteria in concentrations greater than the current ~~specified maximum contaminant level for drinking ground water quality standard~~ shall be subject to monitoring for bacteria by the owner/operator of the injection well. A waiver of the monitoring requirement may be granted by the Director when it can be demonstrated that injection will not result in unreasonable contamination of ground water produced from these adjacent points; (7-1-93)(____)

v. Construction of new Subclass 5F1 injection wells, and other shallow and deep injection wells, as specified by the Director, that are likely to exceed the current ~~drinking ground water quality~~ standard for coliform bacteria at ~~the wellhead~~ the point of beneficial use is prohibited; and (7-1-93)(____)

vi. At no time shall any fluid containing or suspected of containing fecal contaminants of human origin be injected into any Class V injection well authorized under these rules. (7-1-93)

c. Physical, visual and olfactory characteristics. The following restrictions apply to physical, visual

and olfactory characteristics of injected fluids. Temperature, color, odor, turbidity, conductivity and pH: the temperature, color, odor, conductivity, turbidity, pH or other characteristics of the injected fluid may not result in the receiving ground water becoming less suitable for diversion to beneficial uses, as determined by the Director.

(7-1-93)

d. Contamination by an injection well of ground water produced at an existing point of diversion for beneficial use, or a point of diversion for beneficial use developed in the future, shall not exceed water quality standards defined by Rule Subsection 010.47.

(7-1-93)

03. Criteria For Location And Use Of Class V Wells Requiring Permits.

(7-1-93)

a. A Class V well requiring a permit may be required to be located a minimum distance, as determined from Table 1, from any point of diversion for beneficial use that could be harmed by bacterial contaminants. This requirement is not applicable to injection wells injecting wastes of quality equal to or better than adopted drinking ground water quality standards in all respects. In addition, Class V wells may be required to be located at such a distance from a point of diversion for beneficial use as to minimize or prevent ground water contamination resulting from unauthorized or accidental injection, as determined by the Director.

(7-1-93)(____)

b. These location requirements in Table 1 may be waived, as per Rule Subsection 050.01.a., when the applicant can demonstrate that any springs or wells within the calculated perimeter of the generated perched water zone will not be contaminated by the applicant's waste disposal or injection well. Monitoring by the applicant of the production wells or springs in question may be required to demonstrate that they are not being contaminated.

Determined Radii of Perched Water Zones Based on Maximum Average Weekly Injection Rates (cfs) of Class V Injection Wells *	
Injection (cfs)	Radius of Generated Perched Water Zone (ft)
0 - 0.20	800
0.20 - 0.60	1,400
0.61 - 1.00	1,800
1.01 - 2.00	2,500
2.01 - 3.00	3,000
3.01 - 4.00	3,500
4.01 - 5.00	4,000
Greater than 5.00	As determined by the Director

* Injection rates shall be based on the average volume of wastes injected by the well during the week of greatest injection in an average water year.

(7-1-93)

04. Standards For The Quality Of Fluids Injected By Subclass 5A7 Wells (closed-loop heat exchange).

(7-1-93)

a. The quality of fluids injected by a Subclass 5A7 injection well shall comply with drinking ground water quality standards or shall be equal to the quality of the ground water source to the heat exchanger, whichever is less stringent.

(7-1-93)(____)

b. If the quality of the ground water source does not meet drinking ground water quality standards, the injected fluids must be returned to the formation containing the ground water source.

(7-1-93)(____)

c. The temperature of the injected fluids shall not impair the designated beneficial uses of the receiving ground water. (7-1-93)

d. All Rule-~~A~~ authorized Injection Wells shall conform to the ~~drinking~~ ground water quality standards at the point of injection and not cause any water quality standards to be violated at any point of beneficial use. (7-1-93)()

051. -- 054. (RESERVED).

055. MONITORING, RECORD KEEPING AND REPORTING REQUIREMENTS (Rule 55).

The Director may require monitoring, record keeping and reporting by any owner or operator if the Director finds that the well may adversely affect a ~~drinking~~ ground water source or is injecting a contaminant that could have an unacceptable effect upon the quality of the ground waters of the state. (7-1-93)()

01. Monitoring. (7-1-93)

a. Any injection authorized by the Director shall be subject to monitoring and record keeping requirements as conditions of the permit. Such conditions may require the installation, use and maintenance of monitoring equipment or methods. The Director may require where appropriate, but is not limited to, the following: (7-1-93)

i. Monitoring of injection pressures and pressures in the annular space between casings; (7-1-93)

ii. Flow rate and volumes; (7-1-93)

iii. Analysis of quality of the injected fluids for contaminants that are subject to limitation or reduction under the conditions of the permit; or contaminants which the Director determines could have an unacceptable effect on the quality of the ground waters of the state, and which the Director has reason to believe are in the injected fluids; (7-1-93)

iv. Monitoring of ground water through special monitoring wells or existing points of diversion for beneficial use in the zone of influence as determined by the Director; (7-1-93)

v. A demonstration of the integrity of the casing, tubing or seal of the injection well. (7-1-93)

b. The frequency of required monitoring shall be specified in the permit when issued, except that the Director at any time may, in writing, require additional monitoring and reporting. (7-1-93)

c. All monitoring tests and analysis required by permit conditions shall be performed in a state certified laboratory or other laboratory approved by the Director in accordance with the recommended methods set forth in the latest edition of "Standard Methods for the Examination of Water and Wastewater," American Public Health Association; "Methods for Chemical Analysis of Water and Wastes," EPA, American Society for Testing and Materials Standards; or other authority recognized by the Director. (7-1-93)

d. Any field instrumentation used to gather data, when specified as a condition of the permit, shall be required by the Director to be tested and maintained in such a manner as to ensure the accuracy of the data. (7-1-93)

e. All samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity and fluids injected. (7-1-93)

02. Record Keeping. The permittee shall maintain records of all monitoring activities to include: (7-1-93)

a. Date, time and exact place of sampling; (7-1-93)

b. Person or firm performing analysis; (7-1-93)

- c. Date of analysis, analytical methods used and results of analysis; (7-1-93)
- d. Calibration and maintenance of all monitoring instruments; and (7-1-93)
- e. All original tapes, strip charts or other data from continuous or automated monitoring instruments. (7-1-93)

03. Five Year Retention Of Records. The permittee shall retain for a period of five (5) years all records of monitoring, construction and application information. The period of retention shall be extended during the course of any litigation regarding the injection of contaminants by the permittee or when requested by the Director. This requirement shall continue in effect during the five (5) year period following permanent abandonment of a well. (7-1-93)

04. Reporting. (7-1-93)

a. Monitoring results obtained by the permittee pursuant to the monitoring requirements prescribed by the Director shall be reported to the Director as required by permit conditions. (7-1-93)

b. The Director shall be notified in writing by the permittee within five (5) days after the discovery of violation of the terms and conditions of the permit. If the injection activity endangers human health or a public or domestic water supply, use of the injection well shall be immediately discontinued and the owner or operator shall immediately notify the Director. Notification shall contain the following information: (7-1-93)

- i. A description of the violation and its cause; (7-1-93)
- ii. The duration of the violation, including dates and times; if not corrected or use of the well discontinued, the anticipated time of correction; and (~~7-1-93~~)(____)
- iii. Steps being taken to reduce, eliminate and prevent recurrence of the injection. (7-1-93)

c. Where the owner or operator becomes aware of failure to submit any relevant facts in any permit application or report to the Director, that person shall promptly submit such facts or information. (7-1-93)

d. The permittee shall furnish the Director, within a time specified by the Director, any information which the Director may request to determine compliance with the permit. (7-1-93)

e. All applications for permits, notices and reports submitted to the Director shall be signed and certified. (7-1-93)

f. The Director shall be notified in writing of planned physical alterations or additions to any facility related to the permitted injection well operation. (7-1-93)

g. Additional information to be reported to the Director in writing: (7-1-93)

- i. Transfer of ownership; (7-1-93)
- ii. Any change in operational status not previously reported; (7-1-93)
- iii. Any anticipated noncompliance; and (~~7-1-93~~)(____)
- iv. Reports of progress toward meeting the requirements of any compliance schedule attached or assigned to this permit. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

065. VIOLATIONS, FORMAL NOTIFICATION AND ENFORCEMENT (Rule 65).

- 01. Violations.** It shall be a violation of these rules for any owner or operator to: (7-1-93)
- a.** Fail to comply with a permit or authorization, or terms or conditions thereof; (~~7-1-93~~)(____)
 - b.** Fail to comply with applicable standards for water quality; (7-1-93)
 - c.** Fail to comply with any permit application notification or filing requirement; (7-1-93)
 - d.** Knowingly make any false statement, representation or certification in any application, report, document or record filed pursuant to these rules, or terms and conditions of an issued permit; (7-1-93)
 - e.** Falsify, tamper with or knowingly render inaccurate any monitoring device or method required to be maintained or utilized by the terms and conditions of an issued permit; (7-1-93)
 - f.** Fail to respond to any formal notification of a violation when a response is required; or (~~7-1-93~~)(____)
 - g.** Abandon a well in an unauthorized manner. (7-1-93)
- 02. Additional.** It shall be a violation of these rules for any person to construct, operate, maintain, convert, plug, abandon or conduct any other activity in a manner which results or may result in the unauthorized injection of a hazardous waste or of a radioactive waste by an injection well. (7-1-93)
- 03. Formal Notification.** Formal notification of violations may be communicated to the owner or operator with a letter, a notice of violation, a compliance or enforcement order or other appropriate means. (7-1-93)
- 04. Enforcement.** Violation of any of the provisions of the Waste Disposal and Injection Well Act (Chapter 39, Title 42, Idaho Code) or of any rule, regulation, standard or criteria pertaining to the Waste Disposal and Injection Well Act may result in the Director ~~pursuing one (1) or more of the following remedies:~~ initiating an administrative enforcement action as provided under Chapters 17 and 39, Title 42, Idaho Code. (~~7-1-93~~)(____)
- ~~**a.** The Director may cancel the permit to construct, modify or maintain any injection well authorized thereunder. (7-1-93)~~
 - ~~**b.** The Director may seek an injunction or restraining order restraining any person from violating or attempting to violate the provisions of these rules. (7-1-93)~~
 - ~~**c.** The Director may issue a cease and desist order to restrain any person from violating Rule Subsection 065.02 of these rules. (7-1-93)~~
 - ~~**d.** The Director may seek a consent agreement with any owner/operator of an injection well through a compliance conference, letter, or other communication for any injection well found in violation of these rules. Such an agreement shall be established in writing and signed by the owner/operator. Violation of the consent agreement will result in the Director taking other appropriate action. (7-1-93)~~
- ~~**05. Violations.** In the event of any violation, the Director may seek in a court of competent jurisdiction such civil remedies as may be appropriate and provided by law against the violator, and may request the prosecution of any criminal offenses in a court of competent jurisdiction. (7-1-93)~~

(BREAK IN CONTINUITY OF SECTIONS)

075. EXEMPTION FROM DRINKING WATER SOURCE DESIGNATION (Rule 75).

01. General. Most aquifers in Idaho are likely to fit within the definition of “drinking water source”. (Rule Subsection 010.15). Some portions of these aquifers, however, may be isolated or contain water of such quality that they will not be utilized as drinking water sources. Other deep ground water systems may contain water of such poor quality that they will not be used for drinking water. These aquifers, portions of aquifers and deep ground water systems may be employed in the best interests of Idaho as disposal sites for certain contaminants, as authorized for disposal under these rules. However, injection must be consistent with the requirements of the Ground Water Quality Act of 1989 and the Idaho Ground Water Quality Plan. (7-1-93)

02. Most Effective Means. Under the authorities of Section 1805, Title 42, Idaho Code, the Director may determine, “the most effective means by which these water resources may be applied for the benefit of the people of this state.” The Director may exempt an aquifer or portion thereof from a drinking water source designation if: (7-1-93)

- a. It is not currently a drinking water source; and (7-1-93)
- b. It will not be utilized as a drinking water source in the future because: (7-1-93)
 - i. It is situated at such a depth or location that recovery for drinking water purposes is economically or technologically impractical; or (7-1-93)
 - ii. Is so contaminated that it would be economically or technologically impractical to render the water fit for human consumption; or (7-1-93)
 - iii. The total dissolved solids content of the ground water is greater than three thousand (3,000) mg/l and it is not reasonably expected to supply a public water system. (7-1-93)

c. ~~The Director shall not provide an exemption without first considering the recommendations of the Director of the Department of Environmental Quality and providing the opportunity for a fact-finding hearing for any aquifer categorized as “Sensitive Resource” or “General Resource” by the Department of Environmental Quality. Procedures for Recategorizing an Aquifer to “Other Resource”. (IDAPA 58.01.11, “Ground Water Quality Rule.” Section 350), may need to be completed prior to any petition for exemption.~~ (7-1-93)()

03. Petition For Exemption. Any owner or operator proposing to inject contaminants authorized under Rule Subsection 025.03 into an aquifer or portion thereof that is within the definition of a drinking water source, but is not currently used in that manner, and is not likely to be used as such in the future, may petition the Director for an exemption to that designation. The petition for exemption shall contain: (7-1-93)

- a. Reason or reasons for the exemption; (7-1-93)
- b. A description of the aquifer or part thereof proposed for exemption, to include the vertical and lateral limits of the aquifer and water table gradient or potentiometric surface; (7-1-93)
- c. The expected direction and rate of movement of the contaminants; (7-1-93)
- d. A description of the geology to include all aquifers or ground water systems, lithologies and controlling features; (7-1-93)
- e. Ground water resources in the area overlying the aquifer proposed for exemption; (7-1-93)
- f. Any other information that the Director may deem necessary to make a decision. (7-1-93)
- g. Confirmation that the aquifer has been designated “Other Resource” by the DEQ. ()

04. Director’s Action. The Director shall provide legal notice of the proposed exemption in a newspaper or newspapers of general circulation in the area that may be affected by the exemption. The notice shall provide locations where the petition for exemption may be reviewed and shall provide for a comment period of thirty (30) days. (7-1-93)

a. A fact-finding hearing may be requested by any person or persons that could be affected by the exemption. All hearings shall be conducted in accordance with the procedures set forth in Rule Subsection 040.02 of these rules. (7-1-93)

b. A copy of the petition for exemption will be submitted to the Director of the Department of Environmental Quality for recommendations. A written notice of the recommendations shall be provided to the Director of the Department of Water Resources within thirty (30) days of receipt, or within fifteen (15) days of any hearing pertaining to the petition. (7-1-93)

c. After due consideration of the petition and upon receipt of the recommendation of the Director of the Department of Environmental Quality, the Director shall either approve or disapprove the petition for exemption. (7-1-93)

05. Hearing Before The Idaho Water Resource Board. Any person aggrieved by the Director's decision shall have the right to a hearing before the Idaho Water Resource Board pursuant to Rule Subsection 070.01 of these rules. (7-1-93)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.02.73 - RULES GOVERNING ACCIDENT PREVENTION COURSE
DOCKET NO. 39-0273-0201
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2002.

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) 49-201 and 41-2515, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

This rulemaking is necessary to bring the rule into compliance with Section 41-2515, Idaho Code, as amended by Senate Bill 1444, effective July 1, 2002. The legislation removed the prohibition on self-instructed courses and also removes the requirement that accident prevention courses be comprised of classroom or field driving instruction.

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

Compliance with amendments to 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 these are non-negotiable revisions to make the rule compliant with Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Ed Pemble, Driver Services Manager, 208-332-7830.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

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. 39-0273-0201

001. TITLE AND SCOPE.

01. Title. This rule shall be known as IDAPA 39.02.73 "Rules Governing Accident Prevention Course." IDAPA 39, TITLE 02, Chapter 73. (9-1-02)T

02. Scope. This rule establishes minimum standards for approval of a motor vehicle accident prevention course for the instruction of motor vehicle operators who are sixty-five (65) years of age or older. (8-31-89)(9-1-02)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter. (9-1-02)T

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (9-1-02)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this Chapter. (9-1-02)T

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street And Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W State Street with a mailing address of P.O. Box 7129, Boise ID 83707-1129. (9-1-02)T

02. Office Hours. Daily office hours are 8 a.m. to 5 p.m., except Saturday, Sunday and state holidays. (9-1-02)T

03. Telephone And FAX Numbers. The Driver Services Section may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-8739. (9-1-02)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this Chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (9-1-02)T

007. -- 099. (RESERVED).

100. CRITERIA.

01. Instructor Certification. For classroom and field driving instruction, ~~instructors~~ must be certified by ~~either~~ the Idaho Department of Education as a Driver and Traffic Safety Education instructor, or the National Safety Council, American Automobile Association's program (AAA), American Association of Retired Persons (AARP), or an equivalent program, as determined by the Idaho Transportation Department. (8-31-89)(9-1-02)T

02. Contents Of Course. ~~The contents of the~~ Other than courses ~~must be as outlined~~ provided by ~~either~~ the National Safety Council, AAA ~~Program~~, or AARP's ~~instructor's manual or an equivalent instructor's manual~~, as ~~determined~~ all accident prevention course outlines must be approved by the Idaho Transportation Department. (8-31-89)(9-1-02)T

03. Length Of Class. The course must ~~consist of~~ be a minimum of ~~eight six~~ (86) ~~class~~ hours, ~~including~~ which may include any combination of classroom instruction, ~~or~~ field driving instruction, ~~or on-line instruction time~~. (8-31-89)(9-1-02)T

04. Proof Of Insurance. For field driving instruction, if any, the course ~~sponsor~~ provider must provide confirm adequate proof of insurance. ~~(8-31-89)(9-1-02)T~~

05. ~~Sponsor~~ Provider Location. The course ~~sponsor~~ provider must identify confirm location(s) of established place of business, and a telephone number or e-mail address of a contact person who can be reached during regular working hours 8 a.m. to 5 p.m. ~~(8-31-89)(9-1-02)T~~

06. Participant Certification. Each participant shall be issued a certificate of completion by the instructor or course provider. ~~(8-31-89)(9-1-02)T~~

101. -- 199. (RESERVED).

200. RECERTIFICATION COURSE REVIEW.

The sponsors of any approved Accident Prevention Courses must apply to the Department for recertification on an annual basis are subject to periodic review by the department. As a part of the review process, the provider may be asked to confirm course and instructor information and resubmit instruction materials. ~~(8-31-89)(9-1-02)T~~

201. WITHDRAWAL OF COURSE APPROVAL.

The department may withdraw course approval if minimum standards are no longer met or if course providers have failed to respond to a course review. In the event the department proposes to withdraw approval for a course, written notification will be sent to the provider. Requests for reconsideration will be reviewed by the Motor Vehicle Administrator. ~~(9-1-02)T~~

2012. -- 999. (RESERVED).

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.46 - RULES GOVERNING STUDDED TIRES

DOCKET NO. 39-0346-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2002.

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) 49-201 and 49-948, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

Based on a study of winter maintenance storm patterns, this rulemaking extends the allowable date for use of studded tires from April 15 to April 30, providing a safety benefit to travelers without adversely affecting pavement wear.

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

Protection of the public safety.

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 rulemaking is being promulgated to provide a safety benefit to travelers in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Greg Laragan, Assistant Chief Engineer/Operations, 208-334-8535.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

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. 27-0101-0202

001. TITLE AND SCOPE.

01. Title. This rule shall be known as IDAPA 39.03.46 "Rules Governing Studded Tires." IDAPA 39, TITLE 03, Chapter 46. (10-1-02)T

02. Scope. The purpose of this rule is to identify when studded tires are not allowed on public highways. (~~12-26-90~~)(10-1-02)T

002. WRITTEN INTERPRETATIONS.

The Idaho Transportation Department has no written interpretations of this Chapter. (10-1-02)T

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this Chapter shall be governed by the rules of administrative procedure of the attorney general. IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (10-1-02)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this Chapter. (10-1-02)T

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS -- PHONE NUMBERS.

01. Street And Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W State Street with a mailing address of P.O. Box 7129, Boise ID 83707-1129. (10-1-02)T

02. Office Hours. Daily office hours are 8 a.m. to 5 p.m., except Saturday, Sunday and state holidays. (10-1-02)T

03. Telephone And FAX Numbers. The Assistant Chief Engineer/Operations may be contacted during office hours by phone at 208-334-8555, or by fax at 208-334-8595. (10-1-02)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All records associated with this Chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (10-1-02)T

007. -- 099. (RESERVED).

100. PROHIBITIONS.

Motor vehicles equipped with tires having built-in lugs of tungsten carbide or of other metallic material are prohibited on Idaho's public highways ~~between the dates of April~~ from May 16 and through September 30, annually.

(~~12-26-90~~)(10-1-02)T

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.60 - RULES GOVERNING OUTDOOR ADVERTISING

DOCKET NO. 39-0360-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 15, 2002.

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) 40-312, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

This rulemaking addresses the regulation of electronic advertising such as multiple message signs (i.e. rotating panels) and moveable message signs (i.e. video displays) to meet the needs of the outdoor advertising industry while protecting the safety of the traveling public. It also clarifies the definition of commercial activity so that only legitimate commercial and industrial sites qualify as sign locations.

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

This rulemaking provides for the safety of the traveling public.

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 industry representatives were consulted during the development of this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Leonard Hill, Right-of-Way Manager, 208-334-8520.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August, 2002.

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. 27-0101-0201

001. TITLE AND SCOPE.

01. Title. This rule shall be known as IDAPA 39.03.60 "Rules Governing Outdoor Advertising." IDAPA 39, TITLE 03, Chapter 60. (8-15-02)T

02. Scope. This rule contains guidelines for the control of outdoor advertising signs, structures or displays along the interstate, ~~primary freeways and~~ primary system of highways, and National Highway System roads of the state of Idaho pursuant to Chapters 1, 3, and 19, Title 40, Idaho Code. (~~12-26-90~~)(8-15-02)T

002. WRITTEN INTERPRETATIONS.

A written interpretation of this chapter, entitled "Advertising Signs Along Idaho Highways" (ITD-2806M), is available at each of the department district offices listed in Section 005 of this rule. (8-15-02)T

003. ADMINISTRATIVE APPEALS.

Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general. IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (8-15-02)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. (8-15-02)T

005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESS – PHONE NUMBERS.

01. Street And Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W State Street with a mailing address of P.O. Box 7129, Boise ID 83707-1129. (8-15-02)T

02. Office Hours. Daily office hours are 8 a.m. to 5 p.m., except Saturday, Sunday and state holidays. (8-15-02)T

03. Idaho Transportation Department District Offices are at the following locations: (8-15-02)T

a. Idaho Transportation Department District 1
605 Prairie, Coeur d'Alene
Mailing address - P.O. Box D
Coeur d'Alene, Idaho 83814
Office Hours - 7 a.m. to 4 p.m., Pacific Time Zone
Right-of-Way Section Phone – (208) 772-1216 (8-15-02)T

b. Idaho Transportation Department District 2
26th and North and South Highway, Lewiston
Mailing address - P.O. Box 837
Lewiston, Idaho 83501
Office Hours - 7 a.m. to 4 p.m., Pacific Time Zone
Right-of-Way Section Phone – (208) 799-4216 (8-15-02)T

c. Idaho Transportation Department District 3
8150 Chinden Blvd., Boise
Mailing address - P.O. Box 8028
Boise, Idaho 83707
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Right-of-Way Section Phone – (208) 334-8344 (8-15-02)T

d. Idaho Transportation Department District 4

216 Date Street, Shoshone
Mailing address - P.O. Box 2-A
Shoshone, Idaho 83352
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Right-of-Way Section Phone – (208) 886-7839 (8-15-02)T

e. Idaho Transportation Department District 5
5151 South 5th, Pocatello
Mailing address - P.O. Box 4700
Pocatello, Idaho 83201
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Right-of-Way Section Phone – (208) 239-3355 (8-15-02)T

f. Idaho Transportation Department District 6
206 North Yellowstone, Rigby
Mailing address - P.O. Box 97
Rigby, Idaho 83442
Office Hours - 8 a.m. to 5 p.m., Mountain Time Zone
Right-of-Way Section Phone – (208) 745-5635 (8-15-02)T

006. PUBLIC RECORDS ACT COMPLIANCE

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. (8-15-02)T

0027. -- 009. (RESERVED).

010. DEFINITIONS.

The Idaho Transportation Department adopts the definitions set forth in Sections 40-101 through 40-127, Idaho Code. In addition, as used in this chapter: (8-15-02)T

01. Advertising Structure(s) Or Sign(s), Or Advertising Display(s). Any outdoor structure, display, light device, figure, painting, drawing, message, plaque, poster, billboard, or other thing which is designed, intended, or used to advertise or inform. These do not include: (12-26-90)

a. Official notices issued by any court or public body or officer. (12-26-90)

b. Notices posted by any public officer in performance of a public duty or by any person giving legal notice. (12-26-90)

c. Directional, warning, or informational structures required by or authorized by law, informational or directional signs regarding telephone service, emergency telephone signs, buried or underground cable markers and above cable closures. (12-26-90)

d. An official or public structure erected near a city or county, and within its territorial or zoning jurisdiction, which contains the name of such city or county, provided the same is maintained wholly at public expense. (12-26-90)

02. Commercial Or Industrial Activities. Those activities generally recognized as commercial or industrial by zoning authorities in this State, except that none of the following activities shall be considered commercial or industrial: (12-26-90)

a. Agricultural, forestry, grazing, farming, and related activities, including but not limited to, wayside fresh produce stands. (12-26-90)

b. Transient or temporary activities. (12-26-90)

c. Activities not visible from the main traveled way. (12-26-90)

- d. Activities conducted in a building principally used as a residence. (12-26-90)
- e. Railroad tracks and minor sidings. (12-26-90)
- f. Outdoor advertising displays. (12-26-90)

03. Transient Or Temporary Activity. An activity shall be considered transient or temporary for the purposes of Chapter 19, Title 40, Idaho Code when: (8-15-02)T

- a. The activity lacks any business or privilege license required by the city, county or state. (8-15-02)T
- b. The activity on the property has not been conducted for at least six (6) months at the time of application for a sign permit. (8-15-02)T
- c. The activity lacks utilities (water, power, telephone, etc.) and which are normally utilized by similar commercial activities. (8-15-02)T
- d. The activity is not carried on in a permanent building designed, built or modified for its current commercial or industrial use, located within six hundred sixty (660) feet of the nearest edge of the right-of-way. (8-15-02)T
- e. The property upon which the activity is conducted lacks direct or indirect vehicular access or does not generate vehicular traffic. (8-15-02)T
- f. The activity does not have employees on-site during normal business hours which is considered normal, usual, and customary. (8-15-02)T
- g. The activity lacks a frequency of operations which are considered usual, normal and customary for that type of commercial or industrial operation and the activity shall be visible and recognizable as a commercial or industrial activity. (8-15-02)T

034. Commercial Or Industrial Zones. The provisions of Section 40-1911, Idaho Code, shall not apply to those segments of the interstate, ~~primary freeways~~ and primary system of highways which traverse and abut on commercial, business, or industrial zones within the boundaries of incorporated municipalities, wherein the use of real property adjacent to and abutting on the interstate, ~~primary freeways~~ and primary system of highways is subject to municipal or county regulation or control, or which traverse and abut on other areas where the land use is clearly established by State law or county zoning regulation, as industrial, business, or commercial, or which are located within areas adjacent to the interstate, ~~primary freeways~~ and primary system of highways which are in unzoned commercial or industrial areas as determined by the Department from actual land uses; provided, however, that the Department shall determine the size, lighting, and spacing of signs in such zoned and unzoned industrial, business, or commercial areas. For the purpose of this rule, areas abutting interstate, ~~primary freeways~~ and primary highways of this State which are zoned commercial or industrial by counties and municipalities shall be valid as commercial or industrial zones only as to the portions actually used for commerce or industrial purposes and the land along the highway in urban areas for a distance of six hundred (600) feet immediately abutting to the area of the use, and does not include areas so zoned in anticipation of such uses at some uncertain future date nor does it include areas so zoned for the primary purpose of allowing advertising structures. (~~12-26-90~~)(8-15-02)T

045. Customary Maintenance. Repainting the structure, trim, or sign face, changing poster paper, replacing existing electrical components after failure and replacing damaged structural parts. It does not include the installation of a new sign face nor the initial installation of lighting. Substantial replacement begins when repair and other costs exceed fifty percent (50%) of the sign's reproduction cost. (12-26-90)

056. Department. The Idaho Transportation Department, acting through the Idaho Transportation Board. (12-26-90)

067. Erect. To construct, build, raise, assemble, place, affix, create, paint, draw, or in any other way

bring into being or establish, but does not include any of the foregoing activities when performed incident to the change of an advertising message or customary maintenance of a sign. (12-26-90)

078. Grandfather Sign. One which was lawfully in existence in a zoned or unzoned commercial or industrial area on the effective date of the State law and which may remain even though it may not comply with the size, lighting, or spacing criteria within this rule. This clause only allows an individual sign at its particular location for the duration of its normal life subject to customary maintenance. (12-26-90)

089. Illegal Sign. One which was erected and/or maintained in violation of State law. (12-26-90)

0910. Main Traveled Way. The portion of a roadway for the movement of vehicles, exclusive of shoulders. (12-26-90)

11. Multiple Message Sign (MMS). A sign, display, or device that changes the message or image on the sign electronically by movement or rotation of panels or slats, or electronic billboards that have a programmable display of variable text or symbolic imagery. (8-15-02)T

102. Nonconforming Sign. One which was lawfully erected, but does not comply with the provisions of State law or State regulation passed at a later date or which later fails to comply with State law or State regulation due to changed conditions. Illegally erected and/or maintained signs are not nonconforming signs. All signs located within an unzoned area shall become nonconforming if the commercial or industrial activity used in defining the area ceases for a continuous period of six (6) months. (12-26-90)

11. Primary Freeway. ~~Any full control of access primary highway.~~ (12-26-90)

13. Sign Face. The overall dimensions or area of that portion or side of an individual sign structure that is designed, intended, and capable of displaying messages. It includes border and trim, but excludes the base or apron, supports and other structural members. (8-15-02)T

14. Sign Structure. A construction including the sign face, base or apron, and other structural members. (8-15-02)T

125. Unzoned Commercial Or Industrial Area. Any area not zoned by State or local law, regulation or ordinance which is occupied by one (1) or more industrial or commercial activities, other than outdoor advertising signs, and the land along the highway for a distance of six hundred (600) feet immediately abutting to the area of the activities. All measurements shall be from the outer edge of the regularly used buildings, parking lots, storage, or processing areas of the activities, and shall be along or parallel to the edge of pavement of the highway. (12-26-90)

136. Urban Areas. Any geographical area within the city limits of any incorporated city having a population of five thousand (5,000) or more inhabitants. Population numbers referred to in this Subsection shall be determined by the latest United States census. (12-26-90)

147. Visible. Capable of being seen (whether or not legible) without visual aid by a person of normal visual acuity. (12-26-90)

011. -- 099. (RESERVED).

100. GENERAL.

01. Visible Informative Content. This rule applies only to advertising displays whose informative content is visible from the main traveled way of interstate, ~~primary freeways~~ or primary highways. (12-26-90)(8-15-02)T

02. Responsibilities. Both the owner of a sign and the landowner upon whose property the sign is located will be held responsible for violations of this rule. (12-26-90)

03. Nonconforming Signs. Signs which stand without advertising copy, obsolete advertising matter, or

continued need for repairs beyond customary maintenance constitute discontinuance and abandonment after a period of six (6) months and will be subject to removal. (12-26-90)

04. Signs Visible From The Main Travel-Way. Signs beyond six hundred and sixty (660) feet from the right-of-way will be considered to have been erected with the purpose of their message being read from the main traveled way when: (12-26-90)

a. The sign angle and size is such that the message content is readily visible from the main traveled way; or (12-26-90)

b. The exposure time is long enough at the maximum speed limit for the sign message to be readable and comprehensible. (12-26-90)

05. Permit Or License Revocation. The erection or maintenance of signs from the highway right-of-way; or the destruction of trees or shrubs within the highway right-of-way will be cause for permit or license revocation. (12-26-90)

06. Multiple Sign Faces. Criteria which permit multiple sign faces to be considered as one (1) sign structure for spacing purposes are limited to signs which are physically contiguous, or connected by the same structure or cross-bracing. (12-26-90)

07. Edge ~~Of~~ Of Right-Of-Way. Distance from the edge of the right-of-way shall be measured horizontally along a line normal or perpendicular to the centerline of the highway. ~~(12-26-90)~~(8-15-02)T

08. Control Requirement. Where a sign is erected with the purpose of its message being read from two (2) or more highways, one (1) or more of which is a controlled highway, the more stringent of applicable control requirements will apply. (12-26-90)

101. -- 199. (RESERVED).

200. EXEMPTIONS AUTHORIZED BY SECTION 40-1904, IDAHO CODE.

01. Signs Erected By Public Officers Or Agencies. Directional and other official signs and notices erected by public officers or agencies will be issued permits at no cost to the owners, as described more fully elsewhere in this rule. (12-26-90)

02. Advertising Sale Or Lease Of Property. Signs advertising the sale or lease of property upon which they are located. These signs shall not advertise any products, services, or anything unrelated to the selling or leasing of the property. (12-26-90)

03. On-Premise Signs. Signs (on-premise) advertising activities conducted on the property upon which they are located are allowed, subject to the following: Not more than one (1) such sign, visible to traffic proceeding in any one (1) direction and advertising activities being conducted upon the real property where the sign is located may be permitted more than fifty (50) feet from the advertised activity. The criteria for determining the limits of the area of the advertised activity from which the fifty (50) feet measurement can be taken are as follows: (12-26-90)

a. When the advertised activity is a business, commercial, or industrial land use, the distance shall be measured from the regularly used buildings, parking lots, storage, or processing areas, or other structures which are essential and customary to the conduct of the business and within its limits of the real property. It shall not be measured from driveways, fences, or similar facilities. (12-26-90)

b. When the advertised activity is a noncommercial or nonindustrial land use such as a residence, farm, or orchard, the distance shall be measured from the major structures on the property. (12-26-90)

c. In no event shall a sign site be considered part of the premises on which the advertised activity is conducted if it is located upon a narrow strip of land: ~~W~~which is nonbuildable land, such as, but not limited to,

swampland, marshland, or other wetland, or which is a common or private roadway, or held by easement or other lesser interest than the premises where the advertised activity is located. ~~(12-26-90)(8-15-02)T~~

201. -- 299. (RESERVED).

300. DISPLAYS LOCATED WITHIN ZONED OR UNZONED INDUSTRIAL, BUSINESS OR COMMERCIAL AREAS.

01. Size Of Signs. Within zoned and unzoned commercial, business, or industrial areas, and pursuant to the directive of Section 40-312, Idaho Code, ~~no~~ the face of an advertising display shall not exceed the following size limits: ~~(12-26-90)(_____)~~

- a. Maximum area - one thousand (1000) square feet; (12-26-90)
- b. Maximum height - thirty (30) feet; (12-26-90)
- c. Maximum length - fifty (50) feet. (12-26-90)

02. Dimensions. ~~All dimensions~~ The area of a sign face will include all of the border, trim, cutouts, and extensions, but exclude supports and decorative bases. Sign face area shall be measured by the smallest square, rectangle, triangle, circle, or combination thereof which will encompass the entire advertising device including border, trim, cutout, and extension, but excluding supports and decorative bases. ~~(12-26-90)(_____)~~

03. Spacing Of Advertising Displays. Within zoned and unzoned commercial, business, or industrial areas, as defined in Section 010 herein and pursuant to directive of Section 40-1912, Idaho Code, the following spacing regulations shall apply: (12-26-90)

a. Advertising displays on interstate, ~~primary freeway~~ and primary highways may not be located in such a manner as to obscure or otherwise interfere with the effectiveness of an official traffic sign, signal, or device, or to obstruct or interfere with the driver's view of approaching, merging, or intersecting traffic. ~~(12-26-90)(8-15-02)T~~

b. Advertising displays on interstate, ~~primary freeway~~ and primary highways may not be located within five hundred (500) feet of any of the following which are adjacent to the highway: public parks; public forests; public playgrounds; scenic areas designated as such by the Department or other State agencies having and exercising such authority. ~~(12-26-90)(8-15-02)T~~

c. In a case where the highway passes beneath a railroad overpass or beneath a highway grade separation structure where no traffic connection between the crossing highways is provided, no advertising display may be located on the road passing beneath the structure within a distance of five hundred (500) feet from the nearest edge of the overhead route. (12-26-90)

d. Measurement between signs or from a sign to another feature shall be made horizontally along the pavement edge nearest the signs, between points directly opposite the signs or other features. The point of the sign nearest to the highway shall be used to determine the measurement point. (12-26-90)

e. Two (2) sign faces will be permitted at a single location, arranged ~~side by side~~, back to back, or in a V-type configuration, but shall only have one (1) sign face visible to one (1) direction of travel and will be considered as one (1) sign for spacing regulation. The combined face area of two (2) signs erected side by side shall not exceed one thousand (1000) square feet facing in any one (1) direction. ~~(12-26-90)(8-15-02)T~~

f. Signs erected by public agencies or officers and on-premise signs, as defined in Section 010 of this rule, shall not be counted nor shall measurements be made from them for determining compliance with spacing requirements. (12-26-90)

g. Spacing on interstate ~~and primary freeway~~ highways between advertising displays along each side of the highway shall be a minimum of five hundred (500) feet. The spacing between multiple message signs shall be

a minimum of five thousand (5,000) feet.

~~(12-26-90)(8-15-02)T~~

h. No advertising display on interstate ~~and primary freeway~~ highways shall be erected or maintained within one thousand (1000) feet of an interchange or rest area with the exception of permitted, existing displays which shall have grandfather rights. The minimum spacing between displays as set forth herein for interstate ~~and primary freeway~~ highways shall govern the actual location of any sign display permitted ~~and existing~~ within this zone. No advertising display subject to this regulation shall be permitted along any interstate ~~or primary freeway~~ highways within the actual "interchange area," defined as commencing or ending at the beginning or ending of pavement widening at the exit or entrance to the main traveled way of the interstate ~~or primary freeway~~.

~~(7-1-98)(8-15-02)T~~

i. The ~~location spacing~~ of signs on primary highways ~~shall conform to the following minimum spacing criteria, to be applied to between advertising displays along~~ each side of the ~~primary~~ highway ~~as follows: must be a minimum spacing between signs will be of~~ one hundred (100) feet ~~within any in~~ urban areas; and a minimum ~~spacing between signs outside of any urban area shall be one hundred (100) feet provided the number of signs shall not exceed the length of the area measured along the centerline of the highway divided by of~~ two hundred and fifty (250) feet; ~~two (2) signs will be permitted at a single location, either double faced, V type, or back to back, but shall be considered to be one (1) sign for the purpose of spacing regulation outside of urban areas. A sign structure may contain one (1) or more advertisements per facing but the maximum area per facing shall not exceed one thousand (1000) square feet but shall be considered one (1) sign for the purpose of spacing regulation. The spacing between multiple message signs shall be a minimum of one thousand (1,000) feet in urban areas and a minimum of five thousand (5,000) feet outside urban areas.~~

~~(12-26-90)(8-15-02)T~~

j. Where intersections are more than five hundred (500) feet apart, no off-premise advertising display will be permitted within one hundred (100) feet from the right-of-way line of the intersecting road unless buildings or structures control cross vision; then advertising displays may be permitted up to and on top of the intervening structures.

(12-26-90)

k. When intersections are five hundred (500) feet or less apart, off-premise advertising displays will be permitted a minimum of fifty (50) feet from the right-of-way line of the intersecting road; however, all advertising displays between fifty (50) feet and one hundred (100) feet from the right-of-way line of the intersecting road must have the lower extremities of the advertising display (excluding posts) not less than fourteen (14) feet above the traveled way of the roads affected by the intersection for visibility under the signs by road users. Advertising displays may be permitted within one hundred (100) feet of the intersecting road's right-of-way when buildings or structures control cross vision; but such displays must not be located so as to cause greater restriction to vision than the existing buildings or structures.

(12-26-90)

l. Alleys, undeveloped rights-of-way, private roads and driveways shall not be regarded as intersecting streets, roads or highways.

(12-26-90)

m. Advertising structures may not be located within five hundred (500) feet of the point of pavement widening at the entrance or exit to a rest area, weight checking station, port of entry or other State-operated facility for the use of motorists.

(12-26-90)

04. Lighting.

(12-26-90)

a. No sign shall be so illuminated that it interferes with the effectiveness of, or obscures an official traffic sign, device, or signal.

(12-26-90)

b. Section 40-1910, Idaho Code, prohibits advertising structures which are visible from any interstate; ~~primary freeways~~ or primary highway and display any red or blinking intermittent light likely to be mistaken for a warning or danger signal.

~~(12-26-90)(8-15-02)T~~

c. Section 40-1910, Idaho Code, prohibits advertising displays which include any illumination of such brilliance and so positioned as to blind or dazzle the vision of travelers on adjacent interstate; ~~primary freeways~~ and primary highways.

~~(12-26-90)(8-15-02)T~~

05. Variable Or Multiple Message Signs. (8-15-02)T

a. Multiple message signs shall not include any illumination or image which moves continuously, appears to be in motion or has any moving or animated parts or video displays or broadcasts. No multiple message sign may include any illumination which is flashing or moving, except those giving public service information such as date, time, temperature, weather, or other similar information. (8-15-02)T

b. If illuminated with beams or rays of such intensity or brilliance that it would cause glare or impair the vision of the driver or interfere with the operation of a motor vehicle, effective shielding must be in place so as to prevent beams or rays of light from being directed at any portion of the traveled way. (8-15-02)T

c. If illuminated, illumination must not obscure or interfere with the effectiveness of official traffic sign, device, or signal. (8-15-02)T

d. Multiple message signs must not emit or utilize any sound capable of being detected. (8-15-02)T

e. The message or image on a multiple message sign must remain static for a minimum of eight (8) seconds. (8-15-02)T

f. An automated change of message or image on a multiple message sign must be accomplished within two (2) seconds or less and contain a default design that will freeze the sign face in one (1) position should a malfunction occur. (8-15-02)T

g. If a multiple message sign is in violation of any of the conditions listed in Subsection 300.05.a. through 300.05.g., the permit will be revoked. (8-15-02)T

301. -- 399. (RESERVED).

400. LICENSES.

Pursuant to Sections 40-1905, 40-1906 and 40-1907, Idaho Code, no person shall engage in the business of outdoor advertising without first having secured an outdoor advertising license and paid the required license fee. Licenses must be renewed annually; the Department cannot renew licenses for a period longer than one (1) year at a time. License application forms may be secured at the Idaho Transportation Department District Offices, ~~3311 West State Street, P.O. Box 7129, Boise, Idaho 83707~~ as listed in Section 005 of this rule. (12-26-90)(8-15-02)T

401. PERMITS.

No person shall place any advertising display within the areas affected by the provisions of Section 40-1907, Idaho Code, without first having secured a written permit from the Department. (12-26-90)

01. Application Forms. Permit application forms may be secured at the Idaho Transportation Department, ~~3311 West State Street, Boise, Idaho 83707, or at the following~~ District ~~o~~ffices, as listed in Section 005 of this rule. (12-26-90)(8-15-02)T

a. ~~District No. 1
605 Prairie, Coeur d'Alene
Mailing address - P.O. Box D
Coeur d'Alene, Idaho 83814~~ (12-26-90)

b. ~~District No. 2
26th and North and South Highway, Lewiston
Mailing address - P.O. Box 837
Lewiston, Idaho 83501~~ (12-26-90)

c. ~~District No. 3
8150 Chinden Blvd., Boise
Mailing address - P.O. Box 8028
Boise, Idaho 83707~~ (12-26-90)

- d.** ~~District No. 4~~
~~216 Date Street, Shoshone~~
~~Mailing address - P.O. Box 2-A~~
~~Shoshone, Idaho 83352~~ (12-26-90)
- e.** ~~District No. 5~~
~~5151 South 5th, Pocatello~~
~~Mailing address - P.O. Box 4700~~
~~Pocatello, Idaho 83201~~ (12-26-90)
- f.** ~~District No. 6~~
~~206 North Yellowstone, Rigby~~
~~Mailing address - P.O. Box 97~~
~~Rigby, Idaho 83442~~ (12-26-90)

02. Expiration Of Annual Permits. Annual permits will expire December 31 each year, but a multi-year permit may be issued ~~for a greater period than one (1) year~~ as a *matter of convenience* to the outdoor advertiser. An original annual permit fee of ten dollars (\$10) shall accompany each original permit application. An annual renewal fee of three dollars (\$3) will be assessed for each permit, and the Department will mail a bill to each sign owner annually. ~~If a sign owner wishes to renew a permit for more than one (1) year, payment for the entire period must be made in a lump sum in advance.~~ Payment for the renewal of a permit must be received at least thirty (30) days prior to the expiration date. Permit fees will not be prorated for a fraction of a year. (12-26-90)(8-15-02)T

03. Modified Advertising Structures. Whenever an advertising structure is relocated or undergoes substantial replacement beyond customary maintenance, the modified structure will be considered to be a new sign. Therefore, pursuant to Section 40-1906, Idaho Code, an application for a new display must be submitted before such reconstruction is begun. A permit fee of ten dollars (\$10) must accompany the application. Conversion of a sign face to a multiple message sign face will be considered substantial replacement beyond customary maintenance and considered a new sign. (12-26-90)(8-15-02)T

a. Nonconforming signs which are allowed to be maintained until the State requires their removal cannot be modified so as to increase the reproduction cost. They must remain substantially the same as they were on the effective date of the state law and any subsequent amendments. (12-26-90)

b. The categories of nonconforming signs which may be maintained until they are removed, and nonconforming signs which have been "grandfathered" in commercial and industrial areas cannot include new signs erected in their place or any changes to the existing sign which would be beyond customary maintenance. (12-26-90)

04. Space Requirement Violations. In the event that two (2) or more lawfully erected signs along the interstate, ~~primary freeway~~ and primary highways are in violation of the spacing requirements and the regulations promulgated by the Department, the Department shall accord the interested parties a full opportunity to be heard and shall thereafter make a finding as to the date of erection of each of the signs and award the permit or permits to the applicants whose signs were first erected. (12-26-90)(8-15-02)T

05. Application. All applications received during the Department's normal office hours during the same mail pickup will be construed to have been received simultaneously. In the case of a tie between applicants and upon notification thereof by the Department, it shall determine by lot which will receive the permit. (12-26-90)

06. Permit Denial. No permit will be issued for a new sign having ~~more than~~ two (2) or more faces in any one (1) direction. (12-26-90)(8-15-02)T

07. Physically Connected Signs. Two (2) signs ~~structures~~ which are physically connected will be considered as a single sign ~~with two (2) faces~~ for permit purposes. (12-26-90)(8-15-02)T

08. Standard Permit Application. Owners of displays defined under Sections 40-102(4) and 40-1904, Idaho Code, will be requested to submit a standard permit application for each such display. Identification tags will be

issued for such displays at no cost to the owners. No applications will be requested for minor signs, or emergency telephone signs, nor will tags be issued for them. (12-26-90)

09. Lost Or Destroyed Identification Tags. Identification tags, except those issued under Subsection 401.08, which are lost or destroyed either before or after being attached to signs will be replaced only upon payment of a three dollar (\$3) fee. Tags issued under Subsection 401.08 will be replaced at no cost if lost or destroyed. (12-26-90)

10. Invalid Permit. A permit will only be issued for a sign ~~already~~ that is lawfully erected within one hundred and eighty (180) days of the permit issuance date. The identification tag must be affixed only to the sign for which it was issued and must be so affixed within one hundred and eighty (180) days after being received; otherwise, the permit automatically becomes invalid. ~~(12-26-90)~~ (8-15-02)T

11. Cancellation Of Permit. If the sign for which a permit has been issued is removed, destroyed, or for any reason becomes unusable prior to the expiration date of permit, the permit may be canceled. (12-26-90)

12. Advertising Illegal Activities. Signs advertising activities illegal under Federal, State, or local law are not eligible for permits. (12-26-90)

13. Revoked Permits. When the Department determines a false or misleading statement has been made in the application for a license or permit, said license or permit shall be revoked. (12-26-90)

14. Appeal Process. In the event a permit is denied or revoked, the applicant may obtain instructions for the appeal process at any of the Idaho Transportation Department District Office locations listed in Section 005. (8-15-02)T

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.01 - GENERAL ADMINISTRATION

DOCKET NO. 47-0101-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2002.

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) Title 33-031, Idaho Code, and the Rehabilitation Act of 1973 and all subsequent Amendments.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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:

To reorganize and reduce the rules of Vocational Rehabilitation from three chapters to one.

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

Reorganizing and reducing the rules of the Division and removing duplication of federal law and regulations that are incorporated by reference confers a benefit to the public.

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 rules have been implemented through the Rehabilitation Act of 1973 and all subsequent Amendments.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sue Payne (208) 334-3390 ext. 110.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 17th day of July, 2002.

Barry J. Thompson
Administrator
Idaho Division of Vocational Rehabilitation
650 W. State Street, Room 150
P.O. Box 83720, Boise, ID 83720-0096
(208) 334-3390 ext. 108 / Fax: (208) 334-5305

THE FOLLOWING IS THE TEXT OF DOCKET NO. 47-0101-0201

IDAPA 47, TITLE 01, Chapter 01

**47.01.01 - ~~GENERAL ADMINISTRATION~~ RULES OF THE IDAHO DIVISION
OF VOCATIONAL REHABILITATION**

(BREAK IN CONTINUITY OF SECTIONS)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 47.01.01, "~~General Administration~~ Rules of the Idaho Division of Vocational Rehabilitation". ~~(4-5-00)~~(10-1-02)T

02. Scope. The chapter has the following scope: To streamline the existing rules and to implement program changes necessitated by the 1998 Amendments of the Rehabilitation Act of 1973. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

01. General. Unless provided otherwise, any reference in these rules to any document identified in Subsection 004 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (3-30-01)

02. Availability Of Reference Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (3-30-01)

a. Central Office, Idaho Division of Vocational Rehabilitation, 650 W. State Street, Room 150, Boise, Idaho 83720, (208) 334-3390. (3-30-01)

b. Regional Offices, Idaho Division of Vocational Rehabilitation, located at: (3-30-01)

i. 1010 Ironwood Drive, Suite 101, Coeur d'Alene, Idaho 83814, (208) 769-1441. (3-30-01)

ii. 1118 F. Street, P.O. Box ~~368~~1164, Lewiston, Idaho 83501, (208) 799-5070. ~~(3-30-01)~~(10-1-02)T

iii. 3350 Americana Terrace, Suite 210, Boise, Idaho 83706, (208) 334-356650. ~~(3-30-01)~~(10-1-02)T

iv. 10200 W. Emerald Street, Suite 101, Boise, Idaho 83704, (208) 327-7411. (3-30-01)

v. 245 3rd Avenue North, Twin Falls, Idaho 83301, (208) 736-2156. (3-30-01)

vi. 1070 Hiline, Suite 200, Pocatello, Idaho 83201, (208) 236-6333. (3-30-01)

vii. 1825 Hoopes Avenue, Idaho Falls, Idaho 83404, (208) 525-7149. (3-30-01)

viii. 3110 E. Cleveland Blvd. #A57, Caldwell, Idaho 83605, (208) 454-7606. ~~(3-30-01)~~(10-1-02)T

- ix. This document is also available at website <http://www.state.id.us/idvr/idvrhome.htm>. (3-30-01)
- 03. Documents Incorporated By Reference.** The following documents are incorporated by reference into these rules: (3-30-01)
- a. All federal publications through the Rehabilitation Services Administration. ~~(3-30-01)~~(10-1-02)T
 - b. Idaho Division of Vocational Rehabilitation Field Services Manual, 2000~~2~~. ~~(3-30-01)~~(10-1-02)T
 - c. State Plan for Vocational Rehabilitation 2001-2003. (3-30-01)
 - d. Workforce Investment Act, Public Law 105-220. ~~(3-30-01)~~(10-1-02)T
 - e. Federal Register, Department of Education, 34 CFR Part 361. (3-30-01)
 - f. The Rehabilitation Act, as amended 1998. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

- 01. Authorization To Purchase.** A purchase order issued on behalf of the Division. (10-1-02)T
- ~~02.~~ **CFR.** Code of Federal Regulations. (7-1-93)
- ~~023.~~ **Client/Participant.** Any individual who has applied for or is eligible for Vocational Rehabilitation services. ~~(3-30-01)~~(10-1-02)T
- 04. Core Vocational Rehabilitation Services.** Services that reduce the impact of functional limitations on the ability to achieve an employment outcome (i.e. medical restoration services, training services, assistive technology, job placement, etc.) (10-1-02)T
- 05. Designated State Agency.** The Idaho State Board of Education. (10-1-02)T
- ~~036.~~ **Designated State Unit.** The Idaho Division of Vocational Rehabilitation. (7-1-93)
- 07. Extended Period of Time.** An anticipated six (6) or more months within which time rehabilitation services are being provided on an active and ongoing basis. (10-1-02)T
- ~~048.~~ **IDVR.** The Idaho Division of Vocational Rehabilitation. (4-5-00)
- ~~059.~~ **IPE.** Individualized Plan for Employment. (4-5-00)
- 10. Most Significant Disability (MSD).** Meets the criteria as Significant Disability as found in the Rehabilitation Act of 1973, as amended, and is further defined as: (10-1-02)T
- a. Having a severe physical, mental, cognitive or sensory impairment which seriously limits two (2) or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome; and (10-1-02)T
 - b. Whose vocational rehabilitation can be expected to require multiple core vocational rehabilitation services (as opposed to supportive services) over an extended period of time. (10-1-02)T
- ~~0611.~~ **Method Of Written Notification.** The written notification of findings and conclusions arising

from an ~~Administrative Review~~ Informal Dispute Resolution, Mediation, ~~Fair~~ Impartial Due Process Hearing, shall be served to the client via the U.S. Postal Service by means of certified mail. Durational requirements for appeals shall commence on the day received by the client as noted by the certified mail records. ~~(3-30-01)~~(10-1-02)T

12. PM. Policy Memorandum. (10-1-02)T

~~07. P.L. Public Law.~~ (7-1-93)

~~08. RCR. Running Case Record.~~ (7-1-93)

~~0913. RSA. Rehabilitation Services Administration, U.S. Department of Education.~~ (7-1-93)(10-1-02)T

104. State Administrator. The Chief Executive Officer of the Idaho Division of Vocational Rehabilitation. (4-5-00)

~~H. Impartial Hearing Officer. A due process hearing shall be conducted by an impartial hearing officer who shall issue a decision based on the provisions of the approved State Plan, the Rehabilitation Act, and State regulations and policies. The Designated State Unit shall maintain a list of qualified impartial hearing officers who are knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services.~~ (4-5-00)

15. Supportive Services. Services that complement the provision of core services and are provided only to insure that the client/participant can benefit in terms of an employment outcome. (10-1-02)T

16. VRC. Vocational Rehabilitation Counselor. (10-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

100. CLIENT/PARTICIPANT APPEALS.

~~01. Client Of Vocational Rehabilitation – Internal Appeals Procedure To Contest A Disputed Action, Failure To Act, Or Decision Of The Division. A client of Vocational Rehabilitation services may file a request for an Administrative Review, Mediation or Fair Hearing for a re-determination of any and all actions, or lack thereof, concerning determination of eligibility or the provision (or lack thereof) of services.~~ (3-30-01)

~~021. Administrative Review Informal Dispute Resolution.~~ Within ten (10) calendar days of notification of the contested action, lack of action or decision, the client/participant may request that an Administrative Review Informal Dispute Resolution be held. The request shall be made in writing to the Regional Manager. The written request should state the reason for the requested review. ~~(3-30-01)~~(10-1-02)T

a. The Regional Manager shall inform the client/participant in writing as to the time, place, and date of the Administrative Review Informal Dispute Resolution. The client/participant may choose to represent himself/herself or may have a representative(s) speak on his/her behalf. ~~The Regional Manager will insure complete familiarity of the case and will call for testimony from any and all parties to the case that he/she feels is relevant to the review.~~ (4-5-00)(10-1-02)T

b. The Regional Manager will make a decision regarding the specifics of the Administrative Review Informal Dispute Resolution. This decision will be in written form and it will be sent to the client/participant, with a copy. ~~It will also be included in the pertinent case file. Since the Administrative Review is an informal problem resolution process, the form of the written decision may be in standard business letter format.~~ (4-5-00)(10-1-02)T

032. Mediation. ~~The client will be informed of the availability of mediation and the process for such to settle disputes. Mediation is voluntary and is not intended to deny or delay the right to a fair hearing.~~ The request shall be made in writing to the Regional Manager. A written request should state the reason for the requested review.

(3-30-01)

a. *The division will make available a list of qualified mediators from which the client may choose.*

(4-5-00)

b. *The cost of the mediation process is paid for by the Idaho Division of Vocational Rehabilitation. The division is not required to pay for any costs related to the representation of the client.*

(3-30-01)

c. The Mediation must take place within the ~~forty five~~ sixty (4560) day requirement for an Fair Impartial Due Process Hearing.
(3-30-01)(10-1-02)T

043. **Fair Impartial Due Process Hearing.** ~~A Fair Hearing~~ An Impartial Due Process Hearing can be held without an ~~Administrative Review~~ Informal Dispute Resolution or Mediation or if the client/participant is dissatisfied with the result of the ~~Administrative Review~~ Informal Dispute Resolution or Mediation. ~~The Administrative Review or Mediation process may not be used as a means to delay a more formal hearing before an impartial hearing officer unless the parties jointly agree to a delay.~~ The Fair Impartial Due Process Hearing will deal with the issues involved in the original ~~Administrative Review~~ Informal Dispute Resolution or Mediation, if one took place. The request for an Fair Impartial Due Process Hearing will be made in writing to the Administrator of the Division. ~~It must be made~~ within ten (10) calendar days ~~subsequent to receipt of official notification~~ of the Regional Manager's decision from the ~~Administrative Review~~ Informal Dispute Resolution or the Mediation Agreement from Mediation. The hearing by an impartial hearing officer must be held within ~~forty five~~ sixty (4560) days of a request by the client unless both parties agree to a specified delay.
(3-30-01)(10-1-02)T

a. *The impartial hearing officer shall be selected from a pool of qualified persons identified jointly by the Division and members of the State Rehabilitation Council. The impartial hearing officer shall inform all relevant parties, in writing, as to the time, date, and place of the Fair Hearing. The client may represent himself/herself or may choose to be represented by any person(s) of his/her choice.*

(3-30-01)

b. *The hearing is a more formal proceeding than the Administrative Review or Mediation. Upon its completion, the Impartial Hearing Officer shall make a decision. This decision shall be rendered into writing and provided to all parties involved in the Fair Hearing. The decision shall be the final action.*

(3-30-01)

101. -- 9199. (RESERVED).

200. ORDER OF SELECTION.

01. Order Of Selection. The following order of selection will be used if the Idaho Division of Vocational Rehabilitation finds that it cannot serve all eligible clients/participants due to a lack of either personnel and/or financial resources. The priority listings progress downward with priority number one (1) being the most restrictive and priority number four (4) being the least restrictive.
(10-1-02)T

a. Priority Number 1: At the time that a decision to move to an order of selection is made, it is determined that only those consumers who already have an existing individualized plan for employment (IPE) will continue to be served.
(10-1-02)T

b. Priority Number 2: At the time that a decision to move to an order of selection is made, it is determined that only those consumers in Priority Number 1 above and current and future, otherwise eligible, clients/participants rated to this or a more restrictive priority can be served. Consumers meeting this priority rating are those individuals with most significant disabilities.
(10-1-02)T

c. Priority Number 3: At the time that a decision to move to an order of selection is made, it is determined that only those consumers in Priorities Numbers 1 and 2 above and current and future, otherwise eligible, clients/participants rated to this or a more restrictive priority can be served. Consumers meeting this priority rating are those individuals with significant disabilities.
(10-1-02)T

d. Priority Number 4: All eligible clients/participants for Vocational Rehabilitation services (no order of selection in place).
(10-1-02)T

201.-- 299. (RESERVED)

300. CLIENT/PARTICIPANT SERVICES.

01. Provision Of Purchased Services Contingent Upon Financial Need Of The Client/Participant. The Idaho Division of Vocational Rehabilitation will apply a Financial Needs Assessment. Financial need will not be a consideration in the determination of eligibility for Vocational Rehabilitation, but will be a consideration in allocating the cost of VR services, with some exceptions. (10-1-02)T

02. Authorization To Purchase. The Division requires that when purchasing services from a vendor, an authorization must be issued prior to, or on, the beginning date of service. If services are provided without a Division approved authorization to purchase, the Division reserves the right to not honor the vendor's invoice. (10-1-02)T

301. -- 399. (RESERVED)

400. SERVICES FOR WHICH IDAHO DIVISION OF VOCATIONAL REHABILITATION FINANCIAL PARTICIPATION WILL NOT BE AVAILABLE.

01. General Provisions. Idaho Division of Vocational Rehabilitation will not pay for any services that do not contribute to the determination of eligibility or to achieve an employment outcome. (10-1-02)T

02. Private Pilot's License. The Division of Vocational Rehabilitation will not financially participate in the securing of a private pilot's license. The Division may assist in securing a Commercial Pilot's License. (10-1-02)T

03. Advanced Degree. The Idaho Division of Vocational Rehabilitation may assist with an advanced degree if it is the only means available for an individual with a significant disability to achieve an employment outcome. (10-1-02)T

04. Vehicular Purchase. Financial assistance will not be available for the purchase of a vehicle. For the purpose of this rule, "vehicle" is defined as any motorized conveyance that must be licensed by the state of Idaho in order to be operated on state highways, roads, streets, and waterways. (Included within this definition are: cars, trucks, vans, motorcycles, and boats of various sizes and description). Division funds may be utilized to render an already owned vehicle accessible for the client's/participant's use (i.e., hand controls, van conversions, and installation of lifts). (10-1-02)T

05. Surgery. (10-1-02)T

a. Surgery will not be provided if it is the sole core service needed for return to work or to achieve an employment outcome. (10-1-02)T

b. If the original disability(ies) and limitations substantially worsen, surgery may be provided if it is part of a comprehensive plan (IPE) and required to correct a medical problem which, if left untreated, would jeopardize completion of the rehabilitation plan and employment. (The original disability(ies) is/are defined as the disabilities on which eligibility is determined.) (10-1-02)T

c. If a new disability is diagnosed during the provision of VR services under an IPE, surgery may be provided if it is part of a comprehensive plan (IPE) and required to correct a medical problem which, if left untreated, would jeopardize completion of the rehabilitation plan and employment. (10-1-02)T

d. VR will not cover the cost of surgery if surgery does not substantially reduce or eliminate functional limitations, as VR would still need to retrain or accommodate the limitations. (10-1-02)T

e. Regional Manager must review and approve all surgery plans for VRC, VRCL, VRCII and VRCIII. (10-1-02)T

06. Organ Transplantation. The Idaho Division of Vocational Rehabilitation will not pay for organ transplantation with the exception of Renal Transplantation. (10-1-02)T

07. Non-Residents Of The State. Financial participation will not be available to non-residents of Idaho. Citizenship is not a requisite for financial assistance; however, the individual must have legal resident status (i.e., illegal aliens will not be eligible for the Vocational Rehabilitation programs). (10-1-02)T

401. -- 499. (RESERVED).

500. PROVISION OF CRP (COMMUNITY REHABILITATION PROGRAM) SERVICES.
Work Evaluation, Work Adjustment, Community Based Work Evaluation, Community Based Work Adjustment, Job Site Development, Job Coaching, Placement and Follow-Along Services, are services the Idaho Division of Vocational Rehabilitation purchases from CRPs which are accredited by Commission on Accreditation of Rehabilitation Facilities (CARF) or Rehabilitation Services Accreditation System (RSAS). In conjunction with the client/participant, the qualified professional Vocational Rehabilitation Counselor, will determine which CRP Services, if any, are required for the client/participant to achieve an employment outcome. (10-1-02)T

501. -- 599. (RESERVED).

600. CHIROPRACTIC SERVICES.
Chiropractic examinations will not suffice in meeting the medical documentation required for eligibility purposes. (10-1-02)T

601. -- 699. (RESERVED).

700. PAYMENT POLICY.

01. Rates Of Payment. The Vocational Rehabilitation staff will negotiate rates of payment in the best interest of the organization. We will always encourage the pursuit of comparable benefits. (10-1-02)T

02. Policy. It is the policy of the Division to pay the "usual and customary" charges for services provided to itself or to its client/participants by providers of goods or services. The only exceptions to the "usual and customary" considerations are listed in the Payment Policy Chapter of the Idaho Division of Vocational Rehabilitation Field Services Manual, 2002 or addressed as a result of state purchasing rules or superseding Idaho Statute. Exceptions may be required for geographical considerations. (10-1-02)T

701. -- 999. (RESERVED).

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.02 - FIELD SERVICES

DOCKET NO. 47-0102-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

(REPEAL OF CHAPTER)

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2002.

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) Title 33-031, Idaho Code, and the Rehabilitation Act of 1973 and all subsequent Amendments.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002. 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:

To reorganize and reduce the rules of Vocational Rehabilitation from three chapters to one. This chapter is being combined with IDAPA 47.01.01 and is being repealed in its entirety.

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:

Reorganizing and reducing the rules of the Division and removing duplication of federal law and regulations that are incorporated by reference confers a benefit to the public.

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 rules have been implemented through the Rehabilitation Act of 1973 and all subsequent Amendments.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sue Payne, (208) 334-3390 ext. 110.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 17th day of July, 2002.

Barry J. Thompson, Administrator
Idaho Division of Vocational Rehabilitation
650 W. State Street, Room 150
P.O. Box 83720, Boise, ID 83720-0096
(208) 334-3390 ext. 108 / Fax: (208) 334-5305

IDAPA 47.01.02 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.03 - MANAGEMENT SERVICES

DOCKET NO. 47-0103-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

(REPEAL OF CHAPTER)

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2002.

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) Title 33-031, Idaho Code, and the Rehabilitation Act of 1973 and all subsequent Amendments.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002. 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:

To reorganize and reduce the rules of Vocational Rehabilitation from three chapters to one. This chapter is being combined with IDAPA 47.01.01 and is being repealed in its entirety.

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

Reorganizing and reducing the rules of the Division and removing duplication of federal law and regulations that are incorporated by reference confers a benefit to the public.

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 rules have been implemented through the Rehabilitation Act of 1973 and all subsequent Amendments.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sue Payne, (208) 334-3390 ext. 110.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 17th day of July, 2002.

Barry J. Thompson, Administrator
Idaho Division of Vocational Rehabilitation
650 W. State Street, Room 150
P.O. Box 83720, Boise, ID 83720-0096
(208) 334-3390 ext. 108 / Fax: (208) 334-5305

IDAPA 47.01.03 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 48 - DEPARTMENT OF COMMERCE

48.01.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 48-0103-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective October 3, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-4715, 67-4717, and 67-4718, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2002.

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:

- To revise and streamline the existing rules in regard to the grant application submittal and review process.
- To update application submittal to allow for electronic delivery.

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: Conferring 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 conducted with Idaho Department of Commerce staff and designated advertising agency, the Idaho Travel Council, and industry participants of the ITC grant program at the Idaho Travel Council meeting July 23-24, Boise, Idaho. Discussion was generated during and following this meeting and an on-line survey conducted to revise and improve the existing rules in regards to the required credit statement. Industry meetings were held as follows: October 3 - Rexburg.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Idaho Department of Commerce, Carl Wilgus (208) 334-2470.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 15th day of August, 2002.

Carl Wilgus
Administrator, Tourism Development
Department of Commerce
700 W. State St.
PO Box 83720
Boise ID 83720-0093
(208) 334-2470; FAX (208) 334-2631

THE FOLLOWING IS THE TEXT OF DOCKET NO. 48-0103-0201

008. ELIGIBLE PROJECTS.

01. **Eligible Projects.** Eligible projects under the Regional Travel and Convention Grant Program shall be consistent with the legislative declaration of policy in Title 67, Chapter 47, Idaho Code. Programs that are eligible for consideration must fall under the basic definition of travel and convention promotion. (2-22-93)

02. **Application Submittal.** Applicants must submit ~~a~~ one (1) complete signed application, ~~one (1)~~ original and ~~fourteen (14) copies~~ a completed electronic version of their application postmarked and electronically delivered no later than forty-five (45) days prior to the grant awards. If the application is not complete, the ~~plan~~ application will not be considered for funding. (2-22-93)(10-3-02)T

IDAPA 56 - IDAHO RANGELAND RESOURCES COMMISSION

56.01.01 - RULES OF ADMINISTRATIVE PROCEDURE OF THE IDAHO RANGELAND RESOURCES COMMISSION

DOCKET NO. 56-0101-0201

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 58-1408, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2002.

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

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

The proposed rulemaking creates a beginning date for commissioners' terms of appointment and clarifies that these terms continue until appointment of a successor.

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 proposed rule is relatively simple and will directly affect only appointed commissioners.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Gretchen Hyde, Director, at (208) 398-7002.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 23, 2002.

DATED this 21st day of August 2002.

Gretchen Hyde, Director
Idaho Rangeland Resources Commission
2655 Cherry Circle
P. O. Box 126, Emmett, ID 83617
Phone: (208) 398-7002
Fax: (208) 398-7002

THE FOLLOWING IS THE TEXT OF DOCKET NO. 56-0101-0201

100. NOMINATIONS, VACANCIES AND TERMS.

01. Chair And Vice-Chair. At its last meeting of each fiscal year, the Commission shall nominate and elect, by majority vote, a chair to serve as presiding officer at all Commission meetings. The Commission may also

nominate and elect, by majority vote, a vice-chair to fulfill the duties of the chair in the event that the chair is unable to attend a meeting of the Commission. (3-28-00)

02. Terms Of Officers. Terms of elected officers shall be for a period of twelve (12) months and shall begin on July 1 of the year of election. A commissioner may serve as an officer for as many terms as elected. (~~3-28-00~~)()

03. Terms Of Commission Members. The regular term of appointment for a commissioner shall begin on July 1 of the year of appointment and shall continue for a period of five (5) years or until a successor is appointed. ()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.13 - RULES FOR ORE PROCESSING BY CYANIDATION

DOCKET NO. 58-0113-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapter 1, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 02-6, June 5, 2002, pages 95 and 96. The Department of Environmental Quality (DEQ) received no public comment and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact the undersigned.

Dated this 21st day of August, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 58, TITLE 01, Chapter 13

RULES FOR ORE PROCESSING BY CYANIDATION

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-6, June 5, 2002, pages 95 and 96.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.17 - WASTEWATER-LAND APPLICATION PERMIT RULES

DOCKET NO. 58-0117-0201

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2003 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment *sine die* of the First Regular Session of the Fifty-seventh Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapter 1, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reasons for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, Volume 02-6, June 5, 2002, pages 97 through 98. The Department of Environmental Quality (DEQ) received no public comment and the rule has been adopted as initially proposed. The rulemaking record can be obtained by contacting the undersigned.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact the undersigned.

Dated this 21st day of August, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 58, TITLE 01, Chapter 17

WASTEWATER-LAND APPLICATION PERMIT RULES

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 02-6, June 5, 2002, pages 97 and 98.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2003 Idaho State Legislature as a final rule.

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IDAPA 48 - DEPARTMENT OF COMMERCE**48.01.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM****Docket No. 48-0103-0201**

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IDAPA 56 - IDAHO RANGELAND RESOURCES COMMISSION**56.01.01 - RULES OF ADMINISTRATIVE PROCEDURE OF THE IDAHO
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Bulletin Summary of Proposed Rulemakings

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

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

IDAPA 02 – DEPARTMENT OF AGRICULTURE 2270 Old Penitentiary Rd, Boise, ID 83712

02-0403-0204, Rules Governing Animal Industry. Provides for certification, inspections, and record keeping for the poultry and ratite industries pursuant to the National Poultry Improvement Plan. Comment by: 10/23/02.

****02-0403-0205**, Rules Governing Animal Industry. Establishes timeframes and deadlines regarding Trichomoniasis testing and reporting. Comment by: 10/23/02.

****02-0416-0201**, Rules Governing Agriculture Odor Management. Adds definitions, revises requirements and procedures for design and construction for liquid waste systems. Comment by: 10/23/02.

****02-0422-0201**, Rules Governing Animal Health Emergencies. New chapter governs procedures, requirements, and the declaration of an animal health emergency in Idaho. Comment by: 10/23/02.

02-0600-0201, Notice of Legislative Action. Complies with state law affecting the legal authority of the rules of the Division of Plant Industries; adds required sections. Comment by: 10/23/02.

02-0606-0201, Rules Concerning Bacterial Diseases of Beans, *Phaseolus* Species. Repeal of chapter. Comment by: 10/23/02.

02-0606-0202, Rules Governing the Planting of Beans, (*Phaseolus*) Species, in Idaho. Rewrite of chapter updates rules and adds late fee for applications received after July 1 of each year. Comment by: 10/23/02.

IDAPA 05 – DEPARTMENT OF JUVENILE CORRECTIONS PO Box 83720, Boise, ID 83720-0285

05-0103-0201, Rules of the Idaho Department of Juvenile Correction Custody Review Board. New chapter implements the operations and procedures of the board as required by law. Comment by: 10/23/02.

IDAPA 07 – DIVISION OF BUILDING SAFETY 1090 E. Watertower St., Meridian, ID 83642

07-0301-0201, Rules of Building Safety – General; **07-0302-0201**, Rules of the Advisory Board; **07-0303-0201**, Rules Governing Manufactured Buildings; **07-0305-0201**, Rules Governing Manufactured Homes; **07-0308-0201**, Rules Governing Commercial Coaches. Changes conform to statutory changes to Idaho Building Code Act under Title 39, Chapter 41, Idaho Code. Comment by: 10/23/02.

07-0306-0201, Rules Governing the Use of the Uniform Building Code. Adopts and incorporates by reference the 2000 International Building Code. Comment by: 10/23/02.

07-0307-0201, Rules Governing Certification; **07-0310-0201**, Rules Governing the Use of the Life Safety Code. Repeal of chapters. Comment by: 10/23/02.

07-0307-0202, Rules Governing Certification. New chapter prescribes the use of the 2000 International Energy

Conservation Code. Comment by: 10/23/02.

07-0310-0201, Rules Governing the Use of the International Residential Code. New chapter adopts and incorporates by reference the use of the 2000 International Residential Code. Comment by: 10/23/02.

07-0312-0201, Rules Governing Manufactured Home Installations. Changes accommodate new or revised provisions relative to foundations contained within the recently adopted 2000 International Building Code and HUD's Permanent Foundations Guide For Manufactured Housing. Comment by: 10/23/02.

IDAPA 08 – IDAHO STATE BOARD OF EDUCATION

PO Box 83720, Boise, ID 83720-0037

08.02.02 - Rules Governing Uniformity: **08-0202-0201** - Requires that technology competency must be demonstrated before being granted a renewed certificate; **08-0202-0202** - Creates a process for out-of-state certificate holders to obtain an interim three-year, nonrenewable certificate in Idaho; **08-0202-0203** - Provides for minimum course standards for teen driver education and separates requirements for commercial and public school programs. Comment by: 10/23/02.

08.02.03 - Rules Governing Thoroughness: **08-0203-0202** - Removes requirement that nonpublic students take state tests at their own expense; designates standards tests be called Idaho Standards Achievement Tests, with distinctions by grade level. **08-0203-0203** - Rules Governing Thoroughness. Removes general statements of opinion in the preamble; makes adjustments to the Humanities standards and removes separate World History category. **08-0203-0204** - Ensures that Language Arts/Communication standards content knowledge and skills are grade appropriate. Comment by: 10/23/02.

IDAPA 09 – DEPARTMENT OF LABOR

317 W. Main St., Boise, ID 83735

09-0104-0201, Rules of the Benefits Payment Control Bureau. Allows a write-off of minimal overpayment balances when collection costs exceed amount of debt or are overly burdensome administratively and may be excluded. Comment by: 10/23/02.

IDAPA 11 – IDAHO STATE POLICE

PO Box 700, Meridian, ID 83680-0700

11-1101-0201, Rules of the Idaho Peace Officer Standards and Training Council. Defines "prosecutor"; allows Executive Director to waive less serious misdemeanor convictions; clarifies that rules apply to county juvenile probation officers; establishes the "Patrol-to-Detention Transition Academy"; requires officers challenging the academy to complete courses in Emergency Vehicle Operation, Arrest Techniques, Handgun Retention, and Practical Problems; clarifies requirements for different certifications and for reserve certification; enhances and establishes requirements for certification for communications specialist, Master Instructor, and schools utilizing alternate methods of training delivery. Comment by: 10/23/02.

IDAPA 13 – IDAHO FISH AND GAME COMMISSION

PO Box 25, Boise, ID 83707

13-0103-021, Public Use of Lands Owned or Controlled by the Department of Fish and Game. Allows dog training and field trials on some department lands. Comment by: 10/23/02.

13-0104-0201, Rules Governing Licensing. Clarifies Landowner Appreciation and Handicapped Motor Vehicle Permit requirements, makes corrections to outfitter allocation tag and deadline. Comment by: 10/23/02.

13-0107-0201, Rules Governing the Taking of Upland Game Animals. Biennial season update and proposed closure of pygmy rabbit season. Comment by: 10/23/02.

13-0109-0201, Rules Governing the Taking of Game Birds. Annual season adjustments for game bird seasons. Comment by: 10/23/02.

13-0113-0201, Rules Governing the Taking of Migratory Birds. Annual season adjustments. Comment by: 10/23/02.

13-0114-0201, Rules Governing Falconry in the State of Idaho. Adds required sections; adjusts the falconry season based on the annual upland game and game bird seasons; allows for field training using artificially propogated birds. Comment by: 10/23/02.

13-0115-0201, Rules Governing the Use of Dogs. Clarifies the distinction between dog training and field trial permits. Comment by: 10/23/02.

13-0116-0201, The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals. Biennial adjustment of trapping and furbearer seasons. Comment by: 10/23/02.

**IDAPA 15 – OFFICE OF THE GOVERNOR
IDAHO COMMISSION ON AGING
3380 Americana Terrace, Ste. 120, Boise, ID 83706**

15-0101-0201, rules Governing Senior Services Program. Amends references to the UAI provisions to provide that the assessment instrument utilized by AAAs will be such assessment instruments that may be approved by the Commission; amend references to the completion of client assessments to clarify that Case Management shall perform such assessments. Comment by: 10/23/02.

15-0102-0201, Rules Governing Area Agency Adult Protection Programs. Adds a definition; revises the investigative requirements to provide that AP workers immediately forward reports to the Department of Health and Welfare which are to be initially reported to the Department; revises the duty of AP workers requiring them to make referrals to Law Enforcement in substantiated cases involving serious injury or serious imposition of rights. Comment by: 10/23/02.

15-0121-0201, Rules Governing Older American Act Services. Revises the information and assistance services provisions to provide that Area Agencies on Aging rather than service providers shall maintain records required by the Idaho Commission on Aging regarding I&A services provided in their area. Comment by: 10/23/02.

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, Id 83720-0036**

16-0000-0201, Notice of Legislative Action. Statutory change amended the Social Work Licensing Act and changed the titles of Licensed Certified Social Worker-Private Independent Practice (LCSW-P) to Licensed Clinical Social Worker (LCSW), and Licensed Certified Social Worker (LCSW) to Licensed Masters Social Worker (LMSW). Comment by: 10/23/02.

16-0205-0201, Rules Governing Human Immunodeficiency Virus (HIV) Related Services. New chapter guides the planning and disbursement of funds to provide HIV related services to eligible individuals for the federal Ryan White CARE Act and the state supported AIDS Drug Assistance Program (ADAP). Comment by: 10/23/02.

16-0309-0210, Rules Governing the Medical Assistance Program. Uses the term “participant” to replace “client” and “patient”; reduces the cost of nursing visits by leaving the decision for a review visit to a participant up to the professional judgment of the Regional Medicaid Services program; clarifies how a Personal Needs Allowance is determined. Comment by: 10/23/02.

****16-0309-0211**, Rules Governing the Medical Assistance Program. Changes maintain consistency of provider qualifications for Intensive Behavioral Intervention services delivered either through a school district or a developmental disabilities agency. Comment by: 10/23/02.

16-0314-0201, Rules and Minimum Standards for Hospitals in Idaho. Changes make rule consistent with the current national standards for hospital care and conform to federal regulations; The time frame requirement for hospitals to take a medical history and perform a physical examination is being expanded to no more than seven (7) days before or forty-eight (48) hours after hospital admission. Comment by: 10/23/02.

16-0322-0201, Rules for Licensed Residential and Assisted Living Facilities in Idaho. Changes conform to statutory changes; add "or authorized provider" to all sections which refer to a physician; update definitions; make updates regarding: inspection of facilities, unannounced inspections, resident's rights, administrator qualifications, negotiated service agreement, resident's records, menu planning, modified or therapeutic diets, and building construction and physical standards. Comment by: 10/23/02.

****16-0411-0201**, Rules Governing Developmental Disabilities Agencies. Clarifies provider qualifications for Intensive Behavioral Intervention certified providers who deliver services through a Developmental Disabilities Agency (DDA). Comment by: 10/23/02.

IDAPA 17 – IDAHO INDUSTRIAL COMMISSION
PO Box 83720, Boise, ID 83720-0043

17-0701-0201, Safety Rules for Elevators, Escalators, and Moving Walks. Proposed that an owner shall hire a qualified elevator inspector of their choice, provide written notice to the Division of Building Safety of any new installations or any major alteration or repairs to be made to existing equipment installations and receive a state registration number from the Division of Building Safety to be permanently affixed to the equipment for which the notice was submitted; excepting installations or any major alteration or repairs in public schools and in state owned or occupied buildings where a Division of Building Safety inspector will witness inspections. The proposed rule changes include the addition of general requirements for emergency communications and records of oil loss for hydraulic cylinders buried in the ground. Comment by: 10/23/02.

IDAPA 19 – IDAHO STATE BOARD OF DENTISTRY
708½ W. Franklin St., Boise, ID 83702

19-0101-0201, Rules of the Idaho State Board of Dentistry. Requires CPR certification for initial licensure and renewal for dentists, dental specialists and dental hygienists; makes mandatory and increases the administrative fee for anesthesia permit applications, renewals and reinstatements to \$300; specifies that the duration of a provisional license cannot exceed 1 year; requires American Board dental specialty certification as of the date of application for specialty licensure in Idaho; requires advance training in anesthesiology within five (5) years of application for an anesthesia permit with identified exceptions; to correct a citation; and to provide for reinstatement of anesthesia permits. Comment by: 10/23/02.

IDAPA 21 – IDAHO DIVISION OF VETERANS SERVICES
320 Collins Rd., Boise, ID 83702

21-0101-0201, Rules Governing Admission, Residency, And Maintenance Charges in Idaho State Veterans Homes and Division of Veterans Services Administrative Procedure. Clarifies certain nursing care eligibility requirements for admission to Idaho State Veterans Homes and changes the requirement that nursing care residents pay a \$100 security deposit. Comment by: 10/23/02.

21-0102-0201, Rules Governing Emergency Relief for Veterans. Clarifies who is eligible to receive Division emergency grants; changes certain eligibility requirements; provides the administrator of the Division with authority to waive certain emergency grant requirements; improves fiscal management; and clarifies who may make requests for reimbursement for state service officer training. Comment by: 10/23/02.

21-0103-0201, Rules Governing Medicaid Qualified Units in Idaho State Veterans Homes. Changes requirement that all veterans homes must charge the same and to provide a mechanism whereby veterans homes can write off uncollectable debts. Comment by: 10/23/02.

21-0104-0201, Rules Governing the Idaho State Veterans Cemetery. Establishes rules for the operation and maintenance of Idaho's new State Veterans Cemetery. Comment by: 10/23/02.

IDAPA 22 – IDAHO STATE BOARD OF MEDICINE
PO Box 83720, Boise, Idaho 83720-0058

****22-0101-0201**, Rules of the Board of Medicine for Licensure to Practice Medicine and Surgery and Osteopathic Surgery. Defines requirements for continuing education for physicians, specifies the number of hours of education required in a two-year license cycle, identifies acceptable alternatives to continuing education and defines the method of reporting continuing education. Comment by: 10/23/02.

22-0103-0201, Rules for the Licensure of Physician Assistants. Updates the physician assistants' scope of practice; tightens the education requirements for a baccalaureate college degree and for the physician assistant program; more clearly defines graduate physician assistants with time limits imposed for completion of requirements for full licensure; addresses supervision of physician assistants who render care during a disaster or emergency. Comment by: 10/23/02.

22-0105-0201, Rules Governing Licensure of Physical Therapists and Physical Therapist Assistants. Corrects the term of office of the chairman of the Physical Therapy Advisory Committee; provides clarification regarding applicants who fail the examination and for those who apply for licensure by endorsement; clarifies requirements for reinstating an expired license. Comment by: 10/23/02.

22-0109-0201, Rules for the Licensure of Occupational Therapists and Occupational Therapists Assistants. Adds required sections; clarifies requirements for licensure and the fees required for reinstatement of inactive to active licensure; allows the Board to collect costs for extraordinary expenses related to license application; adds Occupational Therapy Code of Ethics. Comment by: 10/23/02.

22-0113-0201, Rules for the Licensure of Dietitians. Add required sections; adds definitions; allows for provisional licensure; clarifies the fees for reactivation of an inactive license and to require current certification by the CDR for license renewal. Comment by: 10/23/02.

**IDAPA 23 – IDAHO STATE BOARD OF NURSING
PO Box 83720, Boise, ID 83720-0061**

23-0101-0202, Rule of the Idaho State Board of Nursing. Consolidates and renumbers existing rules and provides additional clarification and structure; replaces detailed listing of nursing functions for each category of licensure with a standard or model for decision making within a particular scope of process. Comment by: 10/23/02.

**IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES
1109 Main St., Suite 220, Boise, ID 83702**

24-0301-0201, Rules of the State Board of Chiropractic Physicians. Changes expiration date and reinstatement of licenses and establishes requirement for licenses canceled over 5 years to conform to Idaho Code. Comment by: 10/23/02.

24-0401-0201, Rules of the Idaho State Board of Cosmetology. Clarifies high school education equivalent to be any test approved by the Department of Education; clarifies working floor space in a primary and contiguous establishment; establishes that no original license fee is required for relocation of a contiguous establishment within the same primary establishment; establishes requirements for: out of business shop; practical and written reexamination for cosmetology, electrology, esthetics and nail technician; and for instructor reexamination. Deletes models for nail technology exam may not have artificial nails. Comment by: 10/23/02.

24-0501-0201, Rules of the Board of Environmental Health Specialist Examiners. Repeal of chapter. Comment by: 10/23/02.

24-0901-0201, Rules of the Board of Examiners of Nursing Home Administrators. Deletes the reference under nursing home administrator-in-training requirement to the facility administrator not being the preceptor. Comment by: 10/23/02.

24-1101-0201, Rules of the State Board of Podiatry. Updates the Incorporation by Reference section to reflect current publication date; deletes reference to annual renewal date; changes passing grade on examination to 70%; and changes the standards of ethical practice shall be the American Podiatric Medical Association's Code of Ethics.

Comment by: 10/23/02.

24-1201-0201, Rules of the State Board of Psychologist Examiners. Adds that the reexamination fee shall be those charged by the national examining entity plus \$25 processing fee and change reciprocity fee to endorsement fee. Comment by: 10/23/02.

24-1201-0202, Rules of the State Board of Psychologist Examiners. Allows a one (1) year carryover of continuing education hours; deletes unnecessary record keeping requirement; require the training faculty to be on site and of adequate size; clarifies the definition of a professional psychology program. Comment by: 10/23/02.

24-1401-0201, Rules of the State Board of Social Work Examiners. Adds Bureau contact information; deletes obsolete social work classifications and establish current classifications and definitions to be in compliance with current law changes; adds the board/bureau contract is to include investigative, legal and fiscal responsibilities; clarifies reimbursement expenses for board members; deletes that expired licenses will cancel on July first; updates the classifications under fees to reflect those in the current law change; changes board meeting dates to be at least three (3) times each year and at such other times and places as deemed by the board; clarifies endorsement requirements; changes application deadline date to be at least ten (10) days prior to the next board meeting; clarifies continuing education requirements. Comment by: 10/23/02.

24-1501-0201, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. Adds an Incorporation by Reference for supervisors; adds postgraduate supervision requirement to be effective July 1, 2004; establishes counselor supervisor requirements; establishes acceptable supervised experience for a Clinical Professional Counselor, Pastoral Counselor and Marriage and Family Therapists; adds effective July 1, 2004 Marriage and Family Therapist must be registered with the board to provide post graduate supervision; deletes continuing education rules for Pastoral Counselor, Clinical Professional Counselor and Marriage and Family Therapists and incorporates all under one rule; delete rules for conditional counseling license; establishes requirements for registered interns. Comment by: 10/23/02.

24-1601-0201, Rules of the State Board of Dentistry. Inserts rules for Administrative Appeals, Incorporation by Reference; adds Bureau contact information; adds Public Records section; adds Bureau definition; adds the board may meet and have examinations at such other times as determined by the board; establishes the examination shall include a theory examination; establishes grading and reexamination requirements; establishes the reexamination fee shall be the same as the original examination fee. Comment by: 10/23/02.

24-1701-0201, Rules of the State Board of Acupuncture. Inserts rules for Incorporation by Reference; adds Bureau contact information; adds Public Records section; defines Bureau; updates qualification for licensure to be has received certification from NCCAOM; changes renewal of license to be in accordance with Section 67-2614, Idaho Code; establishes continuing education requirements; establishes waiver of continuing education requirements for an inactive license. Comment by: 10/23/02.

24-1801-0201, Rules of the Real Estate Appraiser Board. Updates Incorporation by Reference rule to reflect current publication date. Comment by: 10/23/02.

24-1901-0201, Rules of the Board of Examiners of Residential Care Facility Administrators. Further defines courses approved for continuing education; changes the requirement for renewal of a license to be in accordance with section 67-2614, Idaho Code; increases the license application fee to \$50 and deletes reference to recertification in annual renewal fee. Comment by: 10/23/02.

24-1901-0202, Rules of the Board of Examiners of Residential Care Facility Administrators. Establishes that an applicant for examination shall be required to register with and pay the examination fee to NAB; deletes the contents of examination; establishes that a passing score on the examination shall be determined by NAB; deletes requirement for retakes; adds approved courses of study to qualify for licensure. Comment by: 10/23/02.

IDAPA 25 – OUTFITTERS AND GUIDES LICENSING BOARD
1365 North Orchard, Suite 172, Boise, ID 83706

25-0101-0202, Rules of the Outfitters and Guides Licensing Board. Defines “administrative noncompliance” to

address repeated failure to apply for license renewal in a timely manner or repeated failures to file a complete application and provides for administrative noncompliance to be included in the definition of unethical/unprofessional conduct; provides that the "Trainees Under Supervision" are boat trainees; clarifies that first aid cards must be in possession at all times while guiding; provides that first aid cards must be in possession at all times while guiding; includes proof of non-owner liability insurance as part of notification to the board when an outfitter utilizes equipment from another outfitter; provides for a single deadline for review of outfitter license applications and provides that outfitter applications to amend licenses will be reviewed by the Board within 90 days from receipt of the completed application; provides that an affidavit by the outfitter that the guide will have a valid first aid card while hunting must accompany guide applications; provides that the outfitter's name shall be visible on boats being used by that outfitter; provides for a reduction in the guide ratio for guided snowmachine activities; provides that in addition to granting or denying licenses, the Executive Director may suspend or revoke temporary authorizations, licenses and license amendments with the concurrence of the Board, clarifies that first aid cards are grounds for license denial and provides that the Executive Director may issue a temporary authorization to an applicant pending final approval and issuance of a license. Comment by: 10/23/02

**IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION
PO Box 83720, Boise, ID 83720-0065**

26-0120-0201, Rules Governing the Administration of Park and Recreation Areas and Facilities. Adds definitions; describes compliance requirements and penalties for non-compliance; outlines park and campground requirements for use, reservations and fees and moorage use and fees; provides for designation of proper livestock use areas through proper signing; addresses the protection of wildlife and the protection of historical, cultural and natural resources; clarifies the authority for personal safety and use of firearms; direction for dealing with abandoned property; deletes numerous obsolete sections. Comment by: 10/23/02.

**IDAPA 27 – BOARD OF PHARMACY
PO Box 83720, Boise, ID 83720-0067**

27-0101-0202, Rules of the Idaho Board of Pharmacy. Conforms to statutory changes and changes the time restriction for filing prescriptions for Schedule II controlled substances from 7 to 30 days after date of issue. Comment by: 10/23/02.

27-0101-0203, Rules of the Idaho Board of Pharmacy. Clarifies that students enrolled in pharmacy technician training courses and volunteers at hospital pharmacies may register and be authorized to act as pharmacy technicians even though they are not formally employed by the pharmacy; changes definition of pharmacy technician to one who is employed or otherwise authorized to participate in preparing, compounding, distributing, or dispensing of medications at a pharmacy. Comment by: 10/23/02.

27-0101-0204, Rules of the Idaho Board of Pharmacy. Allows continuing education units earned during June of any given licensing period to be carried over into the next licensing period to the extent the pharmacist's total hours for the given licensing period exceed that required by the rules. Comment by: 10/23/02.

**IDAPA 31 – PUBLIC UTILITIES COMMISSION
PO Box 83720, Boise, ID 83720-0074**

31-2101-0201, The Utility Customer Relation Rules. Comment by: 9/25/02. Provides additional reasons for a utility to require a deposit from a residential customer or applicant and allows a utility to terminate service after normal business hours if the utility is unable to access the customer's meter during normal business hours. Comment by: 10/23/02.

**IDAPA 33 – IDAHO REAL ESTATE COMMISSION
PO Box 83720, Boise, ID 83720**

****33-0101-0201**, Rules of the Idaho Real Estate Commission. Deletes definitions that were moved to statute on July 1, 2002; changes the requirement regarding display of license certificates in branch offices. Comment by: 10/23/02.

****33-0101-0202**, Rules of the Idaho Real Estate Commission. Eliminates the requirements that IREC collect a \$10

“administration fee” for handling the Errors and Omissions Group Insurance applications and that licensees file their “certificates of coverage” with the Commission, providing for self-certification subject to audit by the Commission. Comment by: 10/23/02.

****33-0102-0201**, Rules of Practice and Procedure of the Idaho Real Estate Commission Governing Contested Cases. Distinguishes the functions of investigator, prosecutor, and adjudicator and define the roles and prohibited contacts for each; sets forth the procedure for submission of the Executive Director’s investigation report to the Commissioners; expands the scope of discovery; and clarifies rights to disqualify the hearing officer designated by the agency. Comment by: 10/23/02.

**IDAPA 35 – STATE TAX COMMISSION
PO Box 36, Boise, ID 83722**

35-0101-0201, Income Tax Administrative Rules. Updates incorporation by reference documents and various references to Idaho Code; numerous changes conform to statutory changes and deletes obsolete sections and references; addresses the residency status of a qualified funeral trust; identify the tax rates and income tax brackets for tax years beginning in 1987 through 2002; lists the adjustment for deductions related to nonbusiness income as an adjustment required only of multistate corporations, S corporations and partnerships; clarifies and updates allowable health care and insurance deductions, capital gains deductions, new employee credits, and grocery credits; addresses statute of limitations in the case of a duplicate return and to define what constitutes a duplicate return. Comment by: 10/23/02.

35-0102-0202, Sales and Use Tax Rules. Clarifies sales of used modular buildings are not exempted from tax; clarifies senior citizen centers that qualify for the exemption; passed by the 2002 Legislature enacted by HB 494. It also clarifies that a long-term care facility does not qualify for the exemption; clarify that a business qualifying for the exemption may produce either radio or television programs and that cable companies do not produce television programs and would not qualify for the exemption. Comment by: 10/23/02.

35-0105-0201, Motor Fuels Tax Administrative Rules. Updates references and deletes obsolete rules and references; clarify in Section 130.01 how fuel distributors are to report deductions for ethanol and biodiesel; combines the fuel use tax reporting for gasoline and special fuels under motor fuels; adds statute of limitations for filing fuel tax refund claims; clarify that IFTA licensees must claim IFTA nontaxable miles on their IFTA return. Comment by: 10/23/02.

****35-0105-0202**, Motor Fuels Tax Administrative Rules. Adds a standard power take-off (PTO) or auxiliary engine allowance for concrete pumping trucks and a new subsection to show the requirements for claiming a refund of the special fuels tax for special fuels consumed by a motor vehicle while idling off-highway. Comment by: 10/23/02.

35-0201-0201, Tax Commission Administration and Enforcement Rules. Identifies the interest rate for the calendar year 2003; addresses net operating loss and capital loss carrybacks and their effect on computing penalties; updates code references; adds agencies and officials with whom information may be exchanged. Comment by: 10/23/02.

**IDAPA 37 – DEPARTMENT OF WATER RESOURCES
1301 N. Orchard, Boise, Idaho 83706**

37-0203-0201, Water Supply Bank Rules. Provides for deposit of water bank rental funds received from federal agencies into the federal grant fund. Comment by: 10/23/02.

****37-0303-0202**, Rules and Minimum Standards for the Construction and Use of Injection Wells in the State of Idaho. Implements the new federal requirements concerning large capacity cesspools and motor vehicle waste disposal wells. Comment by: 10/23/02.

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise ID 83707-1129**

39-0273-0201, Rules Governing Accident Prevention Course. Removes the prohibition on self-instructed courses and requirement that accident prevention courses be comprised of classroom or field driving instruction. Comment by: 10/23/02.

39-0346-0201, Rules Governing Studded Tires. Extends the allowable date for use of studded tires from April 15 to April 30, providing a safety benefit to travelers without adversely affecting pavement wear. Comment by: 10/23/02.

39-0360-0201, Rules Governing Outdoor Advertising. Addresses the regulation of electronic advertising such as multiple message signs and moveable message signs to meet the needs of the outdoor advertising industry while protecting the safety of the traveling public; clarifies the definition of commercial activity so that only legitimate commercial and industrial sites qualify as sign locations. Comment by: 10/23/02.

IDAPA 47 – DIVISION OF VOCATIONAL REHABILITATION

PO Box 83720, Boise, ID 83720-0096

47-0101-0201, General Administration (Rules of the Division of Vocational Rehabilitation). Rewrite of chapter incorporates all Division rules into one chapter. Comment by: 10/23/02.

47-0102-0201, Field Services; **47-0103-0201**, Management Services. Repeal of chapters. Comment by: 10/23/02.

IDAPA 48 – DEPARTMENT OF COMMERCE

PO Box 83720, Boise ID 83720-0093

48-0103-0201, Rules of the Idaho Regional Travel and Convention Grant Program. Revises and streamline the existing rules in regard to the grant application submittal and review process; updates application submittal to allow for electronic delivery. Comment by: 10/23/02.

IDAPA 56 – IDAHO RANGELAND RESOURCES COMMISSION

PO Box 126, Emmett, ID 83617

56-0101-0201, Rules of Administrative Procedure of the Idaho Rangeland Resources Commission. Creates a beginning date for commissioners' terms of appointment and clarifies that these terms continue until appointment of a successor. Comment by: 10/23/02.

****PUBLIC HEARINGS HAVE BEEN SCHEDULED FOR THESE DOCKETS.**

Please refer to the Idaho Administrative Bulletin, **October 2, 2002, Volume 02-10** 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-line at: <http://www2.state.id.us/adm/adminrules/>

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
and final rules, public hearing notices
and vacated rulemaking notices.**

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