

IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a monthly compilation of all administrative rule-making documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.

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

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 02-1 refers to the first Bulletin issued in calendar year 2002; Bulletin 03-1 refers to the first Bulletin issued in calendar year 2003. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 02-1 refers to January 2002; Volume No. 03-2 refers to February 2003; and so forth. Example: The Bulletin published in January of 2003 is cited as Volume 03-1. The December 2002 Bulletin is cited as Volume 02-12.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been 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, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises five distinct activities: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings involve all five. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a "Notice of Intent to Promulgate" a rule in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed and/or temporary rule.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency wherein the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a "Notice of Proposed Rulemaking" in the Bulletin. This notice must include:

- a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;
- c) the text of the proposed rule prepared in legislative format;
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;
- f) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and
- g) the deadline for public (written) comments on the proposed rule.

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule. 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) protection of the public health, safety, or welfare; or
- b) compliance with deadlines in amendments to governing law or federal programs; or
- c) conferring a benefit;

If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule. However, a temporary rule that imposes a fee or charge may be adopted only if the Governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

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

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

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rulemaking that is being vacated, the agency, in most instances, should rescind the temporary rule.

PENDING RULEMAKING

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

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

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

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

FINAL RULEMAKING

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

No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that an agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A "Notice of Final Rule" must be published in the Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule 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 that is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

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

SUBSCRIPTIONS AND DISTRIBUTION

For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-00306, telephone (208) 332-1820.

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

*The **Idaho Administrative Code**, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes 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 are available on the Internet at the following address:*

<http://www2.state.id.us/adm/adminrules/>

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

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

IDAPA 38.07.01.200.02.c.ii.

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

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

*"**05**." refers to Title 05, which is the Department of Administrations's Division of Purchasing*

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

*"**200**." refers to Major Section 200, "Content of the Invitation to Bid"*

*"**02**." refers to Subsection 200.02.*

*"**c**." refers to Subsection 200.02.c.*

*"**ii**." refers to Subsection 200.02.c.ii.*

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER." The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0401). 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. 38-0501-0401"

"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**).

"0401" denotes the year and sequential order of the docket received during the year; in this case the first rule-making action in calendar year 2004.

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

"(BREAK IN CONTINUITY OF SECTIONS)"

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

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

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

The citation may also include the IDAPA, Title, or Chapter number, as follows"

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

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the rule.

"01" denotes the Chapter number of the rule.

: "201" references the main Section number of the rule that the citation refers to.

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 38.04.041, "Rules Governing Capitol Mall Parking."

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2004

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
04-1	January, 2004	*November 19, 2003	January 7, 2004	January 28, 2004
04-2	February, 2004	January 7, 2004	February 4, 2004	February 25, 2004
04-3	March, 2004	February 4, 2004	March 3, 2004	March 24, 2004
04-4	April, 2004	March 3, 2004	April 7, 2004	April 25, 2004
04-5	May, 2004	March 31, 2004	May 5, 2004	May 26, 2004
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04-7	July, 2004	June 2, 2004	July 7, 2004	July 28, 2004
04-8	August, 2004	June 30, 2004	August 4, 2004	August 25, 2004
04-9	September, 2004	July 28, 2004	September 1, 2004	September 22, 2004
04-10	October, 2004	**August 25, 2004	October 6, 2004	October 27, 2004
04-11	November, 2004	October 6, 2004	November 3, 2004	November 24, 2004
04-12	December, 2004	November 3, 2004	December 1, 2004	December 22, 2004

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2005

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
05-1	January, 2005	*November 17, 2004	January 5, 2005	January 26, 2005
05-2	February, 2005	December 31, 2004	February 2, 2005	February 23, 2005
05-3	March, 2005	February 4, 2005	March 2, 2005	March 23, 2005
05-4	April, 2005	March 4, 2005	April 6, 2005	April 27, 2005
05-5	May, 2005	April 1, 2005	May 4, 2005	May 25, 2005
05-6	June, 2005	April 29, 2005	June 1, 2005	June 22, 2005
05-7	July, 2005	June 3, 2005	July 6, 2005	July 27, 2005
05-8	August, 2005	July 1, 2005	August 3, 2005	August 24, 2005
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05-11	November, 2005	September 30, 2005	November 2, 2005	November 23, 2005
05-12	December, 2005	October 28, 2005	December 7, 2005	December 28, 2004

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

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

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IDAPA 14 - BOARD OF REGISTRATION OF PROFESSIONAL GEOLOGISTS

14.01.01 - RULES OF PROCEDURE OF THE BOARD OF REGISTRATION OF PROFESSIONAL GEOLOGISTS

DOCKET NO. 14-0101-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-2808, 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 20, 2004.

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 updates the physical address of the Board.

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

No fee or charge is imposed or increased pursuant to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the address correction is non-controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Margaret Odedo, Administrative Assistant, at (208) 334-2268.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 24th day of August, 2004.

Margaret Odedo
Administrative Assistant
Idaho Board of Registration of Professional Geologists
3350 Americana Terrace, Ste. 243
P. O. Box 83720
Boise, ID 83720-0033
Phone: (208) 334-2268
Fax: (208) 334-5211

THE FOLLOWING IS THE TEXT OF DOCKET NO. 14-0101-0401

100. GENERAL PROVISIONS.

01. Offices. The principal office of the board shall be maintained at ~~550 West State Street~~ 3350 Americana Terrace, Suite 243, Boise, Idaho. The mailing address is P.O. Box 83720, Boise, Idaho 83720-0033; to which all correspondence, including remittances and renewal fees, shall be directed. The telephone number of the board is (208) 334-2268. ~~(3-13-02)()~~

02. Meetings. The board shall meet at least once each year at the call of the chairman, within ninety (90) days following the annual examinations; the board shall elect a chairman, vice-chairman, and secretary at such annual meeting. In addition to this annual meeting, the chairman may call special meetings from time to time when, in his opinion, it is deemed necessary, or upon the written request of any three (3) members of the board. (7-1-93)

03. Order Of Business. The order of business at meetings shall be as follows: (7-1-93)

a. Reading of minutes; (7-1-93)

b. Financial report; (7-1-93)

c. Reports of officers; (7-1-93)

d. Reports of committees; (7-1-93)

e. Reading of communications; (7-1-93)

f. Unfinished business; (7-1-93)

g. New business; (7-1-93)

h. Consideration of applications, examinations, and fees; (7-1-93)

i. Consideration of petitions, complaints, suspensions, and revocations; (7-1-93)

j. Miscellaneous; (7-1-93)

k. Adjournment. (7-1-93)

l. Robert's Rules of Order shall govern procedure of the board except as otherwise provided by the act or these rules. (7-1-93)

04. Officers. Officers elected from the board shall be chairman, vice-chairman, and secretary. An assistant secretary may be selected who need not be a member of the board. (7-1-93)

a. The chairman shall be the executive head of the board; shall when present preside at meetings; shall appoint committees; and shall perform all the duties pertaining to the office of chairman. (7-1-93)

b. The vice-chairman shall, in the absence or incapacity of the chairman, exercise the duties and possess all the powers of the chairman. (7-1-93)

c. The secretary shall, with assistance of an assistant secretary and staff as authorized by the board: (7-1-93)

i. Keep correct minutes of the board and furnish a copy to all members of the board; (7-1-93)

ii. Send written notice of all regular and special board meetings to each member not less than ten (10) days in advance thereof; (7-1-93)

- iii. Examine each application for registration and bring about necessary corrections or the supplying of missing or essential data in connection with such application prior to consideration thereof by the board; (7-1-93)
- iv. Address inquiries, where deemed necessary, to references or applicants to verify qualifications, experience, or character; (7-1-93)
- v. Make arrangements, as required by the board, for examinations, interviews, or hearings; (7-1-93)
- vi. Report to the board members the result of every examination and other evidence of qualification of each applicant; (7-1-93)
- vii. Prepare the required annual report and roster; (7-1-93)
- viii. Keep all records, including minutes, register of applicants and registrants, and roster; (7-1-93)
- ix. Receive and deposit all funds and fees, as provided by the act, and keep records of all receipts and disbursements; (7-1-93)
- x. Attend to all official correspondence of the board; (7-1-93)
- xi. Perform all other duties as prescribed by the act or which normally pertain to the office of secretary. (7-1-93)

05. Committees. Regular or special committees may be appointed by the chairman, as necessary, to perform special duties and shall present reports to the board at the time specified or at the earliest regular or special meeting of the board. (7-1-93)

06. Quorum. As provided in the act, a quorum shall be at least three (3) members of the board legally holding office at the time of meeting. Official business of the board shall be conducted only at board meetings with a quorum present. (7-1-93)

07. Fees. The fees for registration under the act shall be the following: (3-13-02)

- a.** The fee for application under the act shall be one hundred dollars (\$100). (3-13-02)
- b.** A non-refundable fee of twenty-five dollars (\$25) is set for processing each examination. (3-13-02)
 - i. The fee for the National examination is set at the current ASBOG rate for each Fundamentals examination and for each Principles and Practice examination. (3-13-02)
 - ii. The fee for reexamination of a candidate failing his first examination shall be the same as Subsection 100.07.b. (3-13-02)
- c.** The fee for the initial certificate shall be twenty dollars (\$20) and the fee for replacing a lost, destroyed or mutilated certificate shall be twenty dollars (\$20). (3-13-02)
- d.** The fee for annual renewal of registration shall be as determined each year by the board, but shall not exceed one hundred dollars (\$100). Renewal fees are due annually by June 30. The amount of the first annual renewal fee for a registrant may, at the discretion of the board, be reduced appropriately on a prorated quarterly basis based upon the initial registration date in the preceding fiscal year. (7-1-93)
 - i. The fee for annual renewal of registration for any person seventy (70) years of age or older as of June 1 shall be half the current renewal fee. (3-13-02)
 - ii. The secretary shall notify each registrant by mail, to the last recorded address, not later than June 1 of each year giving date of expiration of the registrant's certificate and the amount of the renewal fee due by June 30 for the following year. (7-1-93)

iii. Failure on the part of any registrant to renew the certificate in June shall not deprive such person of the right of renewal, but the fee to be paid for renewal after June 30 shall be increased as prescribed in the act. (7-1-93)

08. Certificates. Certificates of registration shall be issued to each registrant, as prescribed by the act, on forms adopted by the board. Certificates shall be displayed by registrants in their place of business. A new certificate may be issued by the board, to replace one lost, destroyed or mutilated. Each certificate shall bear an individual number, as assigned to that particular registrant by the board, which number shall be included in the annual roster of registrants prepared by the secretary. (7-1-93)

09. Seals. (7-1-93)

a. The official seal of the board shall consist of a seal of the state of Idaho surrounded with the words Board of Registration for Professional Geologists. (7-1-93)

b. The board has adopted a seal similar to that illustrated for use of each registrant. To make use of the seal valid, registrant shall first write in ink his signature and date and then stamp over same with the seal. Either impression type or rubber stamp seal shall be valid.

SEE "APPENDIX A" AT END OF THIS CHAPTER

(7-1-93)

10. Address Change. Each applicant and registrant shall notify the board within sixty (60) days of any and all changes of address, giving both old and new address. (7-1-93)

11. Annual Report. An annual report shall be published by the board and mailed to the governor, secretary of state, each registrant, and to the public (upon request). The annual report shall contain, among other things: (7-1-93)

a. Copy of the act; (7-1-93)

b. Rules of procedure; (7-1-93)

c. Annual report of the board, summarizing all transactions; (7-1-93)

d. Excerpts or summary of annual financial report; (7-1-93)

e. Roster of registrants; (7-1-93)

f. Code of ethics; (7-1-93)

g. Current fee schedules; (7-1-93)

12. Amendments. The rules of procedure may be amended by a majority vote of board membership at any regular or special meeting of the board, after prior notice by publication as may be required by the provisions of Title 67, Chapter 52, Idaho Code. (7-1-93)

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO COMMISSION ON AGING**

15.01.01 - RULES GOVERNING SENIOR SERVICES PROGRAM

DOCKET NO. 15-0101-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5003(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

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 updates and clarifies existing rules governing the Senior Services Program to reflect current practices and procedures.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee or charge is imposed or increased pursuant to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the interested groups have been advised as a part of the process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lois S. Bauer, Administrator at (208) 334-3833.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 25th day of August 2004.

Lois S. Bauer
Administrator
Idaho Commission on Aging
3380 Americana Terrace, Ste. 120
Boise, ID 83706
Phone: (208) 334-3833
Fax: (208) 334-3033

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0101-0401

003. ADMINISTRATIVE APPEALS.

~~The ICOA shall provide AAAs with opportunity to appeal administrative decisions related to these rules in accordance with IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". Appeals hereunder are governed by the provisions set forth in IDAPA 15.01.20, "Rules Governing Area Agency on Aging (AAA) Operations." Section 003.~~ (7-1-98)(____)

004. -- 009. (RESERVED).

010. DEFINITIONS.

01. Act. The Idaho Senior Services Act. Programs and services established in ~~Idaho Code~~, Sections 67-5001, ~~et seq.~~ through 67-5011, Idaho Code. (7-1-98)(____)

02. Activities of Daily Living (ADL). Bathing, dressing, toileting, transferring, eating, walking. (7-1-98)

03. Adult Day Care. A structured day program which provides individually planned care, supervision, social interaction, and supportive services for frail older persons in a protective group setting, and provides relief and support for caregivers. (7-1-98)

04. Aging Network. The ICOA, the AAAs, and other providers. (5-3-03)

05. Advance Directive. A Living Will or Durable Power of Attorney for Healthcare executed under the Natural Death Act, 39-4501, Idaho Code. (5-3-03)

06. Area Agency on Aging (AAA). Separate organizational unit within a multipurpose agency which functions only for purposes of serving as the area agency on aging that plans, develops, and implements services for older persons within a specified geographic area. (4-5-00)

07. Area Plan. Plan for aging programs and services which an AAA is required to submit to the Idaho Commission on Aging, in accordance with the OAA, in order to receive OAA funding. (7-1-98)

08. Assessment Instrument. A comprehensive instrument utilizing uniform criteria to assess a client's needs. (5-3-03)

09. Case Manager. A licensed social worker, licensed professional nurse (RN), or Certified Case Manager, or an individual with a BA or BS in a human services field or equivalent and at least one (1) year's experience in service delivery to the service population. (3-30-01)

10. Case Management. Case management is a service provided to older individuals and disabled adults, at the direction of the individual or a family member of the individual, to assess the needs of the person and to arrange, coordinate, and monitor an optimum package of services to meet those needs. Activities of case management include: comprehensive assessment of the individual; development and implementation of a service plan with the individual to mobilize formal and informal resources and services; coordination and monitoring of formal and informal service delivery; and periodic reassessment. (3-30-01)

11. Case Management Supervisor. An individual who has at least a BA or BS degree and is a licensed social worker, psychologist or licensed professional nurse (registered nurse/RN) with at least two (2) years' experience in service delivery to the service population. (4-5-00)

12. Certified Case Manager. A Case Manager who has met the requirements for certification as established by the National Academy of Care/Case Managers or other professional association recognized by the Idaho Commission on Aging. (5-3-03)

13. Chore Services. Providing assistance with routine yard work, sidewalk maintenance, heavy cleaning, or minor household maintenance to persons who have functional limitations that prohibit them from performing these tasks. (5-3-03)

14. **Client.** Person who has met program eligibility requirements for services addressed in this chapter. (7-1-98)
15. **Cognitive Impairment.** A disability or condition due to mental impairment. (7-1-98)
16. **Congregate Meals.** Meals that meet the requirements of the OAA, as amended, served in a group setting. (7-1-98)
- ~~17.~~ **Cost Sharing Payment.** An established payment required from individuals receiving services under the Act. The cost sharing payment varies according to client's current annual household income. ()
- ~~178.~~ **Department.** Department of Health and Welfare. (7-1-98)
- ~~189.~~ **Direct Costs.** Costs incurred from the provision of direct services. These costs include, but are not limited to, salaries, fringe benefits, travel, equipment, and supplies directly involved in the provision of services. Salaries of program coordinators and first line supervisors are considered direct costs. (7-1-98)
- ~~1920.~~ **Eligible Clients.** Residents of the state of Idaho who are sixty (60) years or older. (5-3-03)
- ~~20.~~ **Fee for Services.** An established payment required from individuals receiving services under the Act. The fee varies according to client's current annual household income. (7-1-98)
21. **Fiscal Effectiveness.** A financial record of the cost of all formal services provided to insure that maintenance of an individual at home is more cost effective than placement of that individual in an institutional long-term care setting. (7-1-98)
22. **Formal Services.** Services provided to clients by a formally organized entity, including, but not limited to, Medicaid HCBS. (5-3-03)
23. **Functional Impairment.** A condition that limits an individual's ability to perform ADLs and IADLs. (7-1-98)
24. **Home-Delivered Meals.** Meals delivered to eligible clients in private homes. These meals shall meet the requirements of the OAA. (7-1-98)
25. **Homemaker.** A person who has successfully completed a basic prescribed training, who, ~~with additional~~ under the supervision of a provider, provides supplies homemaker services. (7-1-98)()
26. **Homemaker Service.** Assistance with housekeeping, meal planning and preparation, essential shopping and personal errands, banking and bill paying, medication management, and, with restrictions, bathing and washing hair. (7-1-98)
27. **Household.** For sliding fee purposes, a "household" includes a client and any other person(s) permanently resident in the same dwelling who share accommodations and expenses with the client. (7-1-98)
28. **Idaho Commission on Aging (ICOA).** Commission designated by the Governor to plan, set priorities, coordinate, develop policy, and evaluate state activities relative to the objectives of the OAA. (7-1-98)
29. **Informal Supports.** Those supports provided by church, family, friends, and neighbors, usually at no cost to the client. (7-1-98)
30. **Instrumental Activities of Daily Living (IADL).** Meal preparation, money management, transportation, shopping, using the telephone, medication management, heavy housework, light housework. (7-1-98)
31. **Legal Representative.** A person who carries a Power of Attorney or who is appointed Guardian or Conservator with legal authority to speak for a client. (5-3-03)

- 32. Medicaid HCBS.** Services approved under the Medicaid Waiver for the aged and disabled. (3-30-01)
- 33. National Aging Program Information System.** (NAPIS) Standardized nationwide reporting system that tracks: (7-1-98)
- a.** Service levels by individual service, identifies client characteristics, State and AAA staffing profiles, and identifies major program accomplishments; and (4-5-00)
- b.** Complaints received against long term care facilities and family members or complaints related to rights, benefits and entitlements. (7-1-98)
- 34. Non-Institutional.** Living arrangements which do not provide medical oversight or organized supervision of residents' activities of daily living. Non-institutional residences include congregate housing units, board and room facilities, private residential houses, apartments, condominiums, duplexes and multiplexes, hotel/motel rooms, and group homes in which residents are typically unrelated to individuals. Non-institutional does not include skilled nursing homes, residential care facilities, homes providing adult foster care, hospitals, or residential schools/hospitals for the severely developmentally disabled or the chronically mentally ill. (7-1-98)
- 35. Older Americans Act (OAA).** Federal law which authorizes funding to states to provide supportive and nutrition services for the elderly. (7-1-98)
- 36. Ombudsman.** An individual or program providing a mechanism to receive, investigate, and resolve complaints made by, or on behalf of, residents of long-term care facilities. (5-3-03)
- ~~**37. Performance-Based Agreements.** A written contract between the ICOA and AAAs which establishes statements of work for services to be performed by the AAA, including output and outcome projections, program review and process for contract termination. (5-3-03)~~
- ~~**387. Program.** The Idaho Senior Services Program. (7-1-98)~~
- 398. Planning and Service Area (PSA).** Substate geographical area designated by the ICOA for which an AAA is responsible. (4-5-00)
- ~~**4039. Provider.** An AAA or another entity under contract with the AAA to provide a specific service(s). (5-3-03)~~
- 440. Respite.** Short-term, intermittent relief provided to caregivers (individuals or families) of a functionally-impaired relative or custodial charge. (4-5-00)
- 421. Shopping Assistance.** Accompaniment and provision of assistance to an elderly individual for the purpose of purchasing food, medicine and other necessities for an elderly individual who is disabled or homebound. (7-1-98)
- 432. Sliding Fee Scale.** A fee scale ranging from zero percent (0%) to one hundred percent (100%) of the cost of services. Cost of services shall be based on the contractor's or provider's actual unit costs. A client's percentage (payment) shall be determined by ranking the client's annual household income against the federally determined poverty guidelines for that year. (3-19-99)
- 443. Supportive Service Plan (SSP).** An individual support plan outlining an array of services or the components of an individual service required to maintain a client at home. ~~For Adult Protection purposes the SSP shall address the available remedial, social, legal, medical, educational, mental health, or other services available or~~ to reduce risks and meet the care needs of a vulnerable adult. (7-1-98)(____)
- 454. Supportive Services Technician.** AAA employee working under the supervision of a licensed social worker or case manager assisting with investigation of Adult Protection reports, completion of the ICOA

approved assessment instrument for services of clients of ICOA funded in-home services, or development and initiation of SSPs. The employee shall have a High School diploma and at least two (2) years' experience delivering services to the elderly or at-risk populations. (5-3-03)

465. Transportation Services. Services designed to transport eligible clients to and from community facilities/resources for the purposes of applying for and receiving services, reducing isolation, or otherwise promoting independence. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

022. CLIENT ASSESSMENT.

Applicants for services under this chapter, ~~where multiple needs are being addressed and in other cases where Adult Protection or Case Management personnel determine it necessary~~, shall be assessed utilizing the ICOA approved assessment instrument. (5-3-03)(____)

023. FAMILY AND CAREGIVER SUPPORTS.

01. Intent of ICOA. It is the intent of ICOA to support efforts of family caregivers to maintain functionally or cognitively-impaired elderly relatives in the household. (7-1-98)

02. Eligibility. Based on eligibility and ~~fee for service~~ cost sharing requirements, AAAs shall support family caregiver efforts by making program services available to such families. (7-1-98)(____)

(BREAK IN CONTINUITY OF SECTIONS)

025. FEES COST SHARING PAYMENTS AND CLIENT CONTRIBUTIONS.

01. Poverty Guidelines. Clients whose income exceeds one hundred percent (100%) of poverty (as established by the United States Department of Health and Human Services) shall be required to ~~pay a fee~~ make a cost sharing payment for services according to a variable fee schedules established by the ICOA. (5-3-03)(____)

02. Income Declaration. Income shall be determined by an annual client self-declaration. When a client's income increases or decreases, the client shall notify the provider for a redetermination of income. (7-1-98)

03. Determining Income. For this purpose, income means gross household income from all sources, less the cost of medical insurance and expenditures for non-covered medical services and prescription drugs. Payments the client receives from owned property currently being leased shall be counted as income after expenses are deducted if paid by the client, i.e., insurance, taxes, water, sewer, and trash collection. (5-3-03)

04. Fee Cost Sharing Payment Based on Actual Cost. Assessed ~~fee~~ cost sharing payment shall be a percentage of the provider's actual unit cost. (7-1-98)(____)

05. Cost Sharing Payment Required. Cost sharing payments are required from clients receiving either Chore or Homemaker Services. (____)

056. Fee Cost Sharing Payment Waived. The ~~fee~~ cost sharing payment may be waived for clients who refuse to ~~pay a fee~~ make such payment if there is documented evidence that not providing the service would increase risk or harm to the client. (3-19-99)(____)

06. Fee Required. ~~Fees are required from clients receiving either Chore or Homemaker Services.~~ (3-19-99)

07. Client Contributions. All clients from whom a fee cost sharing payment is not required shall be given the opportunity to make voluntary contributions. (5-3-03)(____)

08. Use of Fees Cost Sharing Payments and Contributions. Providers shall maintain accounting records of all fees cost sharing payments and contributions collected and of all monies expended from these sources. All monies derived from fees cost sharing payments, contributions, or both, shall be used to offset the costs of providing the service(s) for which they were collected. (7-1-98)(____)

(BREAK IN CONTINUITY OF SECTIONS)

027. DENIAL OF SERVICE.

An applicant shall be notified in writing of a denial of service and the right to appeal in accordance with IDAPA 15.01.20, Section 003, "Rules Governing Area Agency on Aging Operations". The request for services may be denied for any of the following reason(s) listed below, or at the discretion of the AAA director: (5-3-03)

01. Applicant Not in Need of Service. The applicant's functional or cognitive deficits are not severe enough to require services. (7-1-98)

02. Family or Other Supports Adequate. Family, or other available formal or informal supports are adequate to meet applicant's current needs. (5-3-03)(____)

03. Other Care Required. The applicant's needs are of such magnitude that more intensive supports, such as Medicaid HCBS, attendant care, or referral for residential or nursing home placement are indicated. In such instances, alternatives shall be explored with the applicant and the applicant's legal representative and family, if available. Referrals shall be made by the provider, as appropriate. (5-3-03)

04. Barriers to Service Delivery Exist. The applicant's home is hazardous to the health or safety of service workers. (7-1-98)

05. Geographical Inaccessibility. The AAA determines that the applicant's home is geographically inaccessible from the nearest point of service provision of home-delivered meals, homemaker, chore, or respite and the provider can document efforts to locate a worker or volunteer to fill the service need have been unsuccessful. (5-3-03)

06. Lack of Personnel or Funding. Services are unavailable based on a lack of available service personnel or funding. When an eligible applicant is denied service based on a lack of available service personnel or funding, the applicant shall be placed on a waiting list. For services other than Case Management, the applicant shall receive an in-home assessment prior to placement on a waiting list. Applicants on the a waiting list for services shall be prioritized according to IDAPA 15.01.20, "Rules Governing Area Agency on Aging Operations," Section 053. All applicants placed on a waiting list shall be notified of this action in writing. (5-3-03)(____)

04028. TERMINATION OF SERVICE.

01. Documentation. Documentation of notice of termination shall be placed in the client's case record, signed, and dated by the provider. (7-1-98)

02. Appeals Process. The client shall be informed of the appeals process, in accordance with IDAPA 15.01.20, Section 0053, "Rules Governing Area Agency on Aging Operations". (3-19-99)(____)

03. AAA Services. AAA authorized services may be discontinued by the provider for any of the reasons listed below, or at the discretion of the AAA director: (5-3-03)

a. Services proved ineffective, insufficient, or inappropriate to meet client needs. (7-1-98)

- b. Other resources, including, but not limited to, formal and informal supports, became available. (5-3-03)
- c. Client withdrew from the program or moved. (7-1-98)
- d. Family or other available formal or informal support to client increased. (5-3-03)
- e. Client placed in a long-term care facility. (7-1-98)
- f. Client died (no notification of termination required). (7-1-98)
- g. Client's functioning improved. (7-1-98)
- h. Client refused service. (7-1-98)
- i. Client's home is hazardous to the service provider (requires prior notification of the AAA Director with final approval being at the discretion of the AAA Director). (7-1-98)
- j. Client's home is not reasonably accessible. (7-1-98)
- k. Client's behavior is a threat to the safety of the provider (requires prior notification of the AAA Director with final approval being at the discretion of the AAA Director). (7-1-98)
- l. Client verbally abuses or sexually harasses service provider. (7-1-98)
- m. Client refuses to pay fee determined for service. (7-1-98)
- n. Service provider is not available in locale. (7-1-98)
- o. Services are no longer cost effective. (7-1-98)

04. Notification of Termination and Right to Appeal. At least two (2) weeks prior to termination, the client shall be informed in writing of the reasons for provider initiated service termination and the right to appeal in accordance with IDAPA 15.10.20, "Rules Governing Area Agency on Aging Operations," Section 0053. Exceptions to the two (2) week advance notification of termination will be justified to the AAA Director with final approval being at the discretion of the AAA Director. Appeal actions are the responsibility of the AAA. The client shall be referred to other services as appropriate. (~~5-3-03~~)(____)

0289. CONDUCT OF SERVICE WORKERS.

Subsection 041.07 has been moved and renumbered as Subsection 029.01.

071. Homemaker Training and Supervision. All ~~homemakers~~ service workers shall receive an employee orientation from the provider before performing ~~homemaker~~ any services. Orientation shall include the purpose and philosophy of ~~homemaker~~ the services, review of ~~homemaking~~ pertinent skills, program regulations, policies and procedures, proper conduct in relating to clients, and handling of confidential and emergency situations involving a client. (7-1-98)(____)

a. CPR. ~~Homemakers~~ Service workers shall complete CPR training within three (3) months of hire and shall maintain certification thereafter. (7-1-98)(____)

b. In-Service Training. Providers shall annually provide ~~homemakers~~ service workers with a minimum of ten (10) hours training, including CPR, for the purpose of upgrading their skills and knowledge. (7-1-98)(____)

c. Providers shall assure that ~~homemakers~~ service workers who assist clients with bathing or hair washing receive specific training in performing these services prior to being assigned to a client. (7-1-98)(____)

d. ~~Homemaker~~ Homemaker Supervision. All providers shall maintain written job descriptions for ~~homemakers~~ service workers and shall have written personnel policies. All ~~homemakers~~ service workers shall receive an annual performance evaluation. ~~Homemaker-s~~ Supervisors of service workers shall be available to ~~homemakers~~ service workers during work hours to discuss changes in client's circumstances, to resolve problems with schedules, or to respond to emergencies. (7-1-98)(____)

Subsection 041.08 has been moved and renumbered as Subsection 029.02.

~~082.~~ **Medical Emergencies.** In case of medical emergency, the ~~homemaker~~ service worker shall immediately call 911 or the available local emergency medical service and, if appropriate, shall initiate CPR. (7-1-98)(____)

~~03.~~ **Restrictions.** Providers shall ensure, through personnel policies, orientation procedures, signed service workers' agreements, and supervision, that the service worker's conduct is governed by the following restrictions. A copy of these restrictions, signed by the service worker, shall be placed in each service worker's personnel file. (5-3-03)(____)

~~01a.~~ **Accepting Money or Loans.** Service workers shall not accept money or a loan, in any form, from a client. (5-3-03)(____)

~~02b.~~ **Sale of Goods.** Service workers shall not solicit the purchase of goods, materials or services. (5-3-03)(____)

~~03c.~~ **Addresses and Telephone Numbers.** Service workers shall not provide a personal telephone number or home address to clients. (5-3-03)(____)

~~04d.~~ **Private Work.** Service workers shall not work privately for a client of ~~homemaker services~~. (5-3-03)(____)

~~05e.~~ **Client's Residence.** Service workers shall not enter a client's residence in the absence of the client unless the client has given permission to enter to accomplish scheduled work and the permission is documented in the client file. (5-3-03)(____)

~~06f.~~ **Proselytizing.** Service workers shall not engage in religious proselytizing during the course of employment. (5-3-03)(____)

~~07g.~~ **Medication Administration.** Service workers shall not administer medications. ~~The homemaker~~ A service worker may remind a client to take medications, assist with removing the cap from a multi-dose or bubble pack container, and may observe the client taking medications. (5-3-03)(____)

~~08h.~~ **Confidentiality.** Service workers shall regard all client communications and information about clients' circumstances as confidential. (5-3-03)(____)

~~09i.~~ **Smoking.** Service workers shall not smoke in the home of a client. (5-3-03)(____)

~~02930.~~ -- 039. (RESERVED).

Section 040 has been moved and renumbered as Section 028

~~0440.~~ **HOMEMAKER**

01. Policy. Homemaker service is designed to provide assistance required to compensate for functional or cognitive limitations. Homemaker services provide assistance to eligible individuals in their own homes, or, based on an ~~Adult Protection~~ referral, in a caregivers home; to restore, enhance, or maintain their capabilities for self-care and independent living. Available family shall be involved in developing a supportive services plan for the client to ensure the formal services provided shall enhance any available informal supports provided. A client or legal representative shall have the right to accept or refuse services at any time. AAAs ~~shall~~ may reserve funds to support the expenditure of up to a maximum of ten percent (10%) of their annual Act Homemaker Service funding to support emergency service requests and response to ~~Adult Protection~~ referrals of individuals aged sixty (60) years or older.
(5-3-03)(____)

02. Service Eligibility. Individuals are eligible for homemaker services if they meet any of the following requirements: (7-1-98)

a. They have been assessed to have ADL deficits, IADL deficits, or both, which ~~prohibit their ability to prevent them from maintaining~~ a clean and safe home environment. (7-1-98)(____)

b. Clients ~~over~~ aged sixty (60) years or older, who have been assessed to need homemaker service, may be living in the household of a family member (of any age) who is the primary caregiver. (7-1-98)(____)

c. They are Adult Protection referrals for whom homemaker service is being requested as a component of an SSP to remediate or resolve an adult protection complaint. ~~Vulnerable adults under age sixty (60), who have been assessed to need homemaker service are eligible to receive the service a maximum of three (3) consecutive months within a program year.~~
(5-3-03)(____)

d. They are home health service or hospice clients who may be eligible for emergency homemaker service. (5-3-03)

03. Medicaid HCBS. When clients are determined by the Department to be eligible for Medicaid HCBS, they are no longer eligible for homemaker services unless the services are determined to be needed on an interim, emergency basis until Medicaid HCBS is initiated. ~~Interim emergency services shall not exceed two (2) months' duration.~~
(3-30-01)(____)

04. Purpose of Service. (7-1-98)

a. Maintain Independence and Dignity. To secure and maintain in a home environment the independence and dignity of clients who are capable of self-care with appropriate supportive services. (7-1-98)

b. Prevent Institutionalization. To avoid or delay placement into long-term care institutions. (7-1-98)

c. Remedy Harmful Living Arrangements. To promote the health and safety of the client. (7-1-98)

d. Crisis Intervention. To assist the client through a crisis situation, if the homemaker service(s) required meet the client's needs and can be provided within the guidelines set forth in these rules. (7-1-98)

05. Exclusions. (7-1-98)

a. Meal Preparation. Homemakers shall not prepare meals for a client if home-delivered meals are available. (7-1-98)

b. Transportation. Homemakers shall not transport a client ~~unless the provider carries liability insurance.~~
(7-1-98)(____)

c. Medical Judgments. Homemakers shall not make medical judgments nor any determinations regarding the application of advance directives. (7-1-98)

d. Bathing and Washing Hair. Providers shall obtain adequate and appropriate insurance coverage

prior to assigning their homemakers to assist clients with bathing and (or) washing hair. (5-3-03)

06. Service Priority. Once approved, clients shall be prioritized to receive homemaker services based on their needs, as determined through the completion of the ICOA approved assessment instrument as follows: (5-3-03)

a. Highest priority shall be given to clients with the greatest degree of functional or cognitive impairment; then (7-1-98)

b. To clients lacking other formal and/or informal supports; then (5-3-03)

c. To clients whose homes are in poor condition with respect to those circumstances which the homemaker service can remedy. (7-1-98)

07. Program Intake. ()

a. If homemaker services are to be provided, the income declaration and Supportive Services Plan shall be completed prior to any work being performed. ()

b. If the client is not eligible for services, appropriate referrals shall be made. ()

~~07.~~ *Subsection 041.07 has been moved and renumbered as Subsection 029.01.*

~~08.~~ *Subsection 041.08 has been moved and renumbered as Subsection 029.02.*

~~09.~~ *Subsection 041.09 has been moved and renumbered as Subsection 056.08.*

~~10.~~ *Subsection 041.10 has been moved and renumbered as Subsection 056.09.*

0421. CHORE.

01. Policy. Chore service is designed to be provided to individuals who reside in their own homes or who occupy individual rental units. Chore services for those individuals who rent housing shall not provide repairs or maintenance that are ~~contractually~~ the contractual responsibility of the property owner. (7-1-98)()

02. Service Eligibility. Clients qualify to receive chore service if: (7-1-98)

a. They have been assessed to have ADL or IADL deficits which inhibit their ability to maintain their homes or yards; (7-1-98)

b. There are no available formal or informal supports; (5-3-03)

c. Chore service is needed to improve the client's safety at home or to enhance the client's use of existing facilities in the home. These objectives shall be accomplished through one-time or intermittent service to the client. (3-19-99)

03. Service Priority. Service provision shall be prioritized based on client's degree of functional impairment. (7-1-98)

04. Program Intake ~~and Eligibility Determination.~~ (7-1-98)()

~~a.~~ *A home visit shall be made within five (5) work days of the referral.* (7-1-98)

~~b.~~ *Client assessment shall be conducted Case Management utilizing the ICOA approved assessment instrument.* (5-3-03)

~~ea.~~ If chore services are to be provided, the income declaration, ~~service determination and work and Supportive Service Plan~~ shall be completed prior to any work being ~~done~~ performed. ~~The work plan shall be signed by both the client and the service provider. The work plan shall include a description of the work to be accomplished, the start and completion dates for such work, and a summary of any cost to the client (for labor or materials) the work shall incur.~~ (7-1-98)(____)

~~eb.~~ If the client is not eligible for services, appropriate referrals shall be made. (7-1-98)

0432. ADULT DAY CARE.

01. Policy. Adult Day Care is designed to meet the needs of eligible participants whose functional or cognitive abilities have deteriorated. It is intended to provide relief for care providing family members. It is a comprehensive program which provides a variety of social and other related support services in a protective setting other than the participant's home during any part of a day, but for a duration of less than twenty-four (24) hours. (5-3-03)

02. Eligibility. Individuals eligible for adult day care include: (7-1-98)

- a. Those who have physical or cognitive disabilities affecting ADL or IADL functioning; (7-1-98)
 - b. Those capable of being transported; (7-1-98)
 - c. Those capable of benefiting from socialization, structured and supervised group-oriented programs; (7-1-98)
- and
- d. Those capable of self-care with supervision or cueing. (7-1-98)

03. Eligibility Determination. ~~An assessment using the ICOA approved assessment instrument shall be completed by the Area Agency on Aging (AAA) case management program.~~ Highest priority shall be given to clients with the greatest degree of functional or cognitive impairment and then to clients lacking informal supports other than the regular caregiver. (5-3-03)(____)

04. Enrollment Agreement. A signed enrollment agreement shall be completed by the provider and the client, or his or her legal representative, and shall include: (5-3-03)

- a. Scheduled days of attendance; (7-1-98)
- b. Services and goals of the day care provider; (5-3-03)
- c. Amount of fees and when due; (7-1-98)
- d. Transportation agreement, if appropriate; (7-1-98)
- e. Emergency procedures; (7-1-98)
- f. Release from liability (for field trips, etc.); (7-1-98)
- g. Conditions for service termination; (7-1-98)
- h. A copy of the center's policy; and (7-1-98)
- i. An SSP. (5-3-03)

- 05. Staffing.** Staff shall be adequate in number and skills to provide essential services. (7-1-98)
- a.** There shall be at least two (2) responsible persons at the ~~center~~ site at all times when clients are in attendance. One (1) shall be a paid staff member. (7-1-98)()
- b.** Staff to client ratio shall be increased appropriately if the number of clients in day care increases or if the degree of severity of clients' functional or cognitive impairment increases. (7-1-98)
- c.** Staff persons counted in the staff to client ratio shall be those who spend the major part of their work time in direct service to clients. (7-1-98)
- d.** If the site administrator is responsible for more than one (1) site or has duties not directly related to adult day care, a program manager shall be designated for each site. (5-3-03)
- e.** Volunteers shall be included in the staff ratio only when they conform to the same standards and requirements as paid staff. (7-1-98)
- 06. Services.** Adult Day Care Programs shall, at a minimum, provide the following services: (7-1-98)
- a.** Assistance with transferring, walking, eating, toileting; (7-1-98)
- b.** Recreation; (7-1-98)
- c.** Nutrition and therapeutic diets; and (7-1-98)
- d.** Exercise. (7-1-98)
- 07. National Standards.** Adult Day Care Programs shall operate under guidelines established by the ICOA in accordance with national standards developed by the National Council on Aging's National Institute on Adult Day Care. (7-1-98)

0443. RESPITE.

01. Policy. Respite is a Home and Community Based Service designed to encourage and support efforts of caregivers to maintain functionally or cognitively impaired ~~elderly relatives~~ persons at home. Paid respite staff and volunteers provide companionship and/or personal care services when needed and appropriate for the care recipient and the caregiver. The caregiver Respite services may utilize respite care to include, but are not limited to, the following: ()

- a.** ~~Meeting~~ Meeting emergency needs; ~~to~~ ()
- b.** ~~Restoring~~ Restoring or maintaining the physical and mental well being of the caregivers; ~~and~~ ()
- c.** ~~Providing~~ Providing socialization for the ~~client~~ care recipient. ~~Paid respite staff and volunteers provide companionship and/or personal care services when needed and appropriate for the homebound consumer/client in the absence of the caregiver.~~ (5-3-03)()

- 02. Eligibility.** (7-1-98)
- a.** The ~~client~~ care recipient shall ~~be homebound or~~ have physical or cognitive impairments affecting ADL or IADL functioning to the extent twenty-four (24) hour care or supervision is required. (7-30-01)()
- b.** ~~Functionally or cognitively impaired persons~~ A caregiver sixty (60) years of age or older residing with an eligible care recipient who is under sixty (60) years of age living in the household of a person sixty (60) years of age or older ~~is~~ eligible to receive Respite. (7-1-98)()
- c.** A caregiver under sixty (60) years of age residing with an eligible care recipient aged sixty (60)

years or older is eligible to receive Respite. ()

03. Service Limitations. (3-30-01)

a. ~~When personal care services incidental to in-home respite care may be performed when necessary by trained paid or volunteer workers to help facilitate caregiver relief are a part of the SSP, those services shall be provided by trained Respite employees or trained Respite volunteers. Respite workers may provide assistance with personal care only when such services are not otherwise available.~~ (5-3-03)()

b. Services requiring supervision of a registered nurse in accordance with the Nurse Practices Act shall not be performed by respite workers. (3-30-01)

c. The Respite provider shall provide adequate and appropriate insurance coverage prior to assigning its respite employees or volunteers to assist clients with personal care tasks. (5-3-03)()

~~**d.** Respite care volunteers shall not transport clients.~~ (7-1-98)

04. Eligibility Determination. ~~An assessment using the ICOA approved assessment instrument shall be completed by the Area Agency on Aging (AAA) case management program.~~ Highest priority shall be given to clients with caregivers of care recipients who have the greatest degree of functional physical or cognitive impairment and then to clients who are lacking informal supports other than the regular caregiver. (5-3-03)()

~~**05. Medical Emergencies.** Employees and volunteers, in performance of their respite duties, shall in the case of an emergency immediately call 911 or the available emergency medical service.~~ (3-30-01)

~~**06. Client Outreach.** In coordination with Information & Assistance (I&A) and other referral sources, providers shall actively promote the program.~~ (7-1-98)

~~0454.~~ -- **055. (RESERVED).**

056. CASE MANAGEMENT.

01. Policy. Case management is a consumer-driven, social model case management service that empowers individuals and their families to make choices concerning in-home, community-based or institutional long-term care services. (4-5-00)

02. Qualifications. Any person hired to fill the position of case manager or case management supervisor ~~or case manager~~ on or after July 1, 1998, shall have the qualifications identified in Subsections 010.089 and 010.101 of this chapter. (4-5-00)()

03. Service Priority. Service priority is based on the following criteria: (7-1-98)

a. Require minimal assistance with one or more ADLs or IADLs; (7-1-98)

b. Require services from multiple health/social services providers; and (7-1-98)

c. Are unable to obtain the required health/social services for themselves; or (7-1-98)

d. Lack available formal or informal supports that can provide the needed assistance. (5-3-03)

04. Screening and Referral. (7-1-98)

a. The purpose of screening is to determine whether an older person needs service referral, assistance and client advocacy, or is a potential case management client who should receive a home visit and a comprehensive assessment. (4-5-00)

b. Screening shall be provided over the telephone. Screening may also be provided in the field, if

appropriate. (7-1-98)

c. Screening shall usually be accomplished by the Information and Assistance component, Adult Protection, provider, or by a community agency. However, case management may receive a direct referral of a potential client who has not been screened. In such cases, case management shall conduct screening or refer the potential client to the Information and Assistance component for screening. (5-3-03)

d. Pre-referral screening shall be ~~done~~ performed to determine if a potential client meets the criteria for receipt of ~~Case Management Services~~. If the potential client meets the criteria and agrees to the referral, the client shall be referred for a comprehensive assessment utilizing the ICOA approved assessment instrument. (~~5-3-03~~)(____)

e. Referrals who do not meet the criteria for Case Management Services shall be referred for other appropriate services. (4-5-00)

f. If notification was requested, the referral source shall be notified of case disposition following the screening. (7-1-98)

05. Referral for Case Management. Referrals shall be accepted from any source and may include eligible clients who are seeking or already receiving other services. (4-5-00)

06. Working Agreements. (7-1-98)

a. The Case Management Program ~~shall~~ is encouraged to enter into working agreements with primary community resources utilized by older persons. These resources may include AAA service providers, mental health centers, hospitals, home health agencies, legal services providers, and others. (~~4-5-00~~)(____)

b. Working agreements ~~shall~~ should address at least the following: (~~7-1-98~~)(____)

i. How long each party ~~shall~~ will take to respond to a request for service; (~~7-1-98~~)(____)

ii. Release of information procedures; (7-1-98)

iii. Referral and follow-up procedures; (7-1-98)

iv. How each party ~~shall~~ will notify the other of program changes and non-availability of service; and (~~7-1-98~~)(____)

v. Procedures for working out problems between the two (2) parties. (7-1-98)

07. Core Services. Case management provides responsible utilization of available informal (unpaid) supports before arranging for formal (paid) services. The case manager and client, or client's legal representative, shall work together in developing an SSP to establish the frequency and duration of needed services. Services shall be arranged subsequent to approval by the client or legal representative. Services provided shall be recorded and monitored to ensure cost effectiveness and compliance with the SSP. (5-3-03)

Subsection 041.09 has been moved and renumbered as Subsection 056.08.

098. Program Intake ~~and Assessment~~. (~~7-1-98~~)(____)

a. Normal Intake. Except under circumstances where a case management waiting list exists, ~~Client~~ contact shall be initiated within five (5) days of receipt of the referral, and an assessment shall be conducted within two (2) weeks of referral. (~~7-1-98~~)(____)

b. Emergency Intake. Referrals indicating a crisis or potential crisis such as a marked decline in health

or functional status, hospital discharge, or adult protection referral require a home visit be conducted to assess service need within ~~one~~ two (~~1~~) working days of receipt of referral. If appropriate and available, a homemaker shall be assigned and service shall be initiated immediately. ~~Such emergency homemaker service shall not exceed two (2) weeks' duration.~~ Referrals assessed to need emergency service shall take precedence over applicants carried on a waiting list. (7-1-98)(____)

c. Client Assessment. To determine the level of need and the type of service needed, an AAA Case Manager or SST shall conduct an in-home assessment using the ICOA approved assessment instrument. Service alternatives shall be discussed and referrals initiated as appropriate. (5-3-03)

d. Assessment Coordination. A client need not be re-assessed if an assessment completed within the past ninety (90) days by the Department provides the same information as the ICOA approved assessment instrument and the client signs a Release of Information form. A client assessment shall be completed if no current assessment from another agency is available. In either case, a home visit shall be included in the process of developing the client's individual SSP. (5-3-03)

Subsection 041.10 has been moved and renumbered as Subsection 056.09.

~~402.~~ **Individual Supportive Service Plan (SSP).** A supportive service plan shall be signed by the client or legal representative prior to initiation of ~~homemaker~~ services. (5-3-03)(____)

a. An approved plan shall reflect needed services to be provided by available family or others. (7-1-98)

b. Revision of the SSP. After services have been in place for one (1) month, the ~~homemaker~~ provider shall inform the ~~supervisor~~ AAA of any modifications ~~needed in it suggests be made to~~ the SSP, such as changes in hours of service or tasks to be performed. (7-1-98)(____)

c. Reassessments of SSP. ~~The SSP Case Management shall be updated~~ the SSP at least annually. Any revisions to an SSP shall be initiated by the client prior to being put into effect. An SSP may be updated more often than annually if changes in a client's circumstances (i.e., functional or cognitive ability, living conditions, availability of supports) indicate a necessity for re-assessment. (7-1-98)(____)

~~a~~**d.** Client assessment shall be conducted during a home visit and shall utilize the ICOA approved assessment instrument. (5-3-03)

~~b.~~ *A client need not be re-assessed if an assessment completed within the past ninety (90) days by the Department provides the same information as the ICOA approved assessment instrument and the client signs a Release of Information form.* (5-3-03)

~~eg.~~ **SSP.** Based on the information obtained during the client assessment and input obtained from family or professionals familiar with the client, the case manager shall develop a written SSP which shall include at least the following: (4-5-00)

- i.** Problems identified during the assessment; (7-1-98)
- ii.** Exploration of opportunities for family and other informal support involvement to be included in development of the SSP; (7-1-98)
- iii.** Overall goals to be achieved; (7-1-98)
- iv.** Reference to all services and contributions provided by informal supports including the actions, if any, taken by the case manager to develop the informal support services; (4-5-00)
- v.** Documentation of all those involved in the service planning, including the client's involvement;

- (7-1-98)
- vi. Schedules for case management monitoring and reassessment; (4-5-00)
 - vii. Documentation of unmet need and service gaps; and (7-1-98)
 - viii. References to any formal services arranged, including fees, specific providers, schedules of service initiation, and frequency or anticipated dates of delivery. (7-1-98)
- ~~d. The SSP shall be reevaluated and updated by the case manager at least annually or when significant changes in the client's status occur;~~ (4-5-00)
- ef. A copy of the current SSP shall be provided to the client or legal representative. (7-1-98)
 - fg. Case files shall be maintained for three (3) years following service termination. (7-1-98)
- 0810. Other Supportive Services.** (7-1-98)
- a. Necessary Services. Case managers shall assist clients to obtain available benefits, services, medically related devices, assistive technology, necessary home modifications, or other services required to fulfill unmet needs. (4-5-00)
 - b. Social-Emotional Support. Case managers shall link clients and their families with available services which facilitate life adjustments and bolster informal supports. (4-5-00)
 - c. Unmet Needs. To assist the AAA in future planning, case managers shall identify and document unmet client needs. (4-5-00)
 - d. Other Resources. In all cases, other available formal and informal supports shall be explored prior to utilization of formal Aging Network services. (5-3-03)
- 0911. Structure and Role.** Case management is a centralized evaluator and arranger of services and provides those activities previously outlined under "Service Functions". AAAs shall be the direct provider for case management services. The AAA is responsible for the implementation of the case management program. (4-5-00)
- a. Case managers shall coordinate service delivery between multiple agencies, individuals, and others. (4-5-00)
 - b. Each AAA shall carry insurance covering case management services in the types and amounts which meet acceptable business and professional standards. (5-3-03)
 - c. ~~Providers~~ Each AAA shall conduct an orientation program for all new case management employees which covers, at least, local resources available, case management service delivery, confidentiality of information, and client rights. (5-3-03)(____)
 - d. In addition to the development and maintenance of the SSP, program and client records shall be maintained to provide an information system which assures accountability to clients, the Case Management Program, and funding agencies, and which supplies data for AAA planning efforts. The information system established shall comply with the following ICOA requirements: (4-5-00)
 - i. NAPIS Registration Form; (7-1-98)
 - ii. Completed ICOA approved assessment instrument; (5-3-03)
 - iii. Pertinent correspondence relating specifically to the client; (7-1-98)
 - iv. A narrative record of client and community contacts, including problems encountered and SSP

modifications developed in response; (7-1-98)

- v. Completed SSP, signed by the client; (7-1-98)
- vi. Written consent and acceptance of Case Management Services and release of information forms; (4-5-00)
- vii. Any other documentation necessary for systematic case management and SSP continuity. (4-5-00)

102. Standards of Performance. AAAs shall assure case management meets the requirements for service neutrality. AAAs shall not be a direct provider of other in-home services, other than Adult Protection, without proper written justification and approval by the Administrator of the ICOA. (5-3-03)

143. Evaluation. Evaluation is required to assure quality control. The AAA is responsible for monitoring case management activities for quality control and assurance. The AAA shall review client records to determine: (4-5-00)

- a. Services are being provided as outlined in the SSP; (7-1-98)
- b. Services are meeting the goals established in the SSP; (7-1-98)
- c. The client is satisfied with the service(s) being provided; (7-1-98)
- d. Changes in service have been authorized; (7-1-98)
- e. The SSP continues to be cost-effective; (7-1-98)
- f. Providers are noting observations and relating information about informal caregivers, additional actions required by the case manager, re-evaluations, amendments to the SSP, and client contacts. (4-5-00)

~~**12. Waiver.** The Director of the Idaho Commission on Aging may waive the requirement that Supportive Services Technicians must be employees of the AAA. In order to grant such a waiver, the AAA must submit a written request to the ICOA that includes appropriate justification. (4-5-00)~~

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO COMMISSION ON AGING**

15.01.02 - RULES GOVERNING AREA AGENCY ADULT PROTECTION PROGRAMS

DOCKET NO. 15-0102-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5003(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

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

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

The proposed rule replaces references to "performance based agreements" with the word "contracts" and clarifies the term "substantiated" as it relates to ICOA investigations into allegations of the abuse, neglect, and exploitation of vulnerable adults.

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

No fee or charge is imposed or increased pursuant to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the primary group being affected was a part of the drafting process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lois S. Bauer, Administrator at (208) 334-3833.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 25th day of August, 2004.

Lois S. Bauer
Administrator
Idaho Commission on Aging
3380 Americana Terrace, Ste. 120
Boise, ID 83706
Phone: (208) 334-3833
Fax: (208) 334-3033

THE FOLLOWING IS THE TEXT OF DOCKET NO. 15-0102-0401

021. ADMINISTRATIVE REQUIREMENTS.

In accordance with Section 67-5011, Idaho Code, the ICOA shall administer AP services through ~~performance-based agreements~~ contracts with AAAs. Each AAA shall adhere to all administrative requirements relating to AP programs and those enumerated in IDAPA 15.01.01, "Rules Governing Senior Services Program," unless a waiver is granted by the ICOA. (7-1-98)(____)

01. Staffing. Each AAA shall provide sufficient staffing to respond to AP complaints within the statutory time frames set forth in Section 39-5304 (2), Idaho Code. (7-1-98)

02. Employee Qualifications. Each AAA shall adhere to standards set forth in rule for the education and licensing of AP program employees, including requirements for the AP Supervisor, AP Worker and Supportive Services Technician. Any person hired after July 1, 1998, to fill the position of AP Supervisor or AP Worker shall be a social worker licensed to practice in Idaho. (7-1-98)

03. Program Reporting And Records. All AAA AP programs shall comply with the ICOA's requirements for reporting and investigative documentation, and shall utilize standardized forms provided by the ICOA. (7-1-98)

04. Conflict Of Interest. AP program employees and their immediate families shall not hold a financial interest in agencies, organizations and entities providing care for vulnerable adults. (7-1-98)

05. Program Reviews. Upon prior notice and at reasonable intervals determined by ICOA, ICOA shall conduct on site program reviews of AAA AP programs. (7-1-98)

022. PROVISION OF SERVICE REQUIREMENTS.

In accordance with section 67-5011, Idaho Code, each AAA shall assume all responsibilities cited in Chapter 53, Title 39, Idaho Code. (7-1-98)

01. Direct Provision Of Service. Each AAA shall provide AP as a direct service. (4-5-00)

02. ~~Performance-Based Agreements~~ Contracts. Each AAA shall provide AP services pursuant to ~~performance-based agreements~~ contracts delineating the duties and obligations of each AAA AP program. (4-5-00)(____)

03. Court Visitors. No AP ~~employee worker~~ shall serve as a court appointed visitor in a guardianship or conservatorship proceeding involving a proposed ward who is or has been the alleged victim in an AP investigation. (7-1-98)(____)

023. -- 030. (RESERVED).

031. INVESTIGATIVE REQUIREMENTS.

01. Review Of Allegations. Upon receipt of a report of abuse, neglect or exploitation the AP worker shall conduct a review of the allegations of such report to determine whether: (5-3-03)

a. The report was required to be made to ICOA or its contractors pursuant to Section 39-5303, Idaho Code; (3-30-01)

b. An emergency exists; and (3-30-01)

c. In cases involving resident-to-resident contact reported pursuant to Section 39-5303(A), Idaho Code, determine whether the case involves the sexual abuse, death, or serious physical injury jeopardizing the life, health, or safety of a vulnerable adult, or involves repeated physical or verbal altercations between residents, not resulting in observable physical or mental injury, but constituting an ongoing pattern of resident behavior that a facility's staff ~~are~~ is unable to remedy through reasonable efforts. (3-30-01)(____)

02. Need For Investigation. If, based on its review, the AP worker determines that a report involves a nursing facility defined in Section 39-1301(b), Idaho Code, and was required to be made to the Department pursuant to Section 39-5303, Idaho Code, the AAA shall immediately refer the report to the Department. If, based on its review, the AAA determines that a report involving resident-to-resident contact was exempted from reporting by Section 39-5303A, Idaho Code, no further investigation need be conducted on such report. The AAA shall investigate all other reports. (5-3-03)

03. Vulnerability Determination. Upon investigating an AP report, each AP worker shall determine whether an alleged victim is vulnerable as defined in Section 39-5302, Idaho Code. If the alleged victim is determined to be vulnerable as defined in Section 39-5302, Idaho Code, the AP worker shall continue the investigation. If the alleged victim is not vulnerable as defined in Section 39-5302, Idaho Code, the case shall be closed; however, the AP worker may refer the complaint to Information and Assistance, Case Management, the Ombudsman, law enforcement or other appropriate entity for investigation and resolution. (5-3-03)

04. Assessment Of Alleged Victim. An alleged victim's vulnerability and associated risk factors shall be determined through the administration of an ~~ICOA-approved~~ risk assessment instrument or other standardized supplemental assessment forms. Initial interviews and assessments of an alleged victim shall be conducted by an AP worker. (5-3-03)(____)

05. Investigative ~~Findings~~ Determinations. An AP worker shall make one (1) of two (2) investigative ~~findings~~ determinations upon completion of an AP investigation: (5-3-03)(____)

a. Substantiated. ~~The AP worker determines, based upon a preponderance of the evidence, that a report is valid. A report of abuse, neglect, and/or exploitation of a vulnerable adult by another individual is deemed substantiated when, based upon limited investigation and review, the AP worker perceives the report to be credible. A substantiated report shall be referred immediately to law enforcement for further investigation and action. Additionally, the name of the individual against whom a substantiated report was filed shall be forwarded to the Department pursuant to Sections 39-5304(5) and 39-5308(2), Idaho Code, for further investigation. In substantiated cases of self-neglect, the AP worker shall initiate appropriate referrals for supportive services with the consent of the vulnerable adult or his legal representative.~~ (5-3-03)(____)

b. Unsubstantiated. ~~A finding of unsubstantiated shall be made by the AP worker if he is unable, based upon a preponderance of the evidence, to substantiate a report. This finding requires~~ The AP worker shall close the case file if a report of abuse, neglect, and/or exploitation by another individual of a vulnerable adult is not substantiated. If an allegation is report is not unsubstantiated, but the AP worker determines that the vulnerable adult has unmet service needs, the AP worker shall initiate appropriate referrals for supportive services with consent of the vulnerable adult or his legal representative. (5-3-03)(____)

06. Protective Action Plan. Upon substantiating a report of abuse, neglect or exploitation of a vulnerable adult, the AP worker shall develop and implement a PAP. (5-3-03)

07. Caretaker Neglect. In investigating a report of caretaker neglect, the AP worker shall take into account any deterioration of the mental or physical health of the caregiver resulting from the pressures associated with care giving responsibilities that may have contributed to the neglect of the vulnerable adult. In such cases, the AP worker shall make every effort to assist the primary caregiver in accessing program services necessary to reduce the risk to the vulnerable adult. In AP cases in which family members are experiencing difficulties in providing twenty-four (24) hour care for a functionally impaired relative, the AP worker shall make appropriate referrals to available community services to provide needed assistance. (5-3-03)

08. Referral To Law Enforcement. ~~A substantiated report of abuse, neglect or exploitation causing a serious injury or a serious imposition of rights to the alleged victim shall be immediately referred to law enforcement pursuant to Section 39-5310, Idaho Code. Other substantiated reports of abuse, neglect or exploitation may be referred to law enforcement at the discretion of the AP worker.~~ (5-3-03)

09. Adult Protection And Ombudsman Coordination. AAAs shall ensure that AP staff and the substate ombudsman maintain a written agreement establishing cooperative protocols in the investigation of complaints. (3-30-01)

~~09.~~ **Confidentiality.** All records relating to a vulnerable adult and held by an AAA are confidential and shall only be divulged as permitted pursuant to Sections 39-5307, 39-5304(5), 39-5308, Idaho Code, and IDAPA 15.01.01, Section 028, "Rules Governing Senior Services Program". (3-30-01)

032. SUPPORTIVE SERVICES AND CASE CLOSURE.

01. Supportive Services Plan. If determined necessary to reduce risk to a vulnerable adult, in substantiated cases and as part of a PAP, the AP worker shall ~~assist~~ refer the case to Case Management ~~for~~ for the development and implementation of an SSP with the consent of the vulnerable adult or his legal representative. (5-3-03)()

02. Documentation Of Client Consent. A vulnerable adult's consent, refusal to grant consent, or withdrawal of consent to an SSP shall be documented in the client case record. (5-3-03)

~~03. Case Review.~~ ~~The implemented SSP shall be reviewed annually or more frequently based on the circumstances of each individual case.~~ (3-19-99)

043. Case Closure. AP shall close a case under the following circumstances: (7-1-98)

a. The AP worker shall close a substantiated case upon a determination that an initiated PAP, SSP or law enforcement involvement has successfully reduced the risk to the vulnerable adult. (5-3-03)

b. The AP worker may close a substantiated case when the vulnerable adult refuses to consent to receive services, or upon a determination that the AAA has implemented all measures available to reduce risk but has been unable to reduce risk. (5-3-03)

c. The AP worker may close a case if another program or agency has agreed to assume responsibility to monitoring and reviewing implementation of an SSP. (5-3-03)

d. A case shall be closed if the AP worker determines that an allegation has been made in bad faith or for a malicious purpose. (5-3-03)

054. Suspense File. Closed cases shall be maintained in a suspense file until formal action is completed by law enforcement and/or the courts in the following instances: (7-1-98)

a. Cases referred by an AP worker to law enforcement for criminal investigation and prosecution as determined necessary by the law enforcement agency. (5-3-03)

b. Cases referred by an AP worker for guardianship/conservatorship proceedings. (5-3-03)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.26 - RULES GOVERNING IDAHO CHILDREN'S SPECIAL HEALTH PROGRAM

DOCKET NO. 16-0226-0401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of this temporary rule is October 1, 2004.

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 56-1003 and 56-1019, Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 20, 2004.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The funding for this program has not increased in 12 years, but costs for treatment and medical services have increased annually. In order to continue providing treatment to children who need it most, the Department has determined that only uninsured children will be enrolled in the program, with the exception of PKU and Cystic Fibrosis participants. The rules have been amended to allow Department staff to determine the eligibility status of those applying to enroll in this program.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. Public comment should be addressed to these additions and deletions.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to confer a benefit for those most needy individuals and to protect their health and 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 the program is aligning procedures with other Department programs to be able to assist the most needy families with the limited funds available.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Russell Duke, (208) 334-0670.

Anyone can submit written comments regarding the proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before October 27, 2004.

DATED this 25th day of August, 2004.

Sherri Kovach, Program Supervisor
DHW - Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE AMENDED TEXT FOR DOCKET 16-0226-0401

110. -- ~~1498.~~ (RESERVED).

~~1549.~~ PROGRAM ELIGIBILITY.

Eligibility for participation in CSHP is based on age, diagnosis, legal residence, insurance status, and financial criteria. Eligibility criteria is explained further in Sections 151 through 157 of these rules. ~~(7-1-97)~~(10-1-04)T

150. INSURANCE STATUS.

Any person with creditable medical insurance as determined by the Department is not eligible for this program, with the exception of CF and PKU participants. Creditable insurance is determined by using IDAPA 16.03.01, "Eligibility For Health Care Assistance For Families and Children". (10-1-04)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0404

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 regular rulemaking procedures. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 20, 2004.

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:

The Department is revising Section 521 of this chapter to change the frequency of utilization control reviews of certain medicaid participants in nursing facilities from quarterly to annual. A change in Federal code allows the Department to no longer perform quarterly reviews. The term "participant" is added for consistency.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

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 based on a change in Federal code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Chris Baylis at (208) 364-1891.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before October 27, 2004.

DATED this 25th day of August, 2004.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0404

301. -- ~~304~~9. (RESERVED).

~~310. UTILIZATION CONTROL--NURSING FACILITIES.~~

~~The policy, rules and regulations to be followed must be those cited in 42 CFR 456.250 through 42 CFR 456.281.~~

~~(7-1-94)~~

~~311. -- 349. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

508. -- ~~519~~20. (RESERVED).

~~520. ANNUAL UTILIZATION CONTROL REVIEW.~~

~~Title XIX recipients in a NF are subject to an on-site review by Regional Nurse Reviewers within ninety (90) days of the date of medical entitlement, and in one (1) year after medical entitlement to determine the need for continued NF care. Reviews will be conducted each calendar quarter on selected Title XIX recipients and other residents mandated by PASARR.~~

~~(7-1-99)~~

521. ~~QUARTERLY UTILIZATION CONTROL~~ REVIEWS.

Selection of ~~recipients/residents~~ participants to be reviewed ~~each quarter~~ at least annually: ~~(7-1-99)~~(____)

~~01. Ninety Day Review. Recipients to be reviewed within ninety (90) days of date of initial medical entitlement; and~~ ~~(7-1-99)~~

~~02. Annual Review. Recipients whose medical entitlement one (1) year anniversary date falls within the quarter; and~~ ~~(7-1-99)~~

~~031. Level II Residents Participants. Recipients/residents Participants who have a Level II evaluation, with ~~an~~ the review completed within the quarter of the admission anniversary date ~~that falls within the quarter~~; and~~ ~~(7-1-99)~~(____)

~~042. Special Medicaid Rate. Recipients Participants who are receiving services that require a special Medicaid rate; and~~ ~~(7-1-99)~~(____)

~~053. Selected Recertification. Recipients Participants identified during previous reviews whose improvement may remove the need for continuing NF care.~~ ~~(7-1-99)~~(____)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0405

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-1003(l), 56-1004(l)(a), Idaho Code.

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

Date: Tuesday, October 12, 2004
Time: 3:00 p.m. - 5:00 p.m.
Place: Region IV Office
1720 Westgate Drive, Suite D - Room 119
Boise, Idaho

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

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

The proposed amendments change the reimbursement methodology and rates used by Medicaid for ground and air ambulance services. The new reimbursement methodology will be based on a fee-for-service system that reimburses at the lower of either the provider's actual charge for the service or the maximum allowable charge for the service on a common fee schedule used by the Department for all ambulance providers. In addition, the base rate is being adjusted to cover ancillary items and supplies that previously could be billed separately.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

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 prior to the publication of the proposed rule because the rule changes are being made to align the Department's rules with Medicare's reimbursement levels.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Arla Farmer at (208) 364-1833.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 27, 2004.

DATED this 25th day of August, 2004.

Sherri Kovach - Program Supervisor
DHW - Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0405

060. FEES AND UPPER LIMITS.

01. Inpatient Hospital Fees. In reimbursing licensed hospitals, the Department will pay the lesser of customary charges or the reasonable cost of semi-private rates for inpatient hospital care in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 10, "Rules Governing Medicaid Provider Reimbursement in Idaho". Inpatient payments ~~shall~~ must not exceed the Upper Payment limit set forth in the Code of Federal Regulations. (7-1-97)(____)

02. Outpatient Hospital Fees. The Department will not pay more than the combined payments the provider is allowed to receive from the beneficiaries and carriers or intermediaries for providing comparable services under comparable circumstances under Medicare. Outpatient hospital services identified below that are not listed in the Department's fee schedules will be reimbursed reasonable costs based on a year end cost settlement. (7-1-97)

a. Maximum payment for hospital outpatient diagnostic laboratory services will be limited to the Department's established fee schedule. (5-25-93)

b. Maximum payment for outpatient hospital diagnostic radiology procedures will be limited to the blended rate of costs and the Department's established fee schedule specified in IDAPA 16, Title 03, Chapter 10, Subsection 457.02, at the time of cost settlement. (7-1-97)

c. Maximum payment for hospital outpatient partial care services will be limited to the Department's established fee schedule. (5-5-93)

d. Maximum payment for hospital out-patient surgical procedures will be limited to the blended rate of costs and the Department's fee schedule for ambulatory surgical centers specified in IDAPA 16.03.10, Subsection 457.01, at the time of cost settlement. (7-1-97)

e. Hospital-based ambulance services will be reimbursed ~~according to Medicare cost reimbursement principles. All other ambulance providers will be reimbursed according to~~ at the lower of either the provider's actual charge for the service or the maximum allowable charge for the service as established by the Department's established fee schedule for medical transportation in its pricing file. (7-1-97)(____)

03. Long-Term Care Facility Fees. Long-term care facilities will be reimbursed the lower of their customary charges, their actual reasonable costs, or the standard costs for their class as set forth in the Provider Reimbursement Manual, but the upper limits for payment must not exceed the payment which would be determined as reasonable costs using the Title XVIII Medicare standards and principles. (11-10-81)

04. Individual Provider Fees. The Department will not pay the individual provider more than the lowest of: (11-10-81)

a. The provider's actual charge for service; or (11-10-81)

b. The maximum allowable charge for the service as established by the Department on its pricing file, if the service or item does not have a specific price on file, the provider must submit documentation to the Department and reimbursement will be based on the documentation; or (3-30-01)

c. The Medicaid upper limitation of payment on those services, minus the Medicare payment, where a beneficiary is eligible for both Medicare and Medicaid. The Department will not reimburse providers an amount in excess of the amount allowed by Medicaid, minus the Medicare payment. (5-3-03)

05. Fees for Other Noninstitutional Services. The Department will reimburse for all noninstitutional services which are not included in other Idaho Department of Health and Welfare Rules, but allowed under Idaho's Medical Assistance Program according to the provisions of 42 CFR Section 447.325 and 42 CFR Section 447.352

and Section 1902(a)(13)(E) of the Social Security Act. (7-1-97)

06. Fees for Speech, Occupational and Physical Therapy Services. The fees for physical, occupational, and speech therapy include the use of therapeutic equipment to provide the modality or therapy. No additional charge may be made to either the Medicaid program or the client for the use of such equipment. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

150. EMERGENCY TRANSPORTATION.

01. Scope of Coverage and General Requirements for Ambulance Services. Medically necessary ambulance services are reimbursable in emergency situations or when prior authorization has been obtained from the Department or its designee. Ambulance services are subject to review by the Department or its designee prior to the service being rendered, and on a retrospective basis. Ambulance service review is governed by provisions of the Transportation Policies and Procedures Manual as amended. If such review identifies that an ambulance service is not covered, then no Medicaid payment will be made for the ambulance service. Reimbursement for ambulance services originally denied by the Department or its designee will be made if such decision is reversed by the appeals process required in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". Payment for ambulance services is subject to the following limitations: (3-15-02)

a. If a Medicaid recipient is also a Medicare recipient, a provider must first bill Medicare for services rendered. (7-1-98)

b. If Medicare does not pay the entire bill for ambulance service, the provider is to secure a Medicare Summary Notice (MSN) from Medicare, attach it to the appropriate claim form and submit it to the Department. (5-3-03)

c. For Medicare recipients, the Department will reimburse providers for services up to the Medicaid allowable amount minus the Medicare payment. (5-3-03)

d. Before payment is made by the Department, a Medicaid recipient must utilize any available insurance benefits to pay for ambulance services. (7-1-98)

e. Ambulance services are medically necessary when an emergency condition exists. For purposes of reimbursement, an emergency condition exists when a recipient manifests acute symptoms and/or signs which, by reasonable medical judgement of the Department or its designee, represent a condition of sufficient severity such that the absence of immediate medical attention could reasonably be expected to result in death, serious impairment of a bodily function or major organ, and/or serious jeopardy to the overall health of the recipient. If such condition exists, and treatment is required at the recipient's location, or transport of the recipient for treatment in another location by ambulance is the only appropriate mode of travel, the Department will review such claims and consider authorization for emergency ambulance services. If an emergency does not exist, prior written authorization to transport by ambulance must be secured from the Department or its designee. For purposes of reimbursement, in non-emergency situations, the provider must provide justification to the Department or its designee that travel by ambulance is medically necessary due to the medical condition of the recipient, and that any other mode of travel would, by reasonable medical judgement of the Department or its designee, result in death, serious impairment of a bodily function or major organ, and/or serious jeopardy to the overall health of the recipient. (7-1-98)

~~**f.** Each billing invoice for ambulance service must have prior authorization attached, if appropriate, and be submitted to the Department for payment. Ambulance units that are not hospital-based must bill on a HCFA 1500 claim form and are reimbursed on a fee for service schedule. Hospital-based ambulance units must bill on a UB-92 claim form and are reimbursed at the hospital's outpatient reimbursement rate. If no attachments to the claim are required, the provider may bill electronically. (7-1-98)~~

~~**gf.** All Emergency Medical Services (EMS) Providers that provide services to Medicaid recipients in~~

Idaho must hold a current license issued by the Emergency Medical Services Bureau of the Department, and must be governed by IDAPA 16.02.03, "Rules Governing Emergency Medical Services". Ambulances based outside the state of Idaho must hold a current license issued by their states' EMS licensing authority when the transport is initiated outside the state of Idaho. Payment will not be made to ambulances that do not hold a current license. (7-1-98)

hg. Only local transportation by ambulance is covered. In exceptional situations where the ambulance transportation originates beyond the locality to which the recipient was transported, payment may be made for such services only if the evidence clearly establishes that such institution is the nearest one with appropriate facilities and the service is authorized by the Department or its designee. (7-1-98)

ih. Ambulance services providers cannot charge Medicaid recipients more than is charged to the general public for the same service. (7-1-98)

02. Air Ambulance Service. In some areas, transportation by airplane or helicopter may qualify as ambulance services. Air ambulance services are covered only when: (7-1-98)

a. The point of pickup is inaccessible by land vehicle; or (11-10-81)

b. Great distances or other obstacles are involved in getting the recipient to the nearest appropriate facility and speedy admission is essential; and (11-10-81)

c. Air ambulance service will be covered where the recipient's condition and other circumstances necessitate the use of this type of transportation; however, where land ambulance service will suffice, payment will be based on the amount payable for land ambulance, or the lowest cost. (11-10-81)

d. Air ambulance services must be approved in advance by the Department or its designee except in emergency situations. Emergency air ambulance services ~~shall~~ will be authorized by the Department or its designee on a retrospective basis. (~~3-15-02~~)()

e. The operator of the air service must bill the air ambulance service rather than the hospital or other facility receiving the recipient. (7-1-98)

03. Ambulance Reimbursement. (7-1-98)

a. ~~The Base rate for ambulance services includes customary patient care equipment including such and items such as stretchers, clean linens, reusable devices, and reusable equipment. The base rate also includes nonreusable items, and disposable supplies such as oxygen, triangular bandages and dressings that may be required for the care of the recipient during transport. In addition to the base rate, the Department will reimburse mileage.~~ (11-10-81)()

~~**b.** Not to be included as a base rate and to be billed separately are charges for each nonreusable item and disposable supply, such as oxygen, triangular bandage and dressing, which may be required for the care of the recipient during transport. Oxygen will be reimbursed according to volume used by the recipient during transport. The volume must appear in the appropriate field on the claim.~~ (7-1-98)

eb. Charges for extra attendants are not covered except for justified situations and must be authorized by the Department or its designee. (7-1-98)

ec. If a physician is in attendance during transport, he is responsible for the billing of his services. (11-10-81)

ed. Reimbursement for waiting time will not be considered unless documentation submitted to the Department or its designee identifies the length of the waiting time and establishes its medical necessity or indicates that it was physician ordered. Limited waiting time will be allowed for round trips. (7-1-98)

fe. Ambulance units are licensed by the EMS Bureau of the Department, or other states' EMS licensing authority according to the level of training and expertise its personnel maintains. At least, this level of

personnel ~~are~~ is required to be in the patient compartment of the vehicle for every ambulance trip. The Department will reimburse a base rate according to the ~~level of ambulance license the unit has been issued~~ following: ()

- i. The level of personnel required to be in the patient compartment of the ambulance; ()
- ii. The level of ambulance license the unit has been issued; and ()
- iii. The level of life support authorized by the Department. ()

f. Units with Emergency Medical Technician - Basic (EMT-B) or equivalent personnel in the patient compartment of the vehicle will be reimbursed ~~at up to~~ the Basic Life Support (BLS) rate. Units with Advanced Emergency Medical Technician-Ambulance (AEMT-A) or equivalent personnel in the patient compartment of the vehicle will be reimbursed ~~at up to~~ the ~~Intermediate Life Support (ILS)~~ Advanced Life Support, Level I (ALS I) rate. Units with Emergency Medical Technician - Paramedic (EMT-P) or equivalent personnel in the patient compartment of the vehicle will be reimbursed ~~at up to~~ the Advanced Life Support, Level II (ALS II) rate. ~~In addition to the base rate, the Department will reimburse mileage. These rates are set by the Department.~~ When a recipient's condition requires hospital-to-hospital transport with ongoing care that must be furnished by one (1) or more health care professionals in an appropriate specialty area, including emergency or critical care nursing, emergency medicine, or a paramedic with additional training, Specialty Care Transport (SCT) may be authorized by the Department.

(7-1-98)()

g. If multiple licensed EMS providers are involved in the transport of a recipient, only the ambulance provider which actually transports the recipient will be reimbursed for the services. In situations where personnel and equipment from a licensed ALSII provider boards an ~~HS ALS I~~ or BLS ambulance, the transporting ambulance may bill for ALSII services as authorized by the Department or its designee. In situations where personnel and equipment from a licensed ~~HS ALS I~~ provider boards an ALSII or BLS ambulance, the transporting ambulance may bill for ~~HS ALS I~~ services as authorized by the Department or its designee. In situations where medical personnel and equipment from a medical facility are present during the transport of the recipient, the transporting ambulance may bill at the ALS I or ALS II level of service. The transporting provider must arrange to pay the other provider for their services. The only exception to the preceding policy is in situations where medical personnel employed by a licensed air ambulance provider boards an ALS I, HS ALS II, or BLS ground ambulance at some point, and the air ambulance medical personnel also accompany and treat the recipient during the air ambulance trip. In this situation, the air ambulance provider may bill the appropriate base rate for the air ambulance trip, and may also bill the charges associated with their medical personnel and equipment as authorized by the Department or its designee. The ground ambulance provider may also bill for their part of the trip as authorized by the Department or its designee.

(7-1-98)()

h. If multiple licensed EMS providers transport a recipient for different legs of a trip, each provider must bill ~~their~~ his base rate; and mileage, ~~and for nonreusable supplies and oxygen used,~~ as authorized by the Department or its designee.

(7-1-98)()

i. If a licensed transporting EMS provider responds to an emergency situation and treats the recipient, but does not transport the recipient, the Department may reimburse for the treat and release service. The Department will reimburse the appropriate base rate ~~and will pay for nonreusable supplies and oxygen used at the scene.~~ This service requires authorization from the Department or its designee, usually on a retrospective basis. (7-1-98)()

j. If an ambulance vehicle and crew have returned to a base station after having transported a recipient to a facility and the recipient's physician orders the recipient to be transferred from this facility to another facility because of medical need, two (2) base rate charges, in addition to the mileage, will be considered for reimbursement. If an ambulance vehicle and crew do not return to a base station and the patient is transferred from one (1) facility to another facility, charges for only one (1) base rate, waiting time, and mileage will be considered.

(7-1-98)

k. Round trip charges will be allowed only in circumstances when a facility in-patient is transported to another facility to obtain specialized services not available in the facility in which the recipient is an in-patient. The transport must be to and from a facility that is the nearest one with the specialized services.

(7-1-98)

l. If a licensed transporting EMS provider responds to a recipient's location and upon examination and evaluation of the recipient, finds that his condition is such that no treatment or transport is necessary, the Department will pay for the response and evaluation service. This service requires authorization by the Department or its designee, usually on a retrospective basis. No payment will be made if the EMS provider responds and no evaluation is done, or the recipient has left the scene. No payment will be made ~~for mileage, supplies or oxygen, nor will payment be made~~ to an EMS provider who is licensed as a non-transporting provider. (3-15-02)()

m. All ambulance providers will be reimbursed at the lower of either the provider's actual charge for the service or the maximum allowable charge for the service as established by the Department in its pricing file. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0406

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 20, 2004.

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:

The rule in this docket is being amended to clarify Medicaid reimbursement for Home Health Agencies (HHA). The rule has been reviewed for plain language.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. Public comment should be addressed to these additions and deletions.

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 but the rules are being amended because of questions received from Home Health Agencies for clarification.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sheila Pugatch at (208) 364-1817.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before October 27, 2004.

DATED this 25th day of August, 2004.

Sherri Kovach, Program Supervisor
Administrative Procedures Section
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0406

105. HOME HEALTH SERVICES.

01. Care and Services Provided. Home health services ~~encompass~~ are services ordered by the patient's attending physician as a part of a plan of care, ~~which~~ that include the following disciplines: nursing services, home health aide, physical therapy and occupational therapy. Reimbursable services are limited as described in Subsections 105.01.a. through 105.01.d., of these rules. (4-1-91)(____)

- a. All plans of care must be reviewed by the patient's physician at least every sixty (60) days, ~~and~~ (11-10-81)(____)
- b. The need for medical supplies and equipment, ordered by the patient's physician as required in the care of the patient and suitable for use in the home, must be reviewed at least once every sixty (60) days. (7-15-87)(____)
- c. Home health visits are limited to one hundred (100) visits per calendar year per person. (11-10-81)
- d. Payment by the Department for home health services ~~will~~ includes mileage as part of the cost of the visit. (11-10-81)(____)

02. Provider Eligibility. ~~In order to~~ To participate as a Home Health Agency (HHA) provider for Medicaid eligible persons, the provider must be licensed ~~as required~~ by the state, and be certified to participate in the Medicare Program. Loss of either state license or Medicare Program certification ~~will be~~ is cause for termination of Medicaid provider status. (7-15-87)(____)

03. Payment—Procedures. Payment for home health services ~~will be~~ is limited to the services ~~authorized~~ described in Subsection 105.01 of these rules, and ~~must not exceed the lesser of reasonable cost as determined by Medicare or the Title XIX percentile cap.~~ is subject to the following limitations: (12-31-91)(____)

a. ~~For visits performed in the first state fiscal year for which this subsection is in effect, the Title XIX percentile cap will be established at the seventy fifth percentile of the ranked costs per visit as determined by the Department using the data from the most recent finalized Medicare cost reports on hand in the Bureau on June 1, 1987. Thereafter the percentile cap will be revised annually, effective at the beginning of each state fiscal year. Revisions will be made using the data from the most recent finalized Medicare cost reports on hand thirty (30) days prior to the effective date. Payment to an HHA for all services and disciplines must not exceed the total amount that would be paid for those same services applying the Medicare caps. The method used to calculate the total Medicare cap amount for an HHA is described in Subsection 105.05 of these rules:~~ (8-1-92)(____)

b. ~~When determining reasonable costs of rented medical equipment ordered by a physician and used for the care of the patient the total rental cost of a Durable Medical Equipment (DME) item shall not exceed one-twelfth (1/12) of the total purchase price of the item. A minimum rental rate of fifteen dollars (\$15) per month is allowed on all DME items. The maximum payment per visit for each home health service or discipline is limited to the lesser of the state percentile cap per visit, or the reasonable cost per visit as determined by Medicare cost finding principles. The method used to calculate the state percentile cap per visit is described in Subsection 105.04 of these rules.~~ (5-1-92)(____)

~~e. The Department may enter into lease/purchase agreements with providers in order to purchase medical equipment when the rental charges total the purchase price of the equipment. (11-10-81)~~

~~d. The Department will not pay for services at a cost in excess of prevailing Medicare rates. (11-10-81)~~

~~e. If a person is eligible for Medicare, all services ordered by the physician will be purchased by Medicare, except for the deductible and co-insurance amounts which the Department will pay. (11-10-81)~~

04. Calculation of the State Percentile Cap Per Visit. The state percentile cap per visit of each home health service or discipline for a state fiscal year is calculated as follows: (____)

a. The cost to provide the service or discipline by each HHA is determined on a cost per visit basis. The most recent finalized cost report on file with the Department on June 1, immediately preceding the state fiscal year to which the cap applies, is the cost report used. ()

b. The costs per visit of all HHAs for a particular service or discipline are arrayed and ranked. ()

c. The percentile cap for each service or discipline is set at the seventy-fifth percentile (75%) of the costs per visit for that service or discipline of all HHAs. ()

05. Calculation of the Total Medicare Cap Amount. The total Medicare cap amount for an HHA is calculated as follows: ()

a. The Medicare cap for each service or discipline is multiplied by the number of Medicaid units provided by the HHA for that service or discipline to derive the Medicare cap total for that service or discipline. ()

b. The Medicare cap amount totals for all services and disciplines are added to derive the total Medicare cap amount for the HHA. ()

06. Leased Equipment. When determining a reasonable rental rate for leased medical equipment ordered by a physician and used for the care of the patient, the monthly rental rate of a Durable Medical Equipment (DME) item must not exceed one-tenth (1/10) of the total purchase price of the item. The Department may purchase medical equipment when the Department determines it would be more cost effective than leasing the equipment. ()

07. Eligible for Medicare. When a person is eligible for Medicare, all services ordered by the physician must initially be billed to Medicare. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0407

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 Sections 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 20, 2004.

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:

The rules in this chapter are being amended to clarify who is required to have a criminal history background check and when the individual is available to provide services. A new section is being added stating which individuals are required to have a criminal history check and the reference in rule where the requirement is found. The new section also states that the requirements of IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," must be complied with.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. Public comment should be addressed to these additions and deletions.

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; the rules are being amended for clarification.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Paul Leary at (208) 364-1817.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before October 27, 2004.

DATED this 25th day of August, 2004.

Sherri Kovach, Program Supervisor
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0407

006. -- 0098. (RESERVED).

009. CRIMINAL HISTORY CHECKS.

01. Compliance With Department Criminal History Check. Criminal history checks are required for certain types of providers under these rules. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". ()

02. Availability to Work or Provide Service. Certain providers are allowed to provide services after the Department has received the self-declaration and fingerprinting, except when they have disclosed a designated crime listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". The criminal history check requirements applicable to each provider type are found in the rules that state the qualifications of these providers. ()

03. Adult Day Care Providers. The criminal history check requirements applicable to providers of adult day care are found in Subsection 143.05 of these rules. ()

04. EPSDT Coordinators. The criminal history check requirements applicable to EPSDT service coordinators are found in IDAPA 16.03.17 "Service Coordination," Section 009. ()

05. Mental Health Clinics. The criminal history check requirements applicable to mental health clinic staff are found in Subsection 465.05 of these rules. ()

06. Personal Assistance Agencies Acting as Fiscal Intermediaries. The criminal history check requirements applicable to the staff of personal assistance agencies acting as fiscal intermediaries are found in Subsection 669.02 of these rules. ()

07. Personal Care Providers. The criminal history check requirements applicable to personal care providers are found in Subsection 146.11 of these rules. ()

08. Psychosocial Rehabilitation Agencies. The criminal history check requirements applicable to psychosocial rehabilitation agency employees are found in Subsection 455.02 of these rules. ()

09. Residential Habilitation Providers. The criminal history check requirements applicable to residential habilitation providers are found in Subsections 143.05 and 796.01 of these rules, and IDAPA 16.04.17 "Rules Governing Residential Habilitation Agencies," Subsections 202.01 and 301.03. ()

10. Service Coordinators and Paraprofessionals. The criminal history check requirements applicable to service coordinators and paraprofessionals working for a service coordination agency are found in IDAPA 16.03.17 "Service Coordination," Section 009. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO

DOCKET NO. 16-0310-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-102, 56-202, and 56-117, 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 20, 2004.

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 non-technical explanation of the substance and purpose of the proposed rule making:

These rules are being amended to add substantive sections into this chapter from IDAPA 16.05.02, "Rules Governing Audit of Providers," that the Department has proposed to repeal under Docket No. 16-0502-0301, published in the Idaho Administrative Bulletin, on September 3, 2003, Vol. 03-9, page 187. The rules have also been amended for plain language and sections have been moved for clarity.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

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 rule amendments are for clarification and to help eliminate rules that are redundant.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sheila Pugatch at (208) 364-1817.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 27, 2004.

DATED this 25th day of August, 2004.

Sherri Kovach, Program Supervisor
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THE FOLLOWING IS THE TEXT FOR DOCKET 16-0310-0401

001. TITLE AND SCOPE.

01. Title. The rules in this chapter are to be cited *in full* as *Idaho Department of Health and Welfare Rules*, IDAPA 16.03.10, "Rules Governing Medicaid Provider Reimbursement in Idaho". (12-31-91)(____)

02. Scope of Provider Reimbursement. These rules establish reimbursement principles and rates for FOHCs, RHCs, and facilities defined in Subsection 011.02 of these rules that provide services to Medicaid participants. (____)

03. Scope of Reimbursement System Audits. These rules also provide for the audit of providers' claimed costs against these rules and Medicare standards. The Department reserves the right to audit financial and other records of the provider, and, when warranted, the records of entities related to the provider. Audits consist of the following types of records: (____)

- a.** Cost verification of actual costs for providing goods and services; (____)
- b.** Evaluation of provider's compliance with the provider agreement, reporting form instructions, and any applicable law, rule, or regulation; (____)
- c.** Effectiveness of the service to achieve desired results or benefits; and (____)
- d.** Reimbursement rates or settlement calculated under this chapter. (____)

04. Exception to Scope for Audits and Investigations. Audits as described in these rules do not apply to the audit processes used in conducting investigations of fraud and abuse under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Sections 200-224. (____)

(BREAK IN CONTINUITY OF SECTIONS)

006. -- 009. (RESERVED).

00410. DEFINITIONS A THROUGH D.

01. Accrual Basis. An accounting system based on the *matching* principle: ~~that~~ Revenues are recorded when they are earned; expenses are recorded in the period incurred. (1-16-80)(____)

02. Allowable Cost. Costs ~~which~~ ~~that~~ are reimbursable, and sufficiently documented to meet the requirements of audit. (1-16-80)(____)

03. Amortization. The systematic recognition of the declining utility value of certain assets, usually not owned by the organization or intangible in nature. (1-16-80)

04. Appraisal. The method of determining the value of property as determined by a MAI appraisal. The appraisal must specifically identify the values of land, buildings, equipment and goodwill. (9-15-84)

05. Assets. Economic resources of the ~~contractor,~~ provider recognized and measured in conformity with generally accepted accounting principles. (1-1-82)(____)

06. Audit. An examination of facility records on the basis of which an opinion is expressed representing the compliance of a provider's financial statements with Medicaid law, regulations, and rules. (____)

07. Auditor. The individual or entity designated by the Department to conduct the audit of a provider's records. (____)

- 08. Audit Reports.** ()
- a. Draft Audit Report.** A preliminary report of the audit finding sent to the provider for the provider's review and comments. ()
- b. Final Audit Report.** A final written report containing the results, findings, and recommendations, if any, from the audit of the provider, as approved by the Department. ()
- c. Interim Final Audit Report.** A written report containing the results, findings, and recommendations, if any, from the audit of the provider, sent to the Department by the auditor. ()
- 069. Bad Debts.** Amounts due to provider as a result of services rendered, but which are considered uncollectible. (1-16-80)
- 0710. Bed-Weighted Median.** A numerical value determined by arraying the average per diem cost per bed of all facilities from high to low and identifying the bed at the point in the array at which half of the beds have equal or higher per diem costs and half have equal or lower per diem costs. The identified bed is the median bed. The per diem cost of the median bed is the bed-weighted median. (4-5-00)
- 0811. Beneficiaries.** Persons who are eligible for and receive benefits under federal health insurance programs such as Title XVIII and Title XIX. (1-16-80)
- 0912. Betterments.** Improvements to assets which increase their utility or alter their use. (1-16-80)
- 103. Capitalize.** The practice of accumulating expenditures related to long-lived assets which will benefit later periods. (1-16-80)
- 114. Case Mix Component.** The portion of the facility's rate, direct care component, that is determined from quarterly case mix indices. The case mix component of a facility's rate is established at the beginning of each calendar quarter, based on the case mix indices calculated on the picture date of the preceding quarter. (4-5-00)
- 125. Case Mix Index (CMI).** A numeric score assigned to each facility resident, based on the resident's physical and mental condition, ~~which that~~ projects the amount of relative resources needed to provide care to the resident. ~~(4-5-00)~~()
- a. Facility Wide Case Mix Index.** The average of the entire facility's case mix indices identified at each picture date during the cost reporting period. If case mix indices are not available for applicable quarters due to lack of data, case mix indices from available quarters will be used. (4-5-00)
- b. Medicaid Case Mix Index.** The average of the weighting factors assigned to each Medicaid resident in the facility on the picture date, based on their RUG's classification. Medicaid or non-Medicaid status ~~will be~~ is based upon information contained in ~~claims and the~~ MDS databases. To the extent that Medicaid identifiers are found to be incorrect ~~at the time of the audit~~, the Department may adjust the Medicaid case mix index and reestablish the reimbursement rate. ~~(4-5-00)~~()
- c. State-Wide Average Case Mix Index.** The simple average of all facilities "facility wide" case mix indices used in establishing the reimbursement limitation July 1 of each year. The state-wide case mix index will be calculated annually during each July 1 rate setting. (4-5-00)
- 16. Chain Organization.** A proprietorship, partnership, or corporation that leases, manages, or owns two (2) or more facilities that are separately licensed. ()
- 137. Common Ownership.** An individual, individuals, or other entities ~~which who~~ have equity; or ~~evidence~~ ownership in two (2) or more organizations which conduct business transactions with each other. Common ownership exists if an individual or individuals possess significant ownership or equity in the provider and the institution or organization serving the provider. ~~(4-5-00)~~()

- 148. Compensation.** The total of all remuneration received, including cash, expenses paid, salary advances, etc. (1-16-80)
- 159. Control.** Control exists where an individual or an organization has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution. (4-5-00)
- 1620. Cost Center.** A "collection point" for expenses incurred in the rendering of services, supplies, or material which are related or so considered for cost-accounting purposes. (1-16-80)
- 1721. Cost Component.** The portion of the facility's rate that is determined from a prior cost report, including property rental rate. The cost component of a facility's rate is established annually at July 1 of each year. (4-5-00)
- 1822. Cost Reimbursement System.** A method of fiscal administration of Title XIX which compensates the provider on the basis of expenses incurred. (1-16-80)
- 1923. Cost Report.** A fiscal year report of provider costs required by the Medicare program and any supplemental schedules required by the Department. (4-5-00)
- 204. Cost Statements.** An itemization of costs and revenues, presented on the accrual basis, which is used to determine cost of care for facility services for a specified period of time. These statements are commonly called income statements. (1-16-80)
- 215. Costs Related to Patient Care.** All necessary and proper costs which are appropriate and helpful in developing and maintaining the operation of patient care facilities and activities. Necessary and proper costs related to patient care are usually costs which are common and accepted occurrences in the field of the provider's activity. They include, but are not limited to, costs such as depreciation, interest expenses, nursing costs, maintenance costs, administrative costs, costs of employee pension plans, and normal standby costs, ~~and others~~. (4-5-00)(____)
- 226. Costs Not Related to Patient Care.** Costs which are not appropriate or necessary and proper in developing and maintaining the operation of patient care facilities and activities. Such costs are not allowable in computing reimbursable costs. They include, for example, cost of meals sold to visitors or employees; cost of drugs sold to other than patients; cost of operation of a gift shop; and similar items. Travel and entertainment expenses are not allowable unless it can be specifically shown that they relate to patient care and for the operation of the nursing facility. (4-5-00)
- 237. Customary Charges.** Customary charges are the ~~regular~~ rates ~~for various services which are recorded for charged to~~ Medicare beneficiaries and ~~charges~~ to patients liable for such charges, as reflected in the facility's records. Those charges are ~~to be~~ adjusted downward, ~~where when~~ the provider does not impose such charges on most patients liable for payment on a charge basis or, when the provider fails to make reasonable collection efforts. The reasonable effort to collect such charges is the same effort necessary for Medicare reimbursement as is needed for unrecovered costs attributable to certain bad debt (see Chapter 3, Sections 310 and 312, PRM). (4-5-00)(____)
- 248. Day Treatment Services.** Day treatment services are developmental services provided regularly during normal working hours on weekdays by, or on behalf of, the provider. However, day treatment services do not include recreational therapy, speech therapy, physical therapy, occupational therapy, or services paid for or required to be provided by a school or other entity. (7-1-97)
- 259. Department.** The Idaho Department of Health and Welfare ~~of the state of Idaho~~. (1-16-80)(____)
- 2630. Depreciation.** The systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated life of the assets. (1-1-82)
- 2731. Direct Care Costs.** Costs directly assigned to the nursing facility or allocated to the nursing facility through the Medicare cost finding principles and consisting of the following: (4-5-00)

- a. Direct nursing salaries ~~which that~~ include the salaries of registered nurses, licensed professional nurses, certified nurse's aides, and unit clerks; ~~and~~ (4-5-00)(____)
 - b. Routine nursing supplies; ~~and~~ (4-5-00)(____)
 - c. Nursing administration; ~~and~~ (4-5-00)(____)
 - d. Direct portion of Medicaid related ancillary services; ~~and~~ (4-5-00)(____)
 - e. Social services; ~~and~~ (4-5-00)(____)
 - f. Raw food; and (4-5-00)
 - g. Employee benefits associated with the direct salaries. (4-5-00)
- ~~2832.~~ **Director.** The Director of the Department of Health and Welfare or his designee. (1-1-82)

011. DEFINITIONS E THROUGH J.

2901. Equity. The net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles. (9-15-84)

302. Facility. ~~An entity which contracts with the Director to provide services to recipients in a structure owned, controlled, or otherwise operated by such an entity, and which entity is responsible for operational decisions in conjunction with the use of the term "facility":~~ Facility refers to a nursing facility or an intermediate care facility for persons with mental retardation. (1-1-82)(____)

ba. "Free-standing Nursing Facility" means a ~~skilled~~ nursing facility, ~~as defined in and licensed under Chapter 13, Title 39, Idaho Code, which that~~ is not owned, managed, or operated by, nor is otherwise a part of a licensed hospital, as defined in Section 39-1301(a), Idaho Code; or (9-28-90)(____)

eb. "Hospital-based facility" means a nursing facility, ~~as defined in and licensed under Chapter 13, Title 39, Idaho Code, which that~~ is owned, managed, or operated by, or is otherwise a part of a licensed hospital, as defined in Section 39-1301(a), Idaho Code. (7-1-97)(____)

c. "Intermediate Care Facility For Persons With Mental Retardation (ICF/MR)" means a facility licensed as an ICF/MR and federally certified to provide care to Medicaid and Medicare patients. (____)

ad. ~~The term~~ "Nursing Facility" or "NF" ~~is used to describe all non-ICF/MR facilities~~ means a facility licensed as a nursing facility and federally certified to provide care to Medicaid and Medicare patients; (2-1-91)(____)

de. "Rural Hospital-Based Nursing Facilities:" ~~Those means~~ hospital-based nursing facilities not located within metropolitan statistical area (MSA) as defined by the United States Bureau of Census. (4-5-00)(____)

f. "Skilled Nursing Facility" means a nursing care facility licensed by the Department to provide twenty-four (24) hour skilled nursing services and federally certified as a "Nursing Facility" under Title XVIII. (____)

eg. "Urban Hospital-Based Nursing Facilities:" ~~Those means~~ hospital-based nursing facilities located within a metropolitan statistical area (MSA) as defined by the United States Bureau of the Census. (4-5-00)(____)

03. Federally Qualified Health Center (FOHC). An entity that meets the requirements of 42 USC Section 1395x(aa)(4). The FOHC may be located in either a rural or urban area designated as a shortage area or in an area that has a medically underserved population. (____)

3104. Fiscal Year. ~~The business year of an organization~~ An accounting period that consists of twelve (12)

consecutive months. (1-16-80)()

3205. Forced Sale. A forced sale is a sale required by a bankruptcy, foreclosure, the provisions of a will or estate settlement pursuant to the death of an owner, physical or mental incapacity of an owner which requires ownership transfer to existing partner or partners, or a sale required by the ruling of a federal agency or by a court order. (11-4-85)

3306. Funded Depreciation. Amounts deposited or held which represent recognized depreciation. (1-16-80)

3407. GAAP. Generally accepted accounting principles, ~~pronounced "gap"~~. (1-16-80)()

3508. Generally Accepted Accounting Principles. ~~Those concepts, postulates, axioms, etc., which are considered standards for accounting measurement. A widely accepted set of rules, conventions, standards, and procedures for reporting financial information as established by the Financial Standards Accounting Board.~~ (1-16-80)()

3609. Goodwill. The amount paid by the purchaser that exceeds the value of the net tangible assets. The value of goodwill is derived from the economic benefits that a going concern may enjoy, as compared with a new one, from established relations in the related markets, with government departments and other noncommercial bodies and with personal relationships. These intangible assets cannot be separated from the business and sold as can plant and equipment. Under the theory that the excess payment would be made only if expected future earnings justified it, goodwill is often described as the price paid for excess future earnings. The amortization of goodwill is nonallowable, nonreimbursable expense. (9-15-84)

3710. Historical Cost. The actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architects' fees, and engineering studies. (1-1-82)

11. Hospital. A hospital as defined in Section 39-1301, Idaho Code. ()

3812. ICF/MR. An intermediate care facility for ~~the mentally retarded~~ persons with mental retardation. (9-15-84)()

3913. ICF/MR Living Unit. The ~~specific property or portion thereof~~ physical structure that an ICF/MR uses to house patients. (7-1-97)()

4014. Improvements. Improvements to assets which increase their utility or alter their use. (1-16-80)

415. Indirect Care Costs. The following costs either directly coded to the nursing facility or allocated to the nursing facility through the Medicare step-down process described in the PRM: (4-5-00)

ba. Activities; ~~and~~ (4-5-00)()

ab. Administrative and general care costs; ~~and~~; (4-5-00)()

c. Central service and supplies; ~~and~~ (4-5-00)()

ed. Dietary (non-"raw food" costs); ~~and~~ (4-5-00)()

he. Employee benefits associated with the indirect salaries; ~~and~~ (4-5-00)()

if. Housekeeping; ~~and~~ (4-5-00)()

dg. Laundry and linen; ~~and~~ (4-5-00)()

gh. Medical records; ~~and~~ (4-5-00)()

- ~~ji.~~ Other costs not included in direct care costs, or costs exempt from cost limits; ~~and~~ (4-5-00)(____)
- ~~fi.~~ Plant operations and maintenance (excluding utilities); ~~and~~ (4-5-00)(____)

~~4216.~~ **Inflation Adjustment.** Cost used in establishing an NE facility's prospective reimbursement rate shall be indexed forward from the midpoint of the cost report period to the midpoint of the rate year using the inflation factor plus one percent (+1%) per annum. (4-5-00)(____)

~~4317.~~ **Inflation Factor.** For use in establishing nursing facility prospective rates, the inflation factor is the Skilled Nursing Facility (SNF) Market Basket as established by Data Resources, Inc. (DRI), or its successor. If subsequent to the effective date of these rules, Data Resources, Inc., or its successor develops an Idaho-specific nursing facility index, it will be used. The Department is under no obligation to enter into an agreement with DRI or its successor to have an Idaho-specific index established. (4-5-00)(____)

~~4418.~~ **Interest.** The cost incurred for the use of borrowed funds. (1-16-80)

~~4519.~~ **Interest on Capital Indebtedness.** The cost incurred for borrowing funds used for acquisitions of capital assets, improvements, etc. These costs are differentiated from those related to current indebtedness by the payback period of the related debt. (1-16-80)

~~4620.~~ **Interest On Current Indebtedness.** The costs incurred for borrowing funds which will be used for "working capital" purposes. These costs are differentiated from others by the fact that the related debt is scheduled for repayment within one (1) year. (1-16-80)

~~4721.~~ **Interest Rate Limitation.** The interest rate allowed for working capital loans and for loans for major movable equipment for ICF/MR facilities is the prime rate as published in the western edition of the Wall Street Journal or successor publication, plus one percent ($\pm 1\%$) at the date the loan is made. (4-5-00)(____)

~~4822.~~ **Interim Reimbursement Rate (IRR).** A rate paid for each Medicaid patient day which is intended to result in total Medicaid payments approximating the amount paid at audit settlement. The interim reimbursement rate is intended to include any payments allowed in excess of the percentile cap. (10-22-93)

~~4923.~~ **Intermediary.** Any organization ~~which~~ that administers the Title XIX program; in this case the Department of Health and Welfare. (1-16-80)(____)

~~50.~~ ~~**Intermediate Care Facility For The Mentally Retarded.** A habilitative facility designed and operated to meet the educational, training, habilitative and intermittent medical needs of the developmentally disabled.~~ (9-15-84)

012. DEFINITIONS K THROUGH O.

~~501.~~ **Keyman Insurance.** Insurance on owners or employees with extraordinary talents in which the direct or indirect beneficiary is the facility or its owners. (1-16-80)

~~502.~~ **Lease.** A contract arrangement for use of another's property, usually for a specified time period, in return for period rental payments. (1-16-80)

~~503.~~ **Leasehold Improvements.** Additions, adaptations, corrections, etc., made to the physical components of a building or construction by the lessee for his use or benefit. Such additions may revert to the owner. Such costs are usually capitalized and amortized over the life of the lease. (1-16-80)

~~504.~~ **Level of Care.** The classification in which a patient/resident is placed ~~following a medical/social review decision.~~ (1-16-80)(____)

~~505.~~ **Licensed Bed Capacity.** The number of beds which are approved by the Licensure and Certification Agency for use in rendering patient care. (1-16-80)

506. Lower of Cost or Charges. Payment to providers (other than public providers furnishing such services free of charge or at nominal charges to the public) ~~shall be~~ is the lesser of the reasonable cost of such services or the customary charges with respect to such services. Public providers which furnish services free of charge or at a nominal charge ~~shall be~~ are reimbursed fair compensation; which is the same as reasonable cost. ~~(4-5-00)~~(____)

507. MAI Appraisal. An appraisal which conforms to the standards, practices, and ethics of the American Institute of Real Estate Appraisers and is performed by a member of the American Institute of Real Estate Appraisers. (9-15-84)

508. Major Movable Equipment. Major movable equipment means such items as beds, wheelchairs, desks, furniture, vehicles, etc. The general characteristics of this equipment are: (12-28-89)

- a. A relatively fixed location in the building; (11-4-85)
- b. Capable of being moved, as distinguished from building equipment; (11-4-85)
- c. A unit cost of five thousand dollars (\$5000) or more; (4-5-00)
- d. Sufficient size and identity to make control feasible by means of identification tags; and (11-4-85)
- e. A minimum life of three (3) years. (4-5-00)

609. Medicaid. The ~~1965 amendments to the~~ federal and state funded medical assistance program found in Title XIX of the Social Security Act (P.L. 89-97), as amended. ~~(1-1-82)~~(____)

610. Medicaid Related Ancillary Costs. For the purpose of these rules, those services considered to be ancillary by Medicare cost reporting principles. Medicaid related ancillary costs will be determined by apportioning direct and indirect costs associated with each ancillary service to Medicaid residents by dividing Medicaid charges into total charges for that service. The resulting percentage, when multiplied by the ancillary service cost, will be considered Medicaid related ancillaries. (4-5-00)

5911. Minimum Data Set (MDS). A set of screening, clinical, and functional status elements, including common definitions and coding categories, that forms the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicare or Medicaid. The version of the document initially used for rate setting is version 2.0. Subsequent versions of the MDS will be evaluated and incorporated into rate setting as necessary. (4-5-00)

612. Minor Movable Equipment. Minor movable equipment includes such items as wastebaskets, bedpans, syringes, catheters, silverware, mops, buckets, etc. Oxygen concentrators used in lieu of bottled oxygen ~~shall~~ may, at the facility's option, be considered minor movable equipment with the cost ~~thereof~~ reported as a medical supply. The general characteristics of this equipment are: ~~(12-28-89)~~(____)

- a. ~~In general, n~~ No fixed location and subject to use by various departments of the provider's facility; ~~(11-4-85)~~(____)
- b. Comparatively small in size and unit cost under five thousand dollars (\$5000); (4-5-00)
- c. Subject to inventory control; (11-4-85)
- d. Fairly large quantity in use; and (11-4-85)
- e. ~~Generally, a~~ A useful life of less than three (3) years. ~~(4-5-00)~~(____)

613. Necessary. The purchase of goods or services that is required by law, prudent management, and for normal, efficient and continuing operation of patient related business. (4-5-00)

614. Net Book Value. The historical cost of an asset, less accumulated depreciation. (1-1-82)

615. New Bed. ~~A Subject to specific exceptions stated in these rules, a bed is considered new if it is an additional nursing facility adds to the number of beds that is for which a facility is licensed subsequent to on or after July 1, 1999.~~ (4-5-00)(____)

616. Nominal Charges. A public provider's charges are nominal where aggregate charges amount to less than one-half (1/2) of the reasonable cost of the related services. (4-5-00)

617. Nonambulatory. Unable to walk without assistance. (11-4-85)

618. Nonprofit Organization. An organization whose purpose is to render services without regard to gains. (1-1-82)

619. Normalized Per Diem Cost. Refers to direct care costs that have been adjusted based on the facility's case mix index for purposes of making the per diem cost comparable among facilities. Normalized per diem costs are calculated by dividing the facility's direct care per diem costs by its facility-wide case mix index, and multiplying the result by the statewide average case mix index. (4-5-00)

~~**70. Nursing Home Facility.** A "Nursing Facility" or "NF". See facility. (9-28-90)~~

~~**7120. Nursing Facility Inflation Rate.** The most specific skilled nursing facility inflation rate applicable to Idaho established by Data Resources, Inc. or its successor. If a state or regional index has not been implemented, the national index will be used See Subsection 011.17, Inflation Factor. (4-5-00)(____)~~

721. Ordinary. Ordinary means that the costs incurred are customary for the normal operation of the business. (4-5-00)

013. DEFINITIONS P THROUGH Z.

7301. Patient Day. A calendar day of care which will include the day of admission and exclude the day of discharge unless discharge occurs after 3:00 p.m. or it is the date of death, except that, when admission and discharge occur on the same day, one (1) day of care shall be deemed to exist. (1-1-82)

7402. Picture Date. A point in time when case mix indices are calculated for every facility based on the residents in the facility on that day. The picture date to be used for rate setting will be the first day of the first month of a quarter. The picture date from that quarter will be used to establish the facility's rate for the next quarter. (4-5-00)

7503. Private Rate. Rate most frequently charged to private patients for a service or item. (1-16-80)

7604. PRM. The Providers Reimbursement Manual, a federal publication which specifies accounting treatments and standards for the Medicare program, HCFA Publications 15-1 and 15-2, which are incorporated by reference into Section 005 of these rules. (4-5-00)(____)

7705. Property Costs. The total of allowable interest expense, plus depreciation, property insurance, real estate taxes, amortization, and allowable lease/rental expense. The Department may require and utilize an appraisal to establish those components of property costs which are identified as an integral part of an appraisal. (9-15-84)

7806. Property Rental Rate. A rate paid per Medicaid patient day to other than hospital based nursing homes in lieu of reimbursement for property costs other than property taxes, property insurance, and the property costs of major movable equipment at ICF/MR facilities. (7-1-97)

~~**79. Proprietary.** An organization operated for the purpose of monetary gains. (1-16-80)~~

~~**807. Provider.** A licensed and certified skilled nursing or intermediate care facility which renders care to Title XIX recipients. Any individual, organization or business entity furnishing medical goods or services in compliance with this chapter and who has applied for, received a provider number, and entered into a written provider~~

agreement with the Department under IDAPA 16.03.09, "Rules Governing the Medical Assistance Program".
(1-16-80)()

8408. Prudent Buyer. A prudent buyer is one who seeks to minimize cost when purchasing an item of standard quality or specification, (PRM, Chapter 2100). (4-5-00)()

8209. Public Provider. A public provider is one operated by a federal, state, county, city, or other local government agency or instrumentality. (4-5-00)

8410. Raw Food. Food used to meet the nutritional needs of the residents of a facility, including liquid dietary supplements, liquid thickeners, and tube feeding solutions. (4-5-00)

8511. Reasonable Property Insurance. Reasonable property insurance means that the consideration given is an amount that would ordinarily be paid by a cost-conscious buyer for comparable insurance in an arm's length transaction. Property insurance per licensed bed in excess of two (2) standard deviations above the mean of the most recently reported property insurance costs per licensed bed of all facilities in the reimbursement class as of the end of a facility's fiscal year shall not be considered reasonable. (11-4-85)

8612. Recipient. An individual determined eligible by the Director for the services provided in the state plan for Medicaid. (1-1-82)

8713. Related Entities. The provider, to a significant extent, is associated or affiliated with, or is controlled by, or has control of another entity. (1-16-80)

8314. Related To Provider. The provider, to a significant extent, is associated or affiliated with, or has control of, or is controlled by, the organization furnishing the services, facilities, or supplies. (4-5-00)

8815. Resource Utilization Groups (RUG's). A process of grouping residents according to the clinical and functional status identified by the responses to key elements of the MDS. For purposes of initial rate setting, RUG's III, version 5.12, 34 Grouper, nursing weights only, with index maximization will be used for grouping residents and is hereby incorporated into these rules. The RUG's Grouper is available from HCFA, 7500 Security Blvd., Baltimore, MD, 21244-1850. Subsequent versions of RUG's, or its successor, will be evaluated and may be incorporated into the rate setting process as necessary. (4-5-00)

16. Rural Health Clinic (RHC). An entity that meets the requirements of 42 USC Section 1395x(aa)(2) as an outpatient facility that is primarily engaged in furnishing physicians' and other medical and health services in rural federally-defined medically underserved areas or designated health professional shortage areas.
()

8917. Skilled Nursing Care. The level of care for patients requiring twenty-four (24) hour skilled nursing services. (1-16-80)

~~**90. Skilled Nursing Facility.** A nursing care facility licensed by the Department to provide twenty-four (24) hour skilled nursing services and certified as a "Nursing Facility" under Title XVIII. (9-28-90)~~

918. Title XVIII. The Medicare program administered by the federal Social Security Administration. (1-16-80)

9219. Title XIX. The medical assistance program known as Medicaid administered by the state of Idaho, Department of Health and Welfare. (1-16-80)

9320. Utilities. All expenses for heat, electricity, water and sewer. (9-15-84)

00614. -- 0429. (RESERVED).

030. PROVIDER'S RESPONSIBILITY TO MAINTAIN RECORDS.
The provider must maintain financial and other records in sufficient detail to allow the Department to audit them as

described in Subsection 001.03 of these rules. ()

01. Expenditure Documentation. Documentation of expenditures must include the amount, date, purpose, payee, and the invoice or other verifiable evidence supporting the expenditure. ()

02. Cost Allocation Process. Costs such as depreciation or amortization of assets and indirect expenses are allocated to activities or functions based on the original identity of the costs. Documentation to support basis for allocation must be available for verification. ()

03. Revenue Documentation. Documentation of revenues must include the amount, date, purpose, and source of the revenue. ()

04. Availability of Records. Records must be available for and subject to audit by the auditor, with or without prior notice, during any working day between the hours of 8:00 a.m. and 5:00 p.m. at the provider's principal place of business in the state of Idaho. ()

a. The provider is given the opportunity to provide documentation before the interim final audit report is issued. ()

b. The provider is not allowed to submit additional documentation in support of cost items after the issuance of the interim final audit report. ()

05. Retention of Records. Records required in Subsections 030.01 through 030.03 of these rules must be retained by the provider for a period of five (5) years from the date of the final payment under the provider agreement. Failure to retain records for the required period can void the Department's obligation to make payment for the goods or services. ()

031. -- 039. (RESERVED).

040. DRAFT AUDIT REPORT.

Following completion of the audit field work and before issuing the interim final audit report to the Department, the auditor will issue a draft audit report and forward a copy to the provider for review and comment. ()

01. Review Period. The provider will have a period of sixty (60) days, beginning on the date of transmittal, to review and provide additional comments or evidence pertaining to the draft audit report. The review period may be extended when the provider: ()

a. Requests an extension prior to the expiration of the original review period; and ()

b. Clearly demonstrates the need for additional time to properly respond. ()

02. Evaluation of Provider's Response. The auditor will evaluate the provider's response to the draft audit report and will delete, modify, or reaffirm the original findings, as deemed appropriate, in preparing the interim final audit report. ()

041. FINAL AUDIT REPORT.

The auditor will incorporate the provider's response and an analysis of the response into the interim final report as appendices and transmit it to the Department. The Department will issue a final audit report and a notice of program reimbursement, if applicable, that sets forth settlement amounts due to the Department or the provider. The final audit report and notice of program reimbursement, if applicable, will take into account the findings made in the interim final audit report and the response of the provider to the draft audit report ()

042. -- 049. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.10 - RULES GOVERNING MEDICAID PROVIDER REIMBURSEMENT IN IDAHO

DOCKET NO. 16-0310-0402

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-102, 56-202, and 56-117, 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 20, 2004.

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 rule making:

These rules are being amended to clarify the current prospective payment methodology used in reimbursement to nursing home providers and to remove obsolete language applying to the previous payment methodology. The rules have also been amended for plain language and sections have been moved for clarity.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

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 rule amendments are for clarification.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sheila Pugatch at (208) 364-1817.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before October 27, 2004.

DATED this 25th day of August, 2004.

Sherri Kovach, Program Supervisor
Administrative Procedures Section
Department of Health and Welfare
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT FOR DOCKET 16-0310-0402

006. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. ()

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

04. Telephone. (208) 334-5500. ()

05. Internet Website Address. The website address is: "http://www.healthandwelfare.idaho.gov". ()

0067. -- 0419. (RESERVED).

020. COST REPORTING.

The provider's Medicaid cost report must be filed using the Department designated reporting forms, unless the Department has approved an exception. The request to use alternate forms must be sent to the Department, in writing with samples attached, a minimum of ninety (90) days prior to the due date for the cost report. The request for approval of alternate forms cannot be used as a reason for late filing. ()

(BREAK IN CONTINUITY OF SECTIONS)

110. ALLOWABLE COSTS.

~~Below is a list of the normally allowable costs, and the related following definitions and explanations, which includes, but is not limited to, the following items apply to allowable costs:~~ (7-1-97)()

01. Accounts Collection. The costs related to the collection of past due program related accounts, such as legal and bill collection fees, are allowable. ()

~~02. Auto and Travel Expense. Expense of maintenance and operation operating costs of a vehicle used for patient care purposes and travel expense related to patient care are reimbursable. The allowance for mileage reimbursement will can not exceed the amount determined reasonable by the Internal Revenue Service for the period being reported on. Meal reimbursement will be is limited to the amount that would be allowed by the state for a Department state employee. Entertainment expense is allowable only if documentation is provided naming the individuals and stating the purpose of the meeting. Entertainment expense is allowable only for patient care related purposes.~~ (7-1-97)()

023. Bad Debts. Payments for efforts to collect past due Title XIX accounts are reimbursable. This may include the fees for lawyers and collection agencies. Other allowances for bad debt and bad debt write-off are not allowable. However, Title XIX coinsurance amounts are one hundred percent (100%) reimbursable (PRM, Section 300). (4-5-00)

034. Bank and Finance Charges. Charges for routine maintenance of accounts are allowable. Penalties for late payments, overdrafts, etc., are not allowable. (1-16-80)

~~05. Compensation of Owners.~~ An owner may receive reasonable compensation for services subject to the limitations in this chapter, to the extent the services are actually performed, documented, reasonable, ordinary, necessary, and related to patient care. Allowable compensation shall cannot exceed the amount necessary to attract

assistance from parties not related to the owner to perform the same services. The nature and extent of services must be supported by adequate documentation including hours performing the services. Where an average industry wide rate for a particular function can be determined, reported allowable owner compensation ~~shall~~ cannot exceed the average rate. Compensation to owners, or persons related to owners, providing administrative services is further limited by provisions in Sections 402 ~~and 403~~ of these rules. In determining the reasonableness of compensation for services paid to an owner or a person related to an owner, compensation is the total of all benefits or remuneration paid to or primarily for the benefit of the owner regardless of form or characterization. It includes, but is not limited to, the following: (7-1-97)(____)

- a. Salaries wages, bonuses and benefits which are paid or are accrued and paid for the reporting period within one (1) month of the close of the reporting period. (7-1-97)
- b. Supplies and services provided for the owner's personal use. (1-16-80)
- c. Compensation paid by the facility to employees for the sole benefit of the owner. (1-16-80)
- d. Fees for consultants, directors, or any other fees paid regardless of the label. (1-16-80)
- e. Keyman life insurance. (1-16-80)
- f. Living expenses, including those paid for related persons. (1-16-80)

046. Contracted Service. All services which are received under contract arrangements are reimbursable to the extent that they are related to patient care or the sound conduct and operation of the facility. (1-16-80)

057. Depreciation. Depreciation on buildings and equipment is an allowable property expense ~~for hospital-based facilities~~ subject to Section 060 of these rules. Depreciation expense is not allowable for land. Leasehold improvements may be amortized. Generally, depreciation and amortization must be calculated on a straight line basis and prorated over the estimated useful life of the asset. (10-22-93)(____)

08. Dues, Licenses and Subscriptions. Subscriptions to periodicals related to patient care and for general patient use are allowable. Fees for professional and business licenses related to the operation of the facility are allowable. Dues, tuition, and educational fees to promote quality health care services are allowable when the provisions of PRM, Section 400, are met. (____)

069. Employee Benefits. Employee benefits including health insurance, vacation, and sick pay are allowable to the extent of employer participation. See PRM, Chapter 21 for specifics. (4-5-00)

10. Employee Recruitment. Costs of advertising for new employees including applicable entertainment costs are allowable. (____)

11. Entertainment Costs Related to Patient Care. Entertainment costs for patient care related purposes are allowable only when documentation is provided naming the individuals and stating the specific purpose of the entertainment. (____)

12. Food. Costs of raw food, not including vending machine items, are allowable. The provider is only reimbursed for costs of food purchased for patients. Revenues from meals sold to nonpatients are used to offset food costs. (____)

13. Home Office Costs. Costs allocated by related entities for home office services are allowable administrative costs. (____)

0714. Insurance. Premiums for insurance on assets or for liability purposes, including vehicles, are allowable to the extent that they are related to patient care. (1-16-80)

0815. Interest. Interest on working capital loans is an allowable administrative expense. When property is reimbursed based on cost, interest on related debt is allowable. However, interest payable to related entities is not

normally an allowable expense. Penalties are not allowable. (7-1-97)

~~09~~**16. Lease or Rental Payments.** Payments for the property cost of the lease or rental of land, buildings, and equipment are allowable according to Medicare reasonable cost principles when property is reimbursed based on cost for leases entered into before March 30, 1981. Such leases entered into on or after March 30, 1981, shall be reimbursed in the same manner as an owned asset. The cost of leases related to home offices and ICF/MR day treatment services shall not be reported as property costs and shall be allowable based on reasonable cost principles subject to other limitations contained herein. (7-1-97)

~~17.~~ **Malpractice/Public Liability Insurance.** Premiums for malpractice and public liability insurance must be reported as administrative costs. ()

~~108.~~ **Payroll Taxes.** The employer's portion of payroll taxes is reimbursable. (1-6-80)

~~149.~~ **Property Costs.** Property costs related to patient care are allowable subject to other provisions of this chapter. Property taxes and reasonable property insurance are allowable for all facilities. ~~A For free-standing NFs and ICF/MRs, the property rental rate will be is paid in lieu of costs in some circumstances according to other provisions~~ as described in Section 060 of these rules. Hospital-based NFs are paid based on property costs. (7-1-97)()

~~a.~~ Amortization of leasehold improvements will be included in property costs. ()

~~i.~~ Straight line depreciation on fixed assets is included in property costs. ()

~~ii.~~ Depreciation of moveable equipment is an allowable property cost. ()

~~b.~~ Interest costs related to the purchase of land, buildings, fixtures or equipment related to patient care are allowable property costs only when the interest costs are payable to unrelated entities. ()

~~120.~~ **Property Insurance.** Property insurance per licensed bed is limited to no more than two (2) standard deviations above the mean of the most recently reported property insurance costs, as used for rate setting purposes, per licensed bed of all facilities in the reimbursement class of the end of a facility's fiscal year. (11-4-85)

~~1321.~~ **Repairs and Maintenance.** Costs of maintenance and minor repairs are allowable when related to the provision of patient care. (1-16-80)

~~1422.~~ **Salaries.** Salaries and wages of all employees engaged in patient care activities or ~~overall~~ operation and maintenance ~~of the facility, including support activities of home offices, shall be~~ are allowable costs. However, non-nursing home wages are not an allowable cost. (1-16-80)()

~~1523.~~ **Supplies.** Cost of supplies used in patient care or providing services related to patient care ~~are~~ is allowable. (1-16-80)()

~~1624.~~ **Taxes.** The cost of ~~property~~ taxes on assets used in ~~rendering~~ providing patient care are allowable. Other taxes ~~may be~~ are allowable. ~~Specifies are covered costs as provided in the Provider Reimbursement Manual, PRM, Chapter 21. Tax penalties are not nonallowable costs.~~ (4-5-00)()

111. -- 114. (RESERVED).

115. NONALLOWABLE COSTS.
In the absence of convincing evidence to the contrary, expenses listed below will be considered nonreimbursable. The following definitions and explanations apply to nonallowable costs: (1-16-80)()

~~031.~~ **Accelerated Depreciation.** Depreciation in excess of calculated straight line depreciation, except as otherwise provided ~~(see Subsection 354.04.e.ii.)~~ is nonallowable. (12-31-91)()

~~062.~~ **Acquisitions.** Costs of corporate acquisitions, ~~e.g.,~~ such as purchase of corporate stock as an

investment, are nonallowable. (1-16-80)()

03. Barber and Beauty Shops. All costs related to running barber and beauty shops are nonallowable. ()

044. Charity Allowances. Cost of free care or discounted services are nonallowable. (1-16-80)()

05. Consultant Fees. Costs related to the payment of consultant fees in excess of the lowest rate available to a facility are nonallowable. It is the provider's responsibility to make efforts to obtain the lowest rate available to that facility. The efforts may include personally contacting possible consultants and/or advertising. The lowest rate available to a facility is the lower of the actual rate paid by the facility or the lowest rate available to the facility, as determined by departmental inquiry directly to various consultants. ~~Information obtained from consultants will be provided to facilities.~~ Costs in excess of the lowest rate available will be disallowed effective thirty (30) days after a facility is notified pursuant to Subsection 115.15.b., unless the provider shows by clear and convincing evidence it would have been unable to comply with state and federal standards had the lowest rate consultant been retained or that it tried to but was unable to retain the lowest rate consultant. This Subsection in no way limits the Department's ability to disallow excessive consultant costs under other Sections of this chapter, such as Section 100 or 121, when applicable. (7-1-97)()

~~06. Fees.~~ Franchise fees are nonallowable, see (PRM, Section 2133.1). (4-5-00)()

~~07. Fund Raising.~~ Certain fund raising expenses are nonallowable, see (PRM, Section 2136.2). (4-5-00)()

~~08. Goodwill.~~ Costs associated with goodwill as defined in ~~Subsection 003.27~~ 011 of these rules are nonallowable. (7-1-97)()

~~09. Holding Companies.~~ All home office costs associated with holding companies are ~~not~~ nonallowable (see PRM, Section 2150.2A). (4-5-00)()

170. Interest. Interest to finance nonallowable costs are nonallowable. (7-1-97)()

~~131. Medicare Costs.~~ All costs of Medicare Part A or Part B services incurred by Medicare certified facilities, including the overhead costs relating to these services are nonallowable. (7-1-98)()

012. Nonpatient Care Related Activities. All activities not related to patient care are nonallowable. (1-16-80)()

~~143. Organization.~~ Organization costs are nonallowable, (see PRM, Section 2134 ~~and subsections of Section 2134 for specifics~~). (4-5-00)()

14. Pharmacist Salaries. Salaries and wages of pharmacists are nonallowable. ()

15. Prescription Drugs. Prescription drug costs are nonallowable. ()

~~18. Property Costs.~~ ~~Costs reimbursed based on a property rental rate according to other provisions of these rules.~~ (7-1-97)

~~0416. Related Party Interest.~~ Interest on related party loans are nonallowable, (see PRM, Sections 218.1 and 218.2). (4-5-00)()

~~0517. Related Party Nonallowable Costs.~~ All costs ~~not~~ nonallowable to providers are ~~not~~ nonallowable to a related party, whether or not they are allocated. (1-16-80)()

018. Related Party Refunds. All refunds, allowances, and terms, ~~etc., shall~~ will be deemed to be allocable to the members of related organizations, on the basis of their participation in the related purchases, costs, etc. (1-16-80)()

19. Self-Employment Taxes. Self-employment taxes, as defined by the Internal Revenue Service, which apply to facility owners are nonallowable. ()

~~1420. Yellow Pages Telephone Book Advertising.~~ Telephone book ~~yellow page~~ advertising costs in excess of the base charge for a quarter column advertisement for each telephone book advertised in are nonallowable. (1-1-82)()

~~1421. Vending Machines.~~ Costs of vending machines and cost of the product to stock the machine are nonallowable costs. ~~Barber and beauty shops.~~ (1-16-80)()

(BREAK IN CONTINUITY OF SECTIONS)

208. REPORTING FORMS.

~~Unless prior approval is granted, only state forms will be acceptable. Requests for approval of alternate forms must be in writing accompanied by samples. Such requests will not be considered adequate reason for late filing, or granting of a waiver, except in extraordinary circumstances as determined by the intermediary. Following is a partial listing of the account titles used on the state forms. Included also is an explanation of the classification and reporting standards applicable to that account. The report form may be revised periodically to meet changing Department and provider needs and may be in electronic format at the discretion of the Department. Reported costs shall only include allowable costs unless the Department structures the report to remove nonallowable costs by cost groupings, in which case, reported total and subtotal costs shall reflect net allowable costs except for the nonreimbursable section of the report.~~ (7-1-97)

~~01. Revenues.~~ The categories are self-explanatory. They are intended to give sufficient breakdown of revenues to effect the reasonable cost principles embodied in the cost reporting system. Facilities may also use the cost center approach of the statement to evaluate the expense of certain cost centers in respect to their revenue. (1-16-80)

~~02. Expenses.~~ (7-1-93)

~~a. Administrative.~~ (12-31-91)

~~i. Salaries: Administrator.~~ Included in this category are salaries paid for administrators and assistant administrators of the facility. Any compensation in excess of the amount allowable under other provisions of this chapter shall be entered in the nonreimbursable Section of the cost statement (see Subsection 110.17 of these rules). (7-1-97)

~~ii. Salaries: Office and Clerical.~~ Salaries and wages paid to clerks, bookkeepers, and others whose duties relate to overall operation of the facility, should be included in this account. (1-16-80)

~~iii. Payroll Taxes.~~ The provider's portion of payroll taxes for all employees except those taxes related to the payroll for persons providing day treatment services to ICF/MR patients shall be included in the report categories provided for such costs. Payroll taxes for employees providing day treatment services to ICF/MR patients shall be reported in categories provided for these expenses. Self-employment taxes related to owners are nonallowable and should not be included. (7-1-97)

~~iv. Employee Benefits.~~ Expenses incurred such as sick pay and vacation pay should be included in this account except for those expenses relating to persons providing day treatment services for ICF/MR patients. Employee benefits for these employees should be reported in cost categories provided for those expenses. (7-1-97)

~~v. Accounts Collections.~~ The expenses related to collection of past due program accounts such as legal fees, bill collectors, etc., are allowable. Allowances for bad debts and bad debt write-off are not allowable, and should be included in the Section titled Nonreimbursable Expenses. (4-28-89)

- vi. ~~Auto and Travel. These expenses shall be those incurred in the operation of vehicles and other travel expense related to patient care. Normally, entertainment shall not be involved, but shall be recorded in the Section under Nonreimbursable Expenses (see PRM, Chapter 21).~~ (4-5-00)
- vii. ~~Bank and Finance Charges. Normally recurring minor charges for handling of accounts shall be included here.~~ (1-16-80)
- viii. ~~Dues, Licenses and Subscriptions. Subscriptions to periodicals related to patient care or for general patient use, license fees (not including franchises), and dues to professional health care organizations are to be included. Dues, tuitions and educational fees to facilitate quality health care services are includable where the provisions of PRM, Section 400, are met.~~ (4-5-00)
- ix. ~~Employee Recruitment. Costs of advertising for new employees shall be recorded in this account including applicable entertainment costs.~~ (1-16-80)
- x. ~~Home Office Costs. Costs allocated by related entities for various services shall be included in this account.~~ (1-16-80)
- xi. ~~Malpractice/Public Liability Insurance. Premiums for malpractice and public liability insurance shall be included in this account.~~ (1-16-80)
- xii. ~~Purchased Services. Costs of legal, accounting, and management services (not including related entities) for overall operations shall be included in this account.~~ (1-16-80)
- xiii. ~~Supplies and Rentals. Cost of supplies, postage, ledger sheets, and rental of minor office equipment shall be included in this account.~~ (1-16-80)
- xiv. ~~Telephone and Communications. Cost of telephone and related communications shall be included in this account.~~ (1-16-80)
- xv. ~~Interest, Working Capital. Allowable interest expense for loans not related specifically to the purchase of the real or personal property of the provider shall be reported here.~~ (1-1-82)
- xvi. ~~Miscellaneous. Any expense not properly allocable to other cost centers and not properly classified in other classification of administration expenses shall be included here.~~ (1-16-80)
- b.** ~~Property. Property costs shall be reported by all facilities including those facilities which are reimbursed a property rental rate.~~ (11-4-85)
- i. ~~Amortization. Amortization of leasehold improvements shall be included here. Certain others may be included here also.~~ (1-16-80)
- ii. ~~Depreciation on Fixed Assets. Depreciation expenses for buildings and fixtures should be included here. Any depreciation in excess of straight line AHA lives shall not be included unless otherwise waived by the Department. Such excess shall be included in the Section of Nonreimbursable Expenses.~~ (7-1-97)
- iii. ~~Depreciation of Equipment. Depreciation expense for moveable equipment shall be included here. Excess depreciation as defined above shall be included in the Nonreimbursable Section (see Subsection 354.04.c.).~~ (12-31-91)
- iv. ~~Interest Expense. Interest expense related to purchase of land, buildings and equipment related to patient care shall be included here only if it is payable to unrelated entities. Generally, interest payable to related entities shall be included in the Nonreimbursable Section (PRM, Section 202.3).~~ (4-5-00)
- v. ~~Insurance. Insurance premiums for property insurance such as fire and glass shall be includable here.~~ (1-16-80)

- ~~vi. Lease and Rental Payments. Payments for lease or rental of buildings, land and for equipment shall be includable here. (1-16-80)~~
- ~~vii. Taxes. Taxes on property related to patient care shall be recorded in this account. (1-16-80)~~
- ~~e. Patient Care Service. (1-16-80)~~
- ~~i. Nursing Care. (1-16-80)~~
- ~~(1) Salaries. Director of Nursing. Salaries or wages of the Director of Nursing shall be included here. (1-16-80)~~
- ~~(2) Registered Nurse. Salaries and wages of registered nurses shall be included in this account. Payroll taxes shall not be included but overtime shall be. (1-16-80)~~
- ~~(3) Licensed Professional Nurses. Wages for licensed professional nurses shall be included in this account including overtime, but not including payroll taxes. (1-16-80)~~
- ~~(4) Aides/Orderlies. Normal overtime and wages for aides and orderlies, not to include payroll taxes, shall be included in this account. (1-16-80)~~
- ~~(5) Contracted Services. Payments for patient health care services under contract shall be entered here. (1-16-80)~~
- ~~ii. Therapy Services. (1-16-80)~~
- ~~(1) Salaries. Salaries for all therapy personnel shall be recorded here. (1-16-80)~~
- ~~(2) Professional Services. Payments for contracted therapy services shall be recorded here. (1-16-80)~~
- ~~(3) Supplies and Miscellaneous. Expenses for supplies and miscellaneous expenses related to therapy and recreational therapy services shall be recorded here. (1-16-80)~~
- ~~iii. Social Services. (1-16-80)~~
- ~~(1) Salaries. Wages and salaries for activity directors and social services personnel shall be recorded here. (1-16-80)~~
- ~~(2) Contracted Services. Payments under contract arrangement for activities director or other social services personnel shall be included here. (1-16-80)~~
- ~~iv. Payroll Taxes and Employee Benefits. The payroll taxes and cost of employee benefits related to the salaries reported in Section 208 of these rules should be reported here. (7-1-97)~~
- ~~v. Costs Not Subject to the Percentile Cap. (12-31-91)~~
- ~~(1) Special Needs. Those costs determined by the Department and authorized under Section 56-117, Idaho Code, will be excluded from other reported costs and will be reported here (see Subsection 254.08). (12-31-91)~~
- ~~(2) Excluded Costs. Increases in costs otherwise subject to a cap incurred by facilities as a result of changes in legislation or regulations will be excluded from costs reported in categories subject to the cap and will be reported here (see Subsection 254.09). (7-1-97)~~
- ~~d. Facility Operations and Services. (1-16-80)~~

- ~~i. Central Supply. (1-16-80)~~

 - ~~(1) Salaries: Pharmacist. Salaries and wages of pharmacists who are regular employees of the facility shall be included here, but are not reimbursable. (1-16-80)~~
 - ~~(2) Salaries. Salaries and wages of others, such as stock clerks, shall be recorded here. (1-16-80)~~
 - ~~(3) Contracted Services. Payments for services under contract will be recorded in this category, not including pharmaceutical services. (1-16-80)~~
 - ~~(4) Supplies and Miscellaneous. Miscellaneous expenses and routine nursing supplies such as laxatives, aspirin, and dressings shall be recorded here; the cost of oxygen concentrators may also be recorded here. Cost of prescription drugs must not be included. (12-28-89)~~
- ~~ii. Laundry and Linen. (1-16-80)~~

 - ~~(1) Salaries. Salaries and wages for personnel involved in laundry operations shall be recorded here. (1-16-80)~~
 - ~~(2) Purchased Services. Costs of contracted linen services shall be recorded here. (1-16-80)~~
 - ~~(3) Linens and Bedding. Purchase of sheets, mattress pads, blankets, towels, etc., shall be entered here. Costs of beds and mattresses are capitalizable and should be treated accordingly. (1-16-80)~~
 - ~~(4) Miscellaneous Expenses. Miscellaneous expenses not properly classified in other areas of Section 208 should be included in this account. (12-31-91)~~
- ~~e. Dietary. (1-16-80)~~

 - ~~i. Salaries: Dietitian. Wages of a dietitian who is a regular employee shall be included here. (1-16-80)~~
 - ~~ii. Salaries: Other. Salaries of cooks and other dietary personnel should be recorded here. (1-16-80)~~
 - ~~iii. Purchased Services. Payments for contracted dietary services, or dietitians, shall be included here. (1-16-80)~~
 - ~~iv. Food. Cost of food used for the period will be included here not including vending machine items. For purposes of reasonable cost evaluation, revenues from meals sold to nonpatients will reduce food costs and should be reported in the revenue Section. (1-16-80)~~
 - ~~v. Supplies. Cost of dietary supplies other than food should be recorded here. Do not include vending machine items. (1-16-80)~~
- ~~f. Plant Operations and Maintenance. (1-16-80)~~

 - ~~i. Salaries. Wages of all housekeeping and maintenance employees shall be included in this account. (1-16-80)~~
 - ~~ii. Repairs and Maintenance. Cost of minor repairs to buildings and equipment shall be recorded here. (1-16-80)~~
 - ~~iii. Purchased Services. Costs of maintenance and repair services purchased under contract arrangements shall be recorded here. (1-16-80)~~
 - ~~iv. Utilities. Expenses for heat, electricity, water and sewer shall be included in this account. (9-15-84)~~

~~f. Supplies and Miscellaneous. Expense of supplies and other unclassified expenses should be included here. (1-16-80)~~

~~g. Nonreimbursable Expenses. This classification of expenses is provided to reconcile your cost statement to books of record. It will also help the facility to determine its reasonable costs and anticipate its revenues. Routine business expenses not includable in the reasonable cost formula are to be recorded in Section 208. The account titles are indicative of these costs which are commonly found. (12-31-91)~~

~~03. Home Office Reporting. The purpose of the provisions of Section 208, is to support the costs allocated to the provider facility. A report is required for each level of organization which allocates costs to the provider, directly or indirectly. (7-1-97)~~

2098. -- 239. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

251. ~~PRINCIPLE (RESERVED).~~

~~Providers of nursing home services will be paid at the allowed amount determined in accordance with Section 56-101 to 56-131, Idaho Code. Total payment will be made up of the total of the following components: (4-5-00)~~

~~01. Property And Utility Costs. All allowable property and utility costs. (9-15-84)~~

~~02. Nonproperty, Nonutility Costs. Nonproperty nonutility costs as determined in accordance with the above mentioned Sections of the Idaho Code. (9-15-84)~~

~~03. Efficiency Increment. An efficiency increment determined in accordance with the above mentioned Sections of the Idaho Code. (1-1-82)~~

~~04. Exempt Costs. Other allowable costs exempt from the percentile cap under Sections 56-110(b) and 56-117, Idaho Code, as specified in Subsection 254.08 and 254.09. (12-31-91)~~

(BREAK IN CONTINUITY OF SECTIONS)

302. DEVELOPMENT OF THE RATE.

~~NF Rates shall be~~ are prospective, with new rates effective July 1 of each year, and rebased annually. Rate setting shall be prospective with new rates effective July 1 of each year. There will be no settlement between actual costs incurred during the rate year and the rate itself. Rates for skilled care nursing facilities with unaudited cost reports will be interim rates established by the Department until a rate is calculated based on an audited cost report. The draft audit of a cost report submitted by a facility shall be issued by the Department no later than five (5) months from the date all information required for completion of the audit is filed with the Department. Data used to develop the reimbursement rate for nursing facilities will be made up of the following components: The rate for an NF is the sum of the cost components described in Subsection 302.04 through 302.09 of this rule. In no case will the rate be set higher than the charge for like services to private pay patients in effect for the period for which payment is made as computed by the lower of costs or customary charges. (4-5-00)(_____)

~~081. Applicable Case Mix Component Index (CMI). The Medicaid ease mix indices CMIs used in establishing each facility's rate will be recalculated quarterly and each facility's rate will be adjusted accordingly. The ease mix indices will be~~ are calculated based on the most recent assessment for each resident in the facility NF on the first day of the first month of the preceding quarter (i.e. for example, assessments as of April 1, 1999 would be are used to establish the ease mix indices CMIs needed to establish rates for the quarter beginning July 1, 1999). The CMIs are recalculated quarterly and each NF's rate adjusted accordingly. (4-5-00)(_____)

~~02. **Utility Costs.** Projected utility costs for the facility's upcoming fiscal year may be submitted to the Department not less than ninety (90) days prior to the beginning date of the facility's upcoming fiscal year. In the absence of such submission the Department will project the facility's utility costs utilizing the methodologies found in Subsection 254.06. (12-31-91)~~

~~072. **Applicable Cost Component Data.** The cost component of each facility's rate shall be established effective July 1 of each year and remain in effect through the following June 30. The cost data used in establishing the cost components of the rate calculation will be are from the audited or unaudited cost report which ended during the previous calendar year (i.e. for example, cost reports ending during the period from January 1, 1998 - December 31, 1998 will be are used in setting rates effective July 1, 1999). If unaudited data is used, the rate will be considered an interim rate until the audited data is available, at which time a retroactive adjustment to the payment rate will be made. The draft audit of a cost report submitted by a facility will be issued by the Department no later than five (5) months after the date all information required for completion of the audit is filed with the Department. (4-5-00)(____)~~

~~03. **Interim Rates.** NFs with unaudited cost reports are given an interim rate established by the Department until a rate is calculated based on an audited cost report. When audited data are available, a retroactive adjustment to the payment rate is made through the calculation of the finalized rate. (____)~~

~~034. **Direct Care Cost Component.** The direct care cost component of a facility's rate is the lesser of the facility's inflated direct care per diem costs, or the case mix adjusted per diem cost limit for that type of provider (free-standing nursing facility and urban hospital-based facilities, or rural hospital-based facilities). The lesser of the cost or limitation is then case mix adjusted, based on the facility's Medicaid case mix index. determined as follows: (4-5-00)(____)~~

~~a. All costs included in the direct care component will be adjusted based on the facility's case mix indices, with the exception of raw food and Medicaid related ancillary costs. The direct care per diem cost limit applicable to the rate period for and NF type (free-standing and urban hospital-based NF or rural hospital-based NF) is identified. The identified direct care cost limit is divided by the statewide average CMI for the cost reporting period, and then multiplied by the NF's facility-wide CMI for the cost reporting period to derive the adjusted direct care per diem cost limit. (4-5-00)(____)~~

~~b. The direct care limitation will be adjusted based on each facility's case mix index. The calculated direct care limit will be divided by the statewide average facility-wide case mix index, and then multiplied by the individual facility-wide case mix index. The adjusted direct care per diem cost limit is compared to the NF's inflated direct care per diem costs. The lower of the two (2) amounts is then case mix adjusted. (4-5-00)(____)~~

~~c. The lesser of the cost or limit will be divided by the facility-wide case mix index, and then multiplied by the most recent quarterly Medicaid case mix index to arrive at the direct care component. If the adjusted direct care per diem cost limit is lower, the adjusted limit is divided by the NF's facility-wide CMI for the cost reporting period, and then multiplied by the NF's most recent quarterly Medicaid CMI for the rate period to arrive at the direct care cost component. (4-5-00)(____)~~

~~d. If the inflated direct care per diem costs are lower, these costs, minus raw food and Medicaid related ancillary costs, are divided by the NF's facility-wide CMI for the cost reporting period, then multiplied by the NF's most recent quarterly Medicaid CMI for the rate period. Raw food and Medicaid related ancillary costs are then added back to arrive at the direct care cost component. (____)~~

~~045. **Indirect Care Cost Component.** The indirect care cost component of a facility's rate is the lesser of the facility's inflated indirect care per diem costs, or the indirect care per diem cost limit for that type of provider (-- free-standing nursing facilities and urban hospital-based facilities NFs, or rural hospital-based facilities) NFs. (4-5-00)(____)~~

~~06. **Calculated Reimbursement Rate.** The reimbursement rate for a facility will be the sum of the Direct Care Component, Indirect Care Component, Efficiency Incentive, Cost Exempt from Limitation, and Property Reimbursement. In no case will the interim reimbursement rate be set higher than the charge for like services to private pay patients in effect for the period for which payment is being made as computed by the lower of costs or customary~~

~~charges.~~

~~(4-5-00)~~

056. Efficiency Incentive. The efficiency incentive is available to those providers, both free-standing and hospital-based, which have inflated per diem indirect care costs less than the indirect per diem cost limit for that type of provider. The efficiency incentive is calculated by multiplying the difference between the per diem indirect cost limit and the facility's inflated per diem indirect care costs by seventy percent (70%). There is no incentive available to those facilities with per diem costs in excess of the indirect care cost limit, or to any facility based on the direct care cost component. ~~(4-5-00)~~(____)

07. Costs Exempt From Limitation. Costs exempt from cost limits are property taxes, property insurance, utilities and costs related to new legal mandates as defined in Section 309 of these rules. (____)

048. Property Reimbursement. ~~Per diem property costs as shown on the latest twelve (12) month cost report or audit report whichever is to be used in accordance with the cost reporting standards specified in Subsections 254.03.a. and 254.03.b. and the property rental rate as determined by Section 060, for facilities which receive this rate in lieu of property costs. No inflationary increase will be considered for property costs for the purpose of developing the interim rate.~~ The property reimbursement component ~~will be~~ is calculated in accordance with Section 060 and Subsection 110.19 of these rules. ~~(4-5-00)~~(____)

09. Revenue Offset. Revenues from products or services provided to nonpatients will be offset from the corresponding rate component(s) as described in Section 302 of these rules. (____)

(BREAK IN CONTINUITY OF SECTIONS)

304. TREATMENT OF NEW BEDS.

Facilities ~~which~~ that add beds ~~subsequent to the effective date of these rules~~ (after July 1, 1999), will have their reimbursement rate subjected to an additional limitation for the next three (3) ~~full~~ years. This limitation will apply beginning with the first rate setting period which utilizes a cost report that includes the date when the beds were added. ~~The facility's rate will be limited to the bed-weighted average of two (2) rates. Those two (2) rates are:~~ ~~(4-5-00)~~(____)

01. Limitation of Facilities Rate. The facility's rate will be limited to the bed-weighted average of the following two (2) rates: (____)

a. ~~¶~~The facility's current prospective rate calculated in accordance with Section 302, of these rules; and (____)

b. ~~¶~~The current median rate for ~~skilled care facilities~~ NFs of that type, (free-standing, rural hospital-based, or urban hospital-based), established each July 1. ~~(4-5-00)~~(____)

02. Calculation of ~~New~~ the Bed-Weighted Rate Average. The current calculated facility rate ~~will be~~ is multiplied by the number of beds in existence prior to the addition. The median rate ~~will be~~ is multiplied by the number of added beds, (weighted for the number of days in the cost reporting period for which they were in service). These two (2) amounts ~~will be~~ are added together and divided by the total number of beds, (with the new beds being weighted if they were only in service for a portion of the year). The resulting per diem ~~will~~ amount represents an overall limitation on the facility's reimbursement rate. Providers with calculated rates that do not exceed the limitation ~~will~~ receive their calculated rate. ~~(4-5-00)~~(____)

03. Exception to New Bed Rate. The following situations will not be treated as new beds for reimbursement purposes: (4-5-00)

a. Any beds converted from nursing facility beds to assisted living beds, ~~may not be reclassified to new~~ can be converted back to nursing facility beds ~~until~~ within three (3) years ~~have elapsed from the date the beds were reclassified to assisted living beds~~ and not be classified as new nursing facility beds. When an NF bed has been converted to an assisted living bed for three (3) or more concurrent years and the bed is converted back to an NF bed,

it must be treated as a new NF bed.

(4-5-00)()

b. Beds ~~which are~~ added as a result of expansion plans, which the Department was ~~made~~ aware of ~~in writing~~ prior to July 1, 1999, will not be treated as new beds. The facility must have already expended significant resources on the purchase of land, site planning, site utility planning, and/or development. ~~Simply~~ The existence of adequate land ~~and/or~~ space in an NF, alone, will not constitute having expended significant resources for the purposes of expansion. A written request with adequate supporting documentation for an exception under this provision must be have been received by the Department no later than December 31, 1999. In no case will beds added subsequent to after July 1, 2003, qualify for the exception to the new bed criteria.

(4-5-00)()

c. Beds which are decertified as a requirement of survey and certification due to deficiencies at the facility may can be re-certified as existing beds with the approval of the Department.

(4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

311. SPECIAL RATES.

A special rate consists of a patient's daily rate for the facility plus a special rate add-on amount. Section 56-117, Idaho Code, provides authority for the Director to pay facilities a special an amount in addition to the daily rate for care given to patients who have long term care needs beyond the normal scope of facility services. ~~These patients must have needs which are and~~ not adequately reflected in the rates calculated pursuant to the principles ~~set forth found~~ in Section 56-102, Idaho Code. ~~The payment~~ This special rate add-on amount for such specialized care will be is in addition to any payments made in accordance with other provisions of this chapter. ~~The incremental cost to a facility that exceeds the rate for services provided pursuant to the provisions of this section will be and is~~ excluded from the computation of payments or rates under other provisions of Section 56-102, Idaho Code, and these rules.

(4-5-00)()

01. Determinations. ~~A determination~~ The Department determines to approve or not approve a special rate ~~will be made~~ on a patient-by-patient basis. No rate will be allowed if reimbursement for these needs is available from a non-Medicaid source. A special rate request will must be for based on an expected identified condition that will be on-going continue for a period of greater than two (2) weeks.

(4-5-00)()

02. Application. ~~Until the facility applies for a special rate, patients with such needs will be included in the computation of the facility's rates following the principles described in Section 56-102, Idaho Code.~~

(4-5-00)

032. Effective Date. Upon approval, a special rates will become is effective on the date the application is was received, unless the provider requests a retroactive effective date. Special rates may be retroactive for up to thirty (30) days prior to receipt of the application.

(3-20-04)()

043. Reporting. Costs equivalent to payments ~~at the for~~ special rate will add-on amounts must be removed from the cost components subject to limits, and will be reported separately by the provider.

(4-5-00)()

054. Limitation. ~~The reimbursement rate paid will~~ A special rate cannot exceed the provider's charges to other patients for similar services.

(4-5-00)()

065. Prospective Rate Treatment. Prospective treatment of special rates became effective July 1, 2000. Subsections 311.076 ~~through and~~ 311.097 of these rules provide clarification of how special rates will be handled are paid under the prospective payment system.

(3-20-04)()

07. Residents Qualifying. ~~Special rates are intended for residents who have long term care needs beyond the normal scope of facility services, and whose needs are not adequately reflected in the rates set pursuant to Section 56-102, Idaho Code.~~

(3-15-02)

086. Determination of Payment for Qualifying Residents. Special rates shall be reimbursed in add-on amounts are calculated using one (1) of the methods described in Subsections 311.086.a. through 311.086.d. of these rules.

(3-20-04)()

a. ~~Special Rate Care Units. If a facility operates a special rate care unit; i.e., such as a behavioral unit; or a Traumatic Brain Injury (TBI) unit, etc., the following reimbursement methods will apply under the circumstances is determined as~~ described in Subsections 311.086.a.i. through 311.086.a.vi. of these rules. (3-20-04)(____)

i. ~~Facility is Under the Direct Care Limit~~ - If the facility ~~operates a special rate unit, the~~ is below the ~~direct care costs of which do not exceed the direct care limit; with all direct special care unit costs included in the rate calculation,~~ no special rate shall be is paid for the unit. (3-15-02)(____)

ii. ~~Facility is Over the Direct Care Limit~~ - If the facility ~~operates a special rate unit, the costs of which exceed the direct care limit, with all direct care costs included in the rate calculation, the special rate for the unit will be equal to the lesser of the per diem amount by which direct care costs exceed the limit, or the special rate add-on calculated as follows: each Medicaid resident approved for a special rate is classified using Medicare's grouper (currently RUG's III v.5.12-44 Group) and is assigned a total rate equal to the applicable Medicare price that would be paid if the resident were Medicare eligible. The special rate "add-on" to the facility rate is calculated by subtracting the resident specific Medicaid rate (based on each resident's Medicaid CMI) from the Medicare price. The average of the special rate add-on amounts calculated using this methodology shall be compared to the amount the provider is over the limit. The lesser amount is allowed as a special rate. If the facility is over the direct care cost limit with special care unit costs included, a special rate add-on amount will be calculated. The special rate add-on amount for the unit is the lesser of the per diem amount by which direct care costs exceed the limit or a calculated add-on amount. The calculated special rate add-on is derived as follows: each Medicaid resident is assigned a total rate equal to the Medicare rate that would be paid if the resident were Medicare eligible. The resident's acuity adjusted Medicaid rate, based on each resident's individual Medicaid CMI, is subtracted from the Medicare rate. The average difference between the Medicaid and the Medicare rates for all special care unit residents is the calculated special rate add-on amount. The calculated special rate add-on amount is compared to the per diem amount by which the provider exceeds the direct care limit. The lesser of these two amounts is allowed as the special rate add-on amount for the unit.~~ (3-15-02)(____)

iii. ~~New Unit Added Before July 1, 2000~~ - A unit added before July 1, 2000 that does not have sufficient historical cost data in the cost report used to set the rate shall receive the same rate that would have been set under the retrospective system until a cost report with sufficient cost detail is filed. (3-15-02)

iv. ~~New Unit Added~~ After July 1, 2000. - To qualify for special rates, The Department must approve special rates for new special care units; or increases to the number of licensed beds in an existing special care unit must first receive Departmental approval. Since a new unit will not have the cost history of an existing unit, the provider's relationship to the cap will not be considered in qualifying for a special rate. Those residents who are New units approved for special rates will have their special rate add-on amount calculated as the difference between the applicable Medicare price under PPS, and the acuity adjusted Medicaid rate for that individual all unit residents as explained in Section 311.086.a.ii. of these rules. However, the average of these amounts would is not be limited to the amount the provider is over the direct care cost limit, as the costs of the unit are not in the rate calculation. (3-20-04)(____)

v. One Hundred Percent (100%) Special Care Facility in Existence as of Existing July 1, 2000. - If at July 1, 2000, an entire facility is devoted to caring for "special rate" residents, including a special care unit which includes Medicaid residents approved for special rates as well as private pay and other residents who would qualify for special rates if they were Medicaid eligible, the facility's allowable reimbursement will be calculated as follows. The costs of the direct care component cost per diem will not be subject to the direct care cost limit. However, those the direct care costs will still be are case-mix adjusted based on the ratio of the facility's Medicaid case-mix CMI for the rate period to their facility-wide case-mix index CMI for the rate period. No additional unit special rate is calculated beyond this exemption. (3-15-02)(____)

vi. Unit Routine Customary Charge. - If the cost to operate a special rate care unit is being included in a facility's rate calculation process, the facility must report its usual and customary charge for that a semi-private room in the unit on the quarterly reporting form, in addition to the semi-private daily room rate for the general nursing home population. A weighted average routine customary charge shall be is computed by taking the number of Medicaid days approved for special rates times the usual and customary charge for private pay individuals in that unit, plus the Medicaid days not in the special rate unit times the usual and customary charge for that portion of the facility to

represent the composite of all Medicaid residents in the facility based on the type of rooms they occupy, including the unit. (3-15-02)(____)

b. Equipment/ And Non-Therapy Supplies. Equipment and non-therapy supplies not adequately addressed in the current RUG's system, as determined by the Department, shall be is reimbursed at invoice cost as an add-on to the facility's rate for the resident receiving the equipment or supplies. The facility need not exceed the direct care limit to receive a special rate for such services. Items that qualify for such treatment include but are not limited to the following: air fluidized beds, overlay mattresses, TPN supplies and VAC wound care. (3-15-02)(____)

c. Ventilator Dependent Residents and Residents Receiving Tracheostomy Care. In the case of ventilator dependent and tracheostomy residents, a two (2) step approach shall be is taken to establish the special rate an add-on amount. The facility need not exceed the direct care limit to receive a special rate for ventilator care and tracheotomy care. The first step is the calculation of a staffing add-on for the cost, if any, of additional direct care staff required to meet the exceptional needs of these residents. The add-on shall be is calculated following the provisions set forth in Subsection 311.086.d. of these rules, adjusted for the appropriate skill level of care staff. The second step shall be is the calculation of an add-on for equipment, supply supplies, or both add-on to be added to the rate up to the invoice cost or rental amount. The combined amount of these two (2) components shall be is considered the special rate add-on amount to the facility's rate for approved residents receiving this care. (3-20-04)(____)

d. Residents Who Do Not Reside Residing in a Special Rate Care Unit Requiring One-to-One Staffing Ratios. Facilities that do not have established units with a cost history built into their cost reports and rates may at times have residents who require unusual levels of staffing; such as; one-to-one staffing ratios. If the resident qualifies for a special rate, the additional reimbursement will be allowed as follows: an hourly add-on rate is computed for reimbursement of approved one-to-one (1 to 1) hours in excess of the minimum staffing requirements in effect for the period. The hourly add-on rate is equal to the current WAHR CNA wage rate plus a benefits allowance of thirty percent (30%), then weighted to remove the CNA Minimum daily staffing time.

<u>Example Using Sixteen (16) Hours of One-To-One Care</u>	
<i>Total hours per day:</i>	24.0
<i>Less minimum staff level required:</i>	(2.0)
<i>Net special rate hours allowed:</i>	22.0
<i>Average wage rate of CNA's per WAHR survey:</i>	\$7.53
<i>Plus Benefits at Thirty percent (30%):</i>	\$2.26
<i>Allowed wages and Benefits</i>	\$9.79
<i>Allowable daily special rate add-on:</i>	\$215.38
<i>Divided by total hours:</i>	24.0
<i>Calculated hourly rate:</i>	\$8.97
<i>One to one hours approved:</i>	16.0
<i>Sixteen (16) hours of one to one add-on:</i>	\$143.53

(3-15-02)(____)

e. Varying Levels of One-to-One Care. For differing varying levels of one-to-one care; i.e., such as eight (8) hours or twenty-four (24) hours, only the total special rate add-on amount is calculated as the number of hours of approved for one-to-one care approved would be changed times the hourly add-on rate as described in Subsection 311.086.d. The WAHR CNA wage rate as described in IDAPA 16.03.09, "Rules Governing the Medical Assistance Program," Section 148 will be updated prior to the July 1st rate setting each year. Should the WAHRS survey be

discontinued, ~~the Department may index~~ prior amounts ~~may be indexed~~ forward, or ~~conduct~~ a comparable survey ~~may be conducted~~ period. (3-20-04)(____)

097. Treatment of the Special Rate Cost for Future Rate Setting Periods. Special rates ~~shall be~~ are established on a prospective basis similar to the overall facility rate. When ~~a~~ the cost report ~~is~~ used to set a prospective rate contains ~~non-unit~~ special rate cost, an adjustment ~~shall be~~ is made to "offset," or ~~remove, the amount received for the special rates from the calculation of costs~~ reduce costs by an amount equal to total incremental revenues, or add-on payments received by the provider during the cost reporting period. The amount received ~~shall be~~ is calculated by multiplying the special rate add-on amount paid for each qualifying resident by the number of days that were paid. ~~The case mix index for each resident shall be left in the facility wide average and the Medicaid average for rate setting purposes, as the offset would only be for the incremental portion of the rate, above what Medicaid would have paid.~~ No related adjustment is made to the facility's CMLs. (3-15-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

407. COSTS FOR THE COMPLETION OF NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS (NATCEPS) IN NURSING FACILITIES (NFS) EXCLUDING ICF/MR FACILITIES AND FOR COMPLYING WITH CERTAIN OTHER REQUIREMENTS.

Provisions of federal law require the state to give special treatment to costs related to the completion of training and competency evaluation of nurse aides and to increase rates related to other new requirements. Treatment will be as follows: (9-28-90)

01. Cost Reimbursement. Effective for cost reports filed and for payments made after April 1, 1990, ~~such~~ NATCEP costs ~~shall will~~ be outside the content of nursing facility care and ~~shall will~~ be reimbursed reported separately as ~~an ancillary~~ exempt costs. (9-28-90)(____)

02. Costs Subject to Audit. Such NATCEP costs ~~shall remain~~ are subject to audit, ~~shall be reported separate from other costs, shall and must~~ be reported by all NFSs, including those ~~which that~~ are hospital-based, and ~~will are~~ not be included in the percentile cap. (9-28-90)(____)

03. Payment Adjustments. ~~Beginning April 1, 1990, interim NF payments will be adjusted to exclude NATCEP costs from the content of NF care, separate payments covering such costs will be made, and payment rates will be revised to cover certain other costs.~~ (9-28-90)

~~a. NATCEP's costs are not part of the content of nursing home care, are to be reported separately on cost reports by all NF's and are reimbursed separate from NF interim rates. Such costs incurred from July 1, 1988 through September 30, 1990 will be reimbursed at one hundred percent (100%) of reasonable cost; NATCEP costs incurred thereafter will be separately reimbursed based on the Medicaid share of reasonable costs.~~ (9-28-90)

~~b. Reimbursement for new costs, other than NATCEP related costs, which result from Public Law 100-203 (OBRA 1987) will be incorporated in interim NF payments effective October 1, 1990 for those providers who document such costs by October 1, 1990. Acceptable documentation will include estimated wages and benefits for new employees or net increases in scheduled working hours for specific current employees in order to comply with new requirements under OBRA 1987. The Department will provide forms for listing items related to the added costs including:~~ (9-28-90)

- ~~i. New employees;~~ (9-28-90)
- ~~ii. Related new responsibilities;~~ (9-28-90)
- ~~iii. Products and services added;~~ (9-28-90)
- ~~iv. Products and services no longer required;~~ (9-28-90)

- v. ~~Added hours required;~~ (9-28-90)
- vi. ~~Wage rates and other costs related to the net added products and services; and~~ (9-28-90)
- vii. ~~The benefits rate for the facility.~~ (9-28-90)
- e. ~~Interim rate increases will be based on total estimated added annual costs divided by the number of annual patient days used in determining the remainder of the interim rate. These rate increases are subject to reevaluation and revision based on actual costs. Interim payments are intended to approximate as closely as possible the final settlement amount. The final settlement for increases related to new costs resulting from OBRA's will be no more or less than audited actual cost. There will be no percentile cap or efficiency increment applied to these new costs.~~ (9-28-90)
- d. ~~A rate change for new costs related to OBRA 1987 will not count toward the limit of two (2) adjustments per year as addressed in Subsection 303.03.~~ (12-31-91)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.17 - SERVICE COORDINATION

DOCKET NO. 16-0317-0401

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 regular rulemaking procedures. The action is authorized pursuant to Section 56-202(b), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, 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 20, 2004.

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

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

This docket changes the time line from thirty (30) to sixty (60) days for development of a service plan by service coordinators. The service plan time line for mental health service coordination remains at thirty (30) days. The rule is being promulgated at the request of service coordinators who testified before the 2004 House Health and Welfare committee. This change will benefit the providers and participants receiving service coordination by ensuring enough time is allowed to develop the service coordination plan. Also, based on a petition for rulemaking from the Case Management Association of Idaho, Inc. (CMAID), three (3) additional changes will be made to clarify the face to face contact requirements, participant's right to choose a provider, and individual service coordinator caseloads. In addition to these requested changes the Department is adding a new section that will be required in all chapters to clarify mandatory criminal history check requirements

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which the public comment should be addressed.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule is based on requested changes from service providers that the Department has agreed to make.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Paul Leary at (208) 364-1840.

Anyone can submit written comments regarding this proposed rulemaking. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before October 27, 2004.

DATED this 5th day of August, 2004.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0317-0401

004. INCORPORATION BY REFERENCE.

The Department has incorporated by reference the following documents: (3-20-04)

01. State Medicaid Manual. Centers for Medicare and Medical Services, Publication No. 45, ~~Part Four (4) Services~~, Sections 1115, 2114, 4302, "~~Optional Targeted Case Management Services Basis, Scope and Purpose,~~" and 4442.3, (August 28, 2002). This document is available online at <http://www.cms.gov/manuals/cmstoc.asp> or requested by mail at the Centers for Medicare and Medical Services, 7500 Security Boulevard, Baltimore, Maryland 21244. (~~3-20-04~~)()

02. DSM-IV-TR. American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision (DSM-IV-TR) Washington, DC, American Psychiatric Association, 2000. Copies of the manual are available from the American Psychiatric Association, 1400 K Street, N.W., Washington, DC, 20005. A copy of the manual is also available for public review at the Department of Health and Welfare, 450 West State Street, Boise, Idaho, 83720-0036. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

~~008.---009.~~ (RESERVED).

009. MANDATORY CRIMINAL HISTORY CHECK REQUIREMENTS.

01. Compliance With Department Criminal History Check. Service coordination agencies must verify that each service coordinator and paraprofessional they employ or with whom they contract has complied with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks." ()

02. When Employee May Begin Work. Once a service coordinator or paraprofessional has completed a self-declaration form and has been fingerprinted, he may begin working for the service coordination agency on a provisional basis, except if he discloses a designated crime listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," while awaiting the results of the criminal history check. ()

03. Additional Criminal Convictions. Once a service coordinator or paraprofessional has received a criminal history clearance, any additional criminal convictions must be reported by the service coordination agency to the Department or its designee when the agency learns of the conviction. ()

010. DEFINITIONS.

01. Agency. An agency is a business entity that provides service coordination and includes at least a supervisor and a service coordinator. (3-20-04)

02. Brokerage Model. Referral or arrangement for services identified in an assessment. This model does not include the provision of direct services. (3-20-04)

03. Crisis. An unanticipated event, circumstance or life situation that places a participant at risk of at least one (1) of the following: (3-20-04)

a. Hospitalization; (3-20-04)

b. Loss of housing; (3-20-04)

- c. Loss of employment or major source of income; (3-20-04)
- d. Incarceration; or (3-20-04)
- e. Physical harm to self or others, including family altercation or psychiatric relapse. (3-20-04)
- 04. Crisis Service Coordination.** Crisis service coordination services are linking, coordinating and advocacy services provided to assist a participant to access emergency community resources in order to resolve a crisis. Crisis service coordination does not include crisis counseling, transportation to emergency service providers, or direct skill-building services. (3-20-04)
- 05. Current Assessment.** An assessment that accurately reflects the status of the participant. (3-20-04)
- 06. Department.** The Idaho Department of Health and Welfare or its designee. (3-20-04)
- 07. High Cost Services.** As used in Subsection 203.01 of these rules, high cost services are medical services that result in expensive claims payment or significant state general fund expenditure that may include: (3-20-04)
- a. Emergency room visits or procedures; (3-20-04)
- b. Inpatient medical and psychiatric services; (3-20-04)
- c. Nursing home admission and treatment; (3-20-04)
- d. Institutional care in jail or prison; (3-20-04)
- e. State, local, or county hospital treatment for acute or chronic illness; and (3-20-04)
- f. Outpatient hospital services. (3-20-04)
- 08. Human Services Field.** A particular area of academic study in health, social services, education, behavioral science or counseling. (3-20-04)
- 09. Paraprofessional.** An adult who has a minimum of a bachelor's degree in a human services field but no experience with participants, or a person without a degree but with a high school diploma or equivalency who has at least twelve (12) months' experience with the population to whom they will be providing services. (3-20-04)
- 10. Practitioner Of The Healing Arts.** For purposes of this rule, a nurse practitioner, physician assistant or clinical nurse specialist. (3-20-04)
- 11. Provider.** Any individual, organization or business entity furnishing medical goods or services in compliance with this chapter and who has applied for and received a provider number and entered into a written provider agreement, under IDAPA 16.03.09 "Rules Governing the Medical Assistance Program," Sections 020 and 040. ()
- ~~**12. Service Coordination.** Service coordination is an activity which assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. Service coordination is a brokerage model of case management as defined in the State Medicaid Manual referenced in Subsection 004.01 of these rules.~~ (3-20-04)()
- 123. Service Coordinator.** An individual who provides service coordination to a Medicaid eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements in Section 700 of these rules. (3-20-04)
- 134. Supports.** Formal and informal services and activities that are not paid for by the Department and

that enable an individual to reside safely in the setting of his choice. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

400. SERVICE PLAN DEVELOPMENT.

A written service coordination plan must be developed and implemented within ~~thirty~~ sixty (360) days after the participant chooses a service coordination agency except in the case of adults with severe and persistent mental illness; in which case the time limit is thirty (30) days. The plan must be updated at least annually. The plan must address the service coordination needs of the participant as identified in the assessment. (3-20-04)(____)

01. Service Plan Content For Individuals With Developmental Disabilities. The service coordination plan for individuals with developmental disabilities is incorporated into the participant's plan of service. The content is identified in IDAPA 16.03.13, "Prior Authorization For Behavioral Health Services," Section 310. (3-20-04)

02. Service Plan Content For Individuals Receiving Personal Assistance Services. The individual's service plan must contain at least the following: (3-20-04)

- a. Problems identified during the assessment; (3-20-04)
- b. Overall goals to be achieved; (3-20-04)
- c. Reference to all services and contributions provided by the informal support system including the actions, if any, taken by the service coordinator to develop the support system; (3-20-04)
- d. Documentation of who has been involved in the service planning, including the participant's involvement; (3-20-04)
- e. Schedules for service coordination monitoring and reassessment; (3-20-04)
- f. Documentation of unmet needs and service gaps; and (3-20-04)
- g. References to any formal services arranged including costs, specific providers, schedules of service initiation, frequency or anticipated dates of delivery. (3-20-04)

03. Service Plan Content For Individuals With Severe And Persistent Mental Illness. The service coordination plan must include the following: (3-20-04)

- a. A list of problems and needs identified during the assessment; (3-20-04)
- b. Concrete measurable goals and objectives to be achieved by the service coordinator; (3-20-04)
- c. Time frames for achievement of the goals and objectives; (3-20-04)
- d. Reference to any formal services arranged including specific providers; (3-20-04)
- e. Frequency of services initiated; and (3-20-04)
- f. Documentation of who was involved in the service planning. (3-20-04)

04. Service Plan Development For EPSDT Service Coordination. The initial plan for EPSDT service coordination is completed by the Department or designee. An EPSDT service coordination agency selected by the family develops an annual service coordination plan and submits it to the Department for prior authorization of continued service coordination. (3-20-04)

401. -- 499. (RESERVED).

500. SERVICE COORDINATOR CONTACT AND AVAILABILITY.

01. Contact With Participant. At least every thirty (30) days, service coordinators must have contact with the participant, legal guardian or provider who can verify the participant's well being and whether services are being provided according to the written plan. The frequency, mode of contact, and person being contacted must be identified in the plan. (3-20-04)

a. Developmental disabilities service coordinators must have face-to-face contact with each participant at least every ninety (90) days. (3-20-04)

b. Mental health service coordinators must have a face-to-face contact every month with each participant. (3-20-04)

c. Early and Periodic Screenings Diagnosis and Treatment (EPSDT) service coordinators must have face to face contact with the child and the child's family at least every ninety (90) days. ()

d. Personal Care Service (PCS) service coordinators must have a face to face contact every month with the participant and others as necessary to coordinate and monitor the progress of the existing individual service plan. ()

02. Hours Of Availability. Service coordinators do not have to be available on a twenty-four (24) hour basis, but must include on the plan what the participant, families, and providers should do in an emergency situation. (3-20-04)

501. -- 549. (RESERVED).

550. PARTICIPANT CHOICE OF SERVICE ~~COORDINATORS AND~~ COORDINATION PROVIDERS. Eligible participants have the option to select service coordinators. A participant must have free choice of a service ~~coordinators as well as providers of Medicaid services~~ coordination provider. (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

700. SERVICE COORDINATOR QUALIFICATIONS.

01. Provider Agreements. Service coordinators must be employees or contractors of an agency that has a valid provider agreement with the Department. (3-20-04)

02. Work Experience And Supervision. All service coordinators must have at least twelve (12) months' experience working with the population they will be serving or be supervised by a qualified service coordinator. (3-20-04)

03. Minimum Education Requirements. All service coordinators must have a minimum of a bachelor's degree in a human services field from a nationally accredited university or college; or be a licensed professional nurse, also referred to as a registered nurse (RN). (3-20-04)

~~04. Criminal History Check.~~ ~~All service coordinators must pass the Department's criminal history check in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks".~~ (3-20-04)

701. -- 724. (RESERVED).

725. PARAPROFESSIONALS.

Under the supervision of a qualified service coordinator, paraprofessionals may be used to assist in the implementation of a service coordination plan except for plans of participants with a mental illness. Paraprofessionals must be able to read and write at a level equal with the paperwork and forms involved in the provision of service. ~~All paraprofessionals must pass the Department's criminal history check as described in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks".~~ (3-20-04)(____)

(BREAK IN CONTINUITY OF SECTIONS)

751. ~~AGENCY~~ INDIVIDUAL SERVICE COORDINATOR CASE LOADS.

The total caseload of a service coordinator must assure quality service delivery and client satisfaction.

(3-20-04)(____)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.09.01 - DAY CARE CENTER HEALTH STANDARDS

DOCKET NO. 16-0901-0401 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-1003 and 39-1110, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rules was published in the July 7, 2004 Idaho Administrative Bulletin, Volume 04-7, page 89. This rule is repealed in its entirety.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Richard Horne at (208)522-0310.

DATED this 25th day of August, 2004.

Sherri Kovach, Program Supervisor
Administrative Procedures Section
Department of Health Welfare
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16, TITLE 09, CHAPTER 01

RULES GOVERNING DAY CARE CENTER HEALTH STANDARDS

This chapter is being repealed in its entirety.

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 04-7, July 7, 2004, page 89.

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2005 Idaho State Legislature as a final rule.

IDAPA 17 - INDUSTRIAL COMMISSION

17.06.02 - BOILER AND PRESSURE VESSEL SAFETY RULES - ADMINISTRATION

DOCKET NO. 17-0602-0401

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(s) 72-508, 72-720, 72-721, 72-722, and 72-723, 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 20, 2004.

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:

Designates appointment of a Chief Inspector by the Division of Building Safety Administrator, and designates the Chief Inspector as the Idaho representative to sit on the National Board of Boiler and Pressure Vessel Inspectors.

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 by the Industrial Commission.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tom Limbaugh, Commissioner, Industrial Commission, (208) 334-6000, or Dave Munroe, Administrator, Division of Building Safety, (208) 332-7100.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 27th day of August, 2004.

Thomas E. Limbaugh, Commissioner
Industrial Commission
317 Main St.
PO Box 83720
Boise, Idaho 83720-0041
(208) 334-6000
(208) 334-2321

THE FOLLOWING IS THE TEXT OF DOCKET NO. 17-0602-0401

013. ~~(RESERVED)~~ **IDAHO CHIEF INSPECTOR AND BOARD REPRESENTATIVE.**

01. Chief Inspector. One (1) employee of the Department who has been trained, qualified, and

received a Certificate of Competency as an inspector by the Board, shall, with the approval of the Commission, be appointed by the Administrator of the Division of Building Safety as the Chief Inspector for the state of Idaho. The Administrator of the Division of Building Safety shall assign the duties and responsibilities of the Chief Inspector.

()

02. State Board Representative. The Chief Inspector shall be designated by the Administrator of the Division of Building Safety as the representative of the state of Idaho to the Board. The representative may participate in all functions and activities of the Board consistent with furthering the interest of the state in fostering Boiler and Pressure Vessel safety in Idaho.

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IDAPA 17 - INDUSTRIAL COMMISSION

17.07.01 - SAFETY RULES FOR ELEVATORS, ESCALATORS AND MOVING WALKS

DOCKET NO. 17-0701-0401 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 4, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, and 72-723, 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 20, 2004.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reason for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Repeals the entire chapter to comply with changes passed by the 2004 legislature removing safety inspections of elevators, escalators and moving walks from Section 72-720, Idaho Code, under jurisdiction of the Industrial Commission and placing jurisdiction with the Division of Building Safety in Title 39, Chapter 86, that became effective July 1, 2004.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted by the Industrial Commission.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tom Limbaugh, Commissioner, Industrial Commission, (208) 334-6000, or Dave Munroe, Administrator, Division of Building Safety, (208) 332-7100.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 10th day of August, 2004.

Thomas E. Limbaugh, Commissioner
Industrial Commission
317 Main St.
PO Box 83720, Boise, Idaho 83720-0041
(208) 334-6000 / (208) 334-2321

IDAPA 17.07.01 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 18 - DEPARTMENT OF INSURANCE

**18.01.56 - REBATES AND ILLEGAL INDUCEMENTS TO OBTAINING
TITLE INSURANCE BUSINESS RULES**

DOCKET NO. 18-0156-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 41-211 and 41-1843, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be scheduled if requested in writing by at least twenty-five (25) persons, a political subdivision or an agency, not later than October 20, 2004.

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 at the address below.

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

Section 013 places additional limitations on title entities for donations and sponsorship of trade association events. Section 014 updates self-promotional advertising standards. Section 015 updates permitted business entertainment standards for title entities.

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

The rule does not impose or increase a fee.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted. The changes were requested by interested parties in the Land Title Association because much of the language in the old rule was outdated.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rule, contact Dale Freeman at (208) 334-4250.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 25th day of August, 2004.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 18-0156-0401

013. PERMITTED ADVERTISING WITH TRADE ASSOCIATIONS.

01. Advertisements. No advertisement may be placed in a publication that is published or distributed by, or on behalf of, a producer of title business. Advertising in a trade association publication is only permitted if the publication is an official publication of the trade association with at least regular quarterly publications. The publications must be nonexclusive (any title entity must have an equal opportunity to advertise in the publication and at a standard rate). The title entity's ad must be purely self-promotional. (4-26-95)

02. Donations. A title entity is permitted to donate time to serve on a trade association committee and may also serve as an officer or director for the trade association. A title entity may ~~also~~ donate to, contribute to or otherwise sponsor a trade association event if the event ~~is a recognized association event that generally benefits all members and affiliated members in an equal manner. The donation cannot benefit selected producer of title business members of the association unless through random process. Solicitation for the donation must be made of all members and affiliated members in an equal manner. Donations are per agent license or insurer and are limited to a cumulative donation value of two thousand dollars (\$2,000) or equivalent things of value collectively to all trade associations per year.~~ A title entity is allowed to participate in and/or attend trade association events as long as the title entity pays a fee commensurate with fees paid by other participants in the events. These events include, but are not limited to, conventions, awards banquets, symposiums, breakfasts, lunches, dinners, open houses, sporting activities, and all other similar activities. (4-26-95)(____)

014. PERMITTED SELF-PROMOTIONAL ADVERTISING.

01. Self-Promotional Items. A title entity may distribute self-promotional items having an acquisition value of less than ~~five ten~~ dollars (\$~~5~~10) to producers of title business, consumers, and members of the general public. These self-promotional items are limited to novelty gifts, advertising novelties, and generic business forms and specifically do not include food or beverages. ~~A generic business form is a title insurance or escrow related form of common usage. This form shall not contain the name of a producer of title business. A title entity shall only distribute novelty gifts, advertising novelties, or generic business forms in the regular course of business. Distribution may be by hand or by regular messenger service and may be mailed if the recipient is out of the title entity's county.~~ A recipient of a novelty gift or advertising novelty shall not receive gifts or advertising novelties in excess of ~~five ten~~ dollars (\$~~5~~10) of cumulative value per month and no more than fifty dollars (\$50) of cumulative value of ~~gifts or advertising novelties~~ per year. ~~A recipient of generic business forms shall not receive more than fifty (50) business forms per month and no more than twenty five dollars (\$25) of cumulative value of forms per year.~~ A title entity shall also not ~~give novelty gifts, advertising novelties or generic business forms to producers of title business, consumers, members of the general public, or trade associations for redistribution by these entities~~ sell or give self-promotional items to any person or entity for redistribution by that person or entity. (4-26-95)(____)

02. Self-Promotional Functions. Self-promotional functions ~~are only permitted on the premises of the title entity, and~~ are limited to the following ~~three two~~ (~~3~~2) types of functions: (4-26-95)(____)

a. Educational programs - a title entity is permitted to conduct educational programs. ~~The instructor for the educational program must be a full-time employee of the title entity.~~ A title entity is permitted to expend no more than ~~two ten~~ dollars (\$~~2~~10) per person at an educational program. (4-26-95)(____)

b. ~~Self-promotional programs—a title entity is permitted to conduct self-promotional programs only for title insurance or escrow related matters. A title entity must not expend more than two dollars (\$2) per person at a self-promotional program.~~ (4-26-95)

eb. Open houses - a title entity is permitted to have two (2) open houses per year. An open house shall be a self-promotional function at the title entity's owned or occupied facility (~~e. g. a Christmas party or any party, an open house for remodeling of its facility, an open house for a new building to become the title entity's facility~~). It shall be nonexclusive (an open invitation to all producers of title business is required). A title entity must not expend more than ~~seven dollars and fifty cents (\$7.50)~~ fifteen dollars (\$15) per guest per open house. A title entity cannot combine permitted expenditures for two (2) open houses to be used for one (1) open house. A title entity also cannot accumulate left over or unused expenditures from one (1) open house and use those expenditures for a second open house. (4-26-95)(____)

015. PERMITTED BUSINESS ENTERTAINMENT.

A title entity may entertain a producer of title business in a single day with a choice of meals and/or events not to exceed fifty dollars (\$50) expense per individual per day according to the following guidelines: A title entity shall not exceed more than one hundred dollars (\$100) per person per day for all meals and/or events. Meals and events shall include, but not be limited to, breakfast, brunch, lunch, dinner, cocktails, sporting events, sporting activities, trips and music and art events. These meals or events may occur on or off the title entity's premises. In addition, a title entity may entertain no more than four (4) persons from any single entity which employs producers of title business in a single day. Spouses and/or guests of the producers of title business shall be included in the count for purposes of determining the four (4) person maximum. In addition, a person may not be entertained by a title entity more than three (3) days during any ten (10) day period of time. For purposes of determining the maximum permitted expenditure, all costs associated with any meals or event shall be considered. This shall include, but not be limited to, costs paid by the title entity for travel, transportation, hotel, equipment or facility rental, meals, cocktails, refreshments, registration or entry fees, and event tickets. (4-26-95)(____)

~~**01. Meals.** A title entity may entertain no more than four (4) persons from an office of one (1) producer of title business in a single day. This entertainment function may take place on or off the title entity's premises, but is restricted to one (1) meal per day for each of the four (4) persons from one (1) office. Business meals shall include all meals and/or drinks, including but not limited to breakfast, brunch, lunch, dinner, cocktails. A title entity shall not exceed more than fifty dollars (\$50) per person for a meal. Also, no more than ten dollars (\$10) total transportation cost from the client's place of business shall be expended. It must be emphasized that no more than four (4) persons from an office of one (1) producer of title business can be entertained by a title entity in any one (1) day and only for a choice of one (1) business meal.~~ (4-26-95)

~~**02. Events.** A title entity may entertain no more than four (4) persons from an office of any producer of title business in a single day. This entertainment function may take place on or off the title entity's premises, but is restricted to one (1) event per day for each of the four (4) persons from one (1) office. An event shall include, but not be limited to, sporting events, sporting activities, and music and art events. The dollar limitation on event expenditures is limited to the admission price or fee to participate in the event, but shall not exceed fifty dollars (\$50) per person. Also, no more than ten dollars (\$10) total transportation costs from the client's place of business shall be expended. It must be emphasized that no more than four (4) persons from an office of one (1) producer of title business can be entertained by a title entity in any one (1) day and only for a choice of one event.~~ (4-26-95)

(BREAK IN CONTINUITY OF SECTIONS)

EXHIBIT 1

A title entity shall not provide things of value except as provided in Sections 012, 013, 014, and 015 of this rule. The following is a partial, but not all inclusive, list of acts and practices which are considered illegal inducements prohibited by the Idaho Insurance Code:

1. A title entity shall not sponsor any activity off its premises unless the producer of title business bears the entire cost of the activity. A title entity shall not cosponsor, subsidize, contribute fees, prizes, gifts, or otherwise provide things of value for a promotional function off the title entity's premises regardless whether the function is self-promotional or not. Off premises functions/activities include, but are not limited to, meetings, luncheons, dinners, conventions, installation ceremonies, celebrations, outings, or related activities of producers of title business, cocktail parties, hospitality room functions, open house celebrations, dances, fishing trips, motor vehicle rallies, sporting events of all kinds, gambling trips, hunting trips or outings, golf tournaments, artistic performances, and outings in recreation areas or entertainment areas. It shall be the burden of the title entity to be prepared to present documentation to the Department of Insurance that no things of value were provided.

2. A title entity shall not sponsor, subsidize, supply prizes or labor, or otherwise provide things of value for promotional activities of producers of title business. This does not prevent a title entity from attending

activities of producers of title business if there is no cost to the title entity other than the title entity's own entry fees, registration fees, meals, etc., and provided that these fees are no greater than those charged to producers of title business.

3. A title entity shall not provide or offer to provide, either directly or indirectly, a compensating balance or deposit in a lending institution either for the express or implied purpose of influencing the extension of credit by such lending institution to any such person, or for the express or implied purpose of influencing the placement or channeling of title insurance business by such lending institution.

4. A title entity shall not pay or offer to pay, either directly or indirectly, with respect to any producer of title business or trade association for:

a. The services of an outside professional whose services are required by any producer of title business to complete or structure a particular transaction;

b. The salary of an employee of such producer of title business;

c. The salary or any part of the salary of a relative of any producer of title business employed by a title entity, if the payment is in excess of the reasonable value of the work actually performed;

d. A fee for making an inspection or appraisal of property, whether or not the fee bears a reasonable relationship to the services performed;

e. Services required to be performed by any producer of title business in his or her professional capacity (e. g. the drafting of documents that are required to be filed by such producer of title business with the title entity for the initiation of closing and settlement services);

f. Any evidence of title or a copy of the contents thereof which is not produced or issued by the title entity, if the evidence or the title relates to a current transaction;

g. The rent for all or any part of the space occupied by any producer of title business;

h. Money, prizes, or other things of value in any kind of a contest or promotional endeavor;

i. Any advertising effort made in the name of, for, or on behalf of any producer of title business;

j. Any business form of any such producer of title business other than a form regularly used in the conduct of the title entity's business, which form is furnished solely for the convenience of the title entity and does not constitute a benefit to the producer of title business; or

k. Any salary, commission, or any other consideration to any employee who is at the same time actively engaged as a real estate licensee in the real property or mortgage brokerage business or is actively engaged in any other business of a producer of title business; or

l. The cancellation fee, the fee for the preliminary title report or other fee on behalf of any producer of title business before or after inducing such producer of title business to cancel an order with another title entity.

5. A title entity shall not furnish, or offer to furnish, all or any part of the time or productive effort of any employee of the title entity (example: office manager, escrow officer, secretary, clerk, messenger, etc.) to any producer of title business. This provision is not intended to effect the title entity's day to day business with producers of title business. It is directed at title entity employees being utilized by, or "loaned" out to a producer of title business for the self-promotional interests of the producer of title business.

6. A title entity shall not furnish, or offer to furnish, pay for, or offer to pay for, furniture, office supplies including file folders, telephones, equipment, or automobiles to any producer of title business, or pay for, or offer to pay for, any portion of the cost of renting, leasing, operating, or maintaining any of the aforementioned items.

7. A title entity shall not provide, or offer to provide, non title services (example: computerized bookkeeping, forms management, computer programming, trust accounting) or any similar benefit to a producer of title business, without charging for and receiving a fee commensurate for services provided (e. g. a fee for trust accounting shall be a like fee charged by state or federally chartered banks or savings and loan associations in the local area). This provision also does not prevent title entities from contracting with trade associations to provide non-title services for a profit (i.e. MLS services).

8. A title entity shall not provide gifts or other things of value in excess of fifty dollars (\$50) per year per individual connection with congratulations or condolences to a producer of title business. A letter or card in these instances will not be interpreted as providing a thing of value.

9. A title entity shall not waive a cancellation fee, fail to charge for a cancellation fee, or otherwise fail to make efforts to collect a cancellation fee from the recipient of services provided by the title entity.

10. A title entity shall not furnish any part of its facility (e. g. conference rooms, meeting rooms, etc.) to a producer of title business or trade association without receiving a fair rental charge commensurate with the average rental for similar facilities in the area.

11. A title entity shall not furnish reports containing publicly recorded information, appraisals, estimates, or income production potential, information kits or similar packages containing information about one or more parcels of real property (other than as permitted in Section 012) helpful to any producer of title business, consumer, or member of the general public without making a charge that is commensurate with the actual cost of the work performed and the material furnished (e. g. "farm packages", lot book reports, tax information, title commitments).

12. Delivery service between a title entity and a producer of title business shall be conducted by the title entity's regular messenger service and shall only involve the delivery of items from a title entity to a producer of title business or from a producer of title business to a title entity.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.01.01 - RULES OF THE BOARD OF ARCHITECTURAL EXAMINERS
DOCKET NO. 24-0101-0401
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-312 (2) (b), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

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:

Correct website address, clarify that the Intern Development Program is in addition to the 8 years of experience and not included in the required 8 years, and to provide an effective date for continuing education.

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.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were no controversial changes made.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 23rd day of August, 2004.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0101-0401

005. ADDRESS OF THE IDAHO BOARD OF ARCHITECTURAL EXAMINERS (RULE 5).

The office of the Board of Architectural Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us. The Board's official web site is at ~~www2.state.id.us/ibol/arc~~ <https://www.ibol.idaho.gov/arc.htm>. (3-15-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

250. QUALIFICATIONS OF APPLICANTS (RULE 250).

01. ARE Applicants. All applicants for the Architectural Registration Examination (ARE) shall possess the minimum qualifications required by the 2001-2002 NCARB Handbook for Interns and Architects, dated July 2001, where such Handbook for Interns and Architects does not conflict with Idaho law. All applicants for the ARE must have completed the Intern Development Program (IDP) requirements. (3-15-02)

02. Experience in Lieu of Degree Applicants. The Board may allow an applicant without an architecture degree to sit for the architecture examination upon determining that such applicant has attained the knowledge and skill approximating that attained by graduation from an accredited architecture curriculum including the submission of a record of eight (8) years or more of experience in architecture work of a character deemed satisfactory by the Board. Said experience shall be in addition to that necessary for completion of the Intern Development Program (IDP) requirements. Two (2) years of eight (8) or more years of experience may be accepted if determined that such experience is directly related to architecture under the direct supervision of a registered engineer (practicing as a structural, civil, mechanical or electrical engineer in the field of building construction) or a registered landscape architect. At least six (6) years of such experience must be obtained while working under the direct supervision of a licensed architect. (~~3-15-02~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

450. CONTINUING EDUCATION (RULE 450).

In order to protect the public health and safety and promote the public welfare, the Board has adopted the following rules for continuing education. (3-20-04)

01. Continuing Education Requirement. Each Idaho licensed architect must successfully complete a minimum of eight (8) hours of continuing education in architectural health, safety and welfare annually for license renewal. (3-20-04)

a. Beginning January 1, 2005, ~~Each~~ licensee shall submit to the Board a license renewal application form, together with the required fees, certifying by signed affidavit that compliance with the annual CE requirements have been met during the previous twelve (12) months. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. (~~3-20-04~~)(____)

b. A licensee shall be considered to have satisfied their CE requirements for the first renewal of their initial license. Licensees who have failed to meet the annual continuing education requirement may petition the Board for additional time to complete their continuing education requirements. (3-20-04)

c. After January 1, 2005 and ~~P~~prior to reinstatement of a license lapsed, canceled or otherwise non-renewed for less than five (5) years, the applicant shall provide proof of attendance consisting of eight (8) hours of continuing education for each year the license was lapsed. A license lapsed, canceled or otherwise not renewed for more than five (5) years may be reinstated in accordance with Section 67-2614, Idaho Code. (~~3-20-04~~)(____)

d. A licensee may carryover a maximum of eight (8) hours of continuing education to meet the next year's continuing education requirement. (3-20-04)

e. One (1) continuing education hour shall be equal to one (1) learning unit, as determined by the American Institute of Architects, or one (1) clock hour of education, as determined by the Board. (3-20-04)

02. Architectural Health, Safety and Welfare Requirement. To qualify for continuing education, a course must involve architectural health, safety and welfare, which generally relates to the structural integrity or unimpairedness of a building or building sites and includes the following subject areas: (3-20-04)

a. Architectural planning and pre-design, accessibility, acoustics, building design, code of ethics, codes, acts, laws and rules governing the practice of architecture, construction administration, construction laws, construction functions, materials, methods and systems, environmental issues, energy efficiency, asbestos, lead based paint, toxic emissions, environmental analysis and environmental issues of building materials and systems, fire, building fire codes, flames spread, smoke contribution, explosives, fire safety systems, fire detection alarm standards, insurance issues, interior design, material use, functions and features, materials systems, roofing, waterproofing, wall systems, mechanical, plumbing and electrical system concepts, materials and methods, security of buildings, natural hazards related to building design, earthquakes, high wind and floods, preservation, renovation, restoration and adaptive reuse and sustainable design, site and soil analysis, site design, specification writing, structural issues, survey methods and techniques, and such other subjects as determined by the Board. (3-20-04)

03. Approved Credit. Continuing education courses must be in the subject of architectural health, safety and welfare and be presented by: (3-20-04)

a. Providers approved by the National Architectural Accreditation Board (NAAB) schools of architecture; or (3-20-04)

b. Providers approved by the National Council of Architect Registration Board (NCARB); or (3-20-04)

c. Providers approved by the American Institute of Architects (AIA); or (3-20-04)

d. Providers as otherwise approved by the Board. All requests for approval or pre-approval of continuing education credits must be made to the Board in writing and must be accompanied by a statement that includes the name of the instructor or instructors, his or her qualifications, the date, time and location of the course, the specific agenda for the course, the number of continuing education hours requested, and a statement of how the course is believed to be in the nature of architectural health, safety and welfare. (3-20-04)

04. Verification of Attendance. It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the licensee. This verification shall be maintained by the licensee for a period of three (3) years and provided to the Board upon request of the Board or its agent. (3-20-04)

05. Failure to Fulfill the Continuing Education Requirements. The license will not be renewed for those licensees who fail to certify or otherwise provide acceptable documentation of meeting the CE requirements. Licensees who make a false attestation regarding compliance with the CE requirements shall be subject to disciplinary action by the Board. (3-20-04)

06. Exemptions. A licensed architect shall be deemed to have complied with the CE requirements if the licensee attests in the required affidavit that for not less than ten (10) months of the preceding one (1) year period of licensure, the architect has met one (1) of the following criteria: (3-20-04)

a. Has served honorably on active duty in the military service (exceeding ninety (90) consecutive days). (3-20-04)

b. Is a resident of another jurisdiction recognized by the Board having a continuing professional education requirement for registration as an architect and has complied with all requirements of that state or district for practice therein. (3-20-04)

c. Is a government employee working as an architect and assigned to duty outside the United States. (3-20-04)

d. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The architect must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. (3-20-04)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.02.01 - RULES OF THE BOARD OF BARBER EXAMINERS

DOCKET NO. 24-0201-0401 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-521(4), 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 20, 2004.

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:

Correct the Board's website address and reduce the fee for original license and renewal fee for barbers, barber stylists, and barber teachers to \$25. Current fees are \$30 for original; \$50 for renewal; and \$30 for teacher.

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

This proposal will reduce the fee for original license and renewal fee in an attempt to bring the reserve fund for this board, which the auditors advised was significantly larger than recommended, into balance. The action is authorized pursuant to Section 54-518, Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were no controversial changes made.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 23rd day August, 2004.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Ph.
(208) 334-3945, fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0201-0401

005. ADDRESS OF IDAHO BOARD OF BARBER EXAMINERS (RULE 5).

The office of the Board of Barber Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us. The Board's official web site is at ~~www2.state.id.us/ibol/bar~~ <https://www.ibol.idaho.gov/bar.htm>. (3-13-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

150. FEES (RULE 150).

- 01. Examination/Reexamination Fee.** Examination/Reexamination fee - seventy-five dollars (\$75). (7-1-96)
- 02. Endorsement Fee.** Endorsement fee - eighty dollars (\$80). (7-1-93)
- 03. Original Barber and Barber-Stylist License Fee.** Original Barber and Barber-Stylist License Fee - ~~thirty~~ twenty-five dollars (~~\$30~~25). (3-13-02)(____)
- 04. Annual Renewal Fee for Barber and Barber-Stylist License.** Annual renewal fee for Barber and Barber-Stylist license - ~~fifty~~ twenty-five dollars (~~\$50~~25). (3-13-02)(____)
- 05. Original Barbershop License Fee.** Original barbershop license fee – fifty dollars (\$50). (3-18-99)
- 06. Annual Renewal Fee for Barbershop License.** Annual renewal fee for barbershop license – thirty dollars (\$30). (3-18-99)
- 07. Original License And Annual Renewal Fee For Barber College License.** Original license and annual renewal fee for barber college license – two hundred dollars (\$200). (3-13-02)
- 08. Teacher Certificate Examination.** Teacher certificate examination - one hundred dollars (\$100). (7-1-93)
- 09. Original Teacher License And Annual Renewal For Teacher License.** Original teacher license and annual renewal for teacher license - ~~thirty~~ twenty-five dollars (~~\$30~~25). (7-1-93)(____)
- 10. Student Registration.** Student registration - twenty dollars (\$20). (7-1-93)
- 11. Renewal And Reinstatement Of Licenses.** See Sections 54-518 and 67-2614, Idaho Code. (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.05.01 - RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS

DOCKET NO. 24-0501-0401 (NEW CHAPTER - FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 25, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-2406, 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 20, 2004.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary rule is being promulgated as per Chapter 24, Title 54, Idaho Code, which was signed into law this last session. Since this is a new law, there were no rules in place. These rules further define qualifications, definitions, and outline continuing education criteria.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The rules are needed to define qualifications, fees, provide definitions, and outline continuing education as this is a new law with no rules in force prior to the rulemaking and is, therefore, being done to comply with existing state law.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted over the course of several noticed meetings with DEQ, members of the public, interested parties and members of the Board.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 30th day of August, 2004.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Phone
(208) 334-3945 Fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0501-0401

IDAPA 24
TITLE 05
CHAPTER 01

24.05.01 - RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS

000. LEGAL AUTHORITY (RULE 0).

These rules are hereby prescribed and established pursuant to the authority vested in the Board of Drinking Water and Wastewater Professionals by the provisions of Section 54-2406, Idaho Code. (8-25-04)T

001. TITLE AND SCOPE (RULE 1).

These rules shall be cited as IDAPA 24.05.01, "Rules of the Board of Drinking Water and Wastewater Professionals". (8-25-04)T

002. WRITTEN INTERPRETATIONS (RULE 2).

The board may have written statements that pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. (8-25-04)T

003. ADMINISTRATIVE APPEALS (RULE 3).

Administrative appeals shall be governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (8-25-04)T

004. INCORPORATION BY REFERENCE (RULE 4).

These rules do not incorporate by reference any document other than those sections of Idaho Code so referenced. (8-25-04)T

005. ADDRESS OF IDAHO BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS (RULE 5).

The office of the Board of Drinking Water and Wastewater Professionals is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is wwp@ibol.state.id.us. The Board's official web site is at <https://www.ibol.idaho.gov/wwp.htm>. (8-25-04)T

006. PUBLIC RECORDS (RULE 6).

The records associated with the Idaho Board of Drinking Water and Wastewater Professionals are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (8-25-04)T

007. -- 009. (RESERVED).

010. DEFINITIONS (RULE 10).

01. Board. The Idaho Board of Drinking Water and Wastewater Professionals. (8-25-04)T

02. Bureau. The Idaho Bureau of Occupational Licenses. (8-25-04)T

03. DEQ. The Idaho Department of Environmental Quality. (8-25-04)T

04. Endorsement. Endorsement (often referred to as "reciprocity") is that process by which a person licensed in another jurisdiction may apply for a license in Idaho. (8-25-04)T

05. EPA. The United States Environmental Protection Agency. (8-25-04)T

06. Operating Personnel. Operating personnel means any person who is employed, retained, or appointed to conduct the tasks associated with the day-to-day operation and maintenance of a public drinking water system or a public wastewater system. Operating personnel shall include every person making system control or system integrity decisions about water quantity or water quality that may affect public health. (8-25-04)T

07. Person. A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (8-25-04)T

08. Public Drinking Water System or Public Water System. Public drinking water system or public water system means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Every community and nontransient noncommunity water system, and each transient water system using a surface water source or ground water source directly influenced by surface water, shall be operated by a certified drinking water operator. (8-25-04)T

09. Public Wastewater System or Wastewater System. Public wastewater system or wastewater system means those systems, including collection systems and treatment systems, that are owned by a city, county, state or federal unit of government, a nonprofit corporation, district, association, political subdivision or other public entity, or that generate or collect two thousand five hundred (2,500) or more gallons a day; or that have been constructed in whole or in part with public funds. This does not include any wastewater treatment system operated and maintained exclusively by a single family residence or any wastewater system consisting solely of a gravity flow, nonmechanical septic tank and subsurface treatment and distribution system, or industrial wastewater systems under private ownership. (8-25-04)T

10. State. The state of Idaho. (8-25-04)T

011. -- 099. (RESERVED).

100. ORGANIZATION (RULE 100).

01. Meetings. The Board shall meet at least two (2) times annually at such times and places as designated by the Board or the Chairman of the Board. (8-25-04)T

a. All meetings shall be held in accordance with the Idaho Open Meeting Law, Chapters 2340 – 2347, Title 67, Idaho Code. (8-25-04)T

b. Special meetings may be called by the Chairman, upon written request of any three (3) members, and all members shall be notified in writing. (8-25-04)T

c. A minimum of four Board members shall constitute a quorum and shall be required to be present in order to hold a meeting of the Board. A majority vote of the Board members present at a meeting shall be considered the action of the Board as a whole. The Chairman may vote only in the event of a tie vote. (8-25-04)T

02. Organization of the Board. At the first meeting of each fiscal year, the Board shall elect from its members a Chairman, who shall assume the duty of the office immediately upon such selection. (8-25-04)T

a. The Chairman shall when present, preside at all meetings, appoint with the consent of the Board, all committees, and shall otherwise perform all duties pertaining to the office of Chairman. The Chairman shall be an ex-officio member of all committees. (8-25-04)T

b. The Chief of the Bureau shall act as an agent of the Board and shall be the official keeper of all records of the Board. The Bureau shall provide such services as may be authorized by Chapter 26, Title 67, Idaho Code, and as defined under contract between the Bureau and the Board. (8-25-04)T

101. -- 149. (RESERVED).

150. APPLICATION (RULE 150).

Each applicant for licensure shall submit a complete application together with the required fees. The applicant must provide or facilitate the provision of any supplemental third party documents that may be required. The Board shall not review an application until all required information is furnished and the required fees paid. (8-25-04)T

01. Licensure by Examination. An application shall be made on the uniform application form adopted by the Board and furnished to the applicant by the Bureau. All applications shall include: (8-25-04)T

a. Documentation of having met the appropriate educational requirement; (8-25-04)T

b. Documentation of all actual applicable experience giving kind and type of work done, together with dates of employment, and verification by affidavit of the most current applicable experience, signed by the person under whose supervision the work was performed. (8-25-04)T

02. Licensure by Endorsement. An application shall be made on the uniform application form adopted by the Board and furnished to the applicant by the Bureau. All applications shall include: (8-25-04)T

a. Official documentation of licensure sent to the Bureau directly from each regulatory authority from which the applicant has obtained licensure. Such documentation shall note name, address, current status, date originally issued, expiration date, and any disciplinary action imposed; (8-25-04)T

b. A copy of the current regulations governing licensure in each jurisdiction from which the applicant obtained licensure. (8-25-04)T

03. Application Deadline. Completed applications must be received at least thirty (30) days prior to the next scheduled board meeting in order to be reviewed by the Board. (8-25-04)T

04. Application Required. Applicants seeking licensure in any type or classification of licensure shall submit a separate application for each type and classification of licensure being sought. Applicants holding a current type and classification of license and who are seeking a classification upgrade within the same license type and category shall not be required to submit an original license fee with their application. (8-25-04)T

151. -- 174. (RESERVED).

175. LICENSE TYPES AND CLASSIFICATIONS (RULE 175).

The Board shall issue each of the following licenses under the provisions of Chapter 24, Title 54, Idaho Code.

(8-25-04)T

01. Drinking Water Distribution Operator. (8-25-04)T

a. Class Operator-In-Training. (8-25-04)T

b. Class Very Small Water System. (8-25-04)T

c. Class I. (8-25-04)T

d. Class II. (8-25-04)T

e. Class III. (8-25-04)T

f. Class IV. (8-25-04)T

- 02. Drinking Water Treatment Operator.** (8-25-04)T
 - a. Class Operator-In-Training. (8-25-04)T
 - b. Class I. (8-25-04)T
 - c. Class II. (8-25-04)T
 - d. Class III. (8-25-04)T
 - e. Class IV. (8-25-04)T
- 03. Wastewater Treatment Operator.** (8-25-04)T
 - a. Class Operator-In-Training. (8-25-04)T
 - b. Lagoon. (8-25-04)T
 - c. Class I. (8-25-04)T
 - d. Class II. (8-25-04)T
 - e. Class III. (8-25-04)T
 - f. Class IV. (8-25-04)T
 - g. Land Application. (8-25-04)T
- 04. Wastewater Collection Operator.** (8-25-04)T
 - a. Class Operator-In-Training. (8-25-04)T
 - b. Class I. (8-25-04)T
 - c. Class II. (8-25-04)T
 - d. Class III. (8-25-04)T
 - e. Class IV. (8-25-04)T
- 05. Wastewater Laboratory Analyst.** (8-25-04)T
 - a. Class I. (8-25-04)T
 - b. Class II. (8-25-04)T
 - c. Class III. (8-25-04)T
 - d. Class IV. (8-25-04)T
- 06. Backflow Assembly Tester.** (8-25-04)T
- 176. -- 199. (RESERVED).**
- 200. FEES FOR EXAMINATION AND LICENSURE (RULE 200).**
The fees for each license type and classification shall be as follows: (8-25-04)T

- 01. Application Fee.** Application fee - Twenty-five dollars (\$25). (8-25-04)T
- 02. Examination Fee.** The examination fees shall be those fees charged by the Association of Boards of Certification (ABC) or other approved examination provider. (8-25-04)T
- 03. Endorsement Fee.** Endorsement Fee – Sixty dollars (\$60). (8-25-04)T
- 04. Original License Fee.** Original license fee – Sixty dollars (\$60). (8-25-04)T
- 05. Annual Renewal Fee.** Annual renewal fee - Sixty dollars (\$60). (8-25-04)T
- 06. Reinstatement Fees.** Reinstatement fee – Twenty-five dollars (\$25). (8-25-04)T
- 07. Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application, examination, reexamination, or reinstatement of a license. (8-25-04)T

201. -- 249. (RESERVED).

250. LICENSE REQUIRED - SCOPE OF PRACTICE (RULE 250).

All water and wastewater operating personnel, including those in responsible charge and those in substitute responsible charge, of public water systems and public wastewater systems, and all backflow assembly testers or inspectors, shall be licensed under the provisions of these rules and Chapter 24, Title 54, Idaho Code. (8-25-04)T

01. Drinking Water Operator Scope. Operating personnel shall only act in accordance with the nature and extent of their license. Those in responsible charge or substitute responsible charge of a public water system must hold a valid license equal to or greater than the classification of the public water system where the responsible charge or substitute responsible charge operator is in responsible charge. The types of water systems are distribution and treatment. (8-25-04)T

02. Wastewater Operator Scope. Operating personnel shall only act in accordance with the nature and extent of their license. Those in responsible charge or substitute responsible charge of a public wastewater system shall hold a valid license equal to or greater than the classification of the public wastewater system where the responsible charge or substitute responsible charge operator is in responsible charge. The types of wastewater systems are collection, laboratory analyst, and treatment. Responsible charge duties shall not be included in the scope of the laboratory analyst category. (8-25-04)T

03. Backflow Assembly Tester. Individuals licensed as backflow assembly testers may inspect and test backflow prevention assemblies as defined in Title 54, Chapter 24, Idaho Code. (8-25-04)T

04. Operator-in-Training. Operators-in-training shall practice only under the direct supervision of a licensed operator of a type, category, and classification higher than operator-in-training. No operator-in-training shall accept or perform the designated responsible charge duties at any system. (8-25-04)T

251. -- 299. (RESERVED).

300. REQUIREMENTS FOR LICENSE (RULE 300).

Applicants shall submit an application together with the required fees and such documentation as is required.

(8-25-04)T

01. Examination Requirement. Applicants must pass a written examination for each individual classification in each type of licensure with a minimum score of seventy percent (70%), except that backflow assembly testers must obtain a minimum score of seventy-five percent (75%) on both the theory and practical examination. For those classifications of Class II through IV, successful completion of the examinations from the immediate lower type and classification shall be a prerequisite to examination eligibility for the next higher classification of the same type, except that applicants for wastewater collection operator or drinking water distribution operator licenses may apply for any classification examination for which they hold the required education

and experience. (8-25-04)T

a. The examination will reflect different levels of knowledge, ability and judgment required for the established license type and class. The Board will administer examinations at such times and places as the Board may determine. (8-25-04)T

b. The examination for all types and classes of drinking water and wastewater licensure shall be validated and provided by the Association of Boards of Certification (ABC). (8-25-04)T

c. The examination for backflow assembly testers shall be that practical and theory examination approved by the Board. (8-25-04)T

d. The examination for wastewater land application operators shall be that examination approved by the Board. (8-25-04)T

e. Applicants who fail an examination must make application to retake the same type and class examination and pay the required examination fees prior to retaking the examination. (8-25-04)T

02. Education and Experience Requirements. Only actual verified on-site operating experience at a treatment, distribution or collection system will be acceptable. (8-25-04)T

a. Each applicant for an Operator-In-Training License must have a high school diploma or GED and pass an Operator-In-Training exam. (8-25-04)T

b. To qualify for a Very Small Water System license an operator must have a high school diploma or GED and six (6) months of acceptable operator-in-training experience at a water distribution system. (8-25-04)T

c. To qualify for a Class I license an applicant must have a high school diploma or GED and one (1) year of acceptable experience at a Class I or higher system. (8-25-04)T

d. To qualify for a Class II treatment or lab analyst license an applicant must have a high school diploma or GED and three (3) years of acceptable Class I operating experience at a Class I or higher system. (8-25-04)T

e. To qualify for a Class III treatment or lab analyst license an applicant must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class II operating experience of a Class II or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (8-25-04)T

f. To qualify for a Class IV treatment or lab analyst license an applicant must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class III operating experience at a Class III or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (8-25-04)T

g. To qualify for a Class II collection or distribution license an operator must have a high school diploma or GED and three (3) years of acceptable operating experience at a Class I or higher system. (8-25-04)T

h. To qualify for a Class III collection or distribution license an operator must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience of a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (8-25-04)T

i. To qualify for a Class IV collection or distribution license an operator must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or

related science; and four (4) years of acceptable operating experience at a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (8-25-04)T

j. To qualify for a lagoon license, an operator must have a high school diploma or GED and twelve (12) months of acceptable supervised operating experience at a Lagoon system. (8-25-04)T

k. To qualify for a Wastewater Land Application license, an operator must have a high school diploma or GED, a current wastewater treatment license and minimum six (6) months of hands-on operating experience at a wastewater land application system. The wastewater land application operator that is a responsible charge or substitute responsible charge operator must be licensed at the type and class equal to or greater than the classification of the wastewater system. (8-25-04)T

l. To qualify for a backflow assembly tester license, an applicant must have a high school diploma or GED, and shall document completion of a backflow assembly tester training program approved by the board consisting of both theory and practical instruction. (8-25-04)T

m. To qualify for an original wastewater laboratory analyst license, an applicant must hold a current water treatment, wastewater treatment or lagoon license. (8-25-04)T

03. Substituting Education for Experience. Applicants may substitute approved education for operating and responsible charge experience as specified below. (8-25-04)T

a. No substitution for operating experience shall be permitted for licensure as a very small system operator or a Class I operator. (8-25-04)T

b. For Classes II, III and IV, substitution shall only be allowed for the required experience when fifty percent (50%) of all stated experience (both operating and responsible charge) has been met by actual on-site operating experience. (8-25-04)T

c. For Class II, a maximum of one and one-half (1½) years of post high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1½) years of operating experience. (8-25-04)T

d. For Class III and IV, a maximum of two (2) years of post high school education in the environmental control field, engineering or related science may be substituted for two (2) years of operating experience; however the applicant must still have one (1) year of responsible charge experience. (8-25-04)T

e. Education substituted for operating experience may not be also credited toward the education requirement. (8-25-04)T

f. One (1) year of post high school education in addition to what is described in Rule 300.04.c. and d. may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (8-25-04)T

04. Substituting Experience for Education. Where applicable, approved operating and responsible charge experience may be substituted for education as specified below: (8-25-04)T

a. One (1) year of operating experience may be substituted for two (2) years of grade school or one (1) year of high school with no limitation. (8-25-04)T

b. For Class III and IV, additional responsible charge experience (that exceeding the two (2) year class requirements) may be substituted for post high school education on a two (2) for one (1) basis: two (2) years additional responsible charge = one (1) year post high school education. (8-25-04)T

05. Substituting Experience for Experience. Related experience may be substituted for experience up to one-half (½) of the operating experience requirement for Class II, III and IV. Experience that may be substituted

includes but is not limited to the following: (8-25-04)T

- a. Experience as an environmental or operations consultant; (8-25-04)T
- b. Experience in an environmental or engineering branch of federal, state, county, or local government; (8-25-04)T
- c. Experience as a wastewater collection system operator; (8-25-04)T
- d. Experience as a wastewater treatment plant operator; (8-25-04)T
- e. Experience as a water distribution system operator and/or manager; (8-25-04)T
- f. Experience as a water treatment plant operator; or (8-25-04)T
- g. Experience in waste treatment operation and maintenance. (8-25-04)T

06. Equivalency Policy. Substitutions for education or experience requirements needed to meet minimum requirements for license will be evaluated upon the following equivalency policies: (8-25-04)T

- a. High School – High School diploma = GED or equivalent as approved by the board = four (4) years. (8-25-04)T
- b. College – Thirty-five (35) credits = one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields as determined by the board). (8-25-04)T
- c. Continuing Education Units (CEU) for operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours = one (1) CEU; forty-five (45) CEUs = one (1) year of college. (8-25-04)T

301. -- 399. (RESERVED).

400. ENDORSEMENT (RULE 400).

The board may waive the examination requirements and issue the appropriate license for applicants holding licenses issued by other States that have equivalent license requirements and who otherwise meet the requirements set forth in subsections 150.02, 150.03, and 150.04. (8-25-04)T

401. -- 449. (RESERVED).

450. WASTEWATER GRANDPARENT PROVISION (RULE 450).

Upon application, the board may issue a grandparent license to a wastewater operator who provides documentation satisfactory to the board of being in responsible charge of an existing public wastewater system on or before April 15, 2003 and to the present. Grandparent licenses for drinking water operators and backflow assembly testers shall not be issued. (8-25-04)T

01. Grandparent License. A license issued under the grandparent provision shall allow the applicant to continue as operator in responsible charge only of the specific facility identified in the application. The license shall be site specific and non-transferable and shall not grant authority for the holder to practice at any other system in any capacity as an operator. (8-25-04)T

02. Application Limitations. The board must receive all applications for a grandparent license no later than April 15, 2006. Applicants shall be subject to the application fee and the original license fee. The owner of the system shall attest under oath that the applicant has served as the system operator in responsible charge and shall specify the duties of the applicant and the dates of employment. (8-25-04)T

03. License Requirements. Upon receiving a grandparent license the wastewater operator shall be required to meet all other requirements including the continuing education and renewal requirements. (8-25-04)T

04. Wastewater System Classification Limitations. The grandparent license shall become invalid any time the classification of the wastewater system changes to a higher classification. (8-25-04)T

05. One System Limitation. A wastewater operator who is the wastewater operator in responsible charge of more than one (1) public wastewater system shall not be eligible for more than one (1) grandparent license. (8-25-04)T

06. Grandparent Professional Growth Requirement. In the first license renewal cycle, every holder of a grandparent license must complete and maintain documentation of completing a one-time training requirement. The one-time training shall include all information covered by the qualifying license exam for the license class the operator holds. Following the first renewal cycle, the operator must meet the regular continuing education requirements. (8-25-04)T

451. -- 499. (RESERVED).

500. CONTINUING EDUCATION (RULE 500).

In order to further protect the health, safety and welfare of Idaho's public, and to facilitate the continued competence of persons licensed under the drinking water and wastewater professional act, the Board has adopted the following rules for continuing education. (8-25-04)T

01. Continuing Education Requirement. Each licensee must successfully complete a minimum of six (6) hours (0.6 CEUs) of approved continuing education annually for license renewal, except that backflow assembly testers shall complete an 8 hour refresher course every two (2) years for license renewal. Continuing education must be earned in a subject matter appropriate to the field in which the license is issued. A licensee holding one (1) or more drinking water license(s) shall be required to meet the annual continuing education requirement for only one license. A licensee holding one (1) or more wastewater license(s) shall be required to meet the annual continuing education requirement for only one license. A licensee holding both drinking water and wastewater class licenses must complete a minimum of six (6) hours annually for the drinking water license plus six (6) hours annually for the wastewater license. (8-25-04)T

a. Each licensee shall submit to the Board an annual license renewal application form, together with the required fees, certifying by signed affidavit that compliance with the CE requirements have been met. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. (8-25-04)T

b. A licensee shall be considered to have satisfied their CE requirements for the first renewal of their license. (8-25-04)T

c. A water or wastewater licensee may carryover a maximum of six (6) hours of continuing education to meet the next year's continuing education requirement. The same hours may not be carried forward more than one (1) renewal cycle. (8-25-04)T

d. Continuing Education hours for approved operator training courses, seminars, related college courses, and other training activities may be converted to Continuing Education Units (CEU) as follows: Six (6) classroom hours = point six (0.6) CEU. (8-25-04)T

02. Subject Material. The subject material of the continuing education requirement shall be relevant to the license for which the continued education is required; and (8-25-04)T

a. Approved by the Idaho Department of Environmental Quality; or (8-25-04)T

b. Sponsored by an accredited college, university; or (8-25-04)T

c. Otherwise approved by the board. (8-25-04)T

d. "Relevant" shall be limited to material germane to the operation, maintenance and administration of

drinking water and wastewater systems as referenced in Chapter 24, Title 54, Idaho Code. (8-25-04)T

03. Course Approval. All requests for approval of continuing education courses must be made to the board in writing no less than sixty (60) days prior to the course being offered, on a form approved by the board and accompanied by: (8-25-04)T

- a. The name and qualifications of the instructor or instructors; (8-25-04)T
- b. The date, time and location of the course; (8-25-04)T
- c. The specific agenda for the course; (8-25-04)T
- d. The type and number of continuing education credit hours requested; (8-25-04)T
- e. A statement of how the course is believed to be relevant as defined; (8-25-04)T
- f. The training materials; (8-25-04)T
- g. Other information as may be requested by the board. (8-25-04)T

04. Verification of Attendance. It shall be necessary for each licensee to maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the licensee. This verification shall be maintained by the licensee and provided upon request of the Board or its agent. (8-25-04)T

05. Failure to Fulfill the Continuing Education Requirements. The license will not be renewed for those licensees who fail to certify or otherwise provide acceptable documentation of meeting the CE requirements. Licensees who make a false attestation regarding compliance with the CE requirements shall be subject to disciplinary action by the Board. (8-25-04)T

06. Exemptions. The Board may waive the continuing education requirement for any one or more of the following circumstances. The licensee must request the exemption and provide any information requested to assist the Board in making a determination. An exemption may be granted at the sole discretion of the Board. (8-25-04)T

a. The licensee is a resident of another jurisdiction recognized by the Board having a continuing professional education requirement for licensure renewal and has complied with the requirements of that state or district. (8-25-04)T

b. The licensee is a government employee working outside the continental United States. (8-25-04)T

c. The licensee documents individual hardship, including health (certified by a medical doctor) or other good cause. (8-25-04)T

501. -- 599. (RESERVED).

600. RENEWAL OR REINSTATEMENT OF LICENSE (RULE 600).

01. Expiration Date. All licenses expire and must be renewed annually on forms approved by the Board in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (8-25-04)T

02. Reinstatement. Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, with the exception that the applicant shall submit proof of having met the required continuing education for each year the license or certificate was cancelled. (8-25-04)T

03. Operator-in-Training Permit. Applicants for the operator-in-training permit shall be issued a “one-time” non-renewable permit for the purpose of gaining supervised experience as an operator-in-training (OIT). This permit will be valid for three (3) years from the date of issue. Upon providing documented proof to the Board of having completed twelve (12) months of supervised operating experience in a Class I or higher public drinking water or wastewater system, and payment of the original license fee, the permittee will be issued a Class I License.

(8-25-04)T

601. -- 699. (RESERVED).

700. DISCIPLINE (RULE 700).

01. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensee for each violation of Chapter 24, Title 54, Idaho Code.

(8-25-04)T

02. Costs and Fees. The Board may order a licensee to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Chapter 24, Title 54, Idaho Code.

(8-25-04)T

800. STAKEHOLDER INVOLVEMENT (RULE 800).

Ongoing drinking water stakeholder involvement shall be provided through the existing DEQ drinking water advisory committee.

(8-25-04)T

801. -- 999. (RESERVED).

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.06.01 - RULES OF THE BOARD OF HEARING AID DEALERS AND FITTERS

DOCKET NO. 24-0601-0401 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-2914(m), 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 20, 2004.

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:

Correct web site address, increase annual renewal fees from \$150 to \$250, and to clarify the examination and reexamination process.

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

Increase annual renewal fees from \$150 to \$250, to bring this Board's financial status into a positive situation pursuant to Section 54-2906, Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were not controversial changes made.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 23rd day of August, 2004.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220, Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0601-0401

005. ADDRESS OF IDAHO BOARD OF HEARING AID DEALERS AND FITTERS (RULE 5).

The office of the Board of Hearing Aid Dealers and Fitters 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 had@ibol.state.id.us. The Board's official web site is at ~~www2.state.id.us/ibol/had~~ <https://www.ibol.idaho.gov/had.htm>. (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

150. FEES (RULE 150).

- 01. Original License Fee.** The original license fee is two hundred fifty dollars (\$250) to be accompanied by the completed application. (Also includes examination when required.) (3-20-04)
- 02. Examination Fee.** Examination fee is two hundred fifty dollars (\$250). (3-20-04)
- 03. Reexamination Fee.** Reexamination fee is two hundred fifty dollars (\$250). (3-20-04)
- 04. Temporary Permit.** Temporary permit fee is two hundred fifty dollars (\$250). (3-20-04)
- 05. Temporary Permit Reissue Fee.** Temporary permit reissue fee is two hundred fifty dollars (\$250). (3-20-04)
- 06. Annual Renewal Fee.** Annual renewal fee is ~~one~~ two hundred fifty dollars (~~\$1~~250). (3-20-04)()
- 07. Reciprocity Fee.** Reciprocity fee is two hundred fifty dollars (\$250). (3-20-04)

151. -- 199. (RESERVED).

200. EXAMINATION AND RE-EXAMINATION (RULE 200).

01. Dates And Locations Of Exams. Examinations shall be held in Boise, Idaho on the second Friday of May and November of each year providing there is one (1) or more applicants to be tested. The board may deviate from date of this scheduled examination upon giving sixty (60) days notice to all applicants for licensure. Applications must be submitted at least sixty (60) days prior to the date of the examination to be taken. (7-1-93)

02. Content Of Exam. The examination consists of a National written examination and a National practical performance examination and an Idaho law and rule examination. A minimum score of seventy percent (70%) must be obtained ~~as reported by the National testing service on the written each~~ examination. ~~An average~~ score of seventy percent (70%) must be obtained in each major section of the practical examination. ~~A score of fifty percent (50%) or less on any subsection within a major section constitutes failure of the entire section. The practical examination is divided into three (3) major sections:~~ (7-1-93)()

- ~~a. Earmolds. (7-1-93)~~
- ~~b. Audiometry. (7-1-93)~~
- ~~c. Orals. (7-1-93)~~

03. Failure Of Exam. Where an applicant fails to obtain a satisfactory score in either the written examination or a section of the practical examination, he shall be required to retake only the portion of the examination failed to qualify for licensure; if he again fails the examination he shall be required to retake the entire examination to qualify for licensure. (7-1-93)

04. Reexamination. An applicant for reexamination who is required to take the entire examination under Subsection 200.03 above and fails to obtain a satisfactory score in either the written or practical portion of the examination shall be required to retake only the portion of the examination failed to qualify for licensure; ~~if he again~~ Should the applicant fail the examination for a third time and every subsequent failure thereafter, he the applicant must wait one (1) year and shall be required to successfully complete no less than eight (8) hours of continuing education before being eligible to retake the entire examination to qualify for licensure. (7-1-93)()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.07.01 - RULES OF THE BOARD OF LANDSCAPE ARCHITECTS
DOCKET NO. 24-0701-0401 (FEE RULE)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-3003(4), 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 20, 2004.

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:

Update web site address and increase the original license fee and the annual renewal fee to maintain a positive cash balance for the Board's operation.

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

Increase the original license fee and the annual renewal fee from \$100 to the cap of \$125 to maintain a positive cash balance for the Board's operation pursuant to Section 54-3003(5), Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because no controversial changes were made.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 23rd day August, 2004.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0701-0401

005. ADDRESS OF IDAHO BOARD OF LANDSCAPE ARCHITECTS (RULE 5).

The office of the Board of Landscape Architects is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The

Board's FAX number is (208) 334-3945. The Board's e-mail address is lar@ibol.state.id.us. The Board's official web site is at ~~www2.state.id.us/ibol/lar~~ <https://www.ibol.idaho.gov/lar.htm>. (3-20-04)(____)

(BREAK IN CONTINUITY OF SECTIONS)

400. FEES (RULE 400).

Fees are not refundable, therefore, applications should not be filed unless the applicant can meet all requirements. (7-1-93)

01. Application Fee. Application Fee (Original-Reapplication-Endorsement) One hundred dollars (\$100). (3-20-04)

02. Examination Fees. Examination fees will be as established by the council of landscape architectural registration boards. (3-20-04)

03. Original License And Annual License Fee. Original license and annual license fee - One hundred ~~twenty-five~~ dollars (\$100~~25~~). (3-20-04)(____)

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

05. Processing Fee. Applicants for examination must submit a twenty-five dollar (\$25) processing fee, together with the examination fees and the application fee. (3-20-04)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

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

DOCKET NO. 24-0901-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-1604(3), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

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:

Correct Board's website address, clarify application review process, provide qualifications for endorsement applicants, and require that nursing home administrators-in-training work in a licensed nursing home and complete a course of study pertinent to administrators.

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.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were no controversial changes made.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 23rd day of August, 2004.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Ph.
(208) 334-3945, fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-0901-0401

005. ADDRESS OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS (RULE 5).

The office of the Board of Examiners of Nursing Home Administrators is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is

(208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us.
The Board's official web site is at ~~www2.state.id.us/ibol/nha~~ <https://www.ibol.idaho.gov/nha.htm>.

(3-13-02)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (RULE 10).

01. Board. The Board of Examiners of Nursing Home Administrators as prescribed in Section 54-1601, Idaho Code. (7-1-93)

02. Bureau. The Bureau of Occupational Licenses as prescribed in Sections 54-1603 and 67-2602, Idaho Code. (3-13-02)

03. NAB. NAB shall mean the national association of boards of examiners for nursing home administrators. ()

011. -- 049. (RESERVED).

050. APPLICATIONS (RULE 050).

Applications will be on forms approved by the Board. ()

01. Board Consideration. No application will be considered for any action unless accompanied by the appropriate fees and until the required supporting documentation is received by the Bureau. ()

02. Filing Deadline. To be considered by the Board, properly completed applications must be received by the Bureau at least thirty (30) days prior to the first day of the month in which the Board will meet. ()

03. Lack of Activity. Applications on file with the Board that lack activity for any period of twelve (12) months shall be terminated unless good cause is demonstrated to the Board. ()

051. -- 099. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

300. RECIPROCAL ENDORSEMENT (RULE 300).

~~An Each applicant for licensure by reciprocal endorsement will shall be required to take and pass the examination pertaining to Idaho law and rules governing nursing homes. Applicants are required to have taken and passed the National Association of Boards of Examiners for Nursing Home Administrators (NAB) examination document compliance with each of the following requirements.~~ (7-1-98)()

01. A Valid License. Hold a valid and current nursing home administrator license issued in another state. ()

02. Experience. Two (2) years of practice as a licensed nursing home administrator in another state. ()

03. Criminal History. Has not been found guilty or convicted or received a withheld judgment or suspended sentence for any felony or any crime involving moral turpitude or received discipline for a license offense in any state. ()

04. National Examination. Has taken and successfully passed the NAB examination. ()

05. State Examination. Has taken and successfully completed the state of Idaho examination. ()

06. Affidavit. Has certified under oath to abide by the laws and rules governing the practice of nursing home administration in Idaho. ()

301. -- 399. (RESERVED).

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)

g. Completion of a specialized course of study in nursing home long-term health care administration approved by NAB or otherwise approved by the Board. ()

04. Facility Administrator. 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. (5-3-03)

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

24.12.01 - RULES GOVERNING THE BOARD OF PSYCHOLOGIST EXAMINERS

DOCKET NO. 24-1201-0401 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

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:

Correct website address, increase renewal fee to cap of \$225 to maintain a positive cash balance, and delete definition and supervision requirements for psychology interns as internship is part of training program

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

Increase renewal fee to cap of \$225 to maintain a positive cash balance pursuant to section 54-2315, Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were not controversial changes made.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 23rd day August, 2004.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220, Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1201-0401

005. ADDRESS OF THE IDAHO BOARD OF PSYCHOLOGIST EXAMINERS (RULE 5).

The office of the Board of Psychologist Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is psy@ibol.state.id.us. The Board's official web site is at ~~www2.state.id.us/ibol/psy~~ <https://www.ibol.idaho.gov/psy.htm>. (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

150. FEES (RULE 150).

- 01. Annual Renewal Fee.** Annual renewal fee - two hundred twenty-five dollars (~~\$200~~²⁵).
(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 those charged by the national examining entity plus a processing fee of twenty-five dollars (\$25). (5-3-03)
- 04. Endorsement Fee.** Endorsement fee - one hundred dollars (\$100) as established by Section 54-2312, Idaho Code. (5-3-03)
- 05. 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)

(BREAK IN CONTINUITY OF SECTIONS)

600. GUIDELINES FOR THE SUPERVISION IN THE EDUCATION OF PSYCHOLOGISTS (RULE 600).

The board recognizes the importance of supervision in the education of psychologists, and that licensed psychologists within Idaho may be called on to provide supervision. It also recognizes that differing levels of supervision are appropriate for persons with differing levels of education and experience. Accordingly, the board identifies three (3) levels within the education of psychologists, and specifies differing levels of supervision for each. These categories refer to persons pursuing a program of activities which, when completed, will allow them to meet the requirements for licensure as psychologists in Idaho. When providing supervision, the licensed supervising psychologist may receive compensation from the supervisee or other interested party, and shall be responsible to insure that supervision appropriate to the education and experience level of the supervisee is provided. Further, the licensed supervising psychologist shall also be responsible to insure that the appropriate documentation for a particular supervisee has been provided to the board as specified below. The number of persons a psychologist may supervise within the three educational levels does not limit the number of service extenders as specified under Subsection 450.03.j. (7-1-93)

- 01. General Provisions.** General provisions for licensed supervising psychologists. (7-1-93)
- a.** The licensed supervising psychologist exercising administrative control shall: (7-1-93)
- i. Have the authority to cause termination of compensation for the supervisee when compensation is provided. (7-1-93)
- ii. Have the authority to cause the suspension or removal of the supervisee from his position as a service provider. (7-1-93)
- b.** The licensed supervising psychologist exercising professional direction shall: (7-1-93)
- i. Within thirty (30) days after initiating supervision, formulate a written supervisory plan for each supervisee. The plan shall include provisions for supervisory sessions and chart review. If the supervising psychologist requires tapes to be made of psychological services delivered by the supervisee, then the plan shall also specify review and destruction of these tapes. The plan shall also specify the hours per calendar week that the

licensed psychologist will be at the same physical location as the supervisee. (7-1-93)

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

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

~~02. Category I—Psychology Intern. (7-1-93)~~

~~a. Definition: A person enrolled in a training program which meets the exact requirements specified in Section 500. (7-1-93)~~

~~b. Verification: The director of training of the program in question will provide documentation to the board which: (7-1-93)~~

~~i. Verifies that the supervisee is admitted to the doctoral program in question and is in good standing. (7-1-93)~~

~~ii. Lists the specific courses which constitute the approved program for the particular supervisee, and designating which courses meet the exact subject area requirements listed in Section 500. (7-1-93)~~

~~iii. Verifies the supervisee is making satisfactory progress toward the degree. (7-1-93)~~

~~e. Supervision Requirements: (7-1-93)~~

~~i. Psychology Interns must be under the direct and continuing administrative control and professional direction of the licensed supervising psychologist when providing psychological services. (7-1-93)~~

~~ii. Work assignments shall be commensurate with the skills of the supervisee and procedures shall be planned in consultation with the licensed supervising psychologist. (7-1-93)~~

~~iii. Supervisees shall be housed in the service delivery site of the licensed supervising psychologist, and at least seventy five percent (75%) of the Psychology Intern's service delivery will occur while the licensed supervising psychologist is physically present on site. (7-1-93)~~

~~iv. Public announcement of fees and services, and contact with lay or professional public shall be offered only by and in the name of the licensed supervising psychologist or his institutional affiliate. (7-1-93)~~

~~v. Setting and collecting of fees shall remain the sole domain of the licensed supervising psychologist or his institutional affiliate, excepting that when a supervisee provides psychological services, third party payers shall be informed of this occurrence in writing at the time of billing. (7-1-93)~~

~~vi. All persons receiving services from a Psychology Intern shall sign a written notice indicating they understand that the service provider is a Psychology Intern and that the licensed supervising psychologist is responsible for the activity. A copy of the signed written notice will be maintained on file with the supervising licensed psychologist. (7-1-93)~~

~~vii. The licensed supervising psychologist's proficiencies will be commensurate with the services provided by the Category I Psychology Intern. (7-1-93)~~

- ~~d.~~ *Restriction: This section is applicable only when:* (7-1-93)
- ~~i.~~ *Service recipients make payment in connection with services they receive.* (7-1-93)
- ~~ii.~~ *Category I Psychology Interns receive compensation in connection with services they provide.* (7-1-93)
- 032. Category II - Psychologist In Training.** (7-1-93)
- a.** Definition: A person having submitted an application for licensure to the Idaho Board of Psychologist Examiners and who has been found by the board to have either: (7-1-93)
- i. Obtained a doctoral degree after completing an educational program which satisfies all the requirements of Section 500; or (7-1-93)
- ii. Obtained a doctoral degree and submitted a plan, approved by the board for the completion of any deficiencies in their doctoral education with regard to the requirements of Section 500. (7-1-93)
- b.** Verification: The State Board of Psychologist Examiners has reviewed the application of the person in question and either: (7-1-93)
- i. Verifies that the applicant has obtained a doctoral degree after completing an educational program which satisfies all the requirements of Section 500; or (7-1-93)
- ii. Verified the applicant obtained a doctoral degree and approved a plan submitted by the applicant for the completion of any deficiencies in his doctoral education with regard to the requirements of Section 500. (7-1-93)
- c.** Supervision Requirements: (7-1-93)
- i. Psychologists in Training must be under the direct and continuing administrative control and professional direction of the licensed supervising psychologist when providing psychological services. (7-1-93)
- ii. Work assignments shall be commensurate with the skills of the Psychologist in Training and procedures shall be planned in consultation with the licensed supervising psychologist. (7-1-93)
- iii. Psychologists in Training shall be housed in the service delivery site of the licensed supervising psychologist, and at least fifty percent (50%) of the Psychologist in Training's service delivery will occur while the licensed supervising psychologist is physically present on site; excepting that where Psychologists in Training are employed by agencies or corporations financed by public funds, licensed supervising psychologists may apply for exemption of this requirement. Exemptions will be made on review of the written supervisory plan, and granted at the discretion of the board. (7-1-93)
- iv. Public announcement of fees and services, and contact with lay or professional public shall be offered only by and in the name of the licensed supervising psychologist or his institutional affiliate. (7-1-93)
- v. Setting and collecting of fees shall remain the sole domain of the licensed supervising psychologist or his institutional affiliate, excepting that when a supervisee provides psychological services, third party payers shall be informed of this occurrence in writing at the time of billing. (7-1-93)
- vi. All persons receiving services from a Psychologist in Training shall sign a written notice indicating their understanding that the service provider is a Psychologist in Training and that the licensed supervising psychologist is responsible for their activity. A copy of the signed written notice will be maintained on file with the licensed supervising psychologist. (7-1-93)
- vii. The licensed supervising psychologist's proficiencies will be commensurate with the services provided by the Category II Psychologist in Training. (7-1-93)

043. Category III - Psychologist Under Supervision. (7-1-93)

a. Definition: A person having submitted an application for licensure to the Idaho Board of Psychologist Examiners and who has been found by the board to have: (7-1-93)

i. Obtained a doctoral degree, and completed an educational program which satisfies all the requirements of Section 500; and (7-1-93)

ii. Completed the EPPP examination with a passing score. (7-1-93)

b. Verification: The State Board of Psychologist Examiners has reviewed the application and: (7-1-93)

i. Verified the applicant has obtained a doctoral degree and completed an educational program which satisfies all the requirements of Section 500; and (7-1-93)

ii. Verified the applicant has completed the EPPP examination with a passing score. (7-1-93)

c. Supervision Requirements: (7-1-93)

i. Psychologists Under Supervision shall be under the continuing professional direction, though not necessarily administrative control, of the licensed supervising psychologist when providing psychological services. (7-1-93)

ii. Work assignments shall be commensurate with the skills of the Psychologist Under Supervision and procedures shall be planned in consultation with the licensed supervising psychologist. (7-1-93)

iii. Public announcement of fees and services, and contact with lay or professional public shall be offered only by and in the name of the supervising licensed psychologist or his institutional affiliate. However, if the Psychologist Under Supervision is employed by either a privately financed agency or corporation or a publicly funded agency or corporation; then public announcement of fees and services with lay or professional public may be offered in the name of those organizations as long as the supervised status of the Psychologist Under Supervision and the name, address and telephone number of the licensed supervising psychologist are made clear to the public. (7-1-93)

iv. Setting and collecting of fees shall remain the sole domain of the licensed supervising psychologist or his institutional affiliate. However, if the Psychologist Under Supervision is employed by either a privately financed agency or corporation or a publicly funded agency or corporation; then the setting and collecting of fees may be offered in the name of those organizations as long as the supervised status of the Psychologist Under Supervision and the name, address and telephone number of the supervising psychologist are made clear to the public; and with the exception that when a supervisee provides psychological services, third party payers shall be informed of this occurrence in writing at the time of billing. (7-1-93)

v. All persons receiving services from a Psychologist Under Supervision shall sign a written notice indicating their understanding that the service provider is a Psychologist Under Supervision and that the licensed supervising psychologist is responsible for their activity. A copy of the signed written notice will be maintained on file with the licensed supervising psychologist. (7-1-93)

vi. The licensed supervising psychologist's proficiencies will be commensurate with the services provided by the Category III Psychologist Under Supervision. (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.14.01 - RULES GOVERNING THE BOARD OF SOCIAL WORK EXAMINERS

DOCKET NO. 24-1401-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-3204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

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:

Correct web address, define supervision requirements, set guidelines for supervisor registration for those pursuing licensure as clinical social workers, allow audio tapes and internet courses as continuing education and deleting references to pastoral counselors. Clinical and independent practice as defined is being extended until July 1, 2006; Supervision is being clarified as 3000 hours in not less than 2 years; and limitations on supervisors is being outlined.

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.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were not controversial changes made.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 23rd day of August, 2004.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Phone
(208) 334-3945, fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1401-0401

005. ADDRESS OF THE STATE BOARD OF SOCIAL WORK EXAMINERS (RULE 5).

The office of the State Board of Social Work Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us. The Board's official web site is at ~~www2.state.id.us/ibol/swo~~ <https://www.ibol.idaho.gov/swo.htm>. (3-13-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

201. PRACTICE OF SOCIAL WORK.

01. 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 psychotherapy. (3-20-04)

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 psychotherapy only under the supervision of a licensed clinical social worker, psychologist, or psychiatrist and in accordance with an approved supervision plan. (3-20-04)

03. Clinical Social Work. The practice of clinical social work is a specialty within the practice of master's social work and requires the application of 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 includes, but is not limited to, individual, couples, family and group psychotherapy, and includes independent and private practice. (3-20-04)

04. Clinical Practice Exemption. A social worker licensed in Idaho at the masters level prior to August 5, 2002 engaged in clinical social work and 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 may meet the supervised experience requirement for clinical licensure upon submission of documentation prior to July 1, 2005~~6~~ showing a minimum of one hundred (100) face-to-face hours of employer provided supervision. No more than seventy-five (75) hours of supervision may be provided by a licensed counselor, marriage and family therapist, or psychiatric nurse and no less than twenty-five (25) hours of supervision may be provided by a licensed clinical social worker, psychologist, or an individual licensed to practice medicine and surgery who practices in the area of psychiatry. A licensed social worker who meets the requirements of Section 201 may continue to practice clinical social work until July 1, 2005~~6~~. An individual practicing under this exemption must still pass the clinical examination as set forth in Section 350 prior to clinical licensure. (3-20-04)(____)

05. 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 baccalaureate or masters level social worker 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. Anyone holding a current Idaho Social Work license who was licensed in Idaho prior to August 5, 2002 shall be exempt from the requirement to submit a plan of supervision and may apply for the Independent Practice certification. Such applicant shall, prior to July 1, 2005~~6~~, submit documentation establishing that a minimum of three thousand (3,000) hours of supervised practice, including one hundred (100) face-to-face hours, was obtained in a supervised setting and provided by a qualified and experienced professional working in the same area of practice; that supervision occurred on a regular and on-going basis; and that the supervisor(s) held a social work license in good standing. ~~(3-20-04)(_____)~~

06. 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. (5-3-03)

07. 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 independent practitioner. Furthermore, a social worker who contracts with an agency or institution that assumes full responsibility for and supervises the services provided to clients is not considered to be a private practitioner. (5-3-03)

08. Supervision. Supervised experience shall be required for both independent practice status and clinical licensure. Consultative-teaching supervision is directed toward enhancement and improvement of the individual's social work values, knowledge, methods, and techniques. A total of three thousand (3,000) hours of supervised social work experience accumulated in not less than two (2) years is required. Actual supervision supervisor contact shall be face-to-face and provided by a qualified and experienced professional working in the same area of practice. Supervision and 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 201.08.c. ~~(3-20-04)(_____)~~

a. Supervision of baccalaureate social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the baccalaureate, masters, or clinical level. (3-20-04)

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. (5-3-03)

c. Supervision of social workers pursuing licensure as clinical level practitioners must be provided by either 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, a licensed clinical professional counselor registered as a supervisor or a licensed marriage and family therapist registered as a supervisor and must focus on clinical social work as defined. No less than fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker. A social worker pursuing licensure at the clinical level must document one thousand seven hundred fifty (1,750) hours of direct client contact of the required three thousand (3,000) hours in clinical social work as defined. ~~(3-20-04)(_____)~~

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. (3-20-04)

09. Supervised Practice Required. To be eligible for licensure as an independent practitioner a candidate must: (5-3-03)

a. Meet the requirements set forth in Subsection 201.08; (3-20-04)

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 (5-3-03)

- c. Not have more than two (2) supervisors at any given time. (5-3-03)

202. SOCIAL WORK SUPERVISOR REGISTRATION (RULE 202).

Effective January 1, 2006, Idaho licensed social workers shall be registered with the Board in order to provide postgraduate supervision for those individuals pursuing licensure in Idaho as a clinical social worker. ()

01. Requirements for Registration. ()

- a. Document at least two (2) years experience as a licensed clinical social worker in Idaho. ()

b. Document at least two thousand (2000) hours of direct client contact as a clinical social worker within the last three (3) years. ()

- 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 clinical social worker license remains current and in good standing. ()

c. A registered clinical social worker supervisor shall not provide supervision to more than three (3) individuals at one (1) time. ()

2023. -- 249. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

351. CONTINUING EDUCATION (RULE 351).

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

a. Continuing education is required for renewal at all levels of social work licensure in Idaho. The board may, upon application, waive the requirements of this rule in cases involving illness or unusual circumstances interfering with the licensee's ability to practice or inability to conform to the rules. (3-20-04)

b. The completion of a minimum of twenty (20) continuing education (CE) hours annually is required to renew each licensure level. (5-3-03)

c. Compliance with the continuing education (CE) requirements for licensees 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. (5-3-03)

d. 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. (5-3-03)

- e. Licensees will maintain documentation verifying CE attendance and curriculum for a period of four

(4) years. This documentation will be subject to audit by the board. (5-3-03)

f. Licensees shall not be required to comply with this requirement during the first year in which they become licensed under the social work act. (5-3-03)

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

h. 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)

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

j. As part of the required hours of continuing education, all licensees must complete at least one (1) hour of training every year in professional ethics. (3-20-04)

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 requirement for professional ethics training shall continue during any period of cancellation. (3-20-04)

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 and audio tapes, internet based courses, 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~~ the course is interactive or requires an examination. (7-1-95)()

b. Category II. Category II consists of a variety of self-directed professional study activities and growth experiences. Examples include making an initial presentation on professional issues or programs, teaching a course for the first time, presenting a lecture or conducting a workshop for the first time, editing or writing professional books or articles, and conducting professional research. (3-20-04)

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, or Psychology, or Pastoral Counseling. (5-3-03)()

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

a. Continuing education course providers shall include: (5-3-03)

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 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. (5-3-03)

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)

iv. Private social service agencies and other entities. Continuing education hours may be obtained by participating in continuing education programs sponsored by agencies or entities who regularly provide social work services. The provider shall certify the number of clock hours of educational content in each approved activity. (3-20-04)

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 except that five (5) hours each year may be non-clinical but shall be germane to the practice of social work. Final approval of acceptable programs rests with the Board. (3-20-04)

04. Documentation. (7-1-95)

a. Each licensee shall maintain documentation verifying CE attendance and curriculum for a period of four (4) years from the date of completion. This documentation will be subject to audit by the Board. (5-3-03)

b. Licensees shall attest, on their annual license renewal application, that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action, including revocation. (5-3-03)

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. (5-3-03)

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. (5-3-03)

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. 24-1501-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-3404, 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 20, 2004.

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:

Correct website address, correct obsolete language, clarify examination required, delete references to pastoral counselors per Idaho Code. Adding a special exemption to the rules requiring continuing education for renewal of a 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.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were no controversial changes made.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 23rd day August, 2004.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Phone
(208) 334-3945, fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1501-0401

005. ADDRESS OF IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS (RULE 5).

The office of the Board of Professional Counselors and Marriage and Family Therapists is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number

of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us. The Board's official web site is at ~~www2.state.id.us/ibol/cou~~ <https://www.bol.idaho.gov/>
(3-13-02)()

(BREAK IN CONTINUITY OF SECTIONS)

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 valid licensed professional counselor license; and (4-2-03)

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. (4-2-03)

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 Licensed Clinical 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 Effective July 1, 2005, successful completion of graduate course or other training/experience equivalent to a college course acceptable to the board~~ National Board of Certified Counselors' National Clinical Mental Health Counseling Examination. (7-1-97)()

d. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)

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

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. (4-2-03)~~
- ~~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).**~~

(BREAK IN CONTINUITY OF SECTIONS)

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.~~ **c.** Marriage and Family Therapist - Seventy-five dollars (\$75). (3-13-02)
- ~~e.~~ **d.** Intern Registration - Twenty-five dollars (\$25). (4-2-03)
- 02. Professional Counselor, and Marriage and Family Therapist, ~~and Pastoral Counselor~~**

Examination or Reexamination Fee. The Professional Counselor, ~~and~~ 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~~ - Seventy-five dollars (\$75). ~~(4-2-03)~~(____)

04. Annual Renewal Fee. Annual license renewal fee for Professional Counselor, Clinical Professional Counselor, or Marriage and Family Therapist, ~~or Pastoral Counselor~~ - Sixty dollars (\$60). ~~(4-2-03)~~(____)

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

(BREAK IN CONTINUITY OF SECTIONS)

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. (4-2-03)

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. One (1) contact hour for each renewal period shall be in ethics. (3-20-04)

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. (4-2-03)

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. (4-2-03)

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. (4-2-03)

05. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. (____)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.16.01 - RULES OF THE STATE BOARD OF DENTURITRY

DOCKET NO. 24-1601-0401 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s)54-3309(g), 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 20, 2004.

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:

Correct the Boards web site address and increase the license renewal fee from \$300 to \$450.

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

This proposal will increase the renewal fees from \$300 to \$450. Due to increasing costs and decreasing numbers of licensees, the Board is in a revenue deficit situation. The action is authorized pursuant to Section 54-3312, Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were no controversial changes made and licensees were informed.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 23rd day August, 2004.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Phone
(208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1601-0401

005. ADDRESS OF IDAHO BOARD OF DENTURITRY (RULE 5).

The office of the Board of Denturitry 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~~ <https://www.ibol.idaho.gov/den.htm>. (4-2-03)(____)

(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. (4-2-03)

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

b. License application and re-examination fee - three hundred dollars (\$300). (4-2-03)

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~~ four hundred fifty dollars (~~\$300~~450). 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 IDAHO BOARD OF ACUPUNCTURE

DOCKET NO. 24-1701-0401

NOTICE OF RULEMAKING - PROPOSED RULE

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

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 20, 2004.

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:

Correct website address, clarify source for distance learning continuing education, provide hardship exemption for continuing education. Add a section that outlines discipline as provided by Statute.

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.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were no controversial changes made.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 23rd day of August, 2004.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220, Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1701-0401

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

The office of the Board of Acupuncture is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main St., Suite 220, Boise, ID 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is acu@ibol.state.id.us. The Board's official web site is at www2.state.id.us/ibol/acu <http://www.ibol.idaho.gov/acu.htm> (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

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: (5-3-03)

01. Subject Material. The subject material of the continuing education requirement shall be germane to the practice of acupuncture and; (5-3-03)

a. Accepted by NCCAOM, offered by accredited schools of acupuncture and oriental medicine, or otherwise approved by the Board. (5-3-03)

b. "Germane to the practice of acupuncture" shall be consistent with Section 54-4702(1)(4), Idaho Code. (5-3-03)

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. (5-3-03)

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~~ if approved by NCCAOM or upon approval of the Board. (~~5-3-03~~)()

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. (5-3-03)

05. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. ()

(BREAK IN CONTINUITY OF SECTIONS)

552. -- ~~999~~574. (RESERVED).

575. DISCIPLINE (RULE 575).

01. Civil Fine. The Board may impose a civil fine not to exceed one thousand dollars (\$1,000) upon a licensee for each violation of Section 54-4711, Idaho Code. ()

02. Costs and Fees. The Board may order a licensee to pay the costs and fees incurred by the Board in the investigation or prosecution of the licensee for violation of Section 54-4711, Idaho Code. ()

576. -- 999. (RESERVED).

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.18.01 - RULES OF THE IDAHO BOARD OF REAL ESTATE APPRAISERS
DOCKET NO. 24-1801-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-4106, 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 20, 2004.

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:

Update version incorporated by reference, to correct the boards address, and make changes required by the Appraiser Sub Committee (federal oversight body) dealing with definitions and continuing education. USPAP course is being defined as National USPAP course and Federal Oversight prohibits carryover of continuing education hours.

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.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were not controversial changes.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 23rd day of August, 2004.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Phone
(208) 334-3945, fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1801-0401

004. INCORPORATION BY REFERENCE (RULE 4).

The document titled "Uniform Standards of Professional Appraisal Practice (USPAP)", 2003~~5~~ Edition published by the Appraisal Foundation and effective January 1, 2003~~5~~ 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.
(3-20-04)(_____)

005. ADDRESS OF THE IDAHO REAL ESTATE APPRAISER BOARD (RULE 5).

The office of the Real Estate Appraiser Board is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220 Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us. The Board's official web site address is [at www2.state.id.us/ibol/rea](http://www2.state.id.us/ibol/rea) <https://www.ibol.idaho.gov>.
(3-13-02)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (RULE 10).

The definitions numbered one through twelve (1-12), appearing at Section 54-4104, Idaho Code are incorporated herein by reference as if set forth in full.
(7-1-93)

01. Advisory Committee. A committee of state certified or licensed real estate appraisers appointed by the board to provide technical assistance relating to real estate appraisal standards and real estate appraiser experience, education and examination requirements that are appropriate for each classification of state certified or licensed real estate appraiser.
(7-1-93)

02. Appraisal Foundation. The Appraisal Foundation means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.
(7-1-97)

03. Appraiser Qualifications Board. Appraiser Qualifications Board of the Appraisal Foundation establishes the qualifications criteria for licensing, certification and recertification of appraisers.
(7-1-97)

04. Appraisal Standards Board. The Appraisal Standards Board of the Appraisal Foundation develops, publishes, interprets and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services.
(7-1-97)

05. Bureau. The Bureau means the Bureau of Occupational Licenses, as prescribed in Sections 54-4106(2)(a) and 67-2601, Idaho Code.
(3-13-02)

06. Chief. The Bureau Chief of the Bureau of Occupational Licenses as established by Section 67-2602, Idaho Code.
(7-1-93)

07. Classroom Hour. Fifty (50) minutes out of each sixty (60) minute hour.
(7-1-93)

08. Field Real Estate Appraisal Experience. Personal inspections of real property, assembly and analysis of relevant facts, and, by the use of reason and the exercise of judgement, formation of objective opinions as to the market or other value of such properties or interests therein and preparation of written appraisal reports or other memoranda showing data, reasoning, and conclusion. Professional responsibility for the valuation function is essential.
(7-1-93)(_____)

09. FIRREA. Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989 was designed to ensure that more reliable appraisals are rendered in connection with federally related transactions.
(7-1-93)

10. Nationally Recognized Appraisal Organization. An appraisal organization which is a member of The Appraisal Foundation.
(7-1-93)

11. Real Estate. In addition to the previous definition in Section 54-4104(7), Idaho Code will also mean an identified parcel or tract of land, including improvements, if any.
(7-1-93)

12. Real Property. In addition to the previous definition in Section 54-4104(8), Idaho Code will also mean one or more defined interests, benefits, or rights inherent in the ownership of real estate. (7-1-93)

13. Residential Unit. Real estate with a current highest and best use of a residential nature. (7-1-93)

14. Specialized Appraisal Services. Services which include situations in which an appraiser is employed or retained to provide appraisal services that do not fall within the defined term "appraisal assignments". Specialized appraisal services relate to the employer's or client's individual needs or investment objectives and commonly include specialized marketing and financing studies as well as analysis, opinions, and conclusions rendered in connection with activities such as real estate brokerage, mortgage banking, and real estate counseling, including real estate tax counseling. (7-1-97)

15. Uniform Standards of Professional Appraisal Practice Or USPAP. Those uniform standards adopted by the Appraisal Foundation's Appraisal Standards Board. These standards may be altered, amended, interpreted, supplemented, or repealed by the Appraisal Standards Board (ASB) from time to time. (3-13-02)

16. USPAP Course. For the purposes of licensure and license renewal, any reference to the approved USPAP course shall mean the National USPAP Course provided by Appraisal Qualifications Board Certified USPAP Instructors and Educational Providers. ()

(BREAK IN CONTINUITY OF SECTIONS)

401. CONTINUING EDUCATION (RULE 401).

All certified/licensed appraisers must comply with the following continuing education requirements: (7-1-97)

01. Purpose Of Continuing Education. The purpose of continuing education is to ensure that the appraiser participates in a program that maintains and increases his skill, knowledge and competency in real estate appraising. (7-1-97)

02. Hours Required. The equivalent of fifteen (15) classroom hours of instruction in courses or seminars during each year prior to renewal is required. (3-20-04)

a. A classroom hour is defined as fifty (50) minutes out of each sixty (60) minute segment. (7-1-93)

b. Credit toward the classroom hour requirement may be granted only where the length of the educational offering is at least two (2) hours. (7-1-97)

c. Credit for the classroom hour requirement may be obtained by accredited courses which have been approved by the ~~appraisal members of The~~ Appraisal ~~Foundation~~ Qualification Board and by courses approved by Real Estate Appraiser Boards of states with reciprocity with Idaho. All other courses must have approval of the Board, which shall require documentation including the instructors and their qualifications, course content, length of course, and its location. Courses shall be approved for a period of four (4) years. (3-13-02)()

~~**d.** Continuing education hours accumulated during the twelve (12) months immediately preceding the license expiration date that are in excess of the required hours per year may be applied toward meeting the continuing education requirement for the next successive license renewals. No more than thirty (30) continuing education hours in excess of the required fifteen (15) hours shall be carried forward. Excess hours must be used toward meeting the continuing education requirements for the next immediately successive renewal periods only.~~ (3-20-04)

ed. Once every two (2) years an Idaho State Certified/Licensed Real Estate Appraiser will be required to attend an approved seven (7) hour USPAP update course or the equivalent. An approved fifteen (15) hour USPAP course shall be considered as an equivalent course, however, no excess ~~USPAP~~ hours may be carried forward to meet the two (2) year ~~USPAP~~ update requirement. (3-20-04)()

03. Credit For Appraisal Educational Processes And Programs. Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education. (7-1-97)

04. Requirement When A Certificate/License Is Cancelled. For each year (less than five (5)) in which a license is lapsed, canceled, or otherwise non-renewed, fifteen (15) hours of continuing education must be obtained prior to reinstatement. In addition, for each two (2) years (less than five (5)) in which a license is lapsed, canceled, or otherwise non-renewed, a seven (7) hour USPAP update course must be obtained prior to reinstatement. (3-20-04)

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

DOCKET NO. 24-1901-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-4205(3) Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

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:

Provides that qualifications for license include good moral conduct and suitability.

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.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there were no controversial changes made.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 23rd day of August, 2004.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233 Phone
(208) 334-3945, fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 24-1901-0401

005. ADDRESS OF IDAHO BOARD OF EXAMINERS OF RESIDENTIAL CARE FACILITY ADMINISTRATORS (RULE 5).

The office of the Board of Examiners of Residential Care Facility Administrators is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of

the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ibol@ibol.state.id.us. The Board's official web site is at ~~www2.state.id.us/ibol/rea~~ www.idaho.gov/ibol/rca.
(3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

101. -- 1949. (RESERVED).

150. QUALIFICATIONS FOR ADMINISTRATOR LICENSE (RULE 150).

Each applicant for an administrator's license and each licensed administrator, as requested by the Board, shall submit proof, along with their application, that said individual meets the following qualifications for the issuance of a license or permit, or the retention or renewal of a license: ()

01. Good Moral Character. The applicant shall submit a criminal background check by an entity approved by the board establishing that the applicant has not been convicted, pled guilty or nolo contendere or received a withheld judgment for a felony or any crime involving dishonesty or the health, safety or welfare of a person. ()

02. Suitability. The applicant shall submit a statement by a licensed physician establishing that the applicant has sufficient physical, emotional and mental capacity to carry out and comply with the laws and rules governing residential care facility administrators. ()

151. -- 199. (RESERVED).

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0401

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2005 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1717, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 4, 2004 Idaho Administrative Bulletin, Volume 04-8, pages 177 through 180.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

DATED this 25th day of August, 2004.

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

IDAPA 27, TITLE 01, CHAPTER 01

RULES OF THE IDAHO BOARD OF PHARMACY

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 04-8, August 4, 2004, pages 177 through 188.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2005 Idaho State Legislature as a final rule.

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0402

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 26, 2004.

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, 54-1718, 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 20, 2004.

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:

The pharmacy faculty at ISU along with two urban hospitals (Kootenai Medical Center in Coeur d'Alene and St. Alphonsus Regional Medical Center in Boise) have approached the Board of Pharmacy requesting authority to commence a pilot project to use teleconferencing and high-speed internet connections to bring pharmacy expertise to Idaho's rural medical facilities. The Board of Pharmacy has reviewed the proposal and has worked with the proponents to prepare temporary rules allowing the two pilot projects. The Board believes that the pilot projects themselves will create an immediate enhancement to the health and welfare of the target rural areas and requests that the Governor find that the proposed temporary rules qualify under Idaho Code § 67-5226(1)(a) - protection of the public health, safety, or welfare - and allow the rules to become effective immediately.

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: Adoption of the rule as a temporary rule with immediate effect is necessary to enhance protection of the public health, safety, or welfare.

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, informal negotiated rulemaking was conducted with the proponents of the telepharmacy pilot projects to be authorized under the rule.

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 the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 26th day of August 2004.

DATED this 25th day of August, 2004.

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. 27-0101-0402

261. TELEPHARMACY PILOT PROJECT.

The Board, through its Executive Director, may authorize specific Institutional Facilities and the Institutional Pharmacies located therein to participate in a Telepharmacy Program. The following rules shall apply to institutions so authorized by the Board for the telepharmacy practiced in the institution. The purpose of the Telepharmacy Program is to allow the provision of pharmaceutical care through the use of telecommunications and information technologies to patients at a distance from the pharmacy and pharmacist providing the pharmaceutical care. During the pilot project phase of the Telepharmacy Program, designation to participate in the Telepharmacy Program shall be at the discretion of the Board and the Executive Director. (8-26-04)T

262. DEFINITIONS.

01. Central Pharmacy. An institutional pharmacy authorized by the Board to participate in a Telepharmacy Program. (8-26-04)T

02. Consulting Pharmacists. Pharmacists employed at a Central Pharmacy who provide pharmaceutical care to patients at a Rural Institutional Facility. (8-26-04)T

03. Rural Institutional Facility. An Institutional Facility authorized by the Board to participate in a Telepharmacy Program. Rural Institutional Facilities will be those facilities such as federally designated critical access hospitals or other facilities operating in a health professional shortage area and who are unable to otherwise obtain pharmaceutical care on a timely basis twenty-four (24) hours per day. (8-26-04)T

04. Rural Institutional Pharmacy. The institutional pharmacy located within a Rural Institutional Facility. (8-26-04)T

05. Telepharmacy Program. The pilot project adopted by the Board to allow selected Central Pharmacies and selected Rural Institutional Facilities to engage in the provision of pharmaceutical care through the use of telecommunications and information technologies to patients at a distance from the pharmacy and pharmacist providing the pharmaceutical care. (8-26-04)T

263. CONTRACT FOR TELEPHARMACY PROGRAM.

A Central Pharmacy may contract with a Rural Institutional Facility for operation of a Telepharmacy Program as specified herein. (8-26-04)T

01. Contract Matters. The contract shall address the following matters: (8-26-04)T

a. Identify the director of pharmacy of the Central Pharmacy and the director of pharmacy of the Rural Institutional Pharmacy and provide for notice to the parties and to the Board in the event of a change in either director. (8-26-04)T

b. Contain a description of the telepharmacy services to be performed by the Central Pharmacy for the Rural Institutional Pharmacy, including: (8-26-04)T

i. Protocols for communication of orders for prescription drugs from the practitioners at the Rural Institutional Pharmacy to the pharmacists at the Central Pharmacy. (8-26-04)T

ii. Protocols for the Central Pharmacy to accomplish dispensing of prescription drugs at the Rural Institutional Facility and to ensure that the Central Pharmacy has sufficient Consulting Pharmacists and support staff to meet the pharmacy needs of the Institutional Facility where the Central Pharmacy is located as well as performing the pharmacy functions for the Rural Institutional Pharmacy as are contemplated under the contract. (8-26-04)T

iii. A description of the access to prescription drugs in the Rural Institutional Pharmacy under the

program and protocol for maintaining the security of prescription drugs in the Rural Institutional Pharmacy. (8-26-04)T

iv. Contain a provision for the orderly transition of pharmaceutical services for the Rural Institutional Pharmacy in the event the Central Pharmacy elects to terminate its participation in the Telepharmacy Program, such transition to include an adequate time for the Rural Institutional Pharmacy to locate appropriate pharmaceutical services from another source. (8-26-04)T

v. The term of the contract shall not exceed two (2) years and shall be subject to the right of the Board and its Executive Director to conduct an annual review of the operations under the contract and of the Telepharmacy Program. (8-26-04)T

02. Additional Contract Matters. The contract may address additional matters regarding the Telepharmacy Program between the Central Pharmacy and the Rural Institutional Facility. (8-26-04)T

03. Contract Approval. The contract must be approved by the Executive Director of the Board of Pharmacy prior to the commencement of telepharmacy services between the Central Pharmacy and the Rural Institutional Facility. In reviewing the contract, the Executive Director shall evaluate the proposed terms in the light of: (8-26-04)T

a. Promoting, preserving, and protecting the health, safety, and welfare of the public; (8-26-04)T

b. Maintaining appropriate professional standards for the practice of pharmacy; and (8-26-04)T

c. Maintaining appropriate safeguards for the protection of prescription drug inventories, especially controlled substance inventories, at the Rural Institutional Pharmacy. (8-26-04)T

264. SPECIAL RULES FOR DIVISION OF RESPONSIBILITY FOR TELEPHARMACY. Notwithstanding anything in these rules (IDAPA 27.01.01) to the contrary, for Rural Institutional Pharmacies and Central Pharmacies, and the pharmacists practicing under an approved contract for telepharmacy services, the following rules shall apply. (8-26-04)T

01. Responsibility of Director of Central Pharmacy. The director of pharmacy of the Central Pharmacy shall be responsible for all telepharmacy services performed by the Central Pharmacy under the approved contract and for meeting the requirements of the Idaho Pharmacy Act and these rules with respect to such services. The telepharmacy activities and operations performed by the Central Pharmacy under the approved contract and the ancillary personnel of the Central Pharmacy engaged in such activities and operations shall be personally and directly supervised by the director of pharmacy in the same fashion as all other activities and operations at the Central Pharmacy. (8-26-04)T

02. Responsibility of Director of Rural Institutional Pharmacy. The director of pharmacy of the Rural Institutional Pharmacy shall remain responsible for all other aspects of the Rural Institutional Pharmacy but shall not be responsible for the services performed by the Central Pharmacy under the approved contract. Where ancillary personnel are directed or supervised in telepharmacy activities by the Central Pharmacy, responsibility for such direction and supervision shall lie with the Central Pharmacy and the director thereof. (8-26-04)T

~~2645.~~ -- 290. (RESERVED).

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0403

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 1, 2004.

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. 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 20, 2004.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking is needed to bring the Board's rules into compliance with federal law, which makes Ephedrine products available through prescription only. These rule changes remove rules that allow Ephedrine products to be sold over the counter.

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:

Adoption of the rule as a temporary rule with immediate effect is necessary to comply with deadlines in amendments to governing federal law.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact R.K. "Mick" Markuson, Director, at (208) 334-2356.

Anyone may submit written comments regarding the propose rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 25th day of August, 2004.

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. 27-0101-0403

158. PRESCRIPTION DRUGS.

01. Designated Drugs. In addition to those drugs designated as prescription or legend drugs as defined in Section 54-1705(23), Idaho Code, the Idaho Board of Pharmacy includes preparations containing ephedrine or salts of ephedrine, as prescription drugs. (7-1-93)

02. Exempt Drugs. A product that meets all the criteria set forth in Subsection 158.02.a. is exempt from the designation as prescription drugs under Subsection 158.01 and exempt from inclusion as a Schedule II controlled substance under Section 37-2707, Idaho Code, unless it is being used or possessed as an immediate precursor of another controlled substance. (7-1-98)

a. Products containing a formula with a ratio of twelve and one half (12.5) milligrams ephedrine to two hundred (200) milligrams guaifenesin or twenty-five (25) milligrams ephedrine to four hundred (400) milligrams guaifenesin; and not exceeding a maximum of twenty-five (25) milligrams of ephedrine per tablet, capsule, or dose; and in addition to such formula, may include only inert or inactive ingredients or substance. (7-1-98)

b. Provided, however, that hemorrhoidal ointments containing not more than two tenths percent (.2%) Ephedrine Sulfate and suppositories not exceeding four (4) milligrams Ephedrine Sulfate per suppository are also exempt pursuant to Subsection 158.02. (7-1-98)

c. ~~Ephedrine products that meet the following criteria are exempt from the designation as prescription drug.~~ (3-16-04)

~~i. The product label must state the total amount in milligrams of ephedrine or ephedrine group alkaloids in a serving or dosage unit and the amount of the product that constitutes a serving or dosage unit. (3-16-04)~~

~~ii. The product label must state the maximum recommended twenty-four (24) hour serving or dosage for an adult human is one hundred (100) milligrams. (3-16-04)~~

~~iii. The product label must state that consumption of more than the recommended serving or dosage for the food or dietary supplement, or that consumption of a serving or dosage at a more frequent interval than recommended, may increase the risk of adverse effects. (3-16-04)~~

~~iv. The product label must contain the following warning in distinct contrast to other label printing or graphics: **WARNING: Not intended for use by anyone under the age of eighteen (18). Do not use this product if you are pregnant or nursing. Consult a health care professional before using this product if you have heart disease, thyroid disease, diabetes, high blood pressure, depression or other psychiatric condition, glaucoma, difficulty in urinating, prostate enlargement, or seizure disorder, if you are using a monoamine oxidase inhibitor (MAOI) or any other prescription drug, or if you are using an over-the-counter drug containing ephedrine, pseudoephedrine or phenylpropanolamine (ingredients found in certain allergy, asthma, cough/cold, and weight control products). Discontinue use and call a health care professional immediately if you experience rapid heartbeat, dizziness, severe headache, shortness of breath or other similar symptoms.** (3-16-04)~~

~~v. The product label must contain the statement: "This statement has not been evaluated by the Food and Drug Administration. This product is not intended to diagnose, treat, cure or prevent any disease." (3-16-04)~~

~~vi. The product must contain only naturally occurring ephedrine or ephedrine alkaloids and contain no hydrochloride or sulfate salts of ephedrine alkaloids. (3-16-04)~~

~~vii. The single serving or dosage must not contain more than twenty-five (25) milligrams of ephedrine alkaloids and the single serving or dosage must not contain ephedrine alkaloids in excess of five (5) percent of the~~

~~total capsule weight. (3-16-04)~~

~~viii. Sale of the product to persons under the age of eighteen (18) is prohibited. (3-16-04)~~

~~ix. The product must not be marketed, advertised or represented in any manner for the indication of stimulation, mental alertness, euphoria, ecstasy, a buzz or high, heightened sexual performance or increased muscle mass. (3-16-04)~~

~~x. Manufacturers of the product must provide an analysis of the product to the Board of Pharmacy to ensure that the product meets the requirements of applicable laws. (3-16-04)~~

~~xi. The manufacturer, wholesaler, or other entity which first produces the product in Idaho or first brings the product into Idaho for sale or resale must register the product with the Board using the appropriate registration form provided by the Board and provide a one hundred dollar (\$100) registration fee to the Board. Registration shall expire twelve (12) months after issuance. Registration shall be renewed for a twelve (12) month period upon receipt by the Board of a one hundred dollar (\$100) renewal fee. The requirements to register and to pay a fee shall terminate upon the federal Food and Drug Administration's publication in the Federal Register of a final rule establishing good manufacturing practices for dietary supplements or five (5) years after the effective date of this rule, whichever date occurs first. Upon any violation of this rule or other applicable law, the Board may revoke the registration. (3-16-04)~~

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0404

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 20, 2004.

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

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

The proposed rule adds specific references to standards of conduct in the practice of pharmacy for reasonable and prudent practice of pharmacy as well as the duty of licensed pharmacists to report unprofessional conduct and to cooperate with investigations by the Board of Pharmacy. The rule then also denotes as unprofessional conduct the violation of these standards.

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

No fee or charge is imposed or increased pursuant to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule revisions simply clarify existing policy and should not be 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 27, 2004.

DATED this 25th day of August, 2004.

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. 27-0101-0404

142. STANDARDS OF CONDUCT.

01. Duty to Cooperate in Investigation. It is the duty of every licensee to cooperate with a disciplinary investigation and any failure or refusal to do so is grounds for disciplinary action. ()

02. Duty to Report Theft, Loss, or Adulteration. It is the duty of every pharmacist-in-charge or pharmacy director to report any theft or loss of controlled substances and any adulteration of any prescription drug to the Board, even if the theft, loss, or adulteration has been accounted for and the employee disciplined internally. ()

1423. -- 150. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

184. CONDUCT, UNPROFESSIONAL.

The following acts or practices by a registered pharmacist or the owner of a pharmacy are declared to be specifically, but not by way of limitation, unprofessional conduct and conduct contrary to the public interest: (7-1-93)

01. General. Manufacturing, compounding, selling, dispensing, or permitting to be manufactured, compounded, sold or dispensed substandard drugs or preparations. (7-1-93)

02. Secret Formulas. Using secret formulas. (7-1-93)

03. Allowing a Commission or Rebate. Allowing a commission or rebate to a person writing or making or otherwise ordering a prescription, or providing consultant services at no charge to receive prescription business. (7-1-93)

04. Failure to Follow Instructions. Failing to strictly follow the instructions of the person writing or making or ordering a prescription as to refilling, content or label, or giving a copy of a prescription to any person without marking said prescription across the face: "Copy for Information Only. Not to Be Filled." (7-1-93)

05. Errors or Omissions. Failing to confer with the person writing, making or ordering a prescription, if there is an error or omission therein which should be questioned. (7-1-93)

06. Advertising. Advertising in a manner that is false, misleading or deceptive including material claims of professional superiority which cannot be substantiated. (7-1-93)

07. Addiction. Being addicted or habituated to the use of alcohol or controlled substances. (7-1-93)

08. Supplying to Unqualified Persons. Supplying or diverting drugs, biological, medicines, substances or devices which are legally sold in pharmacies, so that unqualified persons can circumvent laws pertaining to the legal sale of such articles. (7-1-93)

09. Fraudulent Practice. Performing or in any way being a party to any fraudulent or deceitful practice or transaction. (7-1-93)

10. Competency. Performing any duties as a pharmacist or pharmacy owner in an incompetent, unskilled or negligent manner. (7-1-93)

11. Unprofessional Conduct. Exhibiting unprofessional conduct towards customers, employees, colleagues, inspectors or others. (7-1-93)

12. Failure to Follow Orders. Failure to follow an order of the Board. (2-23-94)

13. Inappropriate Conduct. Any activity by a pharmacist which is inappropriate to the conduct of the profession of pharmacy. (2-23-94)

14. Discipline in Other States. Conduct which results in a suspension, revocation or other disciplinary proceeding or action with respect to a pharmacy or pharmacist license that the Idaho licensee holds in another state. (7-1-98)

15. Failure to Report Theft, Loss, or Adulteration. Failure of any pharmacist-in-charge or pharmacy director to report any theft or loss of controlled substances or any adulteration of any prescription drug to the Board even if the theft, loss, or adulteration has been accounted for and the employee disciplined internally. ()

16. Failure to Cooperate in Investigation. Failure of any licensee to cooperate with a disciplinary investigation. ()

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0405

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 20, 2004.

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

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

The rule extends the expiration date of prescriptions from one (1) year to fifteen (15) months. Medical professionals have indicated that an additional three (3) months added to prescription order expiration dates is necessary to give patients time to complete annual examinations, which medical insurance providers will not pay for until after the one-year anniversary from their prior examination.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee or charge is imposed or increased pursuant to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is non-controversial and the request for this rule change from medical professionals came too late in the process to allow for negotiated rulemaking.

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 27, 2004.

DATED this 25th day of August, 2004.

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. 27-0101-0405

162. PRESCRIPTION EXPIRATION.

All prescription orders that are legally refillable must have the refill instructions indicated on the face of the prescription order. All prescription orders expire ~~one (1) year~~ fifteen (15) months after date of issue. For long term medication orders a new prescription must be obtained and a new file number issued. (7-1-93)()

IDAPA 31 - PUBLIC UTILITIES COMMISSION

31.11.01 - SAFETY AND ACCIDENT REPORTING RULES FOR UTILITIES REGULATED BY IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-1101-0401

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. The action is authorized pursuant to Sections 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 20, 2004.

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

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

The Commission's Safety and Accident Reporting Rules currently adopt by reference several national safety codes. In particular, Rule 201 adopts the federal safety regulations applicable to natural gas utilities and pipelines. In December 2003, the U.S. Office of Pipeline Safety (OPS) amended its safety regulations concerning the operation of pipelines. New OPS safety regulations require pipeline operators to develop integrity management programs (IMPs) for gas transmission pipelines at locations where a pipeline leak or rupture could cause potential harm to the public. IMPs are required for those locations commonly referred to as "high consequence areas". Under the new federal regulations found at 49 C.F.R. Section 192.95, pipeline operators must perform ongoing assessments of pipeline integrity, implement preventative and mitigated actions, and repair and remediate pipelines (as necessary). The federal regulations improve data collection, data analysis, and also set a timeline for performing IMPs. Pipeline operators must periodically assess their IMPs and report semi-annually to the OPS. The Commission proposes to adopt these amended federal safety regulations.

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these proposed rules adopt national federal safety regulations dealing with pipeline safety.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ron Law, Executive Administrator, at (208) 334-0330.

Anyone may submit written comments regarding these proposed rules. All written comments concerning the proposed rules must be delivered to the Commission Secretary at the address identified below or be postmarked on or before October 27, 2004.

DATED at Boise, Idaho this 29th day of July, 2004.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:
472 W Washington
Boise, ID 83702-5983

THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-1101-0401

**RULES 201 THROUGH 300 - TRANSPORTATION OF NATURAL GAS BY PIPELINES --
LIQUEFIED NATURAL GAS FACILITIES -- TRANSPORTATION OF HAZARDOUS LIQUIDS
BY PIPELINE -- ~~NATIONAL~~ INTERNATIONAL FUEL GAS CODE --
~~UNIFORM~~ INTERNATIONAL MECHANICAL CODE**

201. FEDERAL REGULATIONS--49 C.F.R. PARTS 191, 192, 193, 195 AND 199 (RULE 201).

The Commission adopts by reference Parts 191, 192, 193, 195, and 199, Title 49, the Code of Federal Regulations (October 1, 2002~~4~~), except that federal accident reporting requirements contained in the rules adopted by reference in Rule 201 are replaced for state reporting purposes by orders of the Commission or rules of the Commission. These regulations are found in the Code of Federal Regulations, available from the, U.S. Government Printing Office, Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954. The incorporated CFR Parts are also available in electronic format at www.access.gpo.gov/nara. All gas and pipeline corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of these federal regulations adopted by reference. (5-3-03)(_____)

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. 31-2101-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Commission has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 61-507, 61-515, and 14-508, Idaho Code.

PUBLIC HEARING SCHEDULE: A 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 20, 2004.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

The Commission is proposing to amend Rule 108 and to promulgate a new Rule 110. The proposed changes concern instances where customers have made deposits or advance payments to obtain utility service. The change to Rule 108 would allow a public utility to transfer a customer deposit to a new account or apply it to the account balance owing on an existing account. New Rule 110 implements Section 14-508, Idaho Code, that states any deposit or advance payment made to obtain utility service that is unclaimed for more than one (1) year after termination of service is presumed to be abandoned property. Rule 110 would allow a public utility to forward abandoned deposits or advanced payment to a financial assistance program certified by the Commission. In accordance with Section 14-508, Idaho Code, a "financial assistance program" is an entity which assists the utility's low-income and disadvantaged customers with payment of utility bills.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees associated with this proposed rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change to Rule 108 is minor and Rule 110 merely adopts Section 14-508, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Beverly Barker at (208) 334-0302.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 6th day of August 2004.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:
472 W Washington
Boise, ID 83702-5983

THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-2101-0401

**RULES 100 TO 199 - DEPOSIT ~~AND GUARANTEE~~ PRACTICES FOR RESIDENTIAL
AND SMALL COMMERCIAL CUSTOMERS**

(BREAK IN CONTINUITY OF SECTIONS)

108. TRANSFER OF DEPOSIT (RULE 108).

Deposits shall not be transferred from one customer to another customer or between classes of service, except at the customer's request. When a customer with a deposit on file transfers service to a new location within the same utility's service area, the deposit ~~and any outstanding balance~~ (with accrued interest) shall be either transferred to the account for the new location or credited to the customer's current account. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

110. UNCLAIMED DEPOSITS AND ADVANCE PAYMENTS (RULE 110).

01. Presumption of Abandonment. Pursuant to Section 14-508, Idaho Code, any deposit or advance payment made to obtain or maintain utility service that is unclaimed by the owner for more than one (1) year after termination of service is presumed abandoned. ()

02. Financial Assistance Program. A utility may apply to the Commission for approval to pay unclaimed deposits and advance payments presumed to be abandoned to a financial assistance program which assists the utility's low income and disadvantaged customers with payment of utility bills. The utility shall remain obligated to file its report of such abandoned property as required by Section 14-517, Idaho Code, and retain records as required by Section 14-531, Idaho Code. ()

1101. -- 199. (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. 31-2101-0402

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that the Commission intends to initiate negotiated rulemaking and determine whether there is consensus to initiate a formal rulemaking. This negotiated rulemaking action is authorized pursuant to Sections 61-302, 61-303, 61-307, 61-503, 61-507, and 61-515, Idaho Code.

WORKSHOP SCHEDULE: The Commission's Staff will conduct two (2) public workshops for the purpose of discussing changes to the Utility Customer Relations Rules proposed by the Idaho Community Action Network (ICAN):

October 21, 2004 at 9:00 a.m. MST
Commission's Hearing Room
472 West Washington Street, Boise, Idaho.

October 26, 2004 at 9:00 a.m. PST
Room 1B, Kootenai County Administration Bldg.
451 Government Way, Coeur d'Alene, Idaho.

METHOD OF PARTICIPATION: Persons wishing to participate in the informal negotiated rulemaking must do the following:

Interested persons may participate in the negotiated rulemaking workshops. The purpose of the informal workshops is to facilitate negotiated rulemaking in which all interested parties seek consensus on the content of proposed rule changes. For each proposed rule change there will be a discussion of the reason(s) for the proposed change(s), the advantages and disadvantages of implementing the proposed change, and whether there are ways to improve the proposed change or mitigate any disadvantages. Depending on the outcome of the two workshops, additional workshops may be scheduled later. The Commission anticipates that it will solicit public comments after the completion of the workshops.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

In July 2004, ICAN filed a Petition for Rulemaking recommending that the Commission adopt six (6) proposed changes to its Utility Customer Relations Rules and promulgate one (1) new rule. In Order No. 29573 the Commission initiated this negotiated rulemaking docket. Briefly, ICAN proposes changing Rule 306 to extend the existing three (3) month winter moratorium period to five (5) months by adding the beginning month of November and the ending month of March. During the winter moratorium, utilities are prohibited from terminating natural gas or electric heating service for residential customers with children, elderly, or infirmed persons. Second, ICAN proposes to amend Rule 308 concerning the postponement of service termination for medical reasons. Existing Rule 308 provides that a utility shall postpone termination of residential utility service for thirty (30) days upon receipt of a medical certificate stating that disconnection would adversely affect the health of a person residing in that household. ICAN proposes to extend the postponement depending upon the medical condition for a period not to exceed six (6) months, and renewable for a cumulative period not to exceed twelve (12) months.

Third, ICAN proposes to amend Rule 304.01 to increase the number of days required in which the utility must serve its initial notice of service termination to a customer from seven (7) days to fourteen (14) days. ICAN also proposes to change Rule 304.02 dealing with a utility's final notice of service termination. Rule 304.02 currently requires that the utility diligently attempt to contact the affected customer either in person or by telephone at least twenty-four (24) hours before the proposed date of service termination. ICAN proposes that there be at least two (2) documented attempts to contact the affected customer at different periods of the day. Fourth, ICAN proposes to amend Rule 305 which discusses the contents of a utility's final notice to terminate service. ICAN proposes that the termination notice include information on the winter moratorium and that it contain the specific date and time of day that service will be disconnected. ICAN also proposes that the final termination notice be published in English, Arabic, Farsi, Russian, Serbo-Croatian, Spanish, and any other language requested by at least twenty (20) customers.

Fifth, existing Rule 311.01 prohibits the termination of utility service on Saturday, Sunday, a legal holiday, or after 2 p.m. on any Friday or on any day immediately proceeding any legal holiday. ICAN proposes that this rule be amended to prohibit disconnection on any Friday or day proceeding a legal holiday. Sixth, Rule 701 provides that each utility make available to its customers an annual summary of the Customer Relations Rules. ICAN proposes that Rule 701 be modified to provide that the annual summary be posted in the company's local office in both English and Spanish. It further suggests that the annual summary be made available in the five (5) other languages previously identified.

Finally, ICAN proposes that the Commission promulgate a new Rule 702 requiring utilities to provide the annual summary of the customer rules and termination notices in the five (5) foreign languages referenced above. ICAN also proposes that this rule require that each energy utility inquire when service is initiated whether the customer would like to receive notices in a language other than English.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking contact Beverly Barker at (208) 334-0302.

The Commission's Order No. 29573 containing the proposed rule changes may be viewed and copied at the Commission's website, www.puc.state.id.us by clicking on "Laws and Rules" and then "31-2101-0402 Negotiated Rulemaking." Copies of the Commission's Order may also be obtained at the Commission's offices or by calling the undersigned. ICAN's Petition for Rulemaking may be viewed on the Commission's website by clicking on "File Room" then "Multi-Utility Cases."

The deadline for submitting written comments concerning the negotiated rulemaking will be scheduled at a later date.

DATED this 24th day of August, 2004.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:
472 W Washington
Boise, ID 83702-5983

IDAPA 31 - PUBLIC UTILITIES COMMISSION

31.41.01 - CUSTOMER RELATIONS RULES FOR TELEPHONE CORPORATIONS PROVIDING LOCAL EXCHANGE OR INTRASTATE MTS/WATS SERVICE IN IDAHO SUBJECT TO CUSTOMER SERVICE REGULATION BY THE IDAHO PUBLIC UTILITIES COMMISSION UNDER THE PUBLIC UTILITIES LAW OR THE TELECOMMUNICATIONS ACT OF 1988 (THE TELEPHONE CUSTOMER RELATIONS RULES)

DOCKET NO. 31-4101-0401

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 61-507, 62-615(3), 62-622(5), Idaho Code.

PUBLIC HEARING SCHEDULE: A 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 20, 2004.

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 non-technical explanation of the substance and purpose of the proposed rulemaking: The Commission is proposing several changes to its Telephone Customer Relations Rules that address deposits, medical certificates and adoption of the updated federal slamming regulations. First, the Commission is proposing to amend Rule 109 and to promulgate a new Rule 111. These changes concern customer deposits or advance payments to obtain utility service. New Rule 111 implements Section 14-508, Idaho Code, that states any deposit or advance payment made to obtain utility service that is unclaimed for more than one (1) year after termination of service is presumed to be abandoned property. Rule 111 would allow a telephone corporation to forward abandoned deposits or advance payments to "financial assistance programs" that assist low-income and disadvantaged customers with paying their telephone bills. Second, the proposed revisions to Rule 308 are intended to eliminate ambiguities and clarify the procedures for issuing and obtaining a medical certificate. In instances of a customer's or family member's serious illness or medical emergency, a certificate may postpone termination of telephone service. Finally, Rule 702 adopts the updated version of slamming regulations promulgated by the Federal Communications Commission. "Slamming" is the unauthorized change of a customer's selected provider of local or long-distance telephone service.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees associated with this proposed rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed rule changes are minor and conform to Section 14-508, Idaho Code, and adopted federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Beverly Barker at (208) 334-0302.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 6th day of August, 2004.

Jean D. Jewell, Commission Secretary
Idaho Public Utilities Commission
PO Box 83720, Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:
472 W Washington
Boise, ID 83702-5983

THE FOLLOWING IS THE TEXT OF DOCKET NO. 31-4101-0401

RULES 101 THROUGH 199 - RESIDENTIAL AND SMALL BUSINESS
DEPOSIT ~~AND GUARANTEE~~ PRACTICES

(BREAK IN CONTINUITY OF SECTIONS)

109. RECEIPT FOR DEPOSIT--RECORDS OF DEPOSITS (RULE 109).

01. **Receipts.** Each customer paying a deposit ~~must~~ shall be given a receipt containing or otherwise be provided with the following information: (7-1-93)()

- a. Name of customer and service address for which deposit is held; (7-1-93)
- b. Date of payment; (7-1-93)
- c. Amount of payment; and (7-1-93)
- d. Statement of the terms and conditions governing the return of deposits. (7-1-93)

02. **Retention of Records.** Each telephone company shall maintain records that will enable a customer entitled to a return of a deposit to obtain a refund even though the customer may be unable to produce the receipt for the deposit. These records must include the name of each customer, the service locations and telephone number(s) of the customer while the deposit is retained, and the date(s) and amount(s) of the deposits. The telephone company shall retain records of deposits that have been refunded to customers for a period of three (3) years after the date of refund. The telephone company shall retain ~~these~~ records of unclaimed deposits for a period of seven (7) years as required by ~~the Unclaimed Property Act, Sections 14-501 et seq., Idaho Code, and in particular~~ Section 14-531, Idaho Code, ~~(ten years)~~. (7-1-93)()

03. **Transfer of Records.** Upon the sale or transfer of any telephone company or any of its operating units, the seller shall certify to the Commission that it has a list showing the names of all customers whose service is transferred and who have a deposit on file, the date the deposit was made and the amount of the deposit. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

111. UNCLAIMED DEPOSITS AND ADVANCE PAYMENTS (RULE 111).

01. **Presumption of Abandonment.** Pursuant to Section 14-508, Idaho Code, any deposit or advance payment made to obtain or maintain local exchange service, message telecommunications service (MTS), or other services that is unclaimed by the owner for more than one (1) year after termination of service is presumed abandoned. ()

02. **Financial Assistance Program.** A telephone company may apply to the Commission for approval to pay unclaimed deposits and advance payments presumed to be abandoned to a financial assistance program which assists the telephone company's low income and disadvantaged customers with payment of utility bills. The telephone company shall remain obligated to file its report of such abandoned property as required by Section 14-517, Idaho Code, and retain records as required by Section 14-531, Idaho Code. ()

114. -- 199. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

308. SERIOUS ILLNESS OR MEDICAL EMERGENCY (RULE 308).

01. Medical Certificate--Postponement of Termination of Local Exchange or MTS Services. A telephone company offering local exchange or MTS service between a residential customer and the customer's nearest community providing necessary medical facilities or services must postpone termination of local exchange or MTS service to a residential customer for thirty (30) calendar days from the date of ~~the~~ receipt of a current written certificate signed by a licensed physician or public health official with medical training ~~that states~~. The certificate must contain the following information: (1-5-95)()

a. ~~A statement that~~ the customer, a member of the customer's family, or other permanent resident of the premises where service is provided, is seriously ill or has a medical emergency or will become seriously ill or have a medical emergency because of termination of service; and that (7-1-93)

b. ~~Termination of local exchange~~ service would adversely affect the health of that customer, member of the customer's family, or resident of the household. (7-1-93)()

b. If the customer requests that termination of MTS service be postponed, a statement that termination of MTS service would impair the customer's ability to communicate with necessary medical facilities or services. ()

02. Contents Of Medical Certificate. ~~This certificate must be in writing and show clearly~~

c. ~~The name of the person whose serious illness or medical emergency would be adversely affected by termination, the nature of the serious illness or medical emergency,~~ and the relationship to the customer. ()

d. ~~The name, title, and signature of the person giving notice of or~~ certifying the serious illness or medical emergency. (7-1-93)()

03. Restoration of Service. If local exchange or MTS service has already been terminated when the medical certificate is received, the appropriate service ~~must~~ shall be restored as soon as possible, but no later than twenty-four (24) hours after receipt. The customer ~~must~~ shall receive local exchange and necessary MTS services for thirty (30) calendar days from the telephone company's receipt of the certificate. (1-5-95)()

04. Payment Arrangements. ~~Before the expiration of the medical postponement, the customer must make payment arrangements with the telephone company in accordance with Rule 312.~~ (7-1-93)

05. Second Postponement. The telephone company must postpone termination of local exchange and necessary MTS service for an additional thirty (30) days upon receipt of a second certificate stating that the serious illness or medical emergency still exists, unless during the period of the first certificate excessive or unwarranted MTS calls were incurred and not paid or the customer refused to enter into payment arrangements. (1-5-95)()

06. Verification of Medical Certificate. The telephone company may verify the authenticity of the certificate and may refuse to delay termination of service if the certificate is a forgery or is otherwise fraudulent. (7-1-93)

05. Obligation to Pay. Nothing in this rule relieves the customer of the obligation to pay any undisputed bill. ()

(BREAK IN CONTINUITY OF SECTIONS)

702. ADOPTION OF FEDERAL SLAMMING REGULATIONS (RULE 702).

The Commission adopts the slamming regulations promulgated by the Federal Communications Commission and found at Sections 64.1100 through 64.1170 and 64.1190, Title 47, Code of Federal Regulations (October 1, 2004). Local exchange companies and interexchange carriers shall comply with applicable provisions of the federal regulations adopted by reference except as modified in Section 703 of these rules. (3-15-02)()

IDAPA 34 - SECRETARY OF STATE

34.03.01 - RULES IMPLEMENTING THE SUNSHINE LAW

DOCKET NO. 34-0301-0401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that the Secretary of State has adopted a temporary rule, and that proposed regular rulemaking procedures have been initiated. This action is authorized pursuant to Sections 67-6619 and 67-6623, 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 20, 2004.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Chapter 66, Title 67, Idaho Code, commonly referred to as the Sunshine Law, requires that lobbyists and their employers certify annual reports on expenditures. These rules formalize the required information and make reference to various reporting forms being available online.

TEMPORARY RULE JUSTIFICATION: Pursuant to Idaho Code §§ 67-5226(1)(b) and 67-5226(1)(c), the Governor has found that temporary adoption of the rule is appropriate for the following reasons: 1. The rules have a role in protecting the public welfare.

FEE SUMMARY: No fees are imposed or increased under these rules.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the simple nature of the rule, and the fact that annual reports have been filed for many years in the absence of the rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tim Hurst at (208) 334-2300.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 25th day of August, 2004.

Tim Hurst
Chief Deputy Secretary of State
700 West Jefferson St.
P.O. Box 83720
Boise, Idaho 83720-0080

THE FOLLOWING IS THE TEXT OF DOCKET NO. 34-0301-0401

000. LEGAL AUTHORITY.

This chapter is promulgated pursuant to Chapter 66, Title 67, Idaho Code, specifically Idaho Code 67-6603, 67-6607, 67-6608, 67-6610, 67-6611, 67-6612, 67-6614A, 67-6619, 67-6623. (10-1-04)T

001. TITLE AND SCOPE.

The rules in this Chapter shall be known as IDAPA 34.03.01, "Rules Implementing the Sunshine Law". (10-1-04)T

002. WRITTEN INTERPRETATIONS.

Written Interpretations of this Chapter are available by mail from the Idaho Secretary of State. (10-1-04)T

003. CONTACT INFORMATION.

01. Office Hours. Office of Secretary of State, 8:00 a.m. - 5:00 p.m. Monday through Friday. (10-1-04)T

02. Address. The Street address is 700 W. Jefferson, Rm. 203, Boise, Idaho. The mailing address is P.O. Box 83720, Boise, ID 83720-0080. (10-1-04)T

03. Telephone. The Election Division telephone number is (208) 334-2852. (10-1-04)T

04. FAX. The facsimile machine is (208) 334-2282. (10-1-04)T

004. PUBLIC RECORDS ACT COMPLIANCE.

This Chapter and its contents are subject to the Idaho Public Records Law. (10-1-04)T

005. ADMINISTRATIVE APPEALS.

Administrative appeals are not available within the Secretary of State's Office. (10-1-04)T

006. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into this Chapter. (10-1-04)T

007. -- 010. (RESERVED).

011. FORMS.

01. Form for Lobbyist Registration. Pursuant to the authority of Section 23 of the Sunshine Law the official form for lobbyist registration as required by Section 17 is hereby adopted for use in reporting to the Secretary of State. This form shall be designated as "L-1" and shall be available online. The "L-1" form shall be accompanied by payment of a registration fee of ten dollars (\$10). ~~(7-1-93)~~(10-1-04)T

02. Annual Report Form. The official form for the lobbyist annual report as required by Section 67-6619, Idaho Code is hereby adopted for use in reporting to the Secretary of State. This form shall be designated as "L-2" and shall be available online. (10-1-04)T

a. Expenditures to be reported are those made or incurred by such lobbyist or on behalf of such lobbyist by the lobbyist's employer either directly or indirectly for lobbying purposes. The total expenditures shall be cumulative for the calendar year covered by the report. Expenditure categories shall include entertainment, food and refreshment, advertising, living accommodations, travel, telephone, and other expenses or services. (10-1-04)T

b. The annual report shall include the name and address of the lobbyist and the name and address of the lobbyist's employer(s), and the subject matter or proposed legislation and the number of each senate or house bill, resolution, or other legislative activity which the lobbyist has been engaged in supporting or opposing during the reporting period; provided that in the case of appropriation bills the lobbyist shall enumerate the specific section or sections which he supported or opposed. (10-1-04)T

c. The annual report shall be certified as a true, complete, and correct statement by the lobbyist and

the lobbyists's employer(s). (10-1-04)T

023. Monthly Report Form. The official form for the lobbyist monthly report as required by Section 67-6619, Idaho Code is hereby adopted for use in reporting to the Secretary of State. This form shall be designated as "L-3" and shall be ~~in the manner shown in Appendix I~~ available online. (~~7-1-93~~)(10-1-04)T

a. Expenditures to be reported are those made or incurred by such lobbyist or on behalf of such lobbyist by the lobbyist's employer either directly or indirectly for lobbying purposes. The expenditure totals in such reports shall not be cumulative throughout the year but rather shall reflect the total expenditures during the calendar month covered by the report. Expenditure categories shall include entertainment, food and refreshment; advertising; living accommodations; travel; ~~office expenses~~ telephone; and other expenses or services. (~~7-1-93~~)(10-1-04)T

b. The monthly periodic report shall include the name and address of the lobbyist and the name and address of the lobbyist's employer; and the subject matter of proposed legislation and the number of each senate or house bill, resolution, or other legislative activity which the lobbyist has been engaged in supporting or opposing during the reporting period; provided that in the case of appropriation bills the lobbyist shall enumerate the specific section or sections which he supported or opposed. (7-1-93)

c. The monthly report shall be certified as a true, complete, and correct statement by the lobbyist. (10-1-04)T

034. Form for the Appointment and Certification of Political Treasurer. The official form for the appointment and certification of a political treasurer as required by Section 67-6603, Idaho Code is hereby adopted for use in reporting to the Secretary of State. This form shall be numbered "C-1" designated as "Appointment and Certification of Political Treasurer for Candidates and Committees" and shall be ~~in the manner shown in Appendix H of these rules~~ available online. (~~7-1-93~~)(10-1-04)T

045. Forms for the Disclosure of Campaign Finances by Candidates and Political Committees. The official forms for the statement required by Sections 67-6607, 67-6608, and 67-6612, Idaho Code are hereby adopted for use in reporting to the Secretary of State. The form numbered "C-2" shall be designated "Campaign Financial Disclosure Report" and shall be ~~in the manner shown in Appendix III, part A of these rules~~ available online. The form numbers "C-2A" shall be designated "Contributions Pledged But Not Yet Received" and shall be ~~in the manner shown in Appendix III, part B of these rules~~ available online. The form numbered "C-2B" shall be designated "~~Incurred Expenditures Not Yet Paid~~ Incurred (Debts and Obligations) and Payments Made on Debt" and shall be ~~in the manner shown in Appendix III, part C of these rules~~ available online. (~~7-1-93~~)(10-1-04)T

05. Form for Report of Alleged Violation of Sunshine Law. Pursuant to the authority of Section 67-6623(f), Idaho Code of the Sunshine Law the official form to be used in filing a complaint that a person has violated the Sunshine Law is hereby adopted for use in reporting to the Secretary of State. This form shall be designated as "L-5" and shall be available online. Any person may file a complaint against anyone covered by the Sunshine Law. Such complainant must submit form "L-5" to properly file his complaint. No other method of filing a complaint will be recognized. (~~7-1-93~~)(10-1-04)T

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-0401

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(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 20, 2004.

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 032: Amend Income Tax Rule 032 to correct references to the Soldiers' and Sailors' Civil Relief Act which is now the Servicemembers Civil Relief Act.

Rule 075: Amend Income Tax Rule 075 to add the table for the income tax brackets and rates for calendar year 2004.

Rule 120: Amend Income Tax Rule 120 to remove the fifty-percent (50%) limitation on the amount of long-term care insurance that is deductible and to clarify that the fifty-percent (50%) limitation was applicable for taxable years beginning between January 1, 2001 and December 31, 2003.

Rule 121: Amend Income Tax Rule 121 to clarify the types of railroad retirement benefits that qualify for the Idaho deduction allowed by Section 63-3022(l), Idaho Code.

Rule 122: Amend Income Tax Rule 122 to add information related to the new deduction for dividends and distributions paid by a subsidiary to a mutual insurance holding company or intermediate holding company.

Rule 130: Amend Income Tax Rule 130 to add the definition of disabled found in Section 63-701, Idaho Code that is referenced in the statute and to add examples related to unremarried widows and how they compute the retirement benefits deduction.

Rule 193: Amend Income Tax Rule 193 to remove the fifty-percent (50%) limitation on the amount of long-term care insurance that is deductible and to clarify that the fifty-percent (50%) limitation was applicable for taxable years beginning between January 1, 2001 and December 31, 2003. Change the calculations in the tables accordingly.

Rule 719: Amend Income Tax Rule 719 to clarify who a qualifying taxpayer is with regard to claiming the property tax exemption in lieu of the investment tax credit. Add a reference to another income tax rule to aid unitary taxpayers in determining whether they meet the negative Idaho taxable income requirement to qualify for the property tax exemption.

Rule 720: Amend Income Tax Rule 720 to remove the reference to the sunset date for the credit for Idaho research activities in accordance with legislation that removed the ending effective date for this credit.

Rule 746: Amend Income Tax Rule 746 to discuss the requirements and calculations of the credit for qualifying new employees in light of HB651 passed in 2004, which enacted a one thousand dollar (\$1,000) credit in addition to the existing five hundred dollar (\$500) credit.

Rule 750: Amend Income Tax Rule 750 to remove the reference to the sunset date for the broadband equipment investment credit in accordance with legislation that removed the ending effective date for this credit.

Rule 770: Amend Income Tax Rule 770 to correct a reference to the Soldiers' and Sailors' Civil Relief Act which is

now the Servicemembers Civil Relief Act.

Rule 871: Amend Income Tax Rule 871 to correct information regarding the withholding of wages earned by water carrier employees who are covered by Title 46, Section 11108, United States Code.

Rule 872: Amend Income Tax Rule 872 to correct information about the filing of returns as modified by 2004 legislative changes. Delete information regarding Forms W-2, which is being moved to new Rule 874 to reduce the length of the rule. Organize rule more logically.

Rule 874: Promulgate new Income Tax Rule 874 to address Forms W-2, which information had been in Income Tax Rule 872.

Rule 880: Amend Income Tax Rule 880 to require that a timely claim for refund include the taxpayer's recalculation of the Idaho tax on an Idaho amended return to be consistent with Income Tax Rule 890, which addresses changes to a taxpayer's return due to a federal audit. Add qualifying private delivery service to information discussing duplicate returns and the mailing of a return consistent with 2004 legislative changes.

Rule 895: Amend Income Tax Rule 895 to add qualifying private delivery service to information discussing duplicate returns and the mailing of a return consistent with 2004 legislative changes.

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 Janice Boyd, 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 27, 2004.

DATED this 24th day of August, 2004.

Janice Boyd, Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-0401

032. MEMBERS OF THE ARMED FORCES (RULE 032).

01. Idaho Residency Status. Section ~~574~~¹¹ of the ~~Soldiers' and Sailors'~~ Servicemembers Civil Relief Act provides that an individual on active duty with the United States Armed Forces is not a resident of or domiciled in Idaho solely as a result of being stationed in Idaho. ~~(3-20-97)(_____)~~

a. A qualifying service member is an Idaho resident only if he is domiciled in Idaho for the entire taxable year. The domicile of a qualified service member is presumed to be that member's military home of record

until the qualified service member establishes a new domicile. (3-20-97)

b. A qualified service member who is domiciled in Idaho for less than the entire taxable year is a part-year resident. (3-20-97)

c. A qualified service member who is not domiciled in Idaho anytime during the taxable year is a nonresident. (3-20-97)

d. A member of the armed forces meeting the safe harbor exception set forth in Section 63-3013(2), Idaho Code, is not considered a resident of Idaho, even though Idaho is the person's military home of record. Any individual meeting the safe harbor exception to residency status is considered either a nonresident or part-year resident. (4-5-00)

e. The *Soldiers' and Sailors' Servicemembers* Civil Relief Act does not affect the Idaho residency status of a spouse of a qualified service member. The spouse of a qualified service member shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. ~~(3-20-97)~~(____)

02. Active Duty Military Pay. (3-20-97)

a. Section 57411 of the *Soldiers' and Sailors' Servicemembers* Civil Relief Act provides that the active duty military pay of a qualified member of the United States Armed Forces who is not domiciled in Idaho is exempt from Idaho income tax. The active duty military pay is not considered income from services performed within, or from sources within, Idaho. See Section 63-3026A(3)(c), Idaho Code. ~~(3-20-97)~~(____)

b. The active duty military pay of a service member who is domiciled in Idaho is subject to Idaho income tax. However, Section 63-3022(h), Idaho Code, provides that compensation paid by the United States Armed Forces for military service performed outside Idaho is deducted from taxable income in determining the member's Idaho taxable income. See Section 63-3022(h), Idaho Code, for the specific qualifications of this deduction. (3-30-01)

03. Military Separation Pay. Military separation pay received for voluntary or involuntary separation from active military service is not considered active duty military pay. Therefore, Subsection 032.02 of this rule does not apply. ~~(3-20-97)~~(____)

a. Military separation pay is included in Idaho taxable income only if the recipient is domiciled in or residing in Idaho when the separation pay is received. (3-20-97)

b. For purposes of this rule, a former active duty service member whose home of record at the time of separation from the military was a state other than Idaho is not deemed to be residing in Idaho if he moves from Idaho within thirty (30) days from the date of separation from active duty. (3-20-97)

04. Nonmilitary Income. All Idaho source income earned by a military service member is subject to Idaho taxation except as expressly limited by the Idaho Income Tax Act and these rules. (3-20-97)

05. Nonmilitary Spouse. Subsection 032.02 of this rule does not apply to the income earned by a nonmilitary spouse of a military service member. If the nonmilitary spouse is an Idaho resident, he is subject to Idaho taxation on his income from all sources. If the nonmilitary spouse is a nonresident or a part-year resident, he is subject to Idaho taxation on his income from all sources earned while residing in or domiciled in Idaho, plus his income from Idaho sources earned while not residing and not domiciled in Idaho. ~~(3-20-97)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075). Section 63-3024, Idaho Code. (3-20-04)

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate, beginning with calendar year 1987, are identified in Subsection 075.03 of this rule. For taxable years beginning after December 31, 1999, the Idaho income tax brackets are adjusted for inflation. For taxable years beginning on or after January 1, 2003, the maximum tax rate as listed for that taxable year in Subsection 075.03 of this rule shall apply in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (3-20-04)(_____)

02. Tax Computation. (5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (3-20-04)(_____)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household shall be twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (5-3-03)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax would be computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount would then be multiplied by two (2). (5-3-03)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

a. For taxable years beginning in 1987 through 1999:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,000.00	\$0.00	2% of taxable income
\$1,000.00	\$2,000.00	\$20.00	4% of the amount over \$1,000.00
\$2,000.00	\$3,000.00	\$60.00	4.5% of the amount over \$2,000.00
\$3,000.00	\$4,000.00	\$105.00	5.5% of the amount over \$3,000.00
\$4,000.00	\$5,000.00	\$160.00	6.5% of the amount over \$4,000.00
\$5,000.00	\$7,500.00	\$225.00	7.5% of the amount over \$5,000.00
\$7,500.00	\$20,000.00	\$412.50	7.8% of the amount over \$7,500.00
\$20,000.00 or more		\$1,387.50	8.2% of the amount over \$20,000.00

(3-20-04)

b. For taxable years beginning in 2000:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,022.00	\$0.00	1.9% of taxable income
\$1,022.00	\$2,044.00	\$19.42	3.9% of the amount over \$1,022.00
\$2,044.00	\$3,066.00	\$59.28	4.4% of the amount over \$2,044.00
\$3,066.00	\$4,088.00	\$104.25	5.4% of the amount over \$3,066.00

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
\$4,088.00	\$5,110.00	\$159.44	6.4% of the amount over \$4,088.00
\$5,110.00	\$7,666.00	\$224.85	7.4% of the amount over \$5,110.00
\$7,666.00	\$20,442.00	\$413.99	7.7% of the amount over \$7,666.00
\$20,442.00 or more		\$1,397.74	8.1% of the amount over \$20,442.00

(3-20-04)

c. For taxable years beginning in 2001:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,056.00	\$0.00	1.6% of taxable income
\$1,056.00	\$2,113.00	\$16.90	3.6% of the amount over \$1,056.00
\$2,113.00	\$3,169.00	\$54.93	4.1% of the amount over \$2,113.00
\$3,169.00	\$4,226.00	\$98.25	5.1% of the amount over \$3,169.00
\$4,226.00	\$5,282.00	\$152.13	6.1% of the amount over \$4,226.00
\$5,282.00	\$7,923.00	\$216.57	7.1% of the amount over \$5,282.00
\$7,923.00	\$21,129.00	\$404.09	7.4% of the amount over \$7,923.00
\$21,129.00 or more		\$1,381.30	7.8% of the amount over \$21,129.00

(3-20-04)

d. For taxable years beginning in 2002:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,087.00	\$0.00	1.6% of taxable income
\$1,087.00	\$2,173.00	\$17.38	3.6% of the amount over \$1,087.00
\$2,173.00	\$3,260.00	\$56.50	4.1% of the amount over \$2,173.00
\$3,260.00	\$4,346.00	\$101.04	5.1% of the amount over \$3,260.00
\$4,346.00	\$5,433.00	\$156.46	6.1% of the amount over \$4,346.00
\$5,433.00	\$8,149.00	\$222.73	7.1% of the amount over \$5,433.00
\$8,149.00	\$21,730.00	\$415.59	7.4% of the amount over \$8,149.00
\$21,730.00 or more		\$1,420.60	7.8% of the amount over \$21,730.00

(3-20-04)

e. For taxable years beginning in 2003:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,104.00	\$0	1.6% of taxable income
\$1,104.00	\$2,207.00	\$17.66	3.6% of the amount over \$1,104.00
\$2,207.00	\$3,311.00	\$57.39	4.1% of the amount over \$2,207.00
\$3,311.00	\$4,415.00	\$102.64	5.1% of the amount over \$3,311.00
\$4,415.00	\$5,518.00	\$158.93	6.1% of the amount over \$4,415.00
\$5,518.00	\$8,278.00	\$226.25	7.1% of the amount over \$5,518.00
\$8,278.00	\$22,074.00	\$422.16	7.4% of the amount over \$8,278.00
\$22,074.00 or more		\$1,443.06	7.8% of the amount over \$22,074.00

(3-20-04)

f. For taxable years beginning in 2004:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$0.00	\$1,129.00	\$0	1.6% of taxable income
<u>\$1,129.00</u>	<u>\$2,258.00</u>	<u>\$18.06</u>	<u>3.6% of the amount over \$1,129.00</u>
<u>\$2,258.00</u>	<u>\$3,387.00</u>	<u>\$58.70</u>	<u>4.1% of the amount over \$2,258.00</u>
<u>\$3,387.00</u>	<u>\$4,515.00</u>	<u>\$104.98</u>	<u>5.1% of the amount over \$3,387.00</u>
<u>\$4,515.00</u>	<u>\$5,644.00</u>	<u>\$162.55</u>	<u>6.1% of the amount over \$4,515.00</u>
<u>\$5,644.00</u>	<u>\$8,466.00</u>	<u>\$231.41</u>	<u>7.1% of the amount over \$5,644.00</u>
<u>\$8,466.00</u>	<u>\$22,577.00</u>	<u>\$431.78</u>	<u>7.4% of the amount over \$8,466.00</u>
<u>\$22,577.00 or more</u>		<u>\$1,475.95</u>	<u>7.8% of the amount over \$22,577.00</u>

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(BREAK IN CONTINUITY OF SECTIONS)

120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (RULE 120).

Section 63-3022, Idaho Code.

(3-20-97)

01. State And Local Income Tax Refunds. Subtract from taxable income state and local income tax refunds included in taxable income, unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (3-15-02)

02. Idaho Net Operating Loss. As provided in Section 63-3022(c), Idaho Code, subtract the Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and Rules 200 through 210 of these rules. An S

corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. (7-1-99)

03. Income Not Taxable By Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax, if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

04. Donated Technological Equipment. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, subtract the fair market value of technological equipment donated to qualifying institutions. (4-5-00)

05. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for ~~fifty percent (50%)~~ the amount of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction was allowed for fifty percent (50%) of the amount of the premiums paid during the taxable year. (~~5-3-03~~)()

06. Special First-Year Depreciation Allowance. As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes shall be computed without regard to the special first-year depreciation allowance. (3-20-04)

a. Depreciation. Subtract the amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes. (3-20-04)

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions shall apply in computing the Idaho capital loss allowed. (3-20-04)

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. (3-20-04)

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, subtract the federal gain and the Idaho loss. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). (3-20-04)

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, subtract the difference between the federal and Idaho losses. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). (3-20-04)

iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho

capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars (\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income. (3-20-04)

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 American Indians. See Rule 033 of these rules. (5-3-03)

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 certain railroad retirement benefits means the following amounts paid by the Railroad Retirement Board: (7-1-99)(____)

i. Annuities, supplemental annuities, and disability annuities, including the Tier I, social security equivalent benefits, and the Tier II, and supplemental benefits paid by the Railroad Retirement Board. Supplemental benefits, for purposes of this rule, include pension amounts; (7-1-99)(____)

ii. ~~R~~ailroad unemployment; and (7-1-99)(____)

iii. ~~S~~ickness 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 accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (5-3-03)

122. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO CORPORATIONS (RULE 122).

Sections 63-3022 and 41-3821, Idaho Code. (~~3-20-97~~)()

01. Foreign Dividend Gross-Up. As provided in Section 63-3022(f), Idaho Code, subtract the amount reported as a dividend pursuant to Section 78, Internal Revenue Code. (~~3-20-97~~)()

02. Stock Insurance Subsidiary Dividends or Distributions. ()

a. As provided in Section 41-3821, Idaho Code, a mutual insurance holding company or an intermediate holding company shall subtract the amount received as a dividend or distribution from a stock insurance subsidiary. The deduction shall be allowed for taxable years beginning on or after January 1, 2004. ()

b. The deduction allowed by Section 41-3821, Idaho Code, shall not be allowed if the stock insurance subsidiary's Idaho premium tax liability for the preceding taxable year is less than the stock insurance subsidiary would have paid in Idaho income tax had it been subject to Idaho income taxation for that year. The Idaho premium tax liability is the amount of total premium taxes less total premium tax credits allowed. The Idaho income tax it would have paid shall be computed as provided by Section 63-3027, Idaho Code, net of any applicable income tax credits. ()

c. The taxpayer claiming the deduction shall include in its Idaho income tax return for the year the deduction is claimed information that it is entitled to the deduction. Such information shall include the amount of the stock insurance subsidiary's Idaho premium tax for the preceding taxable year and the amount of Idaho income tax it would have paid for such year. ()

(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. In this situation, the amount of the retirement benefits that can be considered for the deduction for the taxable year of the spouse's death is limited to the benefits paid to the spouse as a widow. (3-20-97)()

a. Example. In year one (1), the husband of a married couple filing a joint income tax return received civil service retirement. The husband did not qualify for the Idaho retirement deduction that year since he was not disabled and was only age sixty (60) during that year. In year two (2) the husband died. Because his wife is age sixty-three (63) and disabled in that year, she is eligible for the deduction for year two (2) but only for the amount of her husband's retirement benefits she received that year as a result of being the widow. She may not include in the computation of the deduction any amounts her husband was paid or entitled to prior to his death. For year three (3), she may compute the deduction based on all the retirement benefits she receives as the widow that year. ()

b. Example. Assume the same facts as stated in Paragraph 130.02.a. of this rule, except that the wife is not disabled and does not reach age sixty-five (65) until year four (4). In year one (1) the husband did not qualify for the Idaho retirement deduction. In year two (2) the husband did not qualify for the deduction and the wife did not qualify after her husband died. In year three (3), the wife did not qualify. In year four (4), because the wife reaches age sixty-five (65) during that year, she is entitled to the Idaho retirement deduction on the amount of her husband's retirement she received that year as a result of being a widow. ()

c. Example. Once the widow remarries, she will not be eligible for the Idaho retirement deduction for that year and the years that follow on the amounts she receives from her previous husband's retirement. ()

03. Married Individuals Filing Separate Returns. Married individuals who elect to file married filing separate are not entitled to the deduction allowed by Section 63-3022A, Idaho Code. (7-1-98)

04. Publication of Maximum Deduction. The maximum deduction that may be subtracted when computing Idaho taxable income shall be published each year in the instructions for preparing Idaho individual income tax returns. (3-20-97)

05. Disabled Individual. For purposes of this deduction, an individual is classified as disabled if he meets the requirements of Section 63-701, Idaho Code. This includes: ()

a. An individual recognized as disabled by the Social Security Administration pursuant to Title 42, United States Code, or by the Railroad Retirement Board pursuant to Title 45, United States Code, or by the Office of Management and Budget pursuant to Title 5, United States Code; or ()

b. A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States Veterans Administration. ()

(BREAK IN CONTINUITY OF SECTIONS)

193. HEALTH INSURANCE COSTS AND LONG-TERM CARE INSURANCE (RULE 193). Sections 63-3022P and 63-3022Q, Idaho Code. (3-20-04)

01. In General. The amounts paid by an individual taxpayer for health insurance and ~~fifty percent~~

~~(50%) of the premiums paid for~~ long-term care insurance that are not otherwise deducted or accounted for are allowed as deductions from taxable income. For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction allowed for the long-term care insurance premiums was limited to fifty percent (50%) of the amount paid during the taxable year. ~~(3-20-04)(_____)~~

02. Costs Deducted or Accounted For. Deductions are not allowed for health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for. ~~Examples of health insurance costs and premiums paid for long-term care insurance that are otherwise deducted or accounted for are~~ costs include amounts: ~~(3-20-04)(_____)~~

- a. Paid out of an Idaho medical savings account; (5-3-03)
- b. Paid through a cafeteria plan or other salary-reduction arrangement when these costs are paid out of pretax income; or ~~(5-3-03)(_____)~~
- c. Deducted as business expenses. (5-3-03)

03. Social Security Medicare Part A. (5-3-03)

a. The payroll tax paid for Medicare A is not considered a medical expense under Section 213, Internal Revenue Code and, therefore, does not qualify for the Idaho deduction for health insurance costs. This applies to individuals who are covered by Social Security or are government employees who paid Medicare tax. (5-3-03)

b. The amount of premiums a taxpayer pays to voluntarily enroll in Medicare A is deductible under Section 213, Internal Revenue Code, and qualifies for the Idaho deduction for health insurance costs. This applies to individuals who are not covered under Social Security or who were not government employees who paid Medicare tax. (5-3-03)

04. Social Security Medicare Part B. Amounts paid for Medicare B, which is a supplemental medical insurance, qualify for the deduction allowed under Section 213, Internal Revenue Code, and qualify for the Idaho deduction for health insurance costs. (5-3-03)

05. Medical Payments Coverage and Personal Injury Protection of Automobile Insurance. The portion of automobile insurance that covers medical payments coverage or personal injury protection does not qualify for the Idaho deduction for health insurance costs because the insurance coverage is not restricted to the taxpayer, the taxpayer's spouse, or the dependents of the taxpayer. This insurance provides protection to the driver and passengers of the policyholder's car or other injured parties. (5-3-03)

06. Examples of Limitations When Costs Are Otherwise Deducted or Accounted For. If a taxpayer elects to itemize deductions for Idaho purposes and his medical expenses exceed the seven and one-half percent (7.5%) adjusted gross income limitation, the amount that is deducted as an itemized deduction shall first apply to health insurance costs, next to long-term care insurance, and last to other medical expenses. If the premiums exceed the amount deducted as an itemized deduction, the Idaho deductions for health insurance costs and long-term care insurance may be allowed if the premiums were not otherwise deducted or accounted for. If the taxpayer does not elect to itemize deductions for Idaho purposes, or if the taxpayer is unable to deduct medical expenses as an itemized deduction due to the seven and one-half percent (7.5%) adjusted gross income limitation, the full amount of health insurance costs and ~~fifty percent (50%) of the~~ premiums paid for long-term care insurance (fifty percent (50%) of the premiums for taxable years beginning prior to 2004), not otherwise deducted or accounted for, qualify for the Idaho deduction. Amounts used for calculating the limitations shall not be less than zero (0). ~~(3-20-04)(_____)~~

- a. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to zero (0): (3-20-04)

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
1. Health insurance expenses claimed on federal Schedule A	\$10,000

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS		
2.	Long-term insurance expenses claimed on federal Schedule A	\$4,000
3.	Other medical expenses claimed on federal Schedule A	\$2,000
4.	Total medical expenses claimed on federal Schedule A	\$16,000
5.	7.5% of federal adjusted gross income	\$0
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$16,000
HEALTH INSURANCE		
7.	Total amount paid for health insurance	\$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	\$100
10.	Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
LONG-TERM CARE INSURANCE		
11.	Total amount paid for long-term care insurance	\$4,050
12.	Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$6,000
13.	Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$4,000
14.	Long-term care insurance deducted elsewhere on the federal return	\$50
15.	Long-term care insurance not otherwise deducted deduction allowed for Idaho (line 11 less lines 13 and 14)	\$0
16.	50% of amount paid for long-term care insurance	\$2,025
17.	Long-term care insurance deduction allowed for Idaho (lesser of line 15 or 16)	\$0

(3-20-04)()

b. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to three thousand dollars (\$3,000): (3-20-04)

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS		
1.	Health insurance expenses claimed on federal Schedule A	\$10,000
2.	Long-term insurance expenses claimed on federal Schedule A	\$4,000
3.	Other medical expenses claimed on federal Schedule A	\$2,000
4.	Total medical expenses claimed on federal Schedule A	\$16,000
5.	7.5% of federal adjusted gross income	\$3,000
6.	Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$13,000
HEALTH INSURANCE		
7.	Total amount paid for health insurance	\$10,100
8.	Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9.	Health insurance expenses deducted elsewhere on the federal return	\$100

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
LONG-TERM CARE INSURANCE	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$3,000
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$3,000
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance not otherwise deducted deduction allowed for Idaho (line 11 less lines 13 and 14)	\$1,000
16. 50% of amount paid for long-term care insurance	\$2,025
17. Long-term care insurance deduction allowed for Idaho (lesser of line 15 or 16)	\$1,000

(3-20-04)()

c. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to six thousand dollars (\$6,000): (3-20-04)

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. 7.5% of federal adjusted gross income	\$6,000
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$10,000
HEALTH INSURANCE	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$10,000
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$0
LONG-TERM CARE INSURANCE	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$0
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance not otherwise deducted deduction allowed for Idaho (line 11 less lines 13 and 14)	\$4,000
16. 50% of amount paid for long-term care insurance	\$2,025

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
17. Long-term care insurance deduction allowed for Idaho (lesser of line 15 or 16)	\$2,025

(3-20-04)()

d. Example with seven and one-half percent (7.5%) of federal adjusted gross income equal to fourteen thousand dollars (\$14,000): (3-20-04)

HEALTH INSURANCE AND LONG-TERM CARE INSURANCE DEDUCTION LIMITATIONS	
1. Health insurance expenses claimed on federal Schedule A	\$10,000
2. Long-term insurance expenses claimed on federal Schedule A	\$4,000
3. Other medical expenses claimed on federal Schedule A	\$2,000
4. Total medical expenses claimed on federal Schedule A	\$16,000
5. 7.5% of federal adjusted gross income	\$14,000
6. Medical expense deduction allowed on federal Schedule A (line 4 less line 5)	\$2,000
HEALTH INSURANCE	
7. Total amount paid for health insurance	\$10,100
8. Portion of health insurance expenses allowed on federal Schedule A (lesser of line 1 or line 6)	\$2,000
9. Health insurance expenses deducted elsewhere on the federal return	\$100
10. Health insurance deduction allowed for Idaho (line 7 less lines 8 and 9)	\$8,000
LONG-TERM CARE INSURANCE	
11. Total amount paid for long-term care insurance	\$4,050
12. Medical expense deduction not allocated to health insurance (line 6 less line 1)	\$0
13. Portion of long-term care insurance deduction allowed on federal Schedule A (lesser of line 2 or line 12)	\$0
14. Long-term care insurance deducted elsewhere on the federal return	\$50
15. Long-term care insurance not otherwise deducted deduction allowed for Idaho (line 11 less lines 13 and 14)	\$4,000
16. 50% of amount paid for long-term care insurance	\$2,025
17. Long-term care insurance deduction allowed for Idaho (lesser of line 15 or 16)	\$2,025

(3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

719. IDAHO INVESTMENT TAX CREDIT -- PROPERTY TAX EXEMPTION IN LIEU OF (Rule 719).
Section 63-3029B, Idaho Code. (3-20-04)

01. In General. Beginning with calendar year 2003, a qualifying taxpayer may elect a two (2) year property tax exemption on personal property placed in service during the year. Property placed in service prior to January 1, 2003, does not qualify for the exemption. The personal property must be qualified investment as defined in

Section 63-3029B, Idaho Code, and Rules 710 through 716 of these rules. If the property tax exemption is elected on an item of personal property, the taxpayer may not earn the investment tax credit on that item. The election is irrevocable. (3-20-04)

02. Terms. As used in this rule: (3-20-04)

a. Qualifying Taxpayer. A taxpayer must meet both of the following requirements to qualify for the property tax exemption on personal property. ()

i. The taxpayer's rate of charge or rate of return must not be regulated or limited by federal or state law. For example, if a corporation's rate of return is set by the Public Utilities Commission, that corporation shall not be eligible to claim the property tax exemption on any personal property it may place in service. The corporation may claim investment tax credit on the property if the property is qualified investment under Section 63-3029B, Idaho Code. Each corporation included in a unitary group shall determine whether its rate of charge or rate of return is regulated or limited by federal or state law based solely on its own activities. ()

ii. The taxpayer must have had negative Idaho taxable income in the second preceding taxable year. ()

~~b.~~ Second Preceding Taxable Year. The term second preceding taxable year shall mean the second preceding taxable year from the taxable year in which the property is placed in service. (3-20-04)

~~b.~~ Used Property Limitation. The term used property limitation shall mean the one hundred fifty thousand dollar (\$150,000) limitation imposed by Section 48, Internal Revenue Code of 1986 prior to November 5, 1990. (3-20-04)

03. Negative Idaho Taxable Income in Second Preceding Taxable Year. ~~To qualify for the property tax exemption on personal property, a taxpayer must have had negative Idaho taxable income in the second preceding taxable year.~~ (3-20-04)()

a. Net Operating Loss Carryovers and Carrybacks. Negative Idaho taxable income in the second preceding taxable year shall be determined prior to the application of any Idaho net operating loss carryforwards or carrybacks. (3-20-04)

b. Taxable year, for purposes of this calculation, includes a short taxable year as defined by the Internal Revenue Code. (3-20-04)

c. Examples of Determining Second Preceding Taxable Year. (3-20-04)

i. A taxpayer files income tax returns on a calendar year basis. During calendar year 2003, the taxpayer placed in service personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were calendar years 2001 and 2002. To qualify for the property tax exemption on personal property, the taxpayer must have had negative Idaho taxable income in calendar year 2001, the second preceding taxable year from calendar year 2003. (3-20-04)

ii. A taxpayer files income tax returns on a June 30 fiscal year end basis. During the fiscal year ended June 30, 2003, the taxpayer placed in service between January 1, 2003, and June 30, 2003, personal property that qualifies for the investment tax credit. The taxpayer's two (2) preceding taxable years were fiscal years ended June 30, 2001, and June 30, 2002. To qualify for the property tax exemption, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2001, the second preceding taxable year from fiscal year ended June 30, 2003. Property placed in service during the fiscal year ended June 30, 2003, but in calendar year 2002 does not qualify for the exemption. (3-20-04)()

iii. Assume the same facts as in ~~Subsection~~ Subparagraph 719.03.c.ii., of this rule, except the taxpayer placed the property in service on September 30, 2003, during his fiscal year ended June 30, 2004. To qualify for the property tax exemption on personal property placed in service between July 1, 2003, and June 30, 2004, the taxpayer must have had negative Idaho taxable income in fiscal year ended June 30, 2002, the second preceding taxable year

from the fiscal year ended June 30, 2004.

~~(3-20-04)~~()

iv. Assume the same facts as in ~~Subsection~~ Subparagraph 719.03.c.ii., of this rule, except the taxpayer's previous two (2) taxable years included a short taxable year from January 1, 2002, to June 30, 2002, and calendar year 2001. To qualify for the property tax exemption on personal property placed in service between January 1, 2003, and June 30, 2003, the taxpayer must have had negative Idaho taxable income in the taxable year for calendar year 2001, the second preceding taxable year from the fiscal year ended June 30, 2003. ~~(3-20-04)~~()

v. Table of examples of determining second preceding taxable year.

TAXABLE YEAR PROPERTY PLACED IN SERVICE	FIRST PRECEDING TAXABLE YEAR	SECOND PRECEDING TAXABLE YEAR
Calendar year 2003	Calendar year 2002	Calendar year 2001
Calendar year 2004	Calendar year 2003	Calendar year 2002
Calendar year 2004	Calendar year 2003	Short taxable year beginning February 1, 2002 and ending December 31, 2002
Fiscal year beginning July 1, 2002 and ending June 30, 2003	Fiscal year beginning July 1, 2001 and ending June 30, 2002	Fiscal year beginning July 1, 2000 and ending June 30, 2001
Fiscal year beginning September 1, 2003 and ending August 31, 2004	Fiscal year beginning September 1, 2002 and ending August 31, 2003	Fiscal year beginning September 1, 2001 and ending August 31, 2002
Fiscal year beginning July 1, 2002 and ending June 30, 2003	Short taxable year beginning January 1, 2002 and ending June 30, 2002	Calendar year 2001

(3-20-04)

d. 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, to determine whether it had negative Idaho taxable income in the second preceding taxable year. See Rule 365 of these rules for more information on how unitary corporations determine their Idaho taxable income. ~~(3-20-04)~~()

e. Pass-Through Entities. A taxpayer who is a partnership or an S corporation shall not qualify for the property tax exemption unless the total of its net business income apportioned to Idaho and its nonbusiness income or loss allocated to Idaho is negative for the second preceding taxable year. (3-20-04)

f. Return Not Filed. If a taxpayer has not filed an Idaho income tax return for the second preceding taxable year so that the loss can be verified, the taxpayer shall not be entitled to the exemption. (3-20-04)

04. Used Property Limitation. (3-20-04)

a. In General. The cost of used property that a taxpayer may take into account for any taxable year in computing qualified investment shall not exceed one hundred fifty thousand dollars (\$150,000). This includes the cost of property the taxpayer placed in service during the taxable year and also his share of the cost of property placed in service during the taxable year by a partnership, S corporation, estate or trust. Because property must be qualified investment to qualify for the property tax exemption, the taxpayer is limited to one hundred fifty thousand dollars (\$150,000) for purposes of determining the property tax exemption. (3-20-04)

b. Selection of Items of Used Property. If the cost of the taxpayer's used property eligible for the investment tax credit exceeds the used property limitation, the taxpayer must select the particular items of used property the cost of which is to be taken into account in computing qualified investment. When the taxpayer selects a

particular item, the entire cost or the taxpayer's share of cost of the particular item must be taken into account unless the one hundred fifty thousand dollar (\$150,000) limitation is exceeded. For example, if a taxpayer places in service during the taxable year three (3) items of used property, each with a cost of sixty thousand dollars (\$60,000), the taxpayer must select the entire cost of two (2) of the items and only thirty thousand dollars (\$30,000) of the cost of the third item. The taxpayer may not select a portion of the cost of each of the three (3) items. The remaining thirty thousand dollars (\$30,000) of the third item shall not qualify for the investment tax credit nor the property tax exemption since it is not qualified investment. The selection by a taxpayer shall be made by taking the cost of the used property into account in computing the investment tax credit or the property tax exemption for a taxable year. (3-20-04)

c. Electing Property Tax Exemption on Selected Used Property Items. Once the taxpayer has selected the particular items of used property, the cost of which is to be taken into account in computing qualified investment, the taxpayer shall determine whether he may elect the property tax exemption on the items selected. If an item qualifies as personal property and the taxpayer had a negative Idaho taxable income in the second preceding taxable year, the taxpayer may elect to claim the property tax exemption on the item in lieu of earning the investment tax credit. For example, assume the same facts as in ~~Subsection Paragraph~~ 719.04.b. of this rule. The taxpayer may elect the property tax exemption on any of the three (3) items, limited to the amount included as qualified investment if the item qualifies as personal property and the taxpayer had a negative Idaho taxable in the second preceding taxable year. ~~(3-20-04)~~(____)

720. CREDIT FOR IDAHO RESEARCH ACTIVITIES -- IN GENERAL (RULE 720). (3-15-02)
Section 63-3029G, Idaho Code.

01. Credit Allowed. (3-15-02)

a. The credit for Idaho research activities allowed by Section 63-3029G, Idaho Code, applies to taxable years beginning on and after January 1, 2001 ~~and before December 31, 2005.~~ ~~(3-15-02)~~(____)

b. The Idaho credit shall be computed using the same definitions of qualified research expenses, qualified research, basic research payments, and basic research as are found in Section 41, Internal Revenue Code, except only the amounts related to research conducted in Idaho qualify for the Idaho credit. If an expense does not qualify for the federal credit under Section 41, Internal Revenue Code, it will not qualify for purposes of the Idaho credit. (3-15-02)

02. Limitations. The credit for Idaho research activities allowable in any taxable year shall be limited as follows: (3-15-02)

a. Tax Liability. The total amount of any credit for Idaho research activities claimed during a taxable year may not exceed one hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the credit for Idaho research activities, regardless of whether the credit for Idaho research activities results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-15-02)

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the credit for Idaho research activities is limited by the provisions of Section 63-3029F, Idaho Code. (3-15-02)

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-15-02)

03. Carryovers. The carryover period for the credit for Idaho research activities is fourteen (14) years. (3-15-02)

04. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-15-02)

05. Short Taxable Year Calculations. Short taxable year calculations provided in Section 41, Internal Revenue Code, and related regulations shall be used to compute the Idaho credit if the taxpayer must use short taxable year calculations for purposes of computing the federal credit. If the taxpayer makes the election in Section 63-3029G(1)(a)(i), Idaho Code, and the taxpayer's taxable year is not a calendar year for 2001, the taxpayer must use the federal short taxable year calculations to compute the credit applicable for the period beginning January 1, 2001, and ending the last day of the taxpayer's fiscal year ending in 2001. (3-15-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

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~~ on and after January 1, 2004. (5-3-03)(____)

01. In General. ~~A taxpayer is allowed a credit of five hundred dollars (\$500) per new employee 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.~~ For taxable years beginning on and after January 1, 2004, an employer may be able to earn either a one thousand dollar (\$1,000) credit or a five hundred dollar (\$500) credit for a qualifying new employee. However, the employer cannot earn both credits for the same employee. The applicable credit rate depends on whether the new employee meets certain wage and benefit criteria. If the new employee does not meet the criteria for either credit rate, the employer may not claim the credit for such new employee. (3-20-04)(____)

02. Qualifying for the One Thousand Dollar (\$1,000) Credit. (____)

a. The new employee must meet both of the following criteria to qualify for the one thousand dollar (\$1,000) credit: (____)

i. He must have received annual earnings at an average rate of fifteen dollars and fifty cents (\$15.50) or more per hour worked; and (____)

ii. He must have been eligible to receive employer provided coverage under an accident or health plan described in Section 105, Internal Revenue Code. (____)

b. The new employee does not have to be employed in a revenue-producing enterprise to qualify for the one thousand dollar (\$1,000) credit. (____)

03. Qualifying for the Five Hundred Dollar (\$500) Credit. If a new employee does not meet the criteria for the one thousand dollar (\$1,000) credit, the employer may be eligible to claim the five hundred dollar (\$500) credit. To qualify for the five hundred dollar (\$500) credit, the new employee must have been employed in a revenue-producing enterprise as defined in Section 63-3029E, Idaho Code. (____)

024. 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. Such requirements include the following: (3-20-04)

i. The employee must have been subject to Idaho income tax withholding. (3-20-04)

ii. ~~The employee must have been employed by the taxpayer in a revenue-producing enterprise creating value-added natural resource products.~~ (3-20-04)

iii. The employee must have been employed by the ~~taxpayer~~ employer on a regular full-time basis or on a part-time basis if customarily performing such duties at least twenty (20) hours per week. Leased employees do not qualify as employees of the lessee. (3-20-04)(____)

ii. The employee must have been performing such duties for the ~~taxpayer~~ employer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. (3-20-04)(____)

iv. The employee must have been covered for Idaho unemployment insurance purposes. (3-20-04)

b. Idaho Department of Commerce and Labor Reports. The ~~taxpayer~~ employer should begin with his Idaho Department of Commerce and Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (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)

035. 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. The requirements as to who qualifies for the calculation of number of employees in Paragraph 746.02.a., of this rule shall apply in computing the number of employees in Subparagraphs 746.05.a.i., and 746.05.a.ii., of this rule. Calculations used in computing the number of new employees for the prior taxable year and average for the three (3) prior taxable years shall be made consistent with the computations for the current taxable year. If the ~~taxpayer~~ employer treats the entire business as a revenue-producing enterprise under Subsection Paragraph 745.04.a., of these rules, the calculations in Subsections Subparagraphs 746.035.a.i., and 746.035.a.ii., of this rule 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)(____)

c. The requirements as to who qualifies for the calculation of number of employees in Subsection 746.02.a. shall apply in computing the number of employees in Subsections 746.03.a.i. and 746.03.a.ii. Calculations used in computing the credit earned in taxable years beginning in 2001 when the credit was not limited to employees in a revenue-producing enterprise may not be used in computing the credit earned in taxable years beginning after 2001. The number of new employees shall be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. (3-20-04)(____)

d. The employer shall determine the number of new employees who qualify for the one thousand dollar (\$1,000) credit and the number who qualify for the five hundred dollar (\$500) credit. If the new employees do not meet the criteria set forth in Sections 63-3029E and 63-3029F, Idaho Code, and this rule, the employer shall not earn the credit. For example, if a new employee has an average wage rate of ten dollars (\$10) and the employer's business does not qualify as a revenue-producing enterprise, the new employee does not qualify for either the one thousand dollar (\$1,000) credit or the five hundred dollar (\$500) credit. (____)

046. 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: amounts determined in Paragraphs 746.06.a., and 746.06.b., of this rule. (3-30-01)(____)

a. The number of new employees multiplied by who qualify for the five hundred dollars (\$500) credit multiplied by five hundred dollars (\$500), plus the number of new employees who qualify for the one thousand dollar

(\$1,000) credit multiplied by one thousand dollars (\$1,000); or (3-30-01)(____)

b. The net income of the ~~revenue-producing enterprise trade or business~~, as determined pursuant to Rule 747 of these rules, multiplied by three and one-quarter percent (3.25%). (3-30-01)(____)

057. Limitations. In the year the credit for qualifying new employees is earned or claimed: (3-20-04)

~~a. Taxable years beginning in 2000 and 2002. This credit and all other credits may not exceed forty-five percent (45%) of the taxpayer's income tax liability for that year. 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. (3-20-04)~~

~~ba. Taxable years beginning in 2003 and after. This credit and all other credits may not exceed fifty percent (50%) of the taxpayer's income tax for that year after deducting the credit for taxes paid to other states. The credit for taxes paid to other states is not subject to this limitation. (3-20-04)(____)~~

eb. See Section 63-3029HP, Idaho Code, and Rule 799 of these rules for the priority order of credits. (3-20-04)(____)

~~068. Carryover.~~ To claim the carryover, the ~~taxpayer employer~~ 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 employer~~ is not required to recapture the credit claimed in previous taxable years. However, the ~~taxpayer employer~~ shall recompute the credit based on the reduced employment level to determine the correct amount of carryover. (3-30-01)(____)

~~079. Pass-Through Entities.~~ See Rule 785 of these rules for pass-through entities and the calculation of credits. (3-15-02)

~~0810. 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 63-3029HP, Idaho Code, and Rule 799 of these rules for the priority order of credits. (3-15-02)(____)

(BREAK IN CONTINUITY OF SECTIONS)

750. BROADBAND EQUIPMENT INVESTMENT CREDIT -- IN GENERAL (RULE 750).
Section 63-3029I, Idaho Code. (3-15-02)

01. Credit Allowed. The broadband equipment investment credit allowed by Section 63-3029I, Idaho Code, applies to investments made during taxable years beginning on and after January 1, 2001 ~~and before December 31, 2005~~. The investment must also meet the requirements of Section 63-3029B, Idaho Code, and related rules as to what constitutes qualified investment. (3-15-02)(____)

02. Limitations. The broadband equipment investment credit allowable in any taxable year shall be limited as follows: (3-15-02)

a. The broadband equipment investment credit claimed during a taxable year may not exceed the lesser of: (3-15-02)

i. Seven hundred fifty thousand dollars (\$750,000); or (3-15-02)

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the broadband equipment investment credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-15-02)

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the broadband equipment investment credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-15-02)

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-15-02)

d. Transferred Credit. Limitations apply to each transferee as if the transferee had earned the credit. (3-15-02)

03. Carryovers. (3-15-02)

a. The carryover period for the broadband equipment investment credit is fourteen (14) years. (3-15-02)

b. See Rule 793 of these rules for the rules regarding the carryover of transferred credit. (3-15-02)

04. Taxpayers Entitled to the Credit. Rule 711 of these rules shall apply to the broadband equipment investment credit except that limitations referenced in Subsection 711.01 of these rules shall be those limitations as provided in Section 63-3029I, Idaho Code. (~~3-15-02~~)(____)

05. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

770. GROCERY CREDIT (RULE 770). Section 63-3024A, Idaho Code. (3-20-97)

01. Residents Required to File. (3-20-97)

a. A resident may claim a credit of twenty dollars (\$20) for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. (3-15-02)

b. A resident age sixty-five (65) or older may claim a credit of thirty-five dollars (\$35) for each personal exemption described in ~~Subsection Paragraph~~ 770.01.a. of this rule that represents an individual age sixty-five (65) or over. (~~3-15-02~~)(____)

c. A resident who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (3-20-97)

02. Residents Not Required to File. A resident who is not required to file an Idaho income tax return may be eligible for the credit. If eligible, the individual shall file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 each year. No credit shall be refunded three (3) years after the due date of the claim for refund, including extensions. The following resident individuals are eligible for the credit: (3-20-97)

- a. Individuals age sixty-two (62) or older; (3-20-97)
 - b. Disabled veterans; and (3-20-97)
 - c. Blind individuals. (3-20-97)
- 03. Part-Year Residents.** A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (3-20-97)
- 04. Members of the Armed Forces.** A member of the United States Armed Forces who is required to file an Idaho income tax return and who is: (3-20-97)
- a. Domiciled in Idaho is entitled to this credit; (3-20-97)
 - b. Residing in Idaho but who is a nonresident pursuant to the *Soldiers' and Sailors' Servicemembers Civil Relief Act* is not entitled to this credit. (~~3-20-97~~)()
- 05. Spouse or Dependents of Armed Forces Members.** A spouse or dependent of a nonresident military person stationed in Idaho may be an Idaho resident or part-year resident. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (3-20-97)
- 06. Nonresidents.** A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

- 871. STATE INCOME TAX WITHHOLDING REQUIRED (RULE 871).** (3-20-97)
Sections 63-3035 and 63-3036, Idaho Code.
- 01. Employers Other Than Farmers.** An employer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if: (7-1-99)
- a. The employer is required to withhold for federal purposes; and (7-1-99)
 - b. The employee is an Idaho resident; or the employee is a nonresident and compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to the nonresident employee for services performed in Idaho. (7-1-99)
- 02. Farmer-Employers.** An employer who is a farmer is required to withhold from all salaries, wages, tips, bonuses, or other compensation paid to an employee for services performed in Idaho if: (3-30-01)
- a. The farmer-employer is required to withhold for federal purposes; and (3-30-01)
 - b. Compensation of one thousand dollars (\$1,000) or more will be paid during a calendar year to the agricultural employee. (3-30-01)
- 03. Services Performed Within and Without Idaho.** An employer is required to withhold only on the portion of the employee's total compensation that is reasonably attributable to services performed in Idaho regardless of his post of duty. Compensation may be allocated to Idaho based on workdays, hours, mileage, or commissions. (7-1-99)
- 04. Exceptions to Withholding Requirements.** Withholding is not required if: (3-20-97)

- a. The salaries, wages, tips, bonuses, and other compensation paid by an employer are for services performed wholly outside Idaho regardless of the residency or domicile of either the employer or employee. (3-20-97)
- b. The compensation is paid by the United States Armed Forces to a nonresident serving on active duty in Idaho; (3-20-97)
- c. The compensation is paid to an interstate transportation employee of a rail carrier covered by Title 49, Section 11502, United States Code, who is a nonresident of Idaho; or (7-1-99)
- d. The compensation is paid to an interstate transportation employee of a motor carrier covered by Title 49, Section 14503, United States Code, who is a nonresident of Idaho; or (7-1-99)
- e. The compensation is paid to an employee of an interstate air carrier covered by Title 49, Section 40116, United States Code, who is a nonresident of Idaho and earns fifty percent (50%) or less of his compensation in Idaho; or (7-1-99)
- f. The compensation is paid to ~~an employee of an interstate water carrier~~ a master or seaman on a vessel in the foreign, coastwise, intercoastal, interstate, or noncontiguous trade or to an individual employed on a fishing vessel or any fish processing vessel covered by Title 49, Section ~~14503~~ 11108, United States Code, ~~who is a nonresident of Idaho and earns fifty percent (50%) or less of his compensation in Idaho;~~ or (7-1-99)()
- g. The compensation is exempt from federal withholding. (7-1-99)

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).
 Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)

01. Filing of Returns Payment of State Income Tax Withheld. (7-1-99)()

- a. In General. An employer shall ~~file returns quarterly to report payroll and remit monthly any~~ state income tax withheld. ~~Returns shall be filed on or before the last day of the month following the end of the quarter.~~ These monthly payments are due on or before the 20th day of the following month. However, employers who owe six hundred dollars (\$600) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. (4-5-00)()
- b. ~~Farmer Employers. Generally, an employer who is a farmer shall file returns annually to report payroll and state income tax withheld. However, an employer who is a farmer shall file returns quarterly on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor.~~ Split-Monthly Filers. (4-5-00)()
- i. An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, shall remit the tax withheld based on split-monthly withholding periods. Split-monthly withholding periods begin with the 16th day of the month and end on the 15th day of the following month. Payments for a split-monthly withholding period shall be made no later than five (5) days after the end of the withholding period. ()

ii. Threshold amounts:

<u>Withholding Periods Beginning</u>	<u>Monthly Threshold Amounts</u>	<u>Annual Threshold Amounts</u>
Prior to January 1, 2004	\$5,000.00	\$60,000.00
<u>On or After January 1, 2004, but Before July 1, 2005</u>	\$6,000.00	\$72,000.00
On or After July 1, 2005	\$20,000.00	\$240,000.00

- ()
- iii. Filing status changes will occur only in January. ()
- c. Zero Tax Returns. A return shall be filed for each reporting period. For reporting periods in which the employer had no payroll or withheld no tax, the return shall be completed and filed by the due date. Farmer-Employers. Generally an employer who is a farmer shall remit state income tax withheld on or before the last day of February. However, an employer who is a farmer shall remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. (7-1-99)()
- 02. Filing of Annual Reconciliation Returns.** ()
- a. In General. Beginning January 1, 2004, an employer shall file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return shall: ()
- i. Report payroll paid during the preceding calendar year; and ()
- ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. ()
- b. Due Date of Reconciliation Returns. The annual reconciliation return shall be filed on or before the last day of January. The Tax Commission may require a shorter filing period and due date. ()
- c. Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return shall be completed and filed by the due date. ()
- 023. Extension of Time to Pay or File Returns.** The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the ~~withholding~~ annual reconciliation return. (3-20-97)()
- a. The employer shall file a written request by the due date of the ~~withholding~~ payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment shall be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (4-5-00)()
- b. The employer shall file ~~a~~ the annual reconciliation return ~~reporting the actual tax withheld for the period~~ within one (1) month of the due date. The tax paid with the extension request shall be shown on the ~~adjustment payment~~ line of the return. Interest from the due date applies to any additional tax due. (3-20-97)()
- ~~**03. Payment of State Income Tax Withheld.**~~ (7-1-99)
- ~~a. In General. An employer shall remit monthly any state income tax withheld. However, employers who owe six hundred dollars (\$600) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter.~~ (3-20-04)
- ~~b. Split-Monthly Filers.~~ (3-20-04)
- ~~i. An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subsection 872-03.b.ii., shall remit the tax withheld based on split-monthly withholding periods. Split-monthly withholding periods begin with the 16th day of the month and end on the 15th day of the following month. Payments for a split-monthly withholding period shall be made no later than five (5) days after the end of the withholding period.~~ (3-20-04)
- ~~ii. Threshold amounts.~~

WITHHOLDING PERIODS BEGINNING	MONTHLY THRESHOLD AMOUNTS	ANNUAL THRESHOLD AMOUNTS
Prior to January 1, 2004	\$5,000.00	\$60,000.00
On or After January 1, 2004, but Before July 1, 2005	\$6,000.00	\$72,000.00
On or After July 1, 2005	\$20,000.00	\$240,000.00

(3-20-04)

~~e. Farmer-employers. Generally an employer who is a farmer shall remit state income tax withheld on or before the last day of February. However, an employer who is a farmer shall remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor.~~ (4-5-00)

~~04. Employer's Annual Reconciliation. On or before the last day of February, employers shall file a return reconciling the tax remitted throughout the preceding calendar year and the state income tax withholding reported on the W-2s.~~ (3-20-97)

~~05. Employee's Wage and Tax Statements. Federal Form W-2 or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted.~~ (7-1-99)

~~a. The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment.~~ (3-20-97)

~~b. On or before the last day of February, each employer shall file with the Tax Commission a W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld.~~ (3-20-97)

~~c. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c shall be filed with the Tax Commission.~~ (3-20-97)

~~d. Each employer with fifty (50) or more Idaho employees who is required to file returns on magnetic media or other machine-readable form by Section 6011, Internal Revenue Code, shall file in a similar manner with Idaho. In addition to the information required by the Internal Revenue Code, the magnetic media or machine-readable form shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file on magnetic media but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed.~~ (3-15-02)

~~e. If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee shall include the portion of the employee's total wages reasonably attributed to services performed within Idaho. Wages may be allocated to Idaho based on work days, hours, mileage or commissions.~~ (7-1-99)

064. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule shall be filed using the proper forms as prescribed by the Tax Commission. The forms shall include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).

Sections 63-3035 and 63-3036, Idaho Code.

()

01. Form and Information Required. Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, and the name of the state shall be shown in the appropriate boxes. Altered forms are not accepted.

()

02. Furnishing Forms W-2 to Employees. The employer shall furnish each employee a W-2 before February 1, or at the request of the employee within thirty (30) days after termination of his employment.

()

03. Filing Forms W-2 With the Tax Commission. On or before the last day of February, each employer shall file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld.

()

04. Corrected Forms W-2. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c shall be filed with the Tax Commission.

()

05. Employers With Fifty or More Idaho Employees. Each employer with fifty (50) or more Idaho employees who is required to file returns on magnetic media or other machine-readable form by Section 6011, Internal Revenue Code, shall file in a similar manner with Idaho. In addition to the information required by the Internal Revenue Code, the magnetic media or machine-readable form shall also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file on magnetic media but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed.

()

06. Services Performed Within and Without Idaho. If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee shall include the portion of the employee's total wages reasonably attributed to services performed within Idaho. Wages may be allocated to Idaho based on workdays, hours, mileage or commissions.

()

07. Extension of Time to File Form W-2. The Tax Commission may allow a one (1) month extension of time to file the W-2s.

()

a. The employer shall file a written request by the due date of the W-2s that identifies the reason for the extension.

()

b. The employer shall file the W-2s within one (1) month of the due date. A penalty of two dollars (\$2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date.

()

874.5 -- 879. (RESERVED).

880. CREDITS AND REFUNDS (RULE 880).

Section 63-3072, Idaho Code.

(3-20-97)

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)~~

eb. 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 Required 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. The claim for a credit or refund must be made on an amended Idaho income tax return that is properly signed and includes an explanation of each legal or factual basis in sufficient detail to inform the Tax Commission of the reason for the claim. By signing the amended return the taxpayer shall be declaring 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. (3-15-02)()~~

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 or with a

qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) 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. ~~(5-3-03)~~(____)

(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 or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) 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)~~68, Idaho Code. ~~(5-3-03)~~(____)

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-0402

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(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 20, 2004.

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 325: Amend Income Tax Rule 325 in response to Multistate Tax Commission (MTC) regulation changes. Change terms in the definition of affiliated corporation to be consistent with terms used in other multistate income tax rules and add information to the definition of business activity.

Rule 330: Amend Income Tax Rule 330 in response to MTC regulation changes. Delete current information and replace with information from MTC Reg. IV.1.(a)(1) Business And Nonbusiness Income Defined - Apportionment And Allocation. One major change between the current and proposed rules is the recognition of the two tests, the transactional test and the functional test, for determining business income.

Rule 331: Promulgate a new Income Tax Rule 331 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(a)(2), Business And Nonbusiness Income Defined - Business Income and MTC Reg. IV.1.(a)(3), Terms Used in Definition of Business Income and in Application of Definition.

Rule 332: Promulgate a new Income Tax Rule 332 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(a)(4) Business And Nonbusiness Income Defined – Transactional Test.

Rule 333: Promulgate a new Income Tax Rule 333 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(a)(5), Business and Nonbusiness Income Defined – Functional Test.

Rule 334: Promulgate a new Income Tax Rule 334 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(a)(6) Business and Nonbusiness Income Defined – Relationship of Transactional and Functional Tests to U.S. Constitution.

Rule 336: Promulgate a new Income Tax Rule 336 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(c) Business and Nonbusiness Income - Application of Definitions.

Rule 340: Amend Income Tax Rule 340 in response to MTC regulation changes. Delete current information about a single trade or business of a corporation or an affiliated group of corporations and replace with information from MTC Reg. IV.1.(b)(1) Principles for Determining the Existence of a Unitary Business - Unitary Business Principle. Changes to the MTC regulations regarding the definition of a unitary business attempt to synthesize the various court decisions that define a unitary business into the regulations.

Rule 341: Promulgate a new Income Tax Rule 341 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(b)(2)(A) Principles for Determining the Existence of a Unitary Business – Determination of a Unitary Business.

Rule 342: Promulgate a new Income Tax Rule 342 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(b)(2)(B) Principles for Determining the Existence of a Unitary Business – Description and Illustration of Functional Integration, Centralization of Management, and Economies of Scale.

Rule 343: Promulgate a new Income Tax Rule 343 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(b)(3) Principles for Determining the Existence of a Unitary Business – Indicators of a Unitary Business.

Rule 344: Promulgate a new Income Tax Rule 344 in response to MTC regulation changes. Incorporate information from MTC Reg. IV.1.(b)(4) Principles for Determining the Existence of a Unitary Business – Commonly Controlled Group of Business Entities.

Rule 345: Repeal Income Tax Rule 345 in response to MTC regulation changes. Information related to the application of definitions of business and nonbusiness income is addressed in proposed new Income Tax Rule 336.

Rule 365: Amend Income Tax Rule 365 in response to MTC regulation changes. Add a new subsection regarding dividends and other intangible income to address when this income should be included in a combined report and when intercompany eliminations are appropriate. This information currently is included in Income Tax Rule 330, but is proposed to be deleted from that rule and moved to Income Tax Rule 365.

Rule 485: Amend Income Tax Rule 485 in response to MTC regulation changes. Add additional information regarding the inclusion of the value of rented property in the property factor from MTC Reg. IV.11.(b) Property Factor: Valuation of Rented Property.

Rule 600: Amend Income Tax Rule 600 in response to Multistate Tax Commission (MTC) regulation changes. Delete the subsection addressing common ownership since a commonly controlled group is addressed in proposed new Income Tax Rule 344. Add a new reference to Rules 340 through 344 for the principles for determining the existence of a unitary business.

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 Janice Boyd, 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 27, 2004.

DATED this 25th day of August, 2004.

Janice Boyd, Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0101-0402

325. DEFINITIONS FOR PURPOSES OF MULTISTATE RULES (RULE 325).

Section 63-3027, Idaho Code. For purposes of computing the Idaho taxable income of a multistate corporation, the following definitions apply: (3-20-97)

01. Affiliated Corporation and Affiliated Group. An affiliated corporation is a corporation that is a member of a commonly ~~owned~~ controlled group of which the taxpayer is also a member. The commonly ~~owned~~ controlled group is referred to as an affiliated group. Although Idaho generally follows federal tax principles and terminology, Idaho's use of the terms affiliated corporation and affiliated group means a corporation or corporations with over fifty percent (50%) of its voting stock directly or indirectly owned or controlled by a common owner or owners. For information on what constitutes common ~~ownership~~ control, see ~~Subsection 600.01 Rule 344~~ of these rules. (7-1-98)(____)

02. Allocation. Allocation refers to the assignment of nonbusiness income to a particular state. (3-20-97)

03. Apportionment. Apportionment refers to the division of business income between states in which the business is conducted by the use of a formula containing apportionment factors. (3-20-97)

04. Business Activity. Business activity refers to the transactions and activity occurring in the regular course of a particular trade or business of a taxpayer or to the acquisition, management, and disposition of property that constitute integral parts of the taxpayer's regular trade or business operations. (3-20-97)(____)

05. Combined Group. Combined group means the group of corporations that comprise a unitary business and are includable in a combined report pursuant to Section 63-3027(t) or 63-3027B, Idaho Code, if the water's edge election is made. (3-20-97)

06. Combined Report. Combined report refers to the computational filing method to be used by a unitary business which is conducted by a group of corporations wherever incorporated rather than a single corporation. (3-20-97)

07. Gross Receipts. (3-15-02)

a. Gross receipts are the gross amounts realized, (the sum of money and the fair market value of other property or services received) on the sale or exchange of property, the performance of services, or the use of property or capital (including rents, royalties, interest and dividends) in a transaction that produces business income, in which the income or loss is recognized (or would be recognized if the transaction were in the United States) under the Internal Revenue Code. Amounts realized on the sale or exchange of property are not reduced for the cost of goods sold or the basis of property sold. Gross receipts, even if business income, do not include such items as, for example: (3-15-02)

i. Repayment, maturity, or redemption of the principal of a loan, bond, or mutual fund or certificate of deposit or similar marketable instrument; (3-15-02)

ii. The principal amount received under a repurchase agreement or other transaction properly characterized as a loan; (3-15-02)

iii. Proceeds from issuance of the taxpayer's own stock or from sale of treasury stock; (3-15-02)

iv. Damages and other amounts received as the result of litigation; (3-15-02)

v. Property acquired by an agent on behalf of another; (3-15-02)

vi. Tax refunds and other tax benefit recoveries; (3-15-02)

vii. Pension reversions; (3-15-02)

viii. Contributions to capital; (3-15-02)

ix. Income from forgiveness of indebtedness; or (3-15-02)

x. Amounts realized from exchanges of inventory that are not recognized by the Internal Revenue Code. (3-15-02)

b. Exclusion of an item from the definition of gross receipts is not determinative of its character as business or nonbusiness income. Nothing in this definition shall be construed to modify, impair or supersede any provision of Rules 560 through 595 of these rules. (3-15-02)

08. Group Return. A unitary group of corporations may file one (1) Idaho corporate income tax return for all the corporations of the unitary group that are required to file an Idaho income tax return. When used in these rules, group return refers to this sole return filed by a unitary group. Use of the group return precludes the need for each corporation to file its own Idaho corporate income tax return. (3-20-97)

09. MTC. The Multistate Tax Commission. (3-20-97)

10. Multistate Corporation. A multistate corporation is a corporation that operates in more than one (1) state. For purposes of this definition, state is defined in Section 63-3027(a)(6), Idaho Code. (3-20-97)

11. Unitary Business. Unitary business is a concept of constitutional law defined in decisions of the United States Supreme Court. See Rule 340 of these rules. (7-1-98)

326. -- 329. (RESERVED).

330. BUSINESS AND NONBUSINESS INCOME DEFINED -- APPORTIONMENT AND ALLOCATION (RULE 330).

Sections 63-3027(a)(4), Idaho Code. Sections 63-3027(a)(1) and 63-3027(a)(4), Idaho Code, require that every item of income be classified either as business income or nonbusiness income. Income for purposes of classification as business or nonbusiness includes gains and losses. Business income is apportioned among jurisdictions by use of a formula. Nonbusiness income is specifically assigned or allocated to one (1) or more specific jurisdictions pursuant to express rules. An item of income is classified as business income if it falls within the definition of business income. An item of income is nonbusiness income only if it does not meet the definitional requirements for being classified as business income. (3-20-97)(_____)

~~**01. In General.** All transactions and activities of the taxpayer that depend on or contribute to the operation of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and are transactions and activity arising in the regular course of, and constitute integral parts of, a trade or business. In essence, all income that arises from the conduct of trade or business operations of a taxpayer is business income. For purposes of administering these rules, the income of the taxpayer is business income unless clearly classifiable as nonbusiness income.~~ (3-20-97)

~~**02. Classification of Income.**~~ (3-20-97)

~~**a.** Classifying income by labels such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, nonoperating income, etc., does not determine whether income is business or nonbusiness income. Income of any type or class and from any source is business income if it arises from transactions and activity occurring in the regular course of a trade or business.~~ (3-20-97)

~~**b.** The critical element in determining whether income is business income or nonbusiness income is the identification of the transactions and activity that are the elements of a particular trade or business. The transactional test is met if income or loss is derived from a transaction in the regular course of business. The functional test is met if income or loss is derived from property acquired, managed or disposed of in the regular course of business. If either the transactional or the functional test is met, the resulting income or loss is business income or loss.~~ (3-20-97)

~~**03. Investment Income.** Income arising from the ownership or sale or other disposition of investments is presumed to be business income because of the following:~~ (3-20-97)

~~**a.** The regularity with which most corporate taxpayers engage in investment activities;~~ (3-20-97)

- ~~b. The source of capital for investments arises in the ordinary course of a taxpayer's business; (3-20-97)~~
- ~~c. The income from investments is used in the ordinary course of the taxpayer's business; and (3-20-97)~~
- ~~d. The investment assets are used for general credit purposes. (3-20-97)~~

~~**04. Dividends and Other Intangible Income.** Dividends and other intangible income shall be included in income subject to apportionment to the extent they constitute business income received from companies not included in the combined report. However, a dividend deduction and factor adjustments are allowed to the extent dividends received are paid from prior year earnings previously included in income subject to apportionment. Part I, Subchapter C, Internal Revenue Code, is applied to determine the taxable year in which the earnings and profits were earned that paid the dividend. It is the taxpayer's responsibility to prove that the dividend, or a portion of it, was previously included in Idaho apportionable income. (3-20-97)~~

331. BUSINESS AND NONBUSINESS INCOME DEFINED -- BUSINESS INCOME (RULE 331). ()
Section 63-3027(a)(1), Idaho Code. ()

01. In General. Business income means income of any type or class and from any activity that meets the "transactional test" described in Rule 332 of these rules, or the "functional test" described in Rule 333 of these rules. The classification of income by the labels occasionally used, such as manufacturing income, compensation for services, sales income, interest, dividends, rents, royalties, gains, operating income, and nonoperating income, is of no aid in determining whether income is business or nonbusiness income. ()

02. Terms Used in Definition of Business Income and in Application of Definition. As used in the definition of business income and in the application of the definition, ()

a. "Trade or business" means the unitary business of the taxpayer, part of which is conducted within Idaho. ()

b. "To contribute materially" includes, without limitation, "to be used operationally in the taxpayer's trade or business." Whether property materially contributes is not determined by reference to the property's value or percentage of use. If an item of property materially contributes to the taxpayer's trade or business, the attributes, rights or components of that property are also operationally used in that business. However, property that is held for mere financial betterment is not operationally used in the taxpayer's trade or business. ()

332. BUSINESS AND NONBUSINESS INCOME DEFINED -- TRANSACTIONAL TEST (RULE 332). ()
Section 63-3027(a)(1), Idaho Code. ()

01. In General. Business income includes income arising from transactions and activity in the regular course of the taxpayer's trade or business. ()

02. Business Income for Idaho. If the transaction or activity is in the regular course of the taxpayer's trade or business, part of which trade or business is conducted within Idaho, the resulting income of the transaction or activity is business income for Idaho. Income may be business income even though the actual transaction or activity that gives rise to the income does not occur in Idaho. ()

03. Regular Course of the Taxpayer's Trade or Business. For a transaction or activity to be in the regular course of the taxpayer's trade or business, the transaction or activity need not be one that frequently occurs in the trade or business. Most, but not all, frequently occurring transactions or activities will be in the regular course of that trade or business and will, therefore, satisfy the transactional test. It is sufficient to classify a transaction or activity as being in the regular course of a trade or business, if it is reasonable to conclude transactions of that type are customary in the kind of trade or business being conducted or are within the scope of what that kind of trade or business does. However, even if a taxpayer frequently or customarily engages in investment activities, if those activities are for the taxpayer's mere financial betterment rather than for the operations of the trade or business, such

activities do not satisfy the transactional test. The transactional test includes, but is not limited to, income from sales of inventory, property held for sale to customers, and services that are commonly sold by the trade or business. The transactional test also includes, but is not limited to, income from the sale of property used in the production of business income of a kind that is sold or replaced with some regularity, even if replaced less frequently than once a year. ()

333. BUSINESS AND NONBUSINESS INCOME DEFINED -- FUNCTIONAL TEST (RULE 333). ()
Section 63-3027(a)(1), Idaho Code. ()

01. In General. Business income also includes income from tangible and intangible property, if the acquisition, management or disposition of the property constitutes an integral or necessary part of the taxpayer's regular trade or business operations. ()

02. Terms. ()

a. "Property" includes any interest in, control over, or use in property (whether the interest is held directly, beneficially, by contract, or otherwise) that materially contributes to the production of business income. ()

b. "Acquisition" refers to the act of obtaining an interest in property. ()

c. "Management" refers to the oversight, direction, or control (directly or by delegation) of the property for the use or benefit of the trade or business. ()

d. "Disposition" refers to the act, or the power, to relinquish or transfer an interest in or control over property to another, in whole or in part. ()

e. "Integral part" refers to property that constituted a part of the composite whole of the trade or business, each part of which gave value to every other part, in a manner that materially contributed to the production of business income. ()

03. Integral, Functional, or Operative Component of Trade or Business. Under the functional test, business income need not be derived from transactions or activities that are in the regular course of the taxpayer's own particular trade or business. It is sufficient, if the property from which the income is derived is or was an integral, functional, or operative component used in the taxpayer's trade or business operations, or otherwise materially contributed to the production of business income of the trade or business, part of which trade or business is or was conducted within Idaho. Depending on the facts and circumstances of each case, property that has been converted to nonbusiness use through the passage of a sufficiently lengthy period of time or that has been removed as an operational asset and is instead held by the taxpayer's trade or business exclusively for investment purposes has lost its character as a business asset and is not subject to the rule of the preceding sentence. Property that was an integral part of the trade or business is not considered converted to investment purposes merely because it is placed for sale. ()

04. Examples of Business Income Under the Functional Test. Income that is derived from isolated sales, leases, assignments, licenses, and other infrequently occurring dispositions, transfers, or transactions involving property, including transactions made in liquidation or the winding-up of business, is business income, if the property is or was used in the taxpayer's trade or business operations. Income from the licensing of an intangible asset, such as a patent, copyright, trademark, service mark, know-how, trade secrets, or the like, that was developed or acquired for use by the taxpayer in its trade or business operations, constitutes business income whether or not the licensing itself constituted the operation of a trade or business, and whether or not the taxpayer remains in the same trade or business from or for which the intangible asset was developed or acquired. ()

05. Operational Function Versus Investment Function. Under the functional test, income from intangible property is business income when the intangible property serves an operational function as opposed to solely an investment function. The relevant inquiry focuses on whether the property is or was held in furtherance of the taxpayer's trade or business, that is, on the objective characteristics of the intangible property's use or acquisition and its relation to the taxpayer and the taxpayer's activities. The functional test is not satisfied where the holding of

the property is limited to solely an investment function as is the case where the holding of the property is limited to mere financial betterment of the taxpayer in general. ()

06. Property Held in Furtherance of Trade or Business. If the property is or was held in furtherance of the taxpayer's trade or business beyond mere financial betterment, then income from that property may be business income even though the actual transaction or activity involving the property that gives rise to the income does not occur in Idaho. ()

07. Presumptions. If with respect to an item of property a taxpayer takes a deduction from business income that is apportioned to Idaho or includes the original cost in the property factor, it is presumed that the item or property is or was integral to the taxpayer's trade or business operations. No presumption arises from the absence of any of these actions. ()

08. Application of the Functional Test. Application of the functional test is generally unaffected by the form of the property (for example, tangible or intangible property, real or personal property). Income arising from an intangible interest, for example, corporate stock or other intangible interest in a business or a group of assets, is business income when the intangible itself or the property underlying or associated with the intangible is or was an integral, functional, or operative component to the taxpayer's trade or business operations. Thus, while apportionment of income derived from transactions involving intangible property as business income may be supported by a finding that the issuer of the intangible property and the taxpayer are engaged in the same trade or business, i.e., the same unitary business, establishment of such a relationship is not the exclusive basis for concluding that the income is subject to apportionment. It is sufficient to support the finding of apportionable income if the holding of the intangible interest served an operational rather than an investment function of mere financial betterment. ()

334. BUSINESS AND NONBUSINESS INCOME DEFINED -- RELATIONSHIP OF TRANSACTIONAL AND FUNCTIONAL TESTS TO U.S. CONSTITUTION (RULE 334).

Section 63-3027(a)(1), Idaho Code. The Due Process Clause and the Commerce Clause of the U.S. Constitution restrict states from apportioning income as business income that has no rational relationship with the taxing state. The protection against extraterritorial state taxation afforded by these Clauses is often described as the "unitary business principle." The unitary business principle requires apportionable income to be derived from the same unitary business that is being conducted at least in part in Idaho. The unitary business that is conducted in Idaho includes both a unitary business that the taxpayer alone may be conducting and a unitary business the taxpayer may conduct with any other person or persons. Satisfaction of either the transactional test or the functional test complies with the unitary business principle, because each test requires that the transaction or activity (in the case of the transactional test) or the property (in the case of the functional test) to be tied to the same trade or business that is being conducted within Idaho. Determination of the scope of the unitary business being conducted in Idaho is without regard to the extent to which Idaho requires or permits combined reporting. ()

~~331.— 334. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

336. BUSINESS AND NONBUSINESS INCOME -- APPLICATION OF DEFINITIONS (RULE 336).

01. In General. The following applies the foregoing principles for purposes of determining whether particular income is business or nonbusiness income. ()

02. Rent From Real and Tangible Personal Property. Rental income from real and tangible property is business income if the property for which the rental income was received is or was used in the taxpayer's trade or business and, therefore, is includable in the property factor under Rule 465 of these rules. ()

03. Gains or Losses from Sales of Assets. Gain or loss from the sale, exchange or other disposition of real property or of tangible or intangible personal property is business income if the property while owned by the

taxpayer was used in, or was otherwise included in the property factor of the taxpayer's trade or business. However, if the property was used to produce nonbusiness income, the gain or loss is nonbusiness income. ()

04. Interest Income. Interest income from an intangible is business income if the intangible arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the intangible is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations. ()

05. Dividends. Dividends from stock are business income if the stock arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the stock is an integral, functional, or operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations. ()

06. Patent and Copyright Royalties. Royalties from patents and copyrights are business income if the patent or copyright arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the patent or copyright is an integral, functional, operative component of the taxpayer's trade or business operations, or otherwise materially contributes to the production of business income of the trade or business operations. ()

3367. -- 339. (RESERVED).

340. ~~SINGLE TRADE OR BUSINESS OF A CORPORATION OR AN AFFILIATED GROUP OF CORPORATIONS -- APPLICATION OF DEFINITIONS PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- UNITARY BUSINESS PRINCIPLE (RULE 340).~~
Section 63-3027, Idaho Code. (3-20-97)

01. Apportionment. ~~All income of a trade or business shall be reported and apportioned even though only one (1), or less than all, of the corporation's business divisions or unitary group's affiliates operated in Idaho during the taxable year. The apportionment formula cannot be computed separately for each division, department, or affiliate of a single trade or business.~~ **The Concept of a Unitary Business.** (3-20-97)()

a. A unitary business is a single economic enterprise that is made up either of separate parts of a single business entity or of a commonly controlled group of business entities that are sufficiently interdependent, integrated and interrelated through their activities so as to provide a synergy and mutual benefit that produces a sharing or exchange of value among them and a significant flow of value to the separate parts. This flow of value to a business entity located in Idaho that comes from being part of a unitary business conducted both within and without Idaho is what provides the constitutional due process "definite link and minimum connection" necessary for Idaho to apportion business income of the unitary business, even if that income arises in part from activities conducted outside Idaho. The business income of the unitary business is then apportioned to Idaho using an apportionment percentage provided by Section 63-3027, Idaho Code. ()

b. This sharing or exchange of value may also be described as requiring that the operation of one (1) part of the business be dependent upon, or contribute to, the operation of another part of the business. Phrased in the disjunctive, the foregoing means that if the activities of one (1) business either contributes to the activities of another business or are dependent upon the activities of another business, those businesses are part of a unitary business. ()

02. ~~Single Trade or Business.~~ ~~The determination of whether the activities of a corporation or an affiliated group constitute a single trade or business or more than one (1) trade or business is based on the facts in each case. The activities of a corporation or affiliated group are considered a single business if evidence indicates that the segments being considered are integrated with, depend on, or contribute to each other and the operations of the corporation or affiliated group as a whole. The following factors indicate a single trade or business, and the presence of any of these factors creates a strong presumption that the activities of the corporation or affiliated group constitute a single trade or business:~~ **Constitutional Requirement for a Unitary Business.** (7-1-98)()

a. ~~Same Type of Business.~~ A corporation or affiliated group is generally engaged in a single trade or

~~business if all its activities are in the same general line. For example, a taxpayer operating a chain of retail grocery stores is almost always engaged in a single trade or business. The sharing or exchange of value described in Subsection 340.01 of this rule that defines the scope of a unitary business requires more than the mere flow of funds arising out of a passive investment or from the financial strength contributed by a distinct business undertaking that has no operational relationship to the unitary business.~~ (3-20-97)(____)

~~b. **Steps in a Vertical Process.** A corporation or affiliated group is almost always engaged in a single trade or business if its various divisions or affiliates are engaged in different steps in a large, vertically structured enterprise. For example, a taxpayer that explores for and mines copper ores and fabricates the refined copper into consumer products is engaged in a single trade or business, regardless of the fact that the various steps in the process are operated substantially independent of each other with only general supervision from the enterprise's executive offices. In Idaho, the unitary business principle shall be applied to the fullest extent allowed by the U.S. Constitution. The unitary business principle shall not be applied to result in the combination of business activities or entities under circumstances where, if it were adverse to the taxpayer, the combination of such activities or entities would not be allowed by the U.S. Constitution.~~ (3-20-97)(____)

~~e. **Strong Centralized Management.** A corporation or affiliated group is considered one (1) trade or business if there is a strong central management, coupled with the existence of centralized departments for functions such as financing, advertising, research, or purchasing. For example, a corporation or affiliated group is considered one trade or business if the central executive officers are normally involved in the operations of the divisions or affiliates and centralized offices perform the normal matters for the divisions or affiliates that a truly independent business would perform for itself, such as accounting, personnel, insurance, legal, purchasing, advertising, or financing.~~ (3-20-97)

~~03. **More Than One Trade or Business.** A taxpayer may have more than one (1) trade or business. In this case the taxpayer shall determine the business income attributable to each separate trade or business. The income of each business is apportioned taking into consideration the in-state and outstate factors that relate to that trade or business. **Separate Trades or Businesses Conducted Within a Single Entity.** A single entity may have more than one (1) unitary business. In such cases it is necessary to determine the business, or apportionable, income attributable to each separate unitary business as well as its nonbusiness income, which is specifically allocated. The business income of each unitary business is then apportioned by a formula that takes into consideration the in-state and the out-of-state factors that relate to the respective unitary business whose income is being apportioned.~~ (3-20-97)(____)

~~04. **Unitary Relationship Business Unaffected by Formal Business Organization.** The existence of a A unitary business may exist within a single business entity or among a commonly controlled group of business entities. The relationship shall be determined by reference to the relationship that exists between all related and affiliated corporations, not just those corporations whose income and apportionment factors are required to be considered. For example, the relationship with foreign affiliates shall be considered even though a water's edge election is made. A related corporation may include insurance companies and fifty percent (50%) or less owned corporations. The scope of what is included in a commonly controlled group of business entities is set forth in Rule 344 of these rules.~~ (7-1-98)(____)

341. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- DETERMINATION OF A UNITARY BUSINESS (RULE 341).

~~Section 63-3027, Idaho Code. A unitary business is characterized by significant flows of value evidenced by factors such as those described in Mobil Oil Corp. v. Vermont, 445 U.S. 425 (1980): functional integration, centralization of management, and economies of scale. These factors provide evidence of whether the business activities operate as an integrated whole or exhibit substantial mutual interdependence. Facts suggesting the presence of the factors mentioned above should be analyzed in combination for their cumulative effect and not in isolation. A particular business operation may be suggestive of one (1) or more of the factors mentioned above.~~ (____)

342. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- DESCRIPTION AND ILLUSTRATION OF FUNCTIONAL INTEGRATION, CENTRALIZATION OF MANAGEMENT AND ECONOMIES OF SCALE (RULE 342).

~~Section 63-3027, Idaho Code.~~ (____)

01. Functional Integration. Functional integration refers to transfers between, or pooling among, business activities that significantly affect the operation of the business activities. Functional integration includes, but is not limited to, transfers or pooling with respect to the unitary business's products or services, technical information, marketing information, distribution systems, purchasing, and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, and processes. There is no specific type of functional integration that must be present. The following is a list of examples of business operations that can support the finding of functional integration. The order of the list does not establish a hierarchy of importance. ()

a. Sales, exchanges, or transfers (collectively "sales") of products, services, or intangibles between business activities provide evidence of functional integration. The significance of the intercompany sales to the finding of functional integration will be affected by the character of what is sold and the percentage of total sales or purchases represented by the intercompany sales. For example, sales among business entities that are part of a vertically integrated unitary business are indicative of functional integration. Functional integration is not negated by the use of a readily determinable market price to effect the intercompany sales, because such sales can represent an assured market for the seller or an assured source of supply for the purchaser. ()

b. Common Marketing. The sharing of common marketing features among business entities is an indication of functional integration when such marketing results in significant mutual advantage. Common marketing exists when a substantial portion of the business entities' products, services, or intangibles are distributed or sold to a common customer, when the business entities use a common trade name or other common identification, or when the business entities seek to identify themselves to their customers as a member of the same enterprise. The use of a common advertising agency or a commonly owned or controlled in-house advertising office does not by itself establish common marketing that is suggestive of functional integration. (Such activity, however, is relevant to determining the existence of economies of scale and centralization of management.) ()

c. Transfer or Pooling of Technical Information or Intellectual Property. Transfers or pooling of technical information or intellectual property, such as patents, copyrights, trademarks and service marks, trade secrets, processes or formulas, know-how, research, or development, provide evidence of functional integration when the matter transferred is significant to the businesses' operations. ()

d. Common Distribution System. Use of a common distribution system by the business entities, under which inventory control and accounting, storage, trafficking, or transportation are controlled through a common network provides evidence of functional integration. ()

e. Common Purchasing. Common purchasing of substantial quantities of products, services, or intangibles from the same source by the business entities, particularly where the purchasing results in significant cost savings or where products, services, or intangibles are not readily available from other sources and are significant to each entity's operations or sales, provides evidence of functional integration. ()

f. Common or Intercompany Financing. Significant common or intercompany financing, including the guarantee by, or the pledging of the credit of, one (1) or more business entities for the benefit of another business entity or entities provides evidence of functional integration, if the financing activity serves an operational purpose of both borrower and lender. Lending which serves an investment purpose of the lender does not necessarily provide evidence of functional integration. (See Subsection 342.02 of this rule for discussion of centralization of management.) ()

02. Centralization of Management. Centralization of management exists when directors, officers, or other management employees jointly participate in the management decisions that affect the respective business activities and that may also operate to the benefit of the entire economic enterprise. Centralization of management can exist whether the centralization is effected from a parent entity to a subsidiary entity, from a subsidiary entity to a parent entity, from one (1) subsidiary entity to another, from one (1) division within a single business entity to another division within a business entity, or from any combination of the foregoing. Centralization of management may exist even when day-to-day management responsibility and accountability has been decentralized, so long as the management has an ongoing operational role with respect to the business activities. An operational role can be effected through mandates, consensus building, or an overall operational strategy of the business, or any other mechanism that establishes joint management. ()

a. Facts Providing Evidence of Centralization of Management. Evidence of centralization of management is provided when common officers participate in the decisions relating to the business operations of the different segments. Centralization of management may exist when management shares or applies knowledge and expertise among the parts of the business. Existence of common officers and directors, while relevant to a showing of centralization of management, does not alone provide evidence of centralization of management. Common officers are more likely to provide evidence of centralization of management than are common directors. ()

b. Stewardship Distinguished. Centralized efforts to fulfill stewardship oversight are not evidence of centralization of management. Stewardship oversight consists of those activities that any owner would take to review the performance of or safeguard an investment. Stewardship oversight is distinguished from those activities that an owner may take to enhance value by integrating one (1) or more significant operating aspects of one (1) business activity with the other business activities of the owner. For example, implementing reporting requirements or mere approval of capital expenditures may evidence only stewardship oversight. ()

03. Economies of Scale. Economies of scale refers to a relation among and between business activities resulting in a significant decrease in the average per unit cost of operational or administrative functions due to the increase in operational size. Economies of scale may exist from the inherent cost savings that arise from the presence of functional integration or centralization of management. The following are examples of business operations that can support the finding of economies of scale. The order of the list does not establish a hierarchy of importance. ()

a. Centralized Purchasing. Centralized purchasing designed to achieve savings due to the volume of purchases, the timing of purchases, or the interchangeability of purchased items among the parts of the business engaging in the purchasing provides evidence of economies of scale. ()

b. Centralized Administrative Functions. The performance of traditional corporate administrative functions, such as legal services, payroll services, pension and other employee benefit administration, in common among the parts of the business may result in some degree of economies of scale. A business entity that secures savings in the performance of corporate administrative services due to its affiliation with other business entities that it would not otherwise reasonably be able to secure on its own because of its size, financial resources, or available market, provides evidence of economies of scale. ()

343. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- INDICATORS OF A UNITARY BUSINESS (RULE 343).
Section 63-3027, Idaho Code. ()

01. Same Type of Business. Business activities that are in the same general line of business generally constitute a single unitary business, for example, a multistate grocery chain. ()

02. Steps in a Vertical Process. Business activities that are part of different steps in a vertically structured business almost always constitute a single unitary business. For example, a business engaged in the exploration, development, extraction, and processing of a natural resource and the subsequent sale of a product based upon the extracted natural resource, is engaged in a single unitary business, regardless of the fact that the various steps in the process are operated substantially independently of each other with only general supervision from the business's executive offices. ()

03. Strong Centralized Management. Business activities that might otherwise be considered as part of more than one (1) unitary business may constitute one (1) unitary business when there is a strong centralized management, coupled with the existence of centralized departments for such functions as financing, advertising, research, or purchasing. Strong centralized management exists when a central manager or group of managers makes substantially all of the operational decisions of the business. For example, some businesses conducting diverse lines of business may properly be considered as engaged in only one (1) unitary business when the central executive officers are actively involved in the operations of the various business activities and there are centralized offices that perform for the business activities the normal matters that a truly independent business would perform for itself, such as personnel, purchasing, advertising, or financing. ()

344. PRINCIPLES FOR DETERMINING THE EXISTENCE OF A UNITARY BUSINESS -- COMMONLY CONTROLLED GROUP OF BUSINESS ENTITIES (RULE 344).

Section 63-3027, Idaho Code. ()

01. In General. Separate corporations can be a part of a unitary business only if they are members of a commonly controlled group. ()

02. Commonly Controlled Group. A “commonly controlled group” means any of the following: ()

a. A parent corporation and any one (1) or more corporations or chains of corporations, connected through stock ownership (or constructive ownership) with the parent, but only if: ()

i. The parent owns stock possessing more than fifty percent (50%) of the voting power of a least one (1) corporation, and, if applicable, ()

ii. Stock cumulatively possessing more than fifty percent (50%) of the voting power of each of the corporations, except the parent, is owned by the parent, one (1) or more corporations described in Subparagraph 344.02.a.i., of this rule, or one (1) or more other corporations that satisfy the conditions of this subparagraph. ()

b. Any two (2) or more corporations, if stock, possessing more than fifty percent (50%) of the voting power of the corporations is owned, or constructively owned, by the same person. ()

c. Any two (2) or more corporations that constitute stapled entities. ()

i. For purposes of this paragraph, “stapled entities” means any group of two (2) or more corporations if more than fifty percent (50%) of the ownership or beneficial ownership of the stock possessing voting power in each corporation consists of stapled interests. ()

ii. Two (2) or more interests are stapled interests if, by reason of form of ownership, restrictions on transfer, or other terms or conditions, in connection with the transfer of one (1) of the interests the other interest or interests are also transferred or required to be transferred. ()

d. Any two (2) or more corporations, if stock possessing more than fifty percent (50%) of the voting power of the corporations is cumulatively owned (without regard to the constructive ownership rules of Paragraph 344.05.a., of this rule) by, or for the benefit of, members of the same family. Members of the same family are limited to an individual, the individual’s spouse, parents, brothers, sisters, grandparents, children and grandchildren, and their respective spouses. ()

03. Elections and Terminations. ()

a. If, in the application of Subsection 344.02 of this rule, a corporation is a member of more than one (1) commonly controlled group of corporations, the corporation shall elect to be treated as a member of only the commonly controlled group (or part thereof) with respect to which it has a unitary business relationship. If the corporation has a unitary business relationship with more than one (1) of those groups, it shall elect to be treated as a member of only one (1) of the commonly controlled groups with respect to which it has a unitary business relationship. This election shall remain in effect until the unitary business relationship between the corporation and the rest of the members of its elected commonly controlled group is discontinued, or unless revoked with the approval of the State Tax Commission. ()

b. Membership in a commonly controlled group shall be treated as terminated in any year, or fraction thereof, in which the conditions of Subsection 344.02 of this rule are not met, except as follows: ()

i. When stock of a corporation is sold, exchanged, or otherwise disposed of, the membership of a corporation in a commonly controlled group shall not be terminated, if the requirements of Subsection 344.02 of this rule are again met immediately after the sale, exchange, or disposition. ()

ii. The State Tax Commission may treat the commonly controlled group as remaining in place if the conditions of Subsection 344.02 of this rule are again met within a period not to exceed two (2) years. ()

04. Controlled. A taxpayer may exclude some or all corporations included in a “commonly controlled group” by reason of Paragraph 344.02.d., of this rule by showing that those members of the group are not controlled directly or indirectly by the same interest, within the meaning of the same phrase in Section 482 of the Internal Revenue Code. For purposes of this subsection, the term “controlled” includes any kind of control, direct or indirect, whether legally enforceable, and however exercisable or exercised. ()

05. Stock Ownership. Except as otherwise provided, stock is “owned” when title to the stock is directly held or if the stock is constructively owned. ()

a. An individual constructively owns stock that is owned by any of the following: ()

i. The individual’s spouse. ()

ii. Children, including adopted children, of that individual or the individual’s spouse, who have not attained the age of twenty-one (21) years. ()

iii. An estate or trust, of which the individual is an executor, trustee, or grantor, to the extent that the estate or trust is for the benefit of that individual’s spouse or children. ()

b. Stock owned by a corporation, or a member of a controlled group of which the corporation is the parent corporation, is constructively owned by any shareholder owning stock that represents more than fifty percent (50%) of the voting power of the corporation. ()

c. In the application of Paragraph 344.02.d., of this rule, (dealing with stock possessing voting power held by members of the same family), if more than fifty percent (50%) of the stock possessing voting power of a corporation is, in the aggregate, owned by or for the benefit of members of the same family, stock owned by that corporation shall be treated as constructively owned by members of that family in the same ratio as the proportion of their respective ownership of stock possessing voting power in that corporation to all of such stock of that corporation. ()

d. Except as otherwise provided, stock owned by a partnership is constructively owned by any partner, other than a limited partner, in proportion to the partner’s capital interest in the partnership. For this purpose, a partnership is treated as owning proportionately the stock owned by any other partnership in which it has a tiered interest, other than as a limited partner. ()

e. In any case where a member of a commonly controlled group, or shareholders, officers, directors, or employees of a member of a commonly controlled group, is a general partner in a limited partnership, stock held by the limited partnership is constructively owned by a limited partner to the extent of its capital interest in the limited partnership. ()

f. In the application of Paragraph 344.02.d., of this rule (dealing with stock possessing voting power held by members of the same family), stock held by a limited partnership is constructively owned by a limited partner to the extent of the limited partner’s capital interest in the limited partnership. ()

06. Terms. For purposes of the definition of a commonly controlled group, each of the following shall apply: ()

a. “Corporation” means a corporation as defined in Section 63-3006, Idaho Code. ()

b. “Person” means a person as defined in Section 63-3005, Idaho Code. ()

c. “Voting power” means the power of all classes of stock entitled to vote that possess the power to elect the membership of the board of directors of the corporation. ()

d. “More than fifty percent (50%) of the voting power” means voting power sufficient to elect a

majority of the membership of the board of directors of the corporation. ()

e. "Stock possessing voting power" includes stock where ownership is retained but the actual voting power is transferred in either of the following manners: ()

i. For one (1) year or less. ()

ii. By proxy, voting trust, written shareholder agreement, or by similar device, where the transfer is revocable by the transferer. ()

f. In the case of an entity treated as a corporation under Paragraph 344.06.a., of this rule, "stock possessing voting power" refers to an instrument, contract, or similar document demonstrating an ownership interest in that entity that confers power in the owner to cast a vote in the selection of the management of that entity. ()

~~341.~~—~~344~~5. (RESERVED).

~~345. BUSINESS AND NONBUSINESS INCOME — APPLICATION OF DEFINITIONS (RULE 345).~~
~~Section 63-3027, Idaho Code.~~ (3-20-97)

~~01. In General. This rule is used to determine whether income is business or nonbusiness income. Income, such as dividends, interest, rents, royalties, service and administrative charges, received from subsidiary or affiliated corporations not included in a combined filing, is business income. The examples in this rule are illustrative only and do not cover all pertinent facts.~~ (3-20-97)

~~02. Rental Income. Rental income from real and tangible property is business income if the property for which the rental income was received is used in the taxpayer's trade or business or is incidental to it.~~ (3-20-97)

~~03. Examples of Rental Income.~~ (3-20-97)

~~a. A taxpayer operates a multistate car rental business. The income from car rentals is business income.~~ (3-20-97)

~~b. A taxpayer is engaged in the construction business in which it uses equipment such as cranes, tractors, and earth-moving vehicles. The taxpayer makes short-term leases of equipment when the equipment is not needed on any particular project. The rental income is business income.~~ (3-20-97)

~~c. A taxpayer operates a multistate chain of men's clothing stores. The taxpayer purchases a five (5) story office building for use in connection with its trade or business. It uses the street floor as one (1) of its retail stores and the second and third floors for its corporate headquarters. The remaining two (2) floors are leased to others. The rental of the two (2) floors is incidental to the operation of the taxpayer's trade or business. The rental income is business income.~~ (3-20-97)

~~d. A taxpayer constructed a plant for use in its multistate manufacturing business and twenty (20) years later the plant was closed and offered for sale. The plant was rented temporarily from the time it was closed by the taxpayer until it was sold eighteen (18) months later. The rental income is business income and the gain on the sale of the plant is business income.~~ (3-20-97)

~~04. Gains or Losses From Sale of Assets. Gain or loss from the sale, exchange or other disposition of real and tangible or intangible personal property is business income if the property, while owned by the taxpayer, was used in the taxpayer's trade or business. However, if the property was used to produce nonbusiness income, the gain or loss is nonbusiness income.~~ (3-20-97)

~~05. Examples of Gains or Losses.~~ (3-20-97)

~~a. In conducting its multistate manufacturing business, the taxpayer systematically replaces automobiles, machines, and other equipment used in the business. The gains or losses resulting from the sales are business income.~~ (3-20-97)

~~**b.** A taxpayer constructed a plant for use in its multistate manufacturing business. Twenty (20) years later the property was sold at a gain while the taxpayer was using it. The gain is business income. (3-20-97)~~

~~**e.** Assume the same facts as in Subsection 345.05.b., except that the plant was closed and offered for sale. The plant was sold eighteen (18) months later. The gain is business income. (3-20-97)~~

~~**d.** Assume the same facts as in Subsection 345.05.b., except that the plant was rented while being held for sale. Both the rental income and the gain on the sale of the plant are business income. (3-20-97)~~

~~**06. Interest Income.** Interest income from an intangible is business income if the intangible arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the intangible is related to or incidental to the trade or business operation. (3-20-97)~~

~~**07. Examples of Interest Income.** (3-20-97)~~

~~**a.** A taxpayer operates a multistate chain of department stores, selling for cash or credit. Service charges, interest, or time-price differentials and similar payments are received with respect to installment sales and revolving charge accounts. These amounts are business income. (3-20-97)~~

~~**b.** A taxpayer conducts a multistate manufacturing business. During the year the taxpayer receives a federal income tax refund and collects a judgment against a debtor of the business. Both the tax refund and the judgment earned interest. The interest income is business income. (3-20-97)~~

~~**e.** A taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business, the taxpayer has special accounts to cover items such as worker's compensation claims, rain and storm damage, machinery replacement, etc. The money in those accounts is invested. Also, the taxpayer temporarily invests funds intended to pay federal, state, and local tax obligations. The interest income is business income. (3-20-97)~~

~~**d.** A taxpayer is engaged in a multistate money order and traveler's checks business. In addition to the fees received in connection with the sale of the money orders and traveler's checks, the taxpayer earns interest income by the investment of the funds pending their redemption. The interest income is business income. (3-20-97)~~

~~**e.** A taxpayer is engaged in a multistate manufacturing and selling business. The taxpayer usually has working capital and extra cash totaling two hundred thousand dollars (\$200,000) which it regularly invests in short-term, interest-bearing securities. The interest income is business income. (3-20-97)~~

~~**08. Dividends.** Dividends from stock are business income if the stock arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose of acquiring and holding the stock is related to or incidental to the trade or business operations. (3-20-97)~~

~~**09. Examples of Dividends.** (3-20-97)~~

~~**a.** A taxpayer operates a multistate chain of stock brokerage houses. During the year the taxpayer receives dividends on stock it owns. The dividends are business income. (3-20-97)~~

~~**b.** A taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business the taxpayer has special accounts to cover items such as worker's compensation claims, etc. A part of the money in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on national stock exchanges. Both the interest income and dividends are business income. (3-20-97)~~

~~**e.** A taxpayer and several unrelated corporations own all the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock to obtain a source of supply of materials used in its manufacturing business. The dividends are business income. (3-20-97)~~

~~**d.** A taxpayer is engaged in a multistate construction business. Much of its construction work is~~

~~performed for various federal and state governmental agencies. According to state and federal laws that apply to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets, cash and marketable securities, to current liabilities. To maintain an adequate bonding capacity, the taxpayer holds various stocks and interest-bearing securities. Both the interest income and dividends received are business income.~~ (3-20-97)

~~e. A taxpayer receives dividends from the stock of its subsidiary or affiliate that acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income.~~ (3-20-97)

~~10. **Patent and Copyright Royalties.** Royalties from patents and copyrights are business income if the patent or copyright arises out of or was created in the regular course of the taxpayer's trade or business operations or if the purpose for acquiring and holding the patent or copyright is related to or incidental to the trade or business operations.~~ (3-20-97)

~~11. **Examples of Patent and Copyright Royalties.**~~ (3-20-97)

~~a. A taxpayer is engaged in the multistate business of manufacturing and selling industrial chemicals. In connection with that business the taxpayer obtained patents on some of its products. The taxpayer licensed the production of the chemicals in foreign countries, in return for which the taxpayer receives royalties. The royalties are business income.~~ (3-20-97)

~~b. A taxpayer is engaged in the music publishing business and holds copyrights on numerous songs. The taxpayer acquires the assets of a smaller publishing company, including music copyrights. These acquired copyrights are used later by the taxpayer in its business. Royalties received on these copyrights are business income.~~ (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

365. USE OF THE COMBINED REPORT (RULE 365).

Section 63-3027, Idaho Code. (3-20-97)

01. In General. Use of the combined report does not disregard the separate corporate identities of the members of the unitary group. The combined report is simply the computation, by the formula apportionment method, of the unitary business income reportable to Idaho by the separate corporate members of the unitary group. For purposes of this rule, included corporation means a corporation required to file an Idaho income tax return as a result of its own activities in Idaho and using a combined report. (3-20-97)

02. Separate Computations. Each included corporation shall: (3-20-97)

a. Be responsible for computing and paying its tax including any minimum tax due pursuant to Sections 63-3025 and 63-3025A, Idaho Code, as determined by the combined report. (3-20-97)

b. Separately compute Idaho tax credits and limitations, except the investment tax credit, which is applied pursuant to Section 63-3029B, Idaho Code, and Rules 710 through 717 of these rules. (3-20-97)

c. Separately determine and pay the permanent building fund tax required by Section 63-3082, Idaho Code. (3-20-97)

03. Net Operating Loss. The Idaho net operating loss carryover or carryback for each included corporation is limited to its share of the combined net operating loss apportioned to Idaho for each taxable year. See Rule 200 of these rules. (3-20-97)

04. Nexus. Each corporation shall determine whether it has nexus in Idaho based on its activities or those conducted on its behalf. (3-20-97)

05. Throwback Sales. When a corporation's activities conducted in a state are within the protection of Public Law 86-272, the principle established in Appeal of Joyce, Inc., California State Board of Equalization, November 23, 1966, commonly known as the Joyce Rule, shall apply. Therefore, only the activities conducted by or on behalf of the corporation shall be considered for this purpose. (3-20-97)

06. Filing Returns. Each included corporation may file a separate return reporting its share of the combined net income or loss of the unitary group. In the alternative, the unitary group may elect to file a group return for all the included corporations. This election is allowed as a convenience to the taxpayer. Its use does not preclude the need for the separate recognition and computational requirements in this rule. (3-20-97)

07. Dividends and Other Intangible Income. Dividends and other intangible income shall be included in income subject to apportionment to the extent they constitute business income received from companies not included in the combined report. However, a dividend deduction and factor adjustments are allowed to the extent dividends received are paid from prior year earnings previously included in income subject to apportionment. Part I, Subchapter C, Internal Revenue Code, is applied to determine the taxable year in which the earnings and profits were earned that paid the dividend. It is the taxpayer's responsibility to prove that the dividend, or a portion of it, was previously included in Idaho apportionable income. ()

(BREAK IN CONTINUITY OF SECTIONS)

485. PROPERTY FACTOR -- VALUATION OF RENTED PROPERTY (RULE 485). (3-20-97)
Section 63-3027(1), Idaho Code.

01. In General. Property rented by the taxpayer is valued at eight (8) times its net annual rental rate. The net annual rental rate is the annual rental rate paid by the taxpayer for the property, less the aggregate annual subrental rates paid by subtenants. Subrents are not deducted if they constitute business income because the property that produces the subrents is used in the regular course of the taxpayer's trade or business when it is producing the income. Accordingly, there is no reduction in its value. See Rules 560 and 565 of these rules for special rules when using the net annual rental rate produces a negative or clearly inaccurate value or when the taxpayer uses property at no charge or rents it at a nominal rental rate. (3-20-97)()

02. Examples of Subrents. (3-20-97)

a. A taxpayer receives subrents from a bakery concession in a food market operated by the taxpayer. Since the subrents are business income, they are not deducted from rent paid by the taxpayer for the food market. (3-20-97)

b. A taxpayer rents a five (5) story office building primarily for use in its multistate business. It uses three (3) floors for its offices and subleases two (2) floors to various other businesses. ~~The rental of the two (2) floors is incidental on a short-term basis because it anticipates it will need those two (2) floors for future expansion of its multistate business.~~ The rental of all five (5) floors is integral to the operation of the taxpayer's trade or business. Since the subrents are business income, they are not deducted from the rent paid by the taxpayer. (3-20-97)()

03. Annual Rental Rate. Annual rental rate is the amount paid as rent for property for a twelve (12) month period. If property is rented for less than a twelve (12) month period, the rent paid for the rental period constitutes the annual rental rate for the taxable year. However, if a taxpayer has rented property for a period of twelve (12) months or more and the current taxable year covers a period of less than twelve (12) months, the rent paid for the short taxable year shall be annualized. If the rental period is for less than twelve (12) months, the rent may not be annualized beyond its rental period. If the rental period is on a month-to-month basis, the rent may not be annualized. (3-20-97)()

04. Examples of Annual Rental Rate. (3-20-97)

a. Taxpayer A, which ordinarily files its returns based on a calendar year, is merged into Taxpayer B on April 30. The net rent paid pursuant to a lease with five (5) years remaining is two thousand five hundred dollars (\$2,500) a month. The rent for the short taxable year January 1 to April 30 is ten thousand dollars (\$10,000). After the rent is annualized the net rent is thirty thousand dollars (\$30,000) or $(\$2,500 \times 12)$. (3-20-97)

b. Assume the same facts as in Subsection Paragraph 485.04.a., of this rule except the lease would have terminated on August 31. In this example, the annualized net rent is twenty thousand dollars (\$20,000) or $(\$2,500 \times 8)$. (~~3-20-97~~)(____)

05. Annual Rent. Annual rent is the sum of money or other consideration payable, directly or indirectly, by the taxpayer or for the taxpayer's benefit for the use of the property and includes: (3-20-97)

a. Any amount payable for the use of real or tangible personal property whether the amount is a fixed sum of money or a percentage of sales, profits, or otherwise. (3-20-97)

b. Any amount payable as additional rent or in lieu of rents, such as interest, taxes, insurance, repairs or any other items required to be paid by the terms of the lease or other arrangement, not including amounts paid as service charges, such as utilities, janitor services, etc. If a payment includes rent and other charges not separately stated, the amount of the rent shall be determined by considering the relative values of the rent and the other items. (3-20-97)

06. Examples of Annual Rent. (3-20-97)

a. Pursuant to the terms of a lease, a taxpayer pays a lessor one thousand dollars (\$1,000) per month as a base rental and at the end of the year pays the lessor one percent (1%) of its gross sales of four hundred thousand dollars (\$400,000). The annual rent is sixteen thousand dollars (\$16,000) or $(\$12,000 + (1\% \times \$400,000))$. (3-20-97)

b. Pursuant to the terms of a lease, a taxpayer pays a lessor twelve thousand dollars (\$12,000) a year for rent, plus taxes of two thousand dollars (\$2,000) and mortgage interest of one thousand dollars (\$1,000). The annual rent is fifteen thousand dollars (\$15,000). (3-20-97)

c. A taxpayer stores part of its inventory in a public warehouse. The total charge for the year is one thousand dollars (\$1,000), of which seven hundred dollars (\$700) is for storage space and three hundred dollars (\$300) is for inventory insurance, handling and shipping charges, and C.O.D. collections. The annual rent is seven hundred dollars (\$700). (3-20-97)

07. Exclusions. Annual rent does not include any of the following: (3-20-97)

a. Incidental day-to-day expenses such as hotel or motel accommodations, daily rental of automobiles, etc. (3-20-97)

b. Royalties based on extraction of natural resources, whether represented by delivery or purchase. For this purpose, a royalty includes any consideration conveyed or credited to a holder of an interest in property that constitutes a sharing of current or future production of natural resources from the property, whether designated as a royalty, advance royalty, rental, or otherwise. (3-20-97)

08. Leasehold Improvements. Leasehold improvements shall be treated as property owned by the lessee regardless of whether the lessee is entitled to remove the improvements or they revert to the lessor when the lease expires. The original cost of leasehold improvements shall be included in the lessee's factor. (3-20-97)

09. Safe Harbor Lease. Property subject to a safe harbor lease shall be reported in the factor of the actual user of the property at original acquisition cost. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

600. ENTITIES INCLUDED IN A COMBINED REPORT (RULE 600).

Section 63-3027(t), Idaho Code.

(3-20-97)

~~**01. Common Ownership.** For purposes of determining whether a corporation is an affiliate, common ownership may be established either by the taxpayer owning more than fifty percent (50%) of the voting stock of another corporation or having more than fifty percent (50%) of its voting stock owned by another entity. Common ownership is also established when another entity or individual owns more than fifty percent (50%) of the voting stock of two (2) or more entities. Ownership is determined on both a direct and indirect basis. It is not necessary that more than fifty percent (50%) of the voting stock of an entity be owned by another entity. It is sufficient if more than fifty percent (50%) of the voting stock of an entity is owned by a commonly controlled group of entities. However, common ownership is not established through a fifty percent (50%) or less owned entity's ownership of the stock of other entities.~~ (7-1-98)

~~**a.** Example. Corporation A owns sixty percent (60%) of Corporation B's voting stock and thirty percent (30%) of Corporation C's voting stock. Corporation B owns thirty percent (30%) of Corporation C's voting stock. Corporations A, B and C are affiliated.~~ (7-1-98)

~~**b.** Example. Corporation A owns forty percent (40%) of Corporation B's voting stock and thirty percent (30%) of Corporation C's voting stock. Corporation B owns sixty percent (60%) of Corporation C's voting stock. Corporation A is not affiliated with B or C, however, B and C are affiliated corporations.~~ (7-1-98)

021. Combined Report. Each corporation that is a member of a unitary business transacting business within and without Idaho shall allocate and apportion its income to Idaho using a combined report pursuant to Rules 360 through 369 of these rules. See Rules 340 through 344 of these rules for the principles for determining the existence of a unitary business. (3-20-97)()

032. Domestic International Sales Corporations. If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Domestic International Sales Corporation (DISC) pursuant to the provisions of Section 992, Internal Revenue Code, a combined filing with the DISC is required. (7-1-98)

043. Foreign Sales Corporations. If an affiliated group subject to the income tax jurisdiction of Idaho owns more than fifty percent (50%) of the voting power of the stock of a corporation classified as a Foreign Sales Corporation (FSC) pursuant to the provisions of Section 922, Internal Revenue Code, a combined filing with the FSC is required. (7-1-98)

054. Intercompany Transactions. If a return is filed on a combined basis, the intercompany transactions shall be eliminated to the extent necessary to properly reflect combined income and to properly compute the apportionment factor. (3-20-97)

065. Insurance Companies. Pursuant to Section 41-405, Idaho Code, an insurance company subject to the premium tax may not be included in a combined group. (3-20-97)

IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0401

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(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 20, 2004.

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 027 - The provision on data processing agreements in Subsection 027.09 is outdated. The Commission is proposing that the subsection be struck.

Rule 033 - Sales tax rule 033 states that free distribution newspapers must devote 10% of the newspaper to "editorial content". The statutory exemption for free distribution newspapers, Idaho Code Section 63-3622T, only requires "nonrevenue producing, informative content." The rule, therefore, seems more restrictive than the statute. Also there is a separate rule for free distribution newspapers. The Rule is being amended to strike the subsection on free distribution newspapers.

Rule 084 - The container exemption, Idaho Code Section 63-3622E, Idaho Code, does not mention gift-wrapping. The Commission is proposing that the subsection on gift-wrapping be struck from the rule.

Rule 101 - The reference to "calendar year" in this rule is in conflict with Idaho Code Section 63-3622R.

Rule 102 - This rule contains an incorrect cross-reference to Section 63-3622H, Idaho Code. The cross-reference is being corrected to Idaho Code Section 63-3622HH.

Rule 105 - Section 63-3620, Idaho Code requires retailers to obtain seller's permits from the Tax Commission. The Tax Commission is currently assigning variable filing cycles and "one-time only" filing requirements to different taxpayers. The rule is being amended to specifically provide for these filing cycles.

Rule 110 - The Tax Commission has made several administrative changes to Form 852 Idaho Sales Tax Return - County Assessors or Sheriffs. Sheriff's offices no longer report sales tax collected on this form. Also, the assessors are no longer required to file an amended return for tax collected at different rates. Finally, the Idaho Transportation Dept. also receives a \$1 per registration reimbursement pursuant to Idaho Code Section 63-3638. The rule is being amended to conform to these administrative changes.

Rule 117 - Section 63-3626, Idaho Code provides for refunds of sales tax paid in error. Rule 117 contains a confusing statement about taxes to be refunded to a retailer when tax was not collected by a retailer. The rule is being amended to strike the statement.

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 the proposed rulemaking. All written comments must be directed to

the undersigned and must be delivered on or before October 27, 2004.

DATED this 25th day of August, 2004,

Jim Husted
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-0401

027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).

01. Hardware and Computers Defined. (3-6-00)

a. Hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies. (3-6-00)

b. Computers are programmable machines or devices having information processing capabilities and include word, data, and math processing equipment, testing equipment, programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment. (3-6-00)

02. Computer Software, Storage Media and Transfer Media Defined. (3-6-00)

a. Computer Software. Computer software, interchangeable with the terms program or software program, is a sequence of instructions or collections of data which, when incorporated into a machine readable data processing storage or communication medium or device, is capable of causing a computer to indicate, perform, or achieve a particular function, task, or result. Computer software includes upgrades, fixes and error corrections as well as any documentation or related information held on storage media or transferred by whatever means from any location. (3-6-00)

b. Storage and Transfer Media. Storage media includes, but are not limited to, hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, and semiconductor memory chips used for nonvolatile storage of information readable by a computer. Transfer media include, but are not limited to, the Internet, electronic bulletin boards, local and remote networks, and file transfer protocols. (3-6-00)

03. Hardware. The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See Rule 024 of these rules. (3-6-00)

04. Canned Software. The transfer of title, possession, or use for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software is prewritten computer software which is offered for sale, lease, or use to customers on an off-the-shelf basis or is electronically transferred by whatever means, with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of the identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program.

(3-6-00)

a. Canned software may be transferred to a customer electronically or in storage media. Tax applies to the sale or lease of the canned software, including the charges for the storage media or the charge to effect an electronic transfer. (3-6-00)

b. Tax applies when operational control of canned software is transferred to the buyer, whether title to the storage media on which the software resides passes to the customer or the software resides on storage media furnished by the customer. A fee for the permanent or temporary transfer of possession of software by any means is a sale or lease of tangible personal property and is taxable. (3-6-00)

c. Tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the purchase price subject to tax. (3-6-00)

05. Maintenance Contracts. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive periodic program enhancements and error correction, often referred to as upgrades, either on storage media or through remote telecommunications. The maintenance contract may also provide that the purchaser will be entitled to telephone or on-site support services. (3-6-00)

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software. (7-1-93)

b. If the maintenance contract is optional to the purchaser of canned software, then the portion of the contract fee representing upgrades or new software is subject to sales tax if the fees for support services and upgrades are separately stated. If the fees are not separately stated the entire charge for the maintenance contract is subject to sales tax. (3-6-00)

06. Reports Compiled by a Computer. The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable regardless of the means of transfer. If a report is compiled from information furnished by the same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented. (3-6-00)

a. Example: An accountant uses a computer to prepare financial statements from a client's automated accounting records. No tax will apply since what is sought is the accountant's expertise and knowledge of generally accepted accounting principles. (7-1-93)

b. Example: A company sells mailing lists which are stored on a computer disk. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. (7-1-93)

c. Example: An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

d. When additional copies of records, reports, manuals, tabulations, etc., are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means. (7-1-93)

e. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. (7-1-93)

07. Training Services. Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by Rule 011 of these rules. (3-6-00)

a. When separate charges are made for training materials, such as books, manuals, or canned software, sales tax applies. (7-1-93)

b. When training materials are provided at no cost to the purchaser in conjunction with the sale of tangible personal property, the training materials are considered to be included in the sales price of the tangible personal property. (7-1-93)

c. When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must pay sales tax or accrue and remit use tax. (3-6-00)

08. Custom Software. The transfer of title, possession, or use for a consideration of custom software is not subject to sales tax. Custom software is specified, designed, and created by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. The term includes those services that are represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)

a. Tax does not apply to the sale, license, or lease of custom software regardless of the form or means by which the program is transferred. The tax does not apply to the transfer of custom software or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment. (3-6-00)

b. If the custom programming charges are not separately stated from the sale or lease of equipment, they will be considered taxable as part of the sale. (7-1-93)

c. Custom software includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The sale of the program by the customer for whom the custom software was prepared will be a sale of canned software. (7-1-93)

~~**09. Data Processing Service Agreement.** Data processing includes contractual agreements to access computer equipment owned and operated by another, either by batch or on-line, for the purpose of processing data or examining or acquiring data stored in or accessible to such computer equipment. A charge for computer time under the terms of a data processing service agreement is a service and not subject to sales tax. Computer hardware sold, leased, or rented in connection with a data processing service agreement must be separately stated and taxed as provided in Subsection 027.03. (3-6-00)~~

#09. Purchases for Resale. Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules. (3-6-00)

(BREAK IN CONTINUITY OF SECTIONS)

033. SALES OF NEWSPAPERS AND MAGAZINES (RULE 033).

01. Subscriptions. Subscriptions to newspapers and magazines are sales of tangible personal property.

The sale will be taxed if the single copy price of each newspaper or magazine purchased by the subscriber exceeds eleven cents (\$0.11). The single copy price shall be computed on an annual basis regardless of whether the subscription is paid weekly, monthly or on some other periodic basis. (7-1-93)

02. Single Copy Price. The single copy price shall be computed according to the following formula. (Published subscription price) x (Number of subscription periods in one (1) year) / (Number of issues a subscriber receives in one (1) year) = Single Copy Price. If the single copy price as computed exceeds eleven (\$0.11)cents, the subscription is taxable. If the single copy price is eleven cents (\$0.11) or less, the subscription price is not taxable. (7-1-93)

03. Computation of Tax. If the subscription price is taxable, the tax shall be computed on the subscription price according to the schedule contained in Section 63-3619, Idaho Code. (7-1-93)

04. Subscription Price. As used in this rule, the terms published subscription price and subscription price mean the total amount charged for purchase and delivery of the newspaper and magazine, except that separately stated postage shall be excluded from the subscription price subject to tax. It is acceptable business practice for publishers to establish a price for their newspapers as separate weekday-only and Sunday-only issues. The provisions of this rule will be in effect in such cases. When the price is posted as a combined weekday-Sunday price, sales tax will be charged on the combined subscription price. (7-1-99)

05. Individual Sales. Individual or separate sales of newspapers or magazines, except as provided in Subsection 033.06 of this rule for a single price of eleven cents (\$0.11) or less are not taxable. Individual or separate sales of newspapers or magazines for a single price exceeding eleven cents (\$0.11) are subject to tax according to the schedule provided in Section 63-3619, Idaho Code. Separate or individual sales of newspapers or magazines together with retail sales or other tangible personal property subject to tax shall be taxable if the total sales price of all taxable property included in the sale exceeds eleven cents (\$0.11). (3-15-02)

06. Vending Machine Sales. Sales of newspapers or magazines through a vending machine are governed by the provisions of Section 63-3613, Idaho Code, and Rule 058 of these rules, except when the cost of the newspaper is greater than the sales price, tax will be computed on the retail sales price. (7-1-99)

07. Independent Retailer Sales. The sale of newspapers by a publisher to an independent retailer will be tax exempt only if the retailer provides the publisher with a properly executed resale certificate. See Rule 128 of these rules. The incidence of sales tax then falls upon the independent retailer who must have a registered seller's permit number and will be responsible for collecting, accounting for and remitting the sales tax on all newspapers thus purchased and resold. (3-15-02)

08. Carriers Less Than Sixteen Years Old. If the carrier is less than sixteen (16) years old, the publisher or other seller's permit holder from whom he or she obtains the newspapers will be responsible for the collection of sales tax and remitting such taxes to the State Tax Commission. (7-1-93)

09. Product Consumed by the Publisher. Eight-tenths of one percent (0.8%) of net press run of newspapers or magazines, will be taxed as product consumed by the publisher. Any percentage figure below eight-tenths of one percent (0.8%) must be supported by accepted accounting methods generally used in the publishing industry. The value of the newspapers used shall be set at the retail price charged the consumer. Example: (Eight tenths of one percent (0.8%) of Daily Net Press Run) x (Single Copy Retail Price) x (Tax Rate) / Daily Net Press Run = Tax Per Copy. (7-1-93)

10. Single Unit Price and Net Press Run. For purposes of the computation in Subsection 033.09 of this rule single copy price shall be the amount computed by the formula in Subsection 033.02 of this rule. Net press run shall mean all readable, usable copies, including editorial copies, tearsheets, and archival copies, and not including spoiled runs or printing waste. (7-1-93)

~~**11. Free Distribution Publications.** Those free distribution publications, such as shoppers or flyers which, because they achieve no retail value as defined in this rule and meet the exemption laws due to a ten percent (10%) editorial content, will not be subject to sales tax. (7-1-93)~~

- ~~121.~~ **Cross-Reference.** (7-1-93)
- a.** See Rule 058 of these rules, Sales Through Vending Machines. (7-1-99)
- b.** See Rule 127 of these rules, Free Distribution Newspapers. ()
- ~~b.c.~~ See Rule 128 of these rules, Certificates for Resale and Other Exemption Claims. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

084. CONTAINERS RETURNABLE/NONRETURNABLE (RULE 084).

01. Container. A container encloses or will enclose tangible personal property which is sold at wholesale or retail. A container may be comprised of one (1) or more components. Items used as shipping supplies which do not enclose the product are not considered to be containers. Example: Cartons of canned goods are placed on a pallet. Shrink wrap is used to bind the cartons to the pallet. A shipping address label is affixed to the shrink wrap. The container includes the cans in which the goods are enclosed; the cartons in which the canned goods are placed; and the shrink wrap and pallet which enclose the cartons. The address label is not part of the container.

(7-1-93)()

02. Containers Exempt from Tax. The following containers are exempt from sales or use tax:

(7-1-93)

a. Nonreturnable containers purchased by a retailer or wholesaler who places the contents in the container and sells the contents with the container at retail or wholesale, including cans, barrels, boxes, cartons, grocery sacks, disposable soft drink cups and lids, and other to-go fast food containers; ~~and gift wrap and gift boxes, but only when the gift wrapping of merchandise is offered as a regular service to all purchasers of merchandise at no additional charge.~~

(7-1-98)()

b. Returnable containers when the container, along with the contents, is sold at retail if the fee for the container is separately stated, including returnable beer kegs, returnable barrels, and returnable pallets. (7-1-98)

c. Returnable containers when sold back to retailers or manufacturers for refilling. (7-1-93)

d. Returnable or nonreturnable containers when sold with contents that are exempted from the tax, regardless of whether or not the container is separately billed, including containers for prescription drugs, and oxygen or acetylene cylinders, when the use of the gases qualifies for the production exemption. (7-1-93)

03. Taxable Containers. Containers subject to sales and use tax include containers used by persons who are providing a service rather than selling a product, such as plastic clothing bags purchased by dry cleaners.

(7-1-98)

04. Supplies. Shipping, selling, or distribution supplies are not considered to be containers and are subject to the tax when purchased by the shipper, seller, or distributor, such as:

(7-1-93)

a. Shipping pallets and lumber stickers when not banded or shrink wrapped to the product to be sold, thereby not becoming a part of the container. (7-1-93)

~~**b.** Gift wrap and boxes when not regularly offered to all purchasers of merchandise or when a fee is charged for the service of gift wrapping.~~

(7-1-93)

~~**b.b.** Banding or binders used to secure goods to transportation equipment. (7-1-93)~~

~~**b.c.** Price stickers and address labels affixed to containers that do not provide any product information~~

such as weight, quantity, nutritional value, or other necessary product description. See ~~Idaho Sales Tax Administrative Rule 042 of these rules.~~ (7-1-98)(____)

ed. Example: Plywood is wrapped with lumber wrap. The bundles are rested on pallets for shipping. In this example the lumber wrap is the only container. As the bundles are not enclosed onto the pallet, the pallet is not a container and is instead a shipping supply subject to the tax. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

101. MOTOR VEHICLES AND TRAILERS USED IN INTERSTATE COMMERCE (RULE 101).

01. In General. An exemption is provided from the sales and use tax for motor vehicles and trailers sold or leased to commercial or private carriers to be substantially used in interstate commerce. The exemption is effective beginning April 1, 1989. Commercial or private carriers shall include the business of transportation of persons or commodities owned by the carrier or another, but shall not include farm vehicles or noncommercial vehicles as defined by Section 49-123, Idaho Code. (7-1-93)

02. Motor Vehicles. An exemption is provided from the sales and use tax for motor vehicles sold or leased to a purchaser who will: (7-1-93)

a. Immediately register the vehicle with a maximum gross weight of over twenty-six thousand (26,000) pounds; ~~and~~ (7-1-93)(____)

b. Register the vehicle under the International Registration Plan; (IRP), or other similar proportional or pro rata registration plan; and (7-1-93)(____)

c. Operate the vehicle in a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in any ~~calendar year~~ registration period under the international registration plan. (7-1-93)(____)

03. Trailers. An exemption is provided from the sales or use tax for trailers when the purchaser will: (7-1-93)

a. Immediately place the trailer in a fleet of vehicles registered under the International Registration Plan; (IRP), or other similar proportional or pro rata registration plan; and (7-1-93)(____)

b. The trailer will be part of a fleet of vehicles with a minimum of ten percent (10%) of the fleet miles operated outside the state of Idaho in any calendar year. (7-1-93)

04. Title or Base Plate. The exemption applies whether the motor vehicles and trailers are titled or base plated in Idaho or another state or nation. (7-1-93)

05. Documentation. Purchasers claiming this exemption must provide the seller or lessor with a properly completed Form ST-104-MV, Sales Tax Exemption Certificate-Vehicle. When a vehicle qualifying for this exemption is purchased from a retailer who is not registered to collect Idaho sales tax, the Form ST-104-MV must be completed by the purchaser and provided to the county assessor or Department of Transportation when titling or registering the vehicle in Idaho. (7-1-93)

06. Repair Parts and Supplies. The exemption does not apply to parts, glider kits as defined by Section 49-123, Idaho Code, supplies, or other tangible personal property purchased by persons engaged in interstate commerce. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

102. LOGGING (RULE 102).

01. In General. The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in logging activities. The provisions of this rule are based on the usual methods of doing business in this industry. Specific factual differences in the way a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Since some equipment may be used for more than one (1) purpose, determinations of taxability will be made based upon the primary use of the equipment. (7-1-93)

02. Real Property. The logging exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased for the purpose of becoming an improvement or fixture to real property. See *STC* Rules 010 and 067 of these rules for a definition of real property. (~~7-1-93~~)(____)

03. Property Used in Logging Operations. The logging exemption applies to tangible personal property primarily used in a logging activity without regard to the primary business activity of the person performing the logging. For example, a contractor building a road for the Forest Service may claim the logging exemption when purchasing equipment and supplies primarily used to remove the timber from the right-of-way if the timber is resold, even though logging is not the contractor's primary activity. (7-1-93)

04. Logging Process Begins and Ends. The logging process begins when forest trees are first handled by the logger at the site where such an operation occurs. The logging process ends when the product is placed on transportation vehicles at the loading site, ready for shipment. (7-1-93)

05. Logging Exemption. Generally, the logging exemption includes equipment and supplies used or consumed in the logging process and which are necessary or essential to the performance of the operation. To qualify, the logging use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be directly used in the logging process. Examples include: (7-1-93)

- a. Chain saws with a unit price of more than one hundred dollars (\$100) and tree harvesters. (7-1-93)
- b. Skidders, tower-skidders, skidding cables, or chokers. (7-1-93)
- c. Log loaders and log jammers which are not licensed motor equipment. (7-1-93)
- d. Repair parts, lubricants, hydraulic oil, and coolants which become a component part of logging equipment. (7-1-93)
- e. Fuel, such as diesel, gasoline, and propane consumed by equipment while performing exempt logging activities. (7-1-93)

06. Directly Used. Directly used, as applied to logging, means the performance of any of the following functions when such functions occur between the point at which the logging operation begins and the point at which the operation ends, as defined in Subsection 102.04 of this rule: (7-1-93)

- a. The performance of a function in the logging process that effects a physical change in the property being logged so as to render the property more marketable. (7-1-93)
- b. The performance of a function which occurs simultaneously with and which is an integral part of and necessary to a function which effects a physical change in the property being logged rendering it more marketable. (7-1-93)
- c. The performance of a function which is an integral and necessary step in a continuous series of functions which effect a physical change in the property being logged rendering it more marketable. (7-1-93)

d. The performance of a quality control function which is an integral and necessary step in maintaining specific product standards. Any portion of the quality control function that is related to research and development is excluded from this exemption. (7-1-93)

07. Not Included in Logging Exemption. Generally, the logging exemption does not include the following activities and equipment: (7-1-93)

a. Road construction equipment and supplies such as tractors, road graders, rollers, water trucks, whether licensed or unlicensed, explosives, gravel, fill material, dust suppression products, culverts, and bridge material. (7-1-93)

b. Slash disposal or brush piling and clearing equipment and supplies, such as brush clearing machines, brush rakes, and tractors, except when part of the operation of a tree farm. (7-1-93)

c. Reforestation equipment and supplies, except when part of the operation of a tree farm. (7-1-93)

d. Safety equipment and supplies, including hard hats and earplugs. (7-1-93)

e. Transportation equipment and supplies including vehicles to transport logs from the loading site to the mill, whether the vehicles are licensed or unlicensed, and cable and tie-downs used to fasten logs to the vehicle. (7-1-93)

f. Machinery, equipment, materials, repair parts, and supplies used in a manner that is incidental to logging such as: office equipment and supplies; selling and distribution equipment and supplies; janitorial equipment and supplies; maintenance equipment and supplies which do not become component parts of logging equipment, such as welders, welding gas, and shop equipment; and paint, plastic coatings, and all other similar products used to protect and maintain equipment, whether applied to logging equipment or other equipment. (7-1-93)

g. Research equipment and supplies all expenses for which the taxpayer claims the federal credit for incremental research expenses under Section 41(f) of the Internal Revenue Code. (7-1-93)

h. Hand tools with a unit price of one hundred dollars (\$100) or less, regardless of how necessary the tools may be to the logging operation or how directly they may be used. (7-1-93)

i. Recreation-related vehicles, as defined in Section 63-3622HH, Idaho Code, regardless of use, such as All Terrain Vehicles; (ATV's), snowmobiles, and off-highway motorbikes. (7-1-93)(____)

j. Aircraft or motor vehicles licensed or required to be licensed by the laws of this state, regardless of the use to which such motor vehicles or aircraft are put. A motor vehicle not required to be licensed is exempt under the logging exemption only if it meets the tests established elsewhere in this rule. (7-1-93)

08. Election to Pay Sales Tax. ~~Effective April 6, 1988, the~~ The owner of a log loader, log jammer, or similar fixed load motor equipment used in logging, not normally licensed for use on public roads, may elect to license and pay sales tax on the motor equipment rather than placing it on the personal property tax rolls, if the motor equipment may be legally operated on a public road as a commercial vehicle. (7-1-93)(____)

a. Motor equipment licensed at the time of purchase. Sales tax applies to the total purchase price of the motor equipment. (7-1-93)

b. Motor equipment licensed after the date of purchase. Use tax applies to the fair market value of motor equipment on which no sales or use tax has been paid and which was not licensed at the time of purchase, if acquired within the last seven (7) years. See Section 63-3633, Idaho Code. Fair market value may be determined from the personal property tax records of the county assessor. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

105. TIME AND IMPOSITION OF TAX, RETURNS, PAYMENTS AND PARTIAL PAYMENTS (RULE 105).

01. Time and Imposition of Tax. (7-1-93)

a. Sales Tax. Sales tax is imposed, computed and collected at the time of sale, without regard to the provisions of any contract relating to the time or method of payment. In the case of installment sales, sales on account, or other credit sales, the seller shall report as a taxable sale the entire sales price for the month in which the sale is made. No part of the sales tax may be deferred until the time the retailer actually collects payment from the buyer. A sale occurs when title to property passes through delivery to the customer or absolute and unconditional appropriation to a contract. Lease or rental payments are taxable during the month or other period for which the property is leased or rented. (7-1-93)

b. Use Tax. Use tax is determined at the time of the use, storage or other consumption of tangible personal property in Idaho. The tax is reported and payable in accordance with the provisions of this rule. Persons making purchases subject to use tax should apply for a use tax permit number from the Tax Commission. Application forms may be obtained by contacting any Tax Commission office. (7-1-93)

c. Taxable Sales Create State Revenue. The sales or use tax collected by a retailer from a customer at the time of purchase becomes state money at that time. The collected amounts may not be put to any use other than that allowed by Chapter 36, Title 63, Idaho Code, and these rules. (7-1-93)

02. Returns. (7-1-93)

a. Monthly Filing Generally Required. All retailers and persons subject to use tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all sales and use tax due from the first through the last day of the preceding calendar month. (7-1-93)

b. Request to File Quarterly or Semi-annually. Retailers or persons who owe six hundred dollars (\$600) or less per quarter and have established a satisfactory record of timely filing and payment of the tax may request permission to file quarterly or semi-annually instead of monthly. (~~3-20-04~~)()

c. Request to File Annually. Retailers or persons who have seasonal activities, such as Christmas tree sales or repeating fair booths, may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. (7-1-93)

d. Variable Filing. If the Tax Commission finds it necessary or convenient for the administration of the Sales Tax Act, it may assign an account to a taxpayer with a variable filing requirement. In such a case the taxpayer would not be required to file returns at regular intervals. The Tax Commission may also create one-time filing only accounts for taxpayers who are making a single payment of sales or use tax. ()

de. Final Report. Whenever a taxpayer who is required to file returns under the Sales Tax Act or these rules stops doing business, he must mark cancel on the last return he files. This return ends the taxable year for sales or use tax purposes and constitutes the taxpayer's final report of sales or use tax activities or liabilities. The taxpayer must enclose his seller's permit with his request for cancellation or send a written statement that the permit has been destroyed. If the taxpayer continues business activity after filing a final report he may be subject to liabilities or penalties for failing to comply with the Idaho Sales Tax Act and these rules. (7-1-93)

03. Valid Return. A tax return or other document required to be filed in accordance with Section 63-3623, Idaho Code, and these rules must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return is considered to have filed no return. A

taxpayer's failure to properly file in a timely manner may result in penalties imposed by Section 63-3634, Idaho Code, and related rules. (7-1-93)

a. The sales and use tax return form must be completed and, if required, copies of all pertinent supporting documentation must be attached. The results of required supporting documentation must be carried forward to applicable lines on the sales or use tax return form. (7-1-93)

b. All sales and use tax returns or other documents filed by the taxpayer must include his sales or use tax permit number and federal taxpayer identification number in the spaces provided. (7-1-93)

c. A sales or use tax return that does not provide sufficient information to compute a tax liability does not constitute a valid return. (7-1-93)

d. Perfect accuracy is not required of a valid return, although each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; the tax liability must be calculated and have sufficient supporting information, if required, to demonstrate how the result was reached; and it must show an honest and genuine effort to satisfy the requirements of the law. (7-1-93)

04. Perpetual Extensions of Time to File Revoked. Any previously granted permanent or perpetual extension of time to file any sales or use tax returns is hereby revoked. Any person who has used such an extension in the past may avoid a penalty for late filing by filing a timely extension of time return estimating the tax liability, as provided by Subsection 105.05 of this rule. (7-1-93)

05. Use of Estimates Extension of Time Returns. (7-1-93)

a. The Commission may, for good cause, grant authority for a taxpayer to file for an extension of time by filing an estimated return. When filing the Extension of Time estimated return, the taxpayer must attach a written request which sets forth the reason for estimating. The Commission will review each request to determine if there is good cause for filing an Extension of Time estimated return. If the Commission determines that the request should be denied, the taxpayer will be notified in writing and a penalty, as provided by Section 63-3046, Idaho Code, will apply to any delinquent tax due when the original return is filed. (7-1-93)

b. If the return for any period is filed on an estimated basis, the estimated return must be filed timely and the estimate must be reconciled to actual figures by filing an original return within one (1) month of the due date. Any additional tax due as a result of reconciliation must be remitted when the original return is filed and must include interest on any unpaid balance due from the due date of the return. (~~7-1-93~~)(____)

c. The estimated tax remitted must be at least ninety percent (90%) of the total sales and use tax due for the period or one hundred percent (100%) of the total sales and use tax due for the same month of the prior year. If the estimated tax paid is less than these requirements, a five percent (5%) penalty may be applied to the remaining tax due, as provided by Section 63-3046(a), Idaho Code. (7-1-93)

d. Taxpayers wishing to file an Extension of Time estimated return must obtain the required forms from the Commission. (7-1-93)

06. Forms Required. (7-1-93)

a. Separate Payments. The original return will be completed with the amount of total sales, nontaxable sales, taxable sales, items subject to use tax, and tax due inserted in the blanks. Payment must accompany the return. If the retailer owes payments for withholding or other taxes due to the state and payable to the Commission, separate checks should be made out for each tax payment and the reports and checks should be sent separately to the Commission. A complete sales and use tax return will be filed by each retailer or person subject to use tax. This return will be on a form prepared and mailed to the taxpayer by the Commission. If the original is lost or destroyed, a substitute form will be supplied upon request. (7-1-93)

b. Retailers Must Report Own Use and Nontaxed Transactions. All retailers must report any sales or purchases on which no sales or use tax was collected or paid. Goods sold or produced and consumed by the retailer,

items withdrawn from stock for personal use or employee use, stock removed and used for gift or promotional purposes, or any combination of such uses are subject to tax. (7-1-93)

c. Reporting Adjustments. Any adjustments for additional tax due or credits claimed should be made on the next return due after the adjustments are discovered. These adjustments are to be shown on the line designated for adjustments on the return form and must be accompanied by an explanation and any documents that support the claimed adjustment. (7-1-93)

07. Payment of Tax. (7-1-93)

a. Payment to Accompany Return. The return filed in accordance with this rule must be accompanied by a remittance of the total amount due as shown on the return. Checks or other negotiable instruments should be made payable to the Idaho State Tax Commission. (7-1-93)

b. Payment of One Hundred Thousand Dollars (\$100,000) or Greater. All taxes due to the state must be paid by electronic funds transfer whenever the amount due is one hundred thousand dollars (\$100,000) or greater, in accordance with rules promulgated by the Idaho State Board of Examiners, which is incorporated by reference to these rules. (7-1-93)

c. Remittance of Collections Required--Bracket Exception. Retailers are required to remit all taxes collected from purchasers, except any difference that may result from use of the bracket system described in Rule 068 of these rules. Any taxes erroneously collected in excess of those properly due should be refunded to the purchaser by the retailer. If the retailer either cannot or does not make the refund during the period for which the return is due, then the retailer must report the erroneously collected taxes on the return and pay them to the Commission. If the erroneously collected taxes are subsequently refunded to the purchaser from whom they were collected, the retailer may claim a credit or refund of sales taxes in accordance with Rule 117 of these rules. Under no circumstances may a retailer retain any amount collected as sales or use tax which is greater than the retained amount authorized under the bracket system by Rule 068 of these rules. (3-20-04)

08. Filing Dates--General Rule. The filing date for all sales or use tax returns is the twentieth day of the calendar month immediately following the last day of the reporting period, unless otherwise allowed by these rules. This is the filing due date for all regular monthly, quarterly, semi-annual, and annual accounts. If the twentieth is a Saturday, Sunday, or legal holiday, the return shall be due on the next following day which is not a Saturday, Sunday or legal holiday. (~~3-20-04~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

110. RETURNS FILED BY COUNTY ASSESSORS AND FINANCIAL INSTITUTIONS (RULE 110).

01. Filing Returns. Upon collection of sales tax on applications for certificate of title to a motor vehicle, trailer, or other titled property, or initial application for registration processed by the county assessor, the assessor shall, no less than monthly, complete and submit to the Commission, Form ST-852, Idaho Sales Tax Return-County Assessors ~~or Sheriffs, no less than monthly~~. The assessor may, at his discretion, submit the form more frequently. But at no time shall the amount of tax collected during any month be submitted later than the twentieth day of the month following the month in which the tax was collected. (7-1-93)(____)

~~**02. Separate Forms for Each Tax Rate.** It is possible for an assessor to collect tax at more than one (1) rate. This can happen when a person purchases a vehicle in a state with a lower tax rate and soon thereafter registers the vehicle in Idaho. A separate Form ST-852 must be prepared for each rate of tax collected. (3-20-04)~~

032. Reimbursement. The assessor and the Idaho Transportation Department will be reimbursed at the rate of one dollar (\$1) for each application for certificate of title or initial registration of a motor vehicle, trailer, or other titled property, and each Form ST-108, Truck Camper, Transport Trailer, Office Trailer and Untitled Boat Certificate, processed by the assessor except those upon which any sales or use tax due has been previously collected by a retailer or paid by the purchaser. (3-15-02)(____)

043. Financial Institutions. Financial institutions collecting tax on sales of tangible personal property ~~which~~ that they are financing, whether sold by the financial institution or another, must remit the tax to the Commission no later than the twentieth day of the month following the month in which the tax was collected from the purchaser of the tangible personal property. Failure to remit the tax on a timely basis will result in the addition of penalties and interest as provided by Sections 63-3632 and 63-3634, Idaho Code. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

117. REFUND CLAIMS (RULE 117).

01. In General. Application for refund of sales or use taxes paid in excess of those properly imposed by the Sales Tax Act, shall be in accordance with the provisions of this rule. (7-1-93)

02. Payment of Sales Tax by a Purchaser to a Vendor. When a purchaser has paid sales tax to a vendor, and later determines that the sales tax was paid in error, the purchaser shall request the refund from the vendor to whom the excess tax was paid. If the purchaser can provide evidence that the vendor has refused to refund the tax, he may then file a claim for refund directly with the Tax Commission. (7-1-93)

03. Payment of Sales or Use Tax Directly to the State. When a person holding a seller's permit or use tax account number has paid tax to the state, and later determines that the sales or use tax was paid in error, he may file a claim for refund directly with the Tax Commission. (7-1-93)

04. Bad Debts. Claims for refunds arising from bad debts must be filed with the Tax Commission in the manner prescribed by Rule 063 of these rules. (5-3-03)

05. Mathematical Errors. When the filer of sales or use tax returns determines that a mathematical error has been made on a previously filed return resulting in overpayment of the proper amount of sales or use taxes, he may file a claim for refund directly with the Tax Commission. (7-1-93)

06. Claim Form. Form TCR, Sales Tax Refund Claim, may be used to file for a refund from the Commission. Although this form is available for this purpose, it is not required. A refund claim, however, must be in writing. The claim must include the full name and address of the claimant and his seller's permit number or use tax account number if the claimant has such a number. The claim must include a detailed statement of the reason the claimant believes a refund is due, including a description of the tangible personal property, if any, to which the tax relates and the date on which the claimed excess taxes were paid. If the claimant is the retailer, the claim for refund must include a statement, under oath, that the amount of tax plus interest refunded to the retailer have been or will be refunded by the retailer to the purchaser ~~or that such taxes have never been collected from the purchaser.~~ (5-3-03)(____)

07. Outstanding Liabilities. No claim for refund will be approved or issued if the claimant has outstanding liabilities for other taxes administered by the Tax Commission. (5-3-03)

08. Payment Under Protest. It is not necessary for a taxpayer to pay taxes under protest in order to subsequently be able to claim a refund of such taxes. (7-1-93)

09. Statute of Limitations. A claim for refund will not be allowed if it is filed more than three (3) years from the time the payment of the tax was made. The time the payment was made is the date upon which the sales or use tax return relating to the payment was filed with the State Tax Commission. (5-3-03)

10. Taxes Paid in Response to a Notice of Deficiency Determination. A claim for refund may not be filed relating to any sales or use taxes which have been asserted by a notice of deficiency determination. A taxpayer contending that taxes have been erroneously or illegally collected by the State Tax Commission in conformance with a notice of deficiency determination must seek a refund by using the appeal procedures outlined in Rule 121 of these rules. (5-3-03)

11. Denial of a Refund Claim. All claims for refund or credit will be reviewed by the State Tax Commission's staff. If the staff concludes that all or part of the claim should not be allowed, notice of denial of the claim shall be given to the claimant by return receipt requested delivery. The notice shall include a statement of the reasons for the denial. The notice of denial shall be the equivalent of a notice of deficiency determination. If the taxpayer wishes to seek a redetermination of the denial notice, he must file a petition for redetermination in the manner prescribed in Rule 121 of these rules. A petition for redetermination must be filed no later than sixty-three (63) days from the date upon which the notice of denial is mailed to or served on the claimant. (5-3-03)

12. Interest on Refunds. See Rule 122 of these rules. (5-3-03)

IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0402

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(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 20, 2004.

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 067 - The National Electrical Code was recently amended to state that fiber optic cable must be removed if abandoned. This means the cable should be treated as personal property. Up until now we have treated it as a real property improvement.

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 27, 2004.

DATED this 25th day of August, 2004.

Jim Husted, Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0102-0402

067. REAL PROPERTY (RULE 067).

01. Improvements or Fixtures. Improvements or fixtures to real property include: (7-1-93)

a. Property which is physically attached to the land or other improvements affixed to the land in such

a manner that it may not be removed without materially damaging the real property or is of such a nature that it would normally be expected to be sold together with the land. (7-1-93)

b. Property which increases the market value of the land or increases the ability of the possessor of the land to use it more productively. (7-1-93)

c. Property which increases the market value or productivity on a relatively permanent basis. (7-1-93)

02. Three Factor Test. A three (3) factor test may be applied to determine whether a particular article has become a fixture to real property. The three (3) tests to be applied are: (7-1-93)

a. Annexation to the realty, either actual or constructive. (7-1-93)

b. Adoption or application to the use or purpose to which that part of the realty to which it is connected is suitable. (7-1-93)

c. Intention to make the article a permanent addition to the realty. (7-1-93)

03. Example 1: The original builder or owner of an apartment building installs draperies. The draperies meet the three (3) factor test of a fixture to realty. First, they are constructively annexed to the realty when attached to the drapery rod. Although the draperies are not affixed to the realty, they comprise a necessary, integral, or working part of the object to which they are attached. Second, they appropriately adapt to the purpose of the realty to which they are connected. Window coverings are necessary in order to maintain occupancy of the apartment. The third and controlling factor in this example is the intention with which the installation was made. The intention must be determined from the surrounding circumstances at the time of installation. It is not the undisclosed purpose of the annexor, but rather the intention implied and manifested by his act. The builders intended that the drapes would remain as long as they served their purpose. (7-1-93)

04. Example 2: The three (3) factor test would not be met in Subsection 067.03, Example 1 of this rule, if the drapes were installed by a tenant of an apartment leased for a term with no agreement as to ownership. The tenant would be expected to remove or sell the drapes to an incoming tenant, and his intention would be the controlling factor. The draperies would not be considered as fixtures to the real property. (7-1-93)(____)

05. Personal Property Incidental to the Sale of Real Property. This rule does not affect the provisions of Section 63-3609(c), Idaho Code. (7-1-93)

06. Abandoned Cable. The National Electrical Code requires the removal of certain abandoned fiber optic and communication cable. Such cable therefore is not intended to become a permanent part of a building. If a contractor installs such cable, he is installing personal property. In this case he must separately state the charges for the cable and collect sales tax on that amount. Raceways and other materials that are intended to permanently remain in place are fixtures to realty. Contractors installing both personal property and improvements to realty must account for each separately as required by Section 63-3610(e), Idaho Code. (____)

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-0401
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(s) 63-105A and 63-3624, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

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 is being updated to reference the appropriate editions of the guides used to determine the values of recreation vehicles and is being corrected and updated to reference the appropriate edition of the register used in the valuation of railroad equipment. To make technical corrections.

Rule 225 is being amended to correct the cross reference to the statute based on the change made by HB538.

Rule 304 is being amended to clarify that once a manufactured home has been declared real property, it remains real property until a reversal pursuant to Section 63-305, Idaho Code, has been completed. To make technical corrections.

Rule 317 is being amended to clarify what property is subject to the occupancy tax implementing HB649 and to provide direction to assessors on calculation of the homeowner's exemption.

Rule 404 is being amended to clarify that new electrical generation property is not to be apportioned over the wire miles throughout the county where located but to only be apportioned to the tax code area where the property is located as provided by HB542.

Rule 609 is being amended to implement HB516 relating to ownership issues for the homeowner's exemption by deleting subsections of the rule that are a duplication of the law.

Rule 613 is being amended to implement the new requirements in HB477 relating to procedures for determining crop prices and the capitalization rate to be used in the income approach to calculate the taxable value of agricultural use land. To make technical corrections.

Rule 803 is being amended to implement HB739 by clarifying procedures to be used by county officials when assessing and reporting recovered taxes on any improper homeowner's exemption and to clarify how to calculate the total levy for any taxing district with multiple funds. To make technical corrections.

Rule 961 is being amended to clarify which small acreages used as forestlands and contiguous with other property used as forestland and owned by the same owner are eligible for valuation and property taxation pursuant to Chapter 17, Title 63, Idaho Code. To make technical corrections.

Rule 988 is being amended to implement HB799aa relating to the optional property tax exemption in lieu of investment tax credit by making this rule consistent with the revised law about regulated operating property and providing reporting procedures for distribution of recaptured taxes. To make technical corrections.

Rule 989 is being created to implement HB799aa relating to recapture provisions of the property tax exemption in lieu of investment tax credit. The new rule establishes notification procedures consistent with income tax investment tax credit procedures and defines terms found in HB799aa relating to the computation of county and state average property tax levies.

Rule 990 is being amended to correct the cross reference to the statute based on the change made by HB538.

Rule 995 is being amended to delete bureaucratic procedures made unnecessary by using Web based notification.

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 Alan Dornfest, at (208) 334-7530.

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 27, 2004.

DATED this 25th day of August, 2004.

Alan Dornfest, Tax Policy Supervisor
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36
Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0401

006. INCORPORATION BY REFERENCE (Rule 006).

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

01. Availability Of Reference Material. Copies of the documents incorporated by reference into these rules are available at main office of the State Tax Commission as listed in Rule 005 of these rules. (5-3-03)

02. Documents Incorporated By Reference. The following documents are incorporated by reference into these rules: (5-3-03)

a. "Standard on Ratio Studies" published in 1999 by the International Association of Assessing Officers. (5-3-03)

b. "Recreation Vehicle Guide of the National Automobile Dealers Association" published in 2002~~4~~ for the September through December period by the National Appraisal Guides Incorporated. (~~5-3-03~~)()

c. "Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association" published in 2002~~4~~ for the September through December period by the National Appraisal Guides Incorporated. (~~5-3-03~~)()

d. “Official Railway Equipment Register” published for ~~each quarter in 2002~~ the last three (3) quarters in 2004 and the first quarter in 2005 by R. E. R. Publishing Corporation, Agent as a publication of Commonwealth Business Media, Inc. (5-3-03)()

e. “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (5-3-03)()

f. “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)

g. “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)

h. “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)

i. “Manual of Instructions for the Survey of the Public Lands of the United States” published by the Government Printing Office for the Bureau of Land Management in 1973, Technical Bulletin No. 6. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

225. DOCUMENTATION FOR NEWLY ORGANIZED OR ALTERED TAXING DISTRICTS OR REVENUE ALLOCATION AREAS (RAAS) UNDER THE JURISDICTION OF URBAN RENEWAL AGENCIES (RULE 225).

Sections 50-2907, 50-2908, 63-215, 63-807, 63-1202, 63-306~~7~~29B, and 63-3638, Idaho Code. (3-15-02)()

01. Definitions. The following definitions apply for cities, taxing districts, or revenue allocation areas (RAAs) under the jurisdiction of urban renewal agencies being organized or formed or altering boundaries. (3-15-02)

a. Taxing Districts. The term taxing districts as used in this rule means taxing districts and taxing units. (3-15-02)

b. Alter. Alter or any derivatives of the word as used in Section 63-215, Idaho Code, means annex, deannex, or consolidate or derivatives of these words. (3-15-02)

c. Contiguous. Contiguous means being in actual contact or touching along a boundary or at a point and is synonymous with abutting on. (3-15-02)

d. Deannex. Deannex means to delete or remove a portion but not all of a boundary for a city, taxing district, or RAA by completing all legal requirements to establish a new boundary for the city, taxing district or RAA. (3-15-02)()

e. Disincorporate. Disincorporate or any derivatives of the word as used in Sections ~~63-3067 and~~ 63-3638, Idaho Code, means completing all legal requirements to end the existence of a city. (3-15-02)()

f. Dissolve. Dissolve or any derivatives of the word as used in Sections ~~63-3067 and~~ 63-3638, Idaho Code, means completing all legal requirements to end the existence of a taxing district or RAA. (3-15-02)()

g. Legal Description. Legal description means a narrative that describes by metes and bounds a definite boundary of an area of land that can be mapped on a tax code area map and shall include: (3-15-02)

- i. Section, township, range and meridian. (3-15-02)
- ii. An initial point, being a government surveyed corner, such as a section corner, quarter corner or mineral survey corner. (3-15-02)
- iii. A true point of beginning, defined by bearings and distances from the initial point, that begins a new city, taxing district, RAA or any alteration thereto. (3-15-02)
- iv. Bearings and distances that continuously define the boundary of any area with a closure accuracy of at least one (1) part in five thousand (5,000). Variations from this closure requirement may be approved by the State Tax Commission if the description is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. Such variations may include: (3-15-02)
 - (1) Boundaries which follow mountain ranges, rivers, highways, lakes, canals and other physical features that are clearly delineated on published U.S. Geological Survey quadrangle maps at scale 1:24,000; or (3-15-02)
 - (2) References to cardinal directions, government survey distances, and section or aliquot part corners; or (3-15-02)
 - (3) References to recorded subdivision or town site plats, with copies of such plats; or (3-15-02)
 - (4) Legislatively established boundaries as defined by reference to Idaho Code sections. (3-15-02)
- v. The legal description to annex to or deannex from an existing city, taxing district, or RAA shall plainly and clearly define the boundary lines of the deannexed or annexed area and include a reference to existing boundaries where contiguous. (3-15-02)
- h. Map Prepared in a Draftsman-like Manner. Map prepared in a draftsman-like manner means an original graphic representation or precise copy matching the accompanying legal description and drafted to scale using standard mechanical drawing instruments or a computer. The map shall include: (3-15-02)
 - i. Section, township, range, and meridian identifications. (3-15-02)
 - ii. North arrow, bar scale, and title block. (3-15-02)
 - iii. District name and ordinance number or order date. (3-15-02)
 - iv. Bearing and distance annotation between boundary points or a legend or table identifying the bearing and distance between each set of boundary points. (3-15-02)
 - v. Clearly defined boundary lines of the newly formed city, taxing district, or RAA or of the alteration to an existing one together with reference to the existing boundary where contiguous. (3-15-02)
 - vi. Variations from the requirements of ~~Subsection Paragraph~~ 225.01.h., of this rule for what must be included on the map may be approved by the State Tax Commission if the map is sufficiently certain and accurate to ensure that the property is assigned to the proper tax code area. (~~3-15-02~~)(____)

02. Documentation to Be Filed for Newly Created or Altered Cities, Taxing Districts, or RAAs.
The following documentation shall be filed with the county assessor, county recorder, and the State Tax Commission no later than thirty (30) days following the effective date of any action creating or altering a city, taxing district, or RAA boundary, but no later than January 10 of the following year when any action creating or altering said boundary occurs after December 10. (3-15-02)

- a. A legal description which plainly and clearly defines the boundary of a newly formed city, taxing district, or RAA or the boundary of an alteration to an existing one. (3-15-02)

b. A copy of a map prepared in a draftsman-like manner or a record of survey as defined by Chapter 19, Title 55, Idaho Code, which matches the legal description. (4-5-00)

c. A copy of the ordinance or order effecting the formation or alteration. (4-5-00)

03. Documentation to Be Filed for Disincorporated Cities or Dissolved Taxing Districts, or RAAs. (3-15-02)

a. No later than thirty (30) days following the effective date of the final action disincorporating a city or dissolving a taxing district or RAA, but no later than January 10 of the following year when the final action occurs after December 10, for the distributions of revenue as provided for in Sections 50-2908, 63-1202, 63-3067~~29B~~ and 63-3638, Idaho Code, the disincorporating or dissolving entity shall file a copy of the ordinance or order causing the disincorporation or dissolution with the county assessor, county recorder and the State Tax Commission. If the disincorporating or dissolving entity can provide a map showing the last known boundaries of the entity, this map should accompany the ordinance or order. (~~3-15-02~~)()

b. Upon receipt of the ordinance or order without an accompanying map of the boundaries from a disincorporating city or dissolving taxing district, or RAA, the State Tax Commission shall prepare and send a list of the affected tax code area number(s) and send a copy of a map showing the affected tax code area(s) to the city, taxing district, or urban renewal agency and to the appropriate assessor(s) and recorder(s) within thirty (30) days except for any ordinance or order received after January 1 when the list and map shall be sent by the fourth Friday of January. (3-15-02)

c. After fourteen (14) days from the date of the mailing of the list of the affected tax code area(s), the State Tax Commission shall process the disincorporation or dissolution unless it receives a response from the disincorporating city, or dissolving taxing district, appropriate urban renewal agency, appropriate recorder(s) or appropriate assessor(s) that an error exists in the identification of the tax code area(s). (3-15-02)

04. Digital Map Information. Digital map information in a format usable by the State Tax Commission may be submitted in addition to or as a substitute for any cloth, film, or paper copy maps. Such information shall be accompanied by metadata that clearly defines map projection, datum and attributes. (3-15-02)

05. Deadline for Completion. December 31 of the current year shall be the deadline for completing of any action that creates, alters, or dissolves any taxing district or RAA or creates, alters or disincorporates any city requiring a revision of the State Tax Commission's tax code area maps for the following year, unless the law provides otherwise. (3-15-02)

06. Approval of Property Tax Levy or Revenue Allocation. For the purpose of levying property taxes or receiving revenue allocations no newly formed or altered city, taxing district, or RAA shall be considered formed or altered by the State Tax Commission if it: (3-15-02)

a. Fails to provide the correct documentation plainly and clearly designating the boundaries of a newly formed city, taxing district, or RAA or of an alteration to an existing one; or (3-15-02)

b. Fails to provide the correct documentation in sufficient time for the State Tax Commission to comply with Rule 404 of these rules; or (4-5-00)

c. Has boundaries which overlap with like cities, taxing districts or RAAs. (3-15-02)

07. Notification of Approval or Disapproval. The State Tax Commission shall send a letter of approval or disapproval to the taxing district or municipality. A copy of said letter shall be submitted to any affected urban renewal agency and the auditor(s) and assessor(s) of the involved county(ies). In the case of disapproval said letter will state the reason(s) for disapproval, the corrective action(s) needed for approval, and the time within which such corrective action(s) must be taken. The State Tax Commission shall send such letter within thirty (30) days of receipt of the document to which the disapproval relates, but not later than the fourth Friday of January except during the first quarter of the calendar year for documents relating to the next tax year. (~~3-15-02~~)()

08. One Uniform System. The State Tax Commission will prepare one (1) uniform system of tax code area numbers and maps which shall be used by each county for property tax purposes. (4-5-00)

09. Tax Code Areas. The State Tax Commission shall create a separate, unique number for each tax code area. Only the State Tax Commission shall initiate or change a tax code area number. (3-15-02)

10. Furnished By The State Tax Commission. The State Tax Commission will furnish annually, without charge, one (1) set of updated tax code area maps, a listing of cities, taxing districts or RAAs included in each tax code area, and a list of changes in city, taxing district or RAA boundaries to each appropriate assessor, recorder, treasurer, and entity with operating property assessed by the State Tax Commission. There shall be a charge for all other tax code area maps. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

304. MANUFACTURED HOME DESIGNATED AS REAL PROPERTY (RULE 304). Sections 63-304 and 63-305, Idaho Code. (5-3-03)

01. Statement of Intent to Declare (SID). To declare a manufactured home real property, the homeowner shall complete a "Statement of Intent to Declare," SID form, as prescribed by the State Tax Commission. ~~(3-30-01)~~()

a. All information and signatures requested on the form shall be provided prior to recordation. (3-23-94)

b. The homeowner shall record the completed form. (3-23-94)

c. The homeowner shall provide the assessor a copy of the recorded SID form and the title or Manufacturer's Statement of Origin (MSO). If proof of ownership is being provided through the MSO, the buyer's purchase agreement shall be accepted by the assessor pending receipt of the MSO. For the purpose of this rule, the Manufacturer's Statement of Origin and Manufacturer's Certificate of Origin are synonymous. (3-30-01)

d. For new manufactured homes, the assessor shall verify that sales or use tax has been collected or shall collect such tax. Any sales or use tax collected by the assessor shall be remitted to the State Tax Commission. (3-30-01)

e. The assessor shall forward a copy of the SID form and the title or MSO to the Idaho Transportation Department. The Idaho Transportation Department will cancel the title. (3-23-94)

02. Reversal of Declaration of Manufactured Home as Real Property. To provide for the reversal of the declaration of the manufactured home as real property, the homeowner shall complete the "Reversal of Declaration of Manufactured Home as Real Property" form as prescribed by the State Tax Commission. The homeowner shall submit this completed form to the assessor within the required time period. (3-30-01)

a. The homeowner shall also submit to the assessor a title report with the appropriate signatures of consent attached and shall make application for a title to the manufactured home. (5-3-03)

b. The assessor shall transmit to the Idaho Transportation Department a copy of the completed reversal form, title report with appropriate signatures of consent, and the application for title to the manufactured home. (3-23-94)

03. Definition of Permanently Affixed. In the year any manufactured home is to be declared to be real property, ~~Permanently affixed~~ means complying with the Idaho Manufactured Home Installation Standard as adopted by IDAPA 07.03.12, "Rules Governing Manufactured ~~Mobile~~ Home ~~Licensing~~ Installations," Section 004. ~~(5-3-03)~~()

04. Status of Manufactured Housing Previously Declared Real. All manufactured housing upon which a “nonrevocable option to declare the mobile home as real property” or SID was correctly completed and properly recorded and filed shall be treated as real property until such time as a reversal (as provided for in Section 63-305, Idaho Code, and this rule) is correctly completed and properly recorded and filed. This status as real property is based on all criteria existing when said manufactured housing was originally declared real property. This property must be treated as real property and considered “permanently affixed” without any need to be retrofitted to comply with subsequent changes to the requirements for “permanently affixed,” including changes to the Idaho Manufactured Home Installation Standard as adopted by IDAPA 07.03.12, “Rules Governing Manufactured Home Installations,” Section 004, that occur after the manufactured home was originally declared real property. ()

(BREAK IN CONTINUITY OF SECTIONS)

317. OCCUPANCY TAX ON NEWLY CONSTRUCTED IMPROVEMENTS ON REAL PROPERTY (RULE 317).
Section 63-317, Idaho Code. (5-3-03)

01. ~~Manufactured Housing~~ Property Subject to Occupancy Tax. Excluding additions to existing improvements, the ~~Occupancy tax shall apply to industrial structures and new manufactured housing improvements upon real property, whether under the same or different ownership. Used manufactured housing is not subject to the occupancy tax.~~ The occupancy tax shall also apply to new manufactured housing, as defined in Section 63-317, Idaho Code, excluding additions to existing manufactured housing. (3-23-94)()

02. Value Prorated Monthly. The value for occupancy tax purposes shall be prorated at least monthly. (3-23-94)

03. Notice Of Appraisal. When notifying each owner of the appraisal, the county assessor shall include at a minimum the full market value before any exemptions and before any prorating of the value, the length of time subject to the occupancy tax, and the prorated value. (5-3-03)

04. Examples for Calculation of Value Less Homeowner’s Exemption (HO). The following examples show the correct procedure for the calculation of the taxable value subject to the occupancy tax less the homeowner’s exemption (HO): ()

a. Example for prorated market value of one hundred thousand dollars (\$100,000) or more.

Full Market Value of Home: \$120,000
Prorated Market Value for 11 Month Occupancy: $\$120,000 \times 11/12 = \$110,000$
Taxable Value: $\$110,000 - \$50,000 (HO) = \$60,000$

()

b. Example for prorated market value of less than one hundred thousand dollars (\$100,000).

Full Market Value of Home: \$120,000
Prorated Market Value for 3 Month Occupancy: $\$120,000 \times 3/12 = \$30,000$
Taxable Value: $\$30,000 - \$15,000 (HO) = \$15,000$

()

045. Market Value. The market value for occupancy tax purposes shall be entered on an occupancy tax

valuation roll. Occupancy tax shall not be included in the assessed value of any taxing district, but must be declared in the certified budget. (3-23-94)

056. Allocation to Urban Renewal Agencies. Beginning with any distribution of occupancy tax resulting from occupancy taxes levied after approval of levies for the year 2000, the revenue shall be allocated to any applicable school district and urban renewal agency. The revenue distribution to any applicable school district must be satisfied prior to the distribution to the urban renewal agency. Only the occupancy tax revenue from properties within the revenue allocation area shall be distributed in this manner. School districts shall be allocated an amount of occupancy tax equal to four tenths of one percent (0.4%) of the prorated value of property subject to occupancy tax, provided that such property is located within the school district and within the revenue allocation area of an urban renewal agency. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

404. OPERATOR'S STATEMENT -- CONTENTS (RULE 404).
Sections 63-401 and 63-404, Idaho Code. (5-3-03)

01. Operator's Statement. In the operator's statement, the number of miles of railroad track, electrical and telephone wire, pipeline, etc., must be reported to the hundredth mile in decimal form (0.00) in each taxing district or taxing authority and must be reported by the uniform tax code area method. (7-1-99)

02. Tax Code Area Maps. By March 1 of each year, the State Tax Commission shall furnish to all entities having operating property within the state of Idaho, except private railcar fleets, a list of all changes in tax code area boundary lines. In case the State Tax Commission receives corrections to any tax code area boundaries, these changes must be furnished by March 15. Every day that the tax code area map deadline is extended beyond March 1 allows for an automatic operator's statement extension equal to the delay. The reporting entity shall review the list of changes to identify any tax code areas, within which any of the entity's operating property is located. The reporting entity shall report, under Subsection 404.01 of this rule based on these identified tax code areas. The State Tax Commission shall provide the tax code areas maps to the reporting entity as provided for in Rule 225 of these rules. (5-3-03)

03. Reporting of Mileage. The following procedures apply for reporting mileage. (7-1-99)

a. Railroad Track Mileage. The railroad track mileage shall be reported by the name of the main line and branch lines with the track mileage for the main line and branch lines reported as Main Track Miles. Track miles consisting of passing track, yard switching, spurs, sidings, etc., shall be reported as Secondary Track Miles. (5-3-03)

b. Electric Power Line Mileage. The electric power companies shall report electric power line mileage by transmission and distribution lines. The transmission lines are the lines at a primary source of supply to change the voltage or frequency of electricity for the purpose of its more efficient or convenient transmission; lines between a generating or receiving point and the entrance to a distribution center or wholesale point; and lines whose primary purpose is to augment, integrate, or tie together the sources of power supply. The distribution lines are the lines between the primary source of supply and of delivery to customers, which are not includible in transmission lines. Cooperative electrical associations may include lines designed to accommodate thirty-four thousand five hundred (34,500) volts or more as transmission or distribution lines. Transmission or distribution lines shall be reported by single linear wire mile. (5-3-03)

c. Telephone Wire Mileage. All telephone wire mileage shall be reported on a single linear wire mile basis, and include any ground wires. (5-3-03)

d. Natural Gas and Water Distribution Pipeline Mileage. All natural gas and water distribution companies shall report pipeline miles on a three (3) inch comparison basis. For example, a company with five (5) miles of six (6) inch pipe will report ten (10) pipeline miles: five (5) times six (6) divided by three (3) equals ten (10) miles. (5-3-03)

e. Transmission Pipeline Mileage. Transmission pipeline mileage is reported in actual pipe sizes, without adjustment, because the pipe is normally uniform in size over long distances. (5-3-03)

04. **Situs Property.** Situs property includes microwave stations, ~~and~~ radio relay towers, and thermal electric generation facilities constructed after January 1, 2004, and located in or within five (5) miles of an incorporated city. This property is not apportioned on the basis of mileage. The investment in this property shall be reported in the tax code area(s), within which it is located. (7-1-99)(____)

05. **Record of Property Ownership.** The following procedures apply for maintaining records of operating property ownership. (7-1-99)

a. STC Form R. A record of each property owned, leased, or otherwise operated by each railroad, private railcar fleet or public utility shall be maintained by the State Tax Commission, the appropriate railroad, private railcar fleet or public utility, and the appropriate county assessor's office. Each record shall be maintained on a form identified as STC Form R. The State Tax Commission shall send a copy of each STC Form R to the appropriate company and the appropriate county assessor's office. (7-1-99)

b. Identification of Operating Property and Nonoperating Property. On the STC Form R, the State Tax Commission shall identify which property is operating property and which property is nonoperating property. (5-3-03)

c. Filing of Property Ownership by Railroad Companies. Each railroad company shall file the original railroad right-of-way maps with the State Tax Commission. Each railroad shall file an STC Form R, only, for property that is acquired, leased, or transferred between operating and nonoperating status, or sold during the prior year. (7-1-99)

06. **Filing Date for Operator's Statement.** By April 30 each year, each railroad, private railcar fleet, and or public utility operating in Idaho shall file information pertinent to the entity's ownership and operation with the State Tax Commission. This information must be reliable for preparing an estimate of market value. For each entity submitting a written request for an extension on or before April 30, the State Tax Commission may grant an extension of the filing date until May 31. An automatic extension beyond April 30 may be granted as set out in Subsection 404.02 of this rule. (5-3-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

609. **PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS (RULE 609).**
Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code. (3-15-02)(____)

01. **Homeowner's Exemption.** This exemption shall also be known as the homeowner's exemption. (3-15-02)

~~02. **Residential Improvements.** Primary dwelling place means the claimant's dwelling place before April 15 of the year for which the claim is made. If the residential improvement becomes the claimant's primary dwelling place between January 1 and April 15, the claimant shall not have previously applied for the exemption under Section 63-602G, Idaho Code, for the same year. The primary dwelling place is the single place where a claimant has his true, fixed, and permanent home and principal establishment, and to which whenever the individual is absent he has the intention of returning. A claimant must establish the dwelling to which the claim relates as his primary dwelling place by clear and convincing evidence or by establishing that the dwelling is where the claimant resided before April 15 of the year for which the claim is made and:~~ (3-15-02)

~~a. At least six (6) months during the prior year; or (3-23-94)~~

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

~~year; or~~ (3-23-94)

~~e. The majority of the time after the claimant first occupied the dwelling if occupied by the claimant less than one (1) year.~~ (3-23-94)

~~03. Requirements. If these requirements are not met, the property upon which the claimant makes application shall be deemed to be the claimant's primary dwelling place if the claimant is otherwise qualified and resides in a care facility and does not allow the property upon which the claimant has made application to be occupied by persons paying a consideration excluding utilities to occupy the dwelling. A care facility is a hospital, skilled nursing facility, intermediate care facility or intermediate care facility for the mentally retarded as defined in Section 39-1301, Idaho Code, or a facility as defined in Section 39-3302(15), Idaho Code, or a dwelling other than the one upon which the applicant makes application where a claimant who is unable to reside in the dwelling upon which the application is made lives and receives help in daily living, protection, and security.~~ (3-15-02)

~~04. Owner. "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate. "Owner" shall also include any person who is a beneficiary of a trust. "Owner" includes a vendee in possession under a land sale contract. An "owner" shall also include a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation if that person has no less than a five percent (5%) ownership interest in the entity.~~ (3-20-04)

~~052. Partial Ownership. Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption; however, the amount of the exemption shall be decided on the reduced proportion of the value commensurate with the proportion of partial ownership. Partial ownership, for purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person. The combined community property interests of both spouses shall not be considered partial ownership. The proportional reduction required under this subsection shall not apply to community property interests. Additionally, there is no reduction to the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than five percent (5%) ownership interest in the entity unless any ownership interest is shared by any entity other than the limited partnership, limited liability company or corporation.~~ (3-15-02)()

~~06. Certification. As an owner, the applying partner of a limited partnership, member of a limited liability company or shareholder of a corporation with no less than a five percent (5%) ownership interest in the entity must certify to the county assessor that he has not made application for this exemption in any other county or on any other residential improvement in this county. Although more than one residential improvement owned by the same partnership, limited liability company or corporation may qualify for this exemption, each partner, member or shareholder shall not receive this exemption on more than one residential improvement.~~ (3-15-02)

~~073. Determination of Residency. The State Tax Commission may release pertinent information from any Idaho income tax return to the county assessor and the county Board of Equalization for the sole purpose of providing one indicator of eligibility for the homeowner's exemption. According to Section 63-3077(4), Idaho Code, this information is confidential and is not subject to public disclosure.~~ (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

613. PROPERTY EXEMPT FROM TAXATION -- SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND (RULE 613).

Section 63-602K, Idaho Code. ()

01. Definitions. (4-5-00)

a. Taxable Value of Agricultural Land. The taxable value of agricultural land shall be the landlord's share of net income per acre, capitalized by the annual rate required by Section 63-602K, Idaho Code, plus a

component for the local tax rate. The component for local taxes achieves the necessary allowance for the expense of property taxes. (4-5-00)

b. Speculative Portion. The speculative portion is the difference between the current market value and the taxable value of agricultural land. The market value of agricultural land is established from market sales of similar land. (4-5-00)

c. Economic Rent. Economic rent is the average gross income per acre received by a landlord from either a cash rent or crop share rental agreement. (4-5-00)

d. Net Income. Net income is determined by deducting the landlord's share of current expenses from economic rent per acre. (4-5-00)

02. Calculation of Net Income from Cash Rent. Net Income from cash rent is calculated in the following manner. (4-5-00)

a. Crops Grown. Determine the crops typically grown in the area. (4-5-00)

b. Economic Rent. Determine the average per acre gross income from individual crop rents typical to the area over the immediate past five (5) years. (4-5-00)

c. Landlord's Expenses. Determine the landlord's share of typical contracted expenses paid in the immediately preceding growing season. (4-5-00)

d. Landlord's Net Income. Subtract the landlord's share of typical contracted expenses from the average gross income per acre for the immediately preceding growing season to determine net income. (4-5-00)

03. Calculation of Net Income from Crop Share Rent. Net income from crop share rent is calculated in the following manner. (4-5-00)

a. Crops Grown. Determine the crops typically grown in the area. (4-5-00)

b. Average Crop Production. Determine average crop production per acre based on the most recent five (5) years. (4-5-00)

c. Average Commodity Prices. Determine average commodity prices based on the most recent five (5) years. (4-5-00)

d. Gross Income. Multiply average crop production per acre times the average commodity price to determine gross income per acre. (4-5-00)

e. Landlord's Share of Gross Income. Determine the landlord's share of gross income per acre from a crop rotation typical to the area. (4-5-00)

f. Expenses. Determine the landlord's share of water, fertilizer, chemical, seed and harvest cost per acre for the immediately preceding growing season. (4-5-00)

g. Net Income. Subtract the landlord's share of expenses from the landlord's share of gross income to determine net income. (4-5-00)

04. Determination of Five Year Average Crop Prices. The State Tax Commission shall determine five (5) year average crop prices to be used in determining net income by surveying publicly available data from various sources, including the annual crop summary published by the Idaho Agricultural Statistics Service. Average crop prices determined in this manner by the State Tax Commission should be considered guidelines subject to modification based on local market data. ()

045. Examples of Calculation of Taxable Value of Agricultural Land. The following examples show

calculations for the taxable value of agricultural land. Example in Paragraph '613.05.a.' shows one calculation of capitalization rate (cap rate), example in Paragraph '613.05.b.' shows calculations using cash rent agreements and example in Paragraph '613.05.c.' shows calculations using crop share agreements. (4-5-00)()

a. Capitalization rate calculation example:

TAX CODE AREAS	PROPERTY TAX RATES
8	1.1323951%
9	1.1186222%
10	1.1226782%
11	1.1714841%
12	1.1674300%
13	1.0692041%
15	1.1603100%
16	1.1323951%
17	1.1323951%

AVERAGE = 1.13%

FARM CREDIT ~~BANK~~ SYSTEM INTEREST RATE = 8.22%

TOTAL CAPITALIZATION RATE (CAP RATE) = 9.35%

(4-5-00)()

b. Cash rent agreement calculation example:

CROPS	CONTRACT RENTS PER ACRE	ROTATION IN PERCENT	WEIGHTED INCOME PER ACRE
Barley	\$100.00	14.42%	\$ 14.42
Beans	\$100.00	22.46%	\$ 22.46
Beets	\$170.00	20.33%	\$ 34.56
Corn/Grain	\$100.00	0.00%	\$ 0.00
Corn/Silage	\$110.00	0.00%	\$ 0.00
Hay/Alfalfa	\$120.00	21.32%	\$ 25.58
Potatoes	\$200.00	0.00%	\$ 0.00
Wheat	\$100.00	21.48%	\$ 21.48
Peas	\$125.00	0.00%	\$ 0.00
Oats	\$110.00	0.00%	\$ 0.00
TOTAL INCOME PER ACRE			\$118.49 50

Value per acre equals net income per acre divided by CAP rate:

TOTAL INCOME PER ACRE	\$118.49 50
LESS WATER COSTS	\$ 23.00
LESS MANAGEMENT(@ 5%)	\$ 5.923

NET INCOME PER ACRE	\$ 89.57
CAP RATE	9.35%
VALUE PER ACRE	\$958.00

(4-5-00)()

c. Crop share agreement calculation example:

Crop	Yield	Price	Gross Income	Landlord Share	Landlord Share Gross Income	Rotation Percent	Per Acre Share of Gross Inc.
Barley	100.00	\$ 2.83	\$283.00	33.33%	\$94.32	14.42%	\$13.60
Beans	20.00	\$21.20	\$424.00	33.33%	\$141.32	22.46%	\$31.75
Beets	23.00	\$39.74	\$914.02	25.00%	\$228.51	20.33%	\$46.45
G/Corn	0.00	\$ 3.22	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
S/Corn	0.00	\$24.40	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
Hay	5.50	\$84.10	\$462.55	50.00%	\$231.28	21.32%	\$49.30
Potatoes	0.00	\$ 4.74	\$ 0.00	25.00%	\$ 0.00	0.00%	\$ 0.00
Wheat	98.00	\$ 3.73	\$365.54	33.33%	\$121.83	21.48%	\$26.16
Peas	0.00	\$ 8.68	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
Oats	0.00	\$ 1.66	\$ 0.00	33.33%	\$ 0.00	0.00%	\$ 0.00
TOTAL INCOME PER ACRE						100.00%	\$167.26

Value per acre equals net income per acre divided by CAP rate:

Total Income Per Acre \$167.25	Expenses
	Water = \$ 23.00
	Fertilizer = \$ 14.77
	Chemicals = \$ 9.04
	Seed = \$ 2.05
	Management = \$ 8.36
	Harvest = \$ 14.67
	TOTAL EXPENSE PER ACRE = \$ 71.90
	NET INCOME = \$ 95.36
	CAP RATE = 9.35%
	VALUE PER ACRE = \$1,040.47

(4-5-00)()

056. Cross Reference. For the years 1999 and 2000, see Rule 165 of these rules. Beginning in the year 2001, see Rule 645 of these rules. (4-5-00)()

07. Notification. In addition to providing notification of the Farm Credit System interest rate, the State Tax Commission will annually notify each county assessor of the most recent five (5) year average crop prices for the state. ()

(BREAK IN CONTINUITY OF SECTIONS)

803. BUDGET CERTIFICATION -- DOLLAR CERTIFICATION FORM (L-2 FORM) (RULE 803).
Sections ~~63-602G(5)~~, 63-803, ~~63-3029B(4)~~, and ~~63-3067~~ 3638(10), Idaho Code. (~~3-15-02~~)()

01. Definitions. (4-5-00)

a. “Dollar Certification Form” (L-2 Form). The Dollar Certification Form (L-2 Form) is the form used to submit to the State Tax Commission the budget request from each Board of County Commissioners for each taxing district. This form shall be presumed a true and correct representation of the budget previously prepared and approved by a taxing district. The budget will be presumed adopted in accordance with pertinent statutory provisions unless clear and convincing documentary evidence establishes that a budget results in an unauthorized levy ~~requesting~~ and action as provided in Section 63-809, Idaho Code. (~~3-20-04~~)()

b. “Prior Year’s Market Value for Assessment Purposes.” Prior year’s market value for assessment purposes shall mean the value used to calculate levies during the immediate prior year. This value shall be used for calculating the permanent budget increase permitted for cities, pursuant to Section 63-802(1)(f), Idaho Code, and for fire districts, pursuant to Section 31-1420(3), Idaho Code. (4-5-00)

c. “Annual Budget.” For the purpose of calculating dollar amount increases permitted pursuant to Section 63-802(1), Idaho Code, the annual budget shall include any amount approved as a result of an election held pursuant to Sections 63-802(1)(f), 63-802(1)(g), or 31-1420(3), Idaho Code, provided that said amount is certified on the L-2 Form as part of the budget request. If the amount certified does not include the entire amount approved as a result of the election held pursuant to Sections 63-802(1)(f), 63-802(1)(g), and 31-1420(3), then the amount not used shall be added to the foregone increase amount determined for the taxing district. See the following example.

CERTIFIED PROPERTY TAX BUDGET LIBRARY DISTRICT*				
	FY 1999	FY 2000	FY 2001	FY 2002
Annual Budget	\$10,000	\$10,000	\$10,700	\$11,621
3% Increase	\$0	\$300	\$321	\$349
Subtotal	\$10,000	\$10,300	\$11,021	\$11,970
1999 Election Amount	\$0	\$400 of \$1,000	\$600 of \$1,000	\$0
Certified Budget	\$10,000	\$10,700	\$11,621	\$11,970

*The Library District with zero dollars (\$0) in value for new construction and/or annexation approves an additional budget amount of one thousand dollars (\$1,000) in 1999, but only certifies four hundred dollars (\$400) for the year 2000. Note the example does not account for any foregone amount resulting from the district's decision to not increase its budget by three percent (3%) in 1997, 1998 or 1999. (~~3-20-04~~)()

d. “Property Tax Funded Budget.” Property tax funded budget means that portion of any taxing district’s budget certified to the Board of County Commissioners, approved by the State Tax Commission, and subject to the limitations of Section 63-802, Idaho Code. (3-20-04)

e. “Recovered/Recaptured Property Tax List.” Recovered/recaptured property tax list means the report sent by the county auditor to the appropriate taxing district(s)/unit(s) by the first Monday in August and to the State Tax Commission with the L-2 Forms, listing the amount of revenue distributed to each appropriate taxing

district/unit as recovery of property tax under Section 63-602G(5), Idaho Code, and/or as recapture of property tax under Section 63-3029B(4), Idaho Code, during the twelve (12) month period ending June 30 each year. ()

f. “Taxing District/Unit.” Taxing district/unit means any governmental entity with authority to levy property taxes as defined in Section 63-201, Idaho Code, and those noncountywide governmental entities without authority to levy property taxes but on whose behalf such taxes are levied or allocated by an authorized entity such as the county or city for such entities as county road and bridge funds or urban renewal agencies, respectively. ()

02. Budget Certification. The required budget certification shall be made to each Board of County Commissioners representing each county in which the district is located. ~~The certification shall be on a~~ by submitting the completed L-2 Form prescribed by the State Tax Commission. (4-5-00)()

03. Budget Requested Documents. Each Board of County Commissioners shall submit to the State Tax Commission a budget request for each taxing district in the county that certifies a budget request to finance the property tax funded portion of its annual budget. The Board of County Commissioners shall not submit other documents unless requested to do so by the State Tax Commission. Documents not to be submitted to the State Tax Commission unless requested include newspaper advertisements, school district budget books, entire budget documents, other than the budget request, and similar documents. ~~Each taxing district certifying a budget request to finance the property tax funded portion of its annual budget shall complete the State Tax Commission’s L-2 Form.~~ (5-3-03)()

04. L-2 Form Contents. Each taxing district or unit completing an L-2 Form shall include the following information on or with this form. (3-20-04)

a. “Department or Fund.” Identify the department or fund for which the taxing district is requesting a budget for the current tax year. (4-5-00)

b. “Total Approved Budget.” List the dollar amount of the total budget for each department or fund identified. The amounts must include all money that a taxing district has a potential to spend at the time the budget is set, regardless of whether funds are to be raised from property tax. (4-5-00)

c. “Cash Forward Balance.” List any money brought forward from a prior year to help fund the approved budget. Cash forward balance (Column 3) is the difference between the total approved budget (Column 2) and the sum of amounts reported as other revenue not shown in Column 5 (Column 4), agricultural equipment property tax replacement (Column 5), and balance to be levied (Column 6). (3-15-02)

d. “Other Revenue not Shown in Column 5.” List the revenue included in the total approved budget to be derived from sources other than property tax or money brought forward from a prior year. For example, sales tax revenue is included. (3-15-02)

e. “Agricultural Equipment Property Tax Replacement.” Report the amount of money to be received under Section 63-3067, Idaho Code. For school districts, report only the appropriate amount of such money to be subtracted as provided in Subsection 803.06 of this rule: sum of only the following: (3-20-04)()

i. The amount of money received annually under Section 63-3638(10), Idaho Code, as replacement revenue for the agricultural equipment exemption under Section 63-602EE, Idaho Code (For school districts, the amount of money to be included is only the appropriate amount of such money to be subtracted, as provided in Subsection 803.06 of this rule, not all such money.); ()

ii. The amount of money received as recovery of property tax exemption under Section 63-602G(5), Idaho Code, and listed on the “Recovered/recaptured property tax list”; ()

iii. The amount of money received as recapture of the property tax benefit under Section 63-3029B(4), Idaho Code, and listed on the “Recovered/recaptured property tax list”; and ()

iv. The appropriate amount of money listed on the statement and distributed to the county and each appropriate city under Section 63-2603, Idaho Code, as county property tax relief and detention facility debt ()

retirement. ()

f. "Balance to be Levied." Report the amount of money included in the total approved budget to be derived from property tax. (3-15-02)

g. Other Information. Provide the following additional information. (4-5-00)

i. The name of the taxing district or unit; (3-20-04)

ii. The date of voter approval (if required by statute) and effective period for any new or increased fund which is exempt from the budget limitations in Section 63-802, Idaho Code; (4-5-00)

iii. The signature, date signed, printed name, address, and phone number of an authorized representative of the taxing district; and (5-3-03)

iv. For a hospital district which has held a public hearing, a signature certifying such action. (4-5-00)

h. Attached Information. Other information submitted to the county auditor with the L-2 Form. ~~(3-20-04)~~()

i. For all taxing districts, L-2 worksheet. (3-20-04)

ii. For newly formed recreation or auditorium districts, a copy of the petition forming the district showing any levy restrictions imposed by that petition. (3-20-04)

iii. For any new ballot measures (bonds, overrides, permanent overrides, supplemental maintenance and operations funds, and plant facility funds), notice of election and election results. (3-20-04)

iv. Voter approved fund tracker. (3-20-04)

v. For fire districts, a copy of any new agreements with utility companies providing for payment of property taxes by that utility company to that fire district. (3-20-04)

vi. For any city with city funded library operations and services at the time of consolidation with any library district, each such city must submit a certification to the Board of County Commissioners and the Board of the Library District reporting the dedicated portion of that city's property tax funded library fund budget and separately reporting any portion of its property tax funded general fund budget used to fund library operations or services at the time of the election for consolidation with the library district. (3-20-04)

vii. For any library district consolidating with any city that had any portion of its property tax funded budget(s) dedicated to library operations or services at the time of the election for consolidation, each such library district must submit to the Board of County Commissioners a copy of the certification from that city reporting the information provided for in ~~Subsection~~ Subparagraph 803.04.h.vi., of this rule. ~~(3-20-04)~~()

05. Special Provisions for Fire Districts Levying Against Operating Property. To prevent double counting of public utility property values, for any year following the first year in which any fire district increases its budget using the provision of Section 63-802(2), Idaho Code, such fire district shall not be permitted further increases under this provision unless the following conditions are met: (3-30-01)

a. The fire district and public utility have entered into a new agreement of consent to provide fire protection to the public utility; and (3-30-01)

b. Said new agreement succeeds the original agreement; and (3-30-01)

c. In the first year in which levies are certified following the new agreement, the difference between the current year's taxable value of the consenting public utility and public utility value used in previous budget calculations made pursuant to this section is used in place of the current year's taxable value of the consenting public

utility.

(3-30-01)

06. Special Provisions for Property Tax Replacement Pursuant to Section 63-~~3067~~ 3638, Idaho Code. Property tax replacement monies received pursuant to Section 63-~~3067~~ 3638, Idaho Code, must be reported on the L-2 Form. For all taxing districts except school districts, these monies must be subtracted from the “balance to be levied”. For school districts, only “appropriate property tax replacement monies” are to be subtracted. The reduced balance shall be used to compute levies, but the maximum amount permitted pursuant to Sections 63-802 and 33-802, Idaho Code, shall be based on the sum of these property tax replacement monies and the amount actually levied, or, for school districts, the sum of “appropriate property tax replacement monies” and the amount actually levied.

(~~3-20-04~~)()

a. “Appropriate property tax replacement monies” is determined only for school districts and means all property tax replacement monies received pursuant to Section 63-~~3067~~ 3638, Idaho Code, except an amount equal to four thousands (0.004) multiplied by the year 2000 value of property exempted in Section 63-602EE, Idaho Code. If the amount so determined is greater than the total amount of property tax replacement monies, no property tax replacement monies received pursuant to Section 63-~~3067~~ 3638, Idaho Code, shall be subtracted from the school district maintenance and operation’s (M&O) budget.

(~~5-3-03~~)()

b. After receipt from the counties of the year 2000 tax charges on property exempted in Section 63-602EE, Idaho Code, but no later than July 23, 2001, the State Tax Commission shall notify each county clerk of the amount of property tax replacement money to be paid to each taxing district in that county. Beginning in 2002 and thereafter, the State Tax Commission shall, by the fourth Monday of July, notify each county clerk if the amount of property tax replacement money to be paid to a taxing district or the “appropriate amount of property tax replacement money” to be paid to any school district changes from the amount paid in the preceding year. In 2002, the State Tax Commission shall also notify each county clerk of the amount of the “appropriate property tax replacement monies” to be subtracted before computing the M&O levy for each school district.

(5-3-03)

c. By no later than the first Monday of August of each year, each county clerk shall notify each appropriate taxing district or unit of the total amount of property tax replacement monies that will be received and shall further notify each school district of the appropriate amount to be subtracted before the M&O levy is computed.

(5-3-03)

d. The subtraction required in Subsection 803.06 of this rule may be from any fund(s) subject to the limitations of Section 63-802, Idaho Code, and from school district maintenance and operation funds made pursuant to Section 33-802, Idaho Code.

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

e. Levy limits shall be tested against the amount actually levied.

(3-15-02)

07. Special Provisions for Library Districts Consolidating with Any City’s Existing Library Operations or Services. For any library district consolidating with any city’s existing library operations or services, the amount of the dedicated property tax funded general fund and library fund budgets certified by the city under ~~Subsection~~ Subparagraph 803.04.h.vi., of ~~these~~ this rules shall be added to that library district’s property tax funded budget in effect at the time of the election for consolidation. This total shall be used as this district’s property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (~~3-20-04~~)()

08. Special Provisions for Cities with Existing Library Operations or Services Consolidating with Any Library District. For any city with existing library operations or services at the time of consolidation with any library district, the amount of the dedicated property tax funded library fund budget included in the certification by the city under ~~Subsection~~ Subparagraph 803.04.h.vi., of ~~these~~ this rules shall be subtracted from that city’s total property tax funded budget in effect at the time of the election for the consolidation. This difference shall be used as this city’s property tax funded budget for the most recent year of the three (3) years preceding the current tax year for the purpose of deciding the property tax funded budget that may be increased as provided by Section 63-802, Idaho Code. (~~3-20-04~~)()

09. Special Provisions for Calculating Total Levy Rate for Taxing Districts or Units with Multiple Funds. Whenever the “Calculated Levy Rate” column of the L-2 Form indicates that a levy rate has been calculated

for more than one (1) fund for any taxing district or unit, the "Column Total" entry must be the sum of the levy rates calculated for each fund. Prior to this summation, the levy rates to be summed must be rounded or truncated at the ninth decimal place. No additional rounding is permitted for the column total. ()

(BREAK IN CONTINUITY OF SECTIONS)

961. FORESTLANDS OF LESS THAN FIVE ACRES AND CONTIGUOUS PARCELS (RULE 961).

~~Forest land of four and nine hundred ninety nine one thousandths (4.999) contiguous acres or less shall not be eligible for valuation and taxation as forest land, whether or not the landowner owns other parcels which are eligible. The five (5) acre size is determined exclusive of homesite. Sections 63-1702 and 63-1703, Idaho Code. A parcel of forestland that is less than five (5) acres is not eligible for valuation and taxation as forestland unless the land is contiguous with one (1) or more other parcels of forestland under the same ownership and the contiguous parcels together constitute five (5) acres or more of forestland as defined in Section 63-1701, Idaho Code. The five (5) acre minimum requirement must exclude any homesite. In the following examples each parcel of land is forestland as defined in Section 63-1701, Idaho Code, unless otherwise stated in the example. (3-30-01)()~~

01. Example 1. ~~A landowner owns a fifteen (15) acre parcel which contains four (4) acres of forestland, nine (9) acres of irrigated row crop, and two (2) acres of homesite. The four (4) acres of forestland is not eligible for valuation and taxation as forestland. (7-1-93)()~~

02. Example 2. ~~Landowner owns eight (8) one (1) acre parcels of forest, and one (1) five hundred (500) acre parcel of forest. The eight (8) one (1) acre parcels are not eligible for valuation and taxation as forest lands, unless contiguous to the five hundred (500) acre parcel, or at least five (5) of the one (1) acre parcels are contiguous to each other. A landowner owns five hundred and six (506) acres consisting of one (1) five hundred (500) acre parcel of forestland and six (6) one (1) acre parcels of forestland, that are not contiguous either to one another or to the five hundred (500) acre parcel. The five hundred (500) acre parcel is eligible for valuation and taxation as forestland. The six (6) one (1) acre parcels, are not eligible for valuation and taxation as forestland. (3-30-01)()~~

03. Example 3. ~~A landowner owns five hundred and six (506) acres consisting of one (1) five hundred (500) acre parcel of forestland and six (6) one (1) acre parcels of forestland that are contiguous to the five hundred (500) acre parcel but may or may not be contiguous to one another. The entire five hundred and six (506) acres are eligible for valuation and taxation as forestland. ()~~

04. Example 4. ~~A landowner owns six (6) noncontiguous one (1) acre parcels of forestland. The six (6) one (1) acre parcels are not eligible for valuation and taxation as forestland. ()~~

05. Example 5. ~~A landowner owns six (6) contiguous one (1) acre parcels of forestland. The six (6) one (1) acre parcels are eligible for valuation and taxation as forestland. ()~~

(BREAK IN CONTINUITY OF SECTIONS)

988. ELECTION OF QUALIFIED PROPERTY FOR EXEMPTION (RULE 988).

Sections 63-302, 63-313, 63-404, and 63-3029B, Idaho Code. (3-20-04)()

01. Definitions. The following definitions apply for the purposes of the property tax exemption under Section 63-3029B, Idaho Code, and do not decide investment tax credit eligibility for Idaho income tax purposes. (3-20-04)

a. ~~Calendar year immediately following the taxable year in which the property was investment is placed in service. "Calendar year immediately following the taxable year in which the property was investment is placed in service" means the calendar year beginning after the calendar year the property was put to use or placed in a condition or state of readiness and availability for a specifically assigned function in the production of income. For example, all property meeting the following criteria must be granted the property tax qualified investment exemption for calendar years 2004 and 2005. (3-20-04)()~~

- ~~i. The property is eligible for the investment tax credit for Idaho income tax purposes. (3-20-04)~~
- ~~ii. The taxpayer had an Idaho loss for income tax purposes in the correct year, as indicated in IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719, prior to making the election. (3-20-04)~~
- ~~iii. The property was first placed in service in Idaho between January 1, 2003 and December 31, 2003. (3-20-04)~~
- ~~iv. The taxpayer completed and will file a copy of the State Tax Commission election form (Form 49E) with the correct year's income tax return. (3-20-04)~~
- ~~v. The taxpayer completed and timely returned a personal property declaration to each appropriate assessor listing the property and attaching the completed Form 49E. (3-20-04)~~

b. Operator's Statement. The "operator's statement" is the annual statement listing all property subject to assessment by the State Tax Commission and prepared under Section 63-404, Idaho Code. (3-20-04)

c. Personal Property Declaration. A "personal property declaration" is any form required for reporting personal property or transient personal property to the county assessor under Sections 63-302 or 63-313, Idaho Code, respectively. (3-20-04)

d. Qualified Investment. "Qualified investment" means property that would have otherwise been taxable for property tax purposes and is eligible or qualified under Section 63-3029B, Idaho Code, provided that property is reported on the personal property declaration or operator's statement and is designated as exempt from property tax for two (2) years on Form 49E. (3-20-04)

e. Qualified Investment Exemption. The "qualified investment exemption" (QIE) referred to in this rule is the property tax exemption under Section 63-3029B, Idaho Code. (3-20-04)

02. Designation of Property for Which Exemption Is Elected. The owner shall designate the property on which the QIE is elected. The owner shall make this designation on Form 49E and attach it to ~~the~~ a timely filed personal property declaration or, for operating property, the timely filed operator's statement. The description of the property on Form 49E must be adequate to identify the property to be granted the exemption. In addition to all other steps required to complete the personal property declaration or operator's statement, the owner must provide on the personal property declaration or operator's statement the date the item elected for the QIE was placed in service. (3-20-04)()

03. Election for Investments Not Otherwise Required to Be Listed on the Personal Property Declaration. For investments, like single purpose agricultural or horticultural structures, that are not otherwise required to be listed on the personal property declaration, the owner must list that property to elect the QIE. As with any property designated for the QIE, the owner must attach Form 49E to the personal property declaration. (3-20-04)

04. Continuation of Listing. For all property designated for QIE, even though that property is exempt for two (2) years, the owner must list that property on the personal property declaration or operator's statement in the initial year for which the QIE is claimed and the following four (4) consecutive years, unless that property has been sold, otherwise disposed of, or ceases to qualify pursuant to Section 63-3029B, Idaho Code. (3-20-04)

05. Period of QIE. The QIE shall be granted for the two (2) calendar years immediately after the end of the calendar year in which the property acquired as a qualified investment was first placed in service in Idaho. (3-20-04)

06. Election Specificity. The QIE election provided by Section 63-3029B, Idaho Code, shall be specific to each qualified item ~~of property~~ listed on the personal property declaration or operator's statement. An item ~~of property~~ that is a qualified investment, but for which there is no QIE election during the year after the "calendar year immediately following the taxable year in which the ~~property was~~ investment is placed in service" in Idaho, is not eligible for the QIE. (3-20-04)()

07. Notification ~~To State Tax Commission~~ by Assessor. (3-20-04)()

a. Upon Receipt of Form 49E or a Listing. Upon receiving Form 49E or any listing provided to comply with Subsection 988.08 or 988.12 of ~~these~~ this rules, the county assessor shall send a copy of this form or listing to the State Tax Commission. (3-20-04)()

b. Upon Discovery of Changes. Upon discovering that property granted the QIE was sold, otherwise disposed of, or ceased to qualify under Section 63-3029B, Idaho Code, within the ~~five-year~~ (5) year period beginning with the date the property was placed in service, the county assessor shall notify the State Tax Commission and the taxpayer immediately. The county assessor shall also provide this notification upon discovery that the owner first claiming the QIE failed to list the item ~~of property~~ on any personal property declaration or failed to file a personal property declaration in any year during this ~~five-year~~ (5) year period. This notice shall include: (3-20-04)()

i. Owner. Name of the owner receiving the QIE. (3-20-04)()

ii. Property description. A description of the property that received the QIE. (3-20-04)()

iii. New or used. State whether the individual item was purchased new or used. ()

iv. Date placed in service. The date the owner reported the item was first placed in service in Idaho. (3-20-04)()

v. First year value of QIE. For each item, the amount of exempt value in the first year the QIE was elected and an identification of the year. (3-20-04)()

vi. Second year value of QIE. For each item, the amount of exempt value in the second year after the QIE was elected. ()

vii. Tax code area number. For each item, the number of the tax code area within which that item was located. ()

08. **Moved Personal Property.** In order to provide unmistakable identification of the property, certain taxpayers must send written notification by the date provided in Section 63-302, 63-313, or 63-404, Idaho Code, when moving property that previously received the QIE. This notification: (3-20-04)

a. Is required of taxpayers moving locally assessed property between counties in Idaho during the ~~five-year~~ (5) year period beginning the date that property was placed in service; (3-20-04)()

i. ~~For locally assessed property,~~ The taxpayers send this notification to the assessor in the county that granted the QIE and the assessor in any Idaho county to which the property has been moved; (3-20-04)()

ii. ~~For state tax commission assessed operating property owned by electric distribution, generation, and transmission companies, the taxpayers send this notification to the state tax commission;~~ (3-20-04)

bii. The taxpayers ~~must~~ include a listing which describes the property exactly as it was described on the original Form 49E or cross references the property originally listed on Form 49E; and (3-20-04)()

eb. Is not required of taxpayers when the property is State Tax Commission assessed nonregulated operating property ~~other than property owned by electric distribution, generation, and transmission companies.~~ (3-20-04)()

09. **Notification Regarding Transient Personal Property.** For transient personal property elected for the QIE, the definition of home county in Section 63-313, Idaho Code, and Rule 313 of these rules, applies. When a home county receives information of an election for QIE and a notice that the exempt property was used in another county in Idaho, the home county must forward information identifying that property to the other county(ies) in accordance with procedures in Section 63-313, Idaho Code. Also, the home county assessor shall send a copy of this

notice to the State Tax Commission. (3-20-04)

10. Partial-Year Assessments. Property assessed based on a value prorated for a portion of the year in which the property is first placed in service may still be eligible for the QIE in the subsequent two (2) calendar years, provided the QIE is elected. (3-20-04)

11. Limitation on Amount of Exemption. (3-20-04)

a. New Property. The QIE shall be for the full market value for assessment purposes for new property that is a qualifying investment. (3-20-04)

b. Used Property. ~~For each taxpayer, the QIE shall be limited to one hundred fifty thousand dollars (\$150,000) in the cost of all qualifying used property in any one (1) year. See~~ The QIE for used property placed in service during a taxable year for income tax purposes shall be limited. For each taxpayer, the QIE shall be the lesser of the QIE cost or the current year's market value in accordance with the following procedure: ()

i. QIE cost shall be determined for each item of used property upon which the QIE is claimed. QIE cost is the lesser of an item's cost or one hundred fifty thousand dollars (\$150,000); provided, however, that the QIE cost for all elected used property shall not exceed one hundred fifty thousand dollars (\$150,000) in a taxable year (See Example B in Subparagraph 988.11.c.ii., of this rule). In the event the cost of one (1) or more items of used property exceeds one hundred fifty thousand dollars (\$150,000), QIE cost shall reflect the reduction necessary to stay within the one hundred fifty thousand dollar (\$150,000) limit (See IDAPA 35.01.01, "Income Tax Administrative Rules." Rule 719 for information on the selection of items of used property). ()

ii. For each item purchased used, the QIE shall be limited to the lesser of the QIE cost or the current year's market value (See Example B in Subparagraph 988.11.c.ii., of this rule). ()

c. Examples. In the following examples, which assumes that each all of the property is owned by one ~~(+) the same~~ taxpayer and is a qualified investment. ~~(3-20-04)~~()

i. Example A. In Example A, 2004 is the first year during which the qualified investment receives the QIE. The taxpayer may decide which of the used items placed in service in 2003 is considered first for the exemption. In this example, computer 1 has been given the exemption first. Since the limitation is based on cost, the remaining used property exemption cannot exceed one hundred thirty thousand dollars (\$130,000) and the QIE cost is determined accordingly. The conveyor belt is a new investment, first eligible for the QIE in 2005. In 2006, the assembly line, computer 1, and computer 2 would be fully taxable at the market value as of January 1, 2006.

Example A										
Property Description (same taxpayer)	Year Placed in Service	Cost	New or Used	QIE Cost	Year 1 2004 Market Value	Year 1 2004 Exempt Value	Year 1 2004 Taxable Value	2005 Market Value	2005 Exempt Value	2005 Taxable Value
Assembly line Computer 1	2003	\$140,000 \$20,000	Used	\$20,000	\$140,000 \$12,000	\$140,000 \$12,000	\$0	\$8,000	\$8,000	\$0
Computer 1 Assembly line	2003	\$40,000 \$160,000	Used	\$130,000	\$140,000	\$130,000	\$30,000 \$10,000	\$110,000	\$110,000	\$0
Computer 2	2003	\$50,000	New	N/A	\$50,000 \$40,000	\$50,000 \$40,000	\$0	\$30,000	\$30,000	\$0
Conveyor belt	2004	\$200,000	Used	\$150,000	N/A	N/A	N/A	\$200,000	\$150,000	\$50,000

In this example, "year 1" is the first year during which the qualified investment receives the QIE. ~~(3-20-04)~~()

ii. Example B. In Example B, the property was purchased at auction for a cost much less than its

market value.

Example B										
<u>Property Description</u>	<u>Year Placed in Service</u>	<u>Cost</u>	<u>New or Used</u>	<u>QIE Cost</u>	<u>2006 Market Value</u>	<u>2006 Exempt Value</u>	<u>2006 Taxable Value</u>	<u>2007 Market Value</u>	<u>2007 Exempt Value</u>	<u>2007 Taxable Value</u>
Construction Equipment	2003	\$20,000	Used	\$20,000	\$80,000	\$20,000	\$60,000	\$70,000	\$20,000	\$50,000

()

d. Used Property Placed in Service by Fiscal Year Taxpayer. If a taxpayer had a fiscal year beginning July 1, 2004, and placed one hundred fifty thousand dollars (\$150,000) of qualifying used property in service on May 15, 2004, and an additional one hundred fifty thousand dollars (\$150,000) of qualifying used property in service on August 1, 2004, the taxpayer would qualify for an exemption of up to three hundred thousand dollars (\$300,000) on this used property in 2005 and 2006. The exempt value in the second year of the exemption could not exceed the lesser of three hundred thousand dollars (\$300,000) or the (depreciated) market value of this used property. ()

12. Multi-County Taxpayers. (3-20-04)

a. Except taxpayers electing QIE for property that is State Tax Commission assessed operating property, any taxpayers electing the QIE for properties purchased new must indicate on Form 49E the county where each property is located or must complete a separate Form 49E and attach it to the personal property declaration submitted to each county. (3-20-04)

b. Except taxpayers electing QIE for property that is State Tax Commission assessed operating property, any taxpayers electing the QIE for properties purchased used must attach any Form 49E listing property purchased used to the personal property declaration sent to each county. A Form 49E listing only property purchased used may be provided to comply with this requirement. (3-20-04)

c. Any taxpayers electing QIE for property that is State Tax Commission assessed nonregulated operating property and purchased new or used must indicate on Form 49E each county where each property is located and attach it to the operator's statement. (3-20-04)()

d. If multiple Form 49Es are submitted to one (1) or more assessors, a copy of each Form 49E must be attached to the correct year's income tax return. (3-20-04)

13. Special Provisions for Nonregulated Operating Property. (3-20-04)()

a. For nonregulated operating property, the market value of the QIE is calculated by multiplying the depreciated original cost of the property times the ratio of the correlated value determined under Subsection 405.08 of these rules to the cost approach value determined under Subsection 405.02 of these rules. (3-20-04)()

b. The following special provisions apply for the reduction in market value of nonregulated operating property resulting from QIE being elected. (3-20-04)()

i. Reduction in Idaho value. For nonregulated operating property except situs property ~~and operating property owned by electric distribution, generation, and transmission companies~~, the reduction in market value will be made by subtracting the market value of the QIE from the allocated Idaho value before apportionment to any taxing district or unit. (3-20-04)()

ii. ~~Reduction in market value of operating property owned by electric distribution, generation, and transmission companies. For operating property owned by electric distribution, generation, and transmission companies, the reduction in market value will be made by subtracting the market value of the QIE from the calculated~~

~~market value by county before apportionment to any taxing district or unit within that county.~~ (3-20-04)

iii. Reduction in market value of situs property owned by nonregulated operating property companies. For situs property owned by nonregulated operating property companies, the reduction in market value will be made by subtracting the market value of the specific investment in the specific location. (3-20-04)()

14. Denial of QIE. If the QIE is denied for all or part of the market value of any item for which the QIE had been claimed, the assessor shall notify the taxpayer electing the QIE and shall identify the basis for the denial. (3-20-04)

15. Public Records and Exemption of Certain QIE Information from Disclosure. Public records are presumed to be open to the public. Records containing certain information pertaining to private businesses (such as trade secrets and other proprietary information) may be exempt from public disclosure (See Section 9-340D, Idaho Code) and may be protected from disclosure by the Idaho Trade Secrets Act, Chapter 8, Title 48, Idaho Code, and other laws. A taxpayer who submits information to the State Tax Commission or to a county assessor or Board of Equalization in accordance with this rule may designate all or part of the information as confidential. The designation must be made in writing and clearly identify the particular information deemed confidential. In addition, the front page of the submission must prominently state that the document contains information designated as confidential. The State Tax Commission, the county assessor and Board of Equalization shall treat the designated information as confidential, exempt from disclosure under Section 9-340D, Idaho Code and as subject to the Idaho Trade Secrets Act (see Chapter 8, Title 48, Idaho Code). Nothing in this paragraph limits exchanges of information between or among the State Tax Commission and county officials otherwise authorized by law. (3-20-04)

16. Cross Reference. For more information relating to procedures and requirements for QIE, refer to Section 63-3029B, Idaho Code, ~~and IDAPA 35.02.01, "Tax Commission Administrative and Enforcement Rules," Rule 450;~~ and IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719. For information relating to recapture of QIE, refer to Rule 989 of these rules. (3-20-04)()

989. ~~(RESERVED)~~ QUALIFIED INVESTMENT EXEMPTION (QIE) RECAPTURE (RULE 989). ()
Section 63-3029B, Idaho Code.

01. In General. If a taxpayer has elected the property tax exemption (also know as the QIE) allowed by Section 63-3029B, Idaho Code, for property sold or otherwise disposed of prior to being held five (5) full years, or property that ceases to qualify or failed to originally qualify pursuant to Section 63-3029B, Idaho Code, the property tax benefit shall be subject to recapture. ()

02. Notification by Taxpayer That Property Ceases to Qualify. If an item on which a taxpayer claimed the QIE ceases to qualify during the recapture period or was incorrectly claimed by the taxpayer as qualified investment, the taxpayer shall provide notification of the amount owing and shall remit said amount to the State Tax Commission by the date by which the personal property declaration or operator's statement is due in the next calendar year. If no personal property declaration or operator's statement is required, the notification must be filed by the following March 15. Notification shall be accomplished by filing State Tax Commission Form 49ER. For each item of property, for each year in which the QIE was granted, the taxpayer shall include with such notification the following: ()

- a. A description of the item that ceases to qualify. ()
- b. The county where the item was located. ()
- c. The date the item was placed in service. ()
- d. The date the item was no longer qualified for the QIE. ()
- e. The amount of value exempted from property tax each year, and ()
- f. The amount of the property tax benefit recapture. ()

03. Notification in Case of Failure by Taxpayer to File Form 49ER. If any taxpayer who is required to file Form 49ER fails to do so by the date specified in Subsection 989.02 of this rule, the State Tax Commission shall issue a Notice of Deficiency in the manner provided in Section 63-3045, Idaho Code, to the taxpayer who claimed the QIE. The notice shall show the calculation of the recaptured property tax benefit. ()

04. Protest of Recapture. If a taxpayer does not agree with the Notice of Deficiency issued to assert the recapture, the taxpayer may file a protest with the State Tax Commission to request a redetermination of the deficiency. The protest shall meet the requirements as provided in Section 63-3045, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administrative and Enforcement Rules," Rule 320. ()

05. Property Tax Benefit Subject to Recapture. For any item determined to be subject to the recapture of the property tax benefit under Section 63-3029B(4)(d), Idaho Code, the taxpayer shall multiply the exempt value of the property by the applicable average property tax levy determined by the State Tax Commission under Subsection 989.06 or 989.07 of this rule. The result of this calculation shall be multiplied by the recapture percentage found in the following table.

Table for Reduction of Property Tax Benefit Subject to Recapture	
Time Held/Time Qualifying	Recapture Percentage
Less than or equal to one (1) year	100%
More than one (1) year but less than or equal to two (2) years	80%
More than two (2) years but less than or equal to three (3) years	60%
More than three (3) years but less than or equal to four (4) years	40%
More than four (4) years but less than or equal to five (5) years	20%

The taxpayer shall report this calculation on Form 49ER and shall submit this form and remit the amount calculated to the State Tax Commission no later than the date indicated in Section 989.02 of this rule. ()

06. County Average Property Tax Levy -- Locally Assessed Property Located in One County or Nonapportioned Centrally Assessed Property. For locally assessed property located in one (1) county or nonapportioned centrally assessed property, the State Tax Commission shall compute and report the county average property tax levy according to the following procedure. ()

a. Property Tax Budget Summation. For each year, sum the property tax portion of the annual budget of each taxing district wholly located within the county for which the average levy is to be calculated. This is the approved amount found on the taxing district's L-2 Form in the column entitled "Balance to be levied" as described in Rule 803 of these rules. To this amount, add the prorated portion of the approved "Balance to be levied" for any taxing district located partially within the county for which the average levy is to be calculated. The prorated portion is determined by multiplying the levy for the taxing district by the taxable value (as defined in Section 63-803(4), Idaho Code) of the portion of the taxing district within the county for which the average levy is to be calculated. ()

b. Average Property Tax Levy. The average property tax levy shall be computed by dividing the total of the property tax budgets computed in Paragraph 989.06.a., of this rule by the taxable value (as defined in Section 63-803(4), Idaho Code) of the county for which the average levy is to be calculated. ()

c. Notice to Each County Auditor. The State Tax Commission will notify each county auditor of the county's current year's average property tax levy no later than the first Monday in December each year. ()

07. Statewide Average Property Tax Levy -- Locally Assessed Property Located in More Than One County or Apportioned Centrally Assessed Property. For locally assessed property located in more than one (1) county or apportioned centrally assessed property, the State Tax Commission shall determine the average urban property tax levy of the state and shall notify each county auditor of said average no later than the first Monday in

December each year. ()

08. Noticing Remittance for the Recapture of the Property Tax Benefit. When the State Tax Commission remits to a county the property tax benefit recaptured under Section 63-3029B(4)(f), Idaho Code, it shall include with this remittance a notice identifying the following: ()

a. Owner. Name of the owner receiving the QIE: ()

b. Property Description. A description of the property that received the QIE: ()

c. First Year Value of QIE. The amount of exempt value in the first year the QIE was elected and an identification of the year: ()

d. Second Year Value of QIE. The amount of exempt value in the second year after the QIE was elected: ()

e. Tax Code Area Number. The number of the tax code area within which that item was located; and ()

f. Amount Remitted. The amount of money remitted for any item. ()

09. No Allocation of Remittances to Urban Renewal Agencies. Remittances received by a county for property tax benefits recaptured under Section 63-3029B(4)(f), Idaho Code, shall not be subject to allocation to urban renewal agencies. ()

10. Penalty and Interest. Penalty and interest shall be determined as provided in Sections 63-3045 and 63-3046, Idaho Code. Penalty and interest shall be computed from the due date found in Subsection 989.02 of this rule. ()

11. Cross Reference. For more information relating to QIE, refer to Section 63-3029B, Idaho Code, and Rule 988 of these rules. ()

990. CERTIFICATION OF THE TAX CHARGE ON FARM MACHINERY, TOOLS AND EQUIPMENT FOR REPLACEMENT FUND DISTRIBUTION (RULE 990).
Sections ~~63-3067~~ and 63-602EE and 63-3638, Idaho Code. (3-15-02)()

01. Tax Charge Described. Tax charges to be certified are year 2000 property taxes levied against farm machinery, tools and equipment formerly categorized as Category 58. (3-15-02)

02. Category 58 Described. Rule 130 of these rules formerly described Category 58 as unlicensed farm or ranch machinery, shop tools, or equipment not assessed as real property. (3-15-02)

03. Cross Reference. Boards of county commissioners and county clerks need to refer to Rule 803 of these rules for special directions relating to certifying the year 2000 tax charge on farm machinery, tools and equipment to the State Tax Commission. (3-15-02)()

991. -- 994. (RESERVED).

995. CERTIFICATION OF SALES TAX DISTRIBUTION (RULE 995).
Section 63-3638, Idaho Code. (5-3-03)

01. Most Current Census. Population shall be from the most current population census or estimate available from the Bureau of the Census during the quarter of the year for which any distribution of sales tax money is to be made. (3-24-94)

02. Market Value for Assessment Purposes. Market value for assessment purposes shall mean the market value certified to the State Tax Commission pursuant to Section 63-510, Idaho Code, and shall include

homeowner's exemptions, and the amount of real and personal property value which exceeds the assessed value shown on the base assessment roll for a revenue allocation area as defined in Section 50-2903(12), Idaho Code, for the calendar year immediately preceding the current fiscal year. (5-3-03)

03. Current Fiscal Year. For the purposes of this section, current fiscal year shall mean the current fiscal year of the state of Idaho. For distribution purposes, the current fiscal year shall begin with the distribution made in October, following collection of sales taxes in July, August, and September. (3-30-01)

04. Incorporated City. Incorporated city shall, for the current fiscal year, have a duly elected mayor and city council, and be recognized by the Bureau of the Census, U.S. Department of Commerce, for the distribution of federal general revenue sharing monies. (3-24-94)

05. Population and Valuation Estimates. Population and valuation estimates for distribution of revenue sharing monies shall be updated at least annually. Updated estimates shall be used beginning with the October distribution. (3-24-94)

06. Determination Date and Eligibility. The eligibility of each city for revenue sharing monies pursuant to Section 63-3638(89)(a), Idaho Code, shall be determined as of July 1 of the current year. Cities formed after January 1, 2001, shall also be entitled to a share of the money pursuant to the provisions of Section 63-3638(89)(c), Idaho Code. ~~(3-30-01)()~~

07. Quarterly Certification. The State Tax Commission shall certify quarterly to each county clerk the base and excess shares of the distributions required pursuant to Section 63-3638(89)(c) and 63-3638(89)(d), Idaho Code, and the distributions to cities and counties required pursuant to Section 63-3638(89)(a) and 63-3638(89)(b), Idaho Code. Each county clerk shall calculate and certify the distribution of these monies to the eligible taxing districts based on the directives of the State Tax Commission. ~~The clerk shall prepare and transmit to the county treasurer and the State Tax Commission copies of a single auditor's certificate showing the total combined certification for base and excess distributions no later than the second Monday of the month following distribution of the revenue from the State Tax Commission.~~ (5-3-03)()

a. City and County Base Shares. For cities and counties, the initial base share shall be the amount of money to which they were entitled for the fourth calendar quarter of 1999, based on the provisions of Section 63-3638(e), Idaho Code, as such section existed prior to July 1, 2000. In addition, the initial base share shall be adjusted proportionally to reflect increases that become available or decreases that occur, unless increases exceed five percent (5%) of the initial base share. (3-30-01)

b. Special Purpose Taxing District Base Shares. For special purpose taxing districts the initial base share shall be the amount of money to which they were entitled for the fourth calendar quarter of 1999, based on the provisions of Section 63-3638(e), Idaho Code, as such section existed prior to July 1, 2000. Special purpose taxing district initial base shares shall be proportionally reduced to reflect decreases in the amount of sales tax available to be distributed. (3-30-01)

c. Excess Shares. Excess shares shall be any amounts above the base share that any city, county or special purpose taxing district is entitled to receive pursuant to Section 63-3638(89)(c) or 63-3638(89)(d), Idaho Code. These amounts shall not be subject to redistribution provisions of Section 40-801, Idaho Code. ~~(3-30-01)()~~

d. Shares Pursuant to Section 63-3638(89)(a) or 63-3638(89)(b), Idaho Code. Shares to be distributed pursuant to Section 63-3638(89)(a) or 63-3638(89)(b), Idaho Code, shall be termed "revenue sharing". Such shares shall be subject to quarterly distribution and for this purpose, the one million three hundred twenty thousand dollars (\$1,320,000) distribution pursuant to Section 63-3638(89)(b)(i), Idaho Code, shall be considered an annual amount and shall be divided into four (4) equal shares. ~~(3-30-01)()~~

08. Notification of Value. The county auditor shall notify the State Tax Commission of the value of each taxing district and unit as specified in Section 63-510, Idaho Code. (3-30-01)

09. Corrections. (3-30-01)

a. When distributions have been made erroneously, corrections shall be made to the following quarterly distribution(s) so as to provide the quickest practicable restitution to affected taxing districts. Corrections shall be made to reconcile erroneous distributions made for the current fiscal year. Errors made in distributions ~~made~~ for the last quarter of the current fiscal year shall be corrected as soon as practicable in distributions made for the following fiscal year. ~~(3-30-01)~~(____)

b. The State Tax Commission shall notify affected county clerks when the State Tax Commission becomes aware of an error in the distribution of the base or excess shares. (3-30-01)

c. The State Tax Commission shall notify affected cities or county clerks when the State Tax Commission becomes aware of an error in the distribution of city or county revenue sharing monies. (3-30-01)

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0402

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 63-105A and 63-3624, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Rule 635 is being amended to be consistent with a recent district court ruling by changing the definition of "previously eligible" to recognize eligibility at any time since 1981 and by deleting the definition of "continued to be eligible". To make technical corrections.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: A temporary/proposed rule change is needed for Rule 635 due to a district court ruling.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being adopted as a temporary/proposed rule and the time constraints require having the schedule available to reflect the new rate.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 25th day of August, 2004.

Alan Dornfest
Tax Policy Supervisor
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0402

635. PARTIAL EXEMPTION FOR PARCELS OF LAND IN A RURAL HOMESITE DEVELOPMENT PLAT (RULE 635).

Section 63-602FF, Idaho Code. (5-3-03)

01. Definitions. For the purpose of implementing the partial exemption under Section 63-602FF, Idaho Code, beginning with assessments for 2002, the following terms are defined. (5-3-03)

a. “Speculative Homesite Exemption.” “Speculative homesite exemption” means an exemption granted under Section 63-602FF, Idaho Code. (5-3-03)

b. “Previously Eligible.” Parcels of land in a rural homesite development plat are “previously eligible” for the exemption provided in Section 63-602K, Idaho Code, provided the land was eligible for an exemption on the speculative portion of value of agricultural land *on January 1 of the year immediately preceding the year for which eligibility for the speculative homesite exemption is first determined* at any time since the enactment of that exemption in 1981 ~~(5-3-03)(8-1-04)T~~

e. *“Continue to be eligible.” “Continue to be eligible” means the parcel must have been eligible for the speculative value exemption on January 1 of the year immediately preceding the year for which eligibility for the speculative home site exemption is to be determined. Continue to be eligible also means once granted, the speculative home site exemption will be granted each year the property meets each of the qualifying criteria stated in Subsections 635.02.a., through 635.02.e., 635.02.e., and 635.02.f., of this rule.* (5-3-03)

d.c. “Improvements are Being Built.” “Improvements are being built” or “construction of the improvements has begun” means construction of any structure has commenced or is observable on the land. Construction of improvements does not include construction of any fences or “associated site improvements”, as defined in Rule 645 of these rules. (5-3-03)

02. Qualifying Criteria for the Speculative Homesite Exemption. To qualify for the speculative homesite exemption, any parcel of land must meet each of the following criteria. (5-3-03)

a. The county where the parcel of land is located is less than one hundred thousand (100,000) in population. (5-3-03)

b. The parcel of land is in a recorded subdivision plat. (5-3-03)

c. The parcel of land is rural; that is, not within the boundaries of an incorporated city. (5-3-03)

d. The parcel of land was “previously eligible” for the speculative agricultural value exemption under Section 63-602K, Idaho Code. (5-3-03)

e. The parcel of land is not eligible for the speculative agricultural value exemption under Section 63-602K, Idaho Code, for the current year’s assessment. (5-3-03)

f. No improvements, as defined in *Subsection Paragraph 635.01.d.c., of this rule* are being or have been built upon the parcel of land. ~~(5-3-03)(8-1-04)T~~

03. Nonqualifying Parcels in Subdivisions. (5-3-03)

a. Any parcel never eligible for the exemption provided in Section 63-602K, Idaho Code, shall not be qualified for the speculative homesite exemption. (5-3-03)

b. Any rural subdivision parcel designated as timberland under Chapter 17, Title 63, Idaho Code, shall not be qualified for the speculative homesite exemption. (5-3-03)

04. Calculation of Taxable Value of Land Eligible for the Speculative Homesite Exemption. The taxable value of land eligible for the speculative homesite exemption shall be calculated based on the prior use

qualifying the parcel for the exemption provided in Section 63-602K, Idaho Code; that is, the taxable value per acre of this land shall be equal to the taxable value per acre of qualifying agricultural land in the same use as this land when it previously qualified for the speculative agricultural value exemption. Any additional value for the “associated site improvements,” as defined in Rule 645 of these rules, is part of the value exempt under the speculative homesite exemption and is not included in the taxable value of the land as calculated pursuant to Section 63-602K, Idaho Code. (5-3-03)

05. Use of Category. The county assessor shall use the category identified in Rule 130 of these rules for all parcels of land qualifying for the speculative homesite exemption. (5-3-03)

06. Report of Exempt Value. As provided in Rule 509 of these rules, the county auditor shall report to the State Tax Commission the total exempt value of all parcels of land qualifying for the speculative homesite exemption. (5-3-03)

07. Removal of the Speculative Homesite Exemption. (5-3-03)

a. The year following the year in which the population of a county exceeds one hundred thousand (100,000), the speculative homesite exemption shall be removed from any parcels of land previously qualifying for the speculative homesite exemption in that county. Population shall be determined from the most current census or estimate available from the Bureau of the Census as of January 1 of each year. (5-3-03)

b. The year following the year in which any parcel is annexed into an incorporated city or is incorporated into a newly incorporating city, the speculative homesite exemption shall be removed from that parcel. (5-3-03)

c. The speculative homesite exemption shall be removed from any parcel of land when “improvements are being built”. The speculative homesite exemption must not be removed until “improvements are being built” upon the parcel, even if, the ownership of a parcel of land has been transferred. (5-3-03)

IDAPA 35 - STATE TAX COMMISSION
35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0105-0401
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(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 20, 2004.

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:

Rules 000 – Legal Authority, 002 – Written Interpretations, 003 – Administrative Appeals, 004 – Public Records, 500 – Idaho Clean Water Trust Fund Transfer Fee, 501 – Petroleum Transfer Fee Suspended, 510 – Application and Reporting of the Petroleum Transfer Fee are being amended to correct references to Idaho Code sections that were renumbered in previous years.

Rule 005 – Office – Office Hours – Street and Mailing Addresses – Phone and Facsimile Numbers – E-mail Address is being amended to add the State Tax Commission’s Web site address and to update the Tax Commission’s taxpayer services’ e-mail address.

Rule 140 – Deductions are being amended to remove outdated 1998 effective date language.

Rule 292 – Calculation of Refunds for Nontaxable Uses of Motor Fuels in Motor Vehicles is being amended in Subsection 292.05.a., to add special fuels consumed while idling as an activity not eligible for a special fuels tax refund. This change is being made due to the passage of HB684 by the 2004 Idaho Legislature.

Rule 420 – documentation for IFTA Licensee Reporting and Special Fuels Users Claiming Nontaxable Use of Special Fuels in a Motor Vehicle is being amended to remove an additional records requirement in Subsection 420.04.e., because the quarterly mileage tax collected by the Idaho Transportation Department was repealed.

Rule 421 – Documentation for Idaho International Registration Plan and Full Fee Registrants is a new rule needed to set out the recordkeeping requirements for certain registrant’s of motor vehicles in Idaho. HB474 gave the Tax Commission the authority to conduct audits of motor vehicle registration applications for the Transportation Department.

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 27, 2004.

DATED this 12th day of August, 2004.

Randy Nilson, Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV,
P.O. Box 36, Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0105-0401

000. LEGAL AUTHORITY (RULE 000).

According to sections 63-~~513~~105(2), 63-2427, 40-312 and 41-49089, Idaho Code, the Tax Commission promulgates rules implementing the provisions of the Idaho Transportation Department and the Idaho Motor Fuels Tax Act and the provisions of the Idaho Clean Water Trust Fund Act relating to the Idaho Clean Water Trust Fund Transfer Fee.

(~~6-23-94~~)()

(BREAK IN CONTINUITY OF SECTIONS)

002. WRITTEN INTERPRETATIONS (RULE 002).

This agency has written statements as defined in Section 67-5201(19)(b)(iv), Idaho Code, which pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter. To the extent that such documents are not confidential under Sections 63-2434, 41-49089, 63-3076, 63-3077, or 9-337 through 9-350, Idaho Code, they are available for public inspection and copying at the main office of the State Tax Commission. See Rule 005 of these rules for the main office address.

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

003. ADMINISTRATIVE APPEALS (RULE 003).

This chapter does allow administrative relief in the provisions outlined under Sections 63-2434, 41-49089, and 63-3045 through 63-3049, Idaho Code and pursuant to Rules promulgated by the Commission found in the Commission's administration and enforcement rules relating to income taxation, IDAPA 35.02.01.

(~~7-1-97~~)()

004. PUBLIC RECORDS (RULE 004).

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code, to the extent that these documents are not confidential under Sections 63-2434, 41-49089, 63-3076, 63-3077, or 9-337 through 9-350, Idaho Code. Non-confidential records are available for public inspection and copying at the main office of the State Tax Commission. See Rule 005 of these rules for the main office address.

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

005. OFFICE -- OFFICE HOURS -- STREET AND MAILING ADDRESSES -- WEB SITE ADDRESS -- PHONE AND FACSIMILE NUMBERS -- E-MAIL ADDRESS (RULE 005).

01. Main Office. The State Tax Commission main office is located at 800 Park Blvd., Plaza IV, Boise, Idaho 83712-7742. The correspondence mailing address is P.O. Box 36, Boise, Idaho 83722-0410. The State Tax Commission's Web site address is tax.idaho.gov. The telephone number for Taxpayer Services is (208) 334-7660, or toll free 1-(800)-972-7660, and the facsimile number is (208) 334-7846. The e-mail address is "taxrep@tax.~~state.id.us~~idaho.gov". All offices are open from 8 a.m. to 5 p.m. ~~except Saturday, Sunday and Monday through Friday~~ except for legal holidays.

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

02. Regional Field Offices. The address and phone number for each regional field office is listed in IDAPA 35.02.01.005 "Tax Commission Administration and Enforcement Rule 005."

(3-15-02)

03. Hearing Impaired. Hearing impaired individuals may contact any State Tax Commission office by using the Idaho Relay Service Number 1(800)377-3529.

(3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

140. DEDUCTIONS (RULE 140).

01. Motor Fuels and Petroleum Products Presumed to Be Distributed. Unless the contrary is established, it shall be presumed that all motor fuels and other petroleum products imported into this state by a distributor, which are no longer in the possession of that distributor, have been distributed. If the licensed distributor has returned to the refinery or pipeline terminal motor fuels and other petroleum products on which the tax and/or transfer fee has been paid or has had an accidental loss, the licensed distributor has the burden of showing the petroleum products were returned to the refinery or pipeline terminal or documenting the accidental loss. No refund of the transfer fee will be allowed for accidental losses of motor fuels or other petroleum products. (7-1-98)

02. Distributor's and Retail Dealer's Allowances for Motor Fuels. (~~EFFECTIVE JULY 1, 1998~~) (~~Prior to July 1, 1998 this Subsection only applied to sales of gasoline and aircraft engine fuel.~~) The distributor shall certify on his report that the one percent (1%) credit allowance has been afforded the retail dealer to cover the dealer's shrinkage, evaporation, spillage or handling losses for motor fuel. The State Tax Commission shall then allow the additional one percent (1%) deduction unless a retail dealer claims that he did not receive the credit allowance. If such claim is made, the State Tax Commission shall require the licensed distributor to provide documentary proof that the one percent (1%) credit allowance has been afforded the retail dealer, and unless the distributor establishes that the credit has been afforded to the retail dealer, the deduction will be disallowed. In the case of sales of motor fuel to retail dealers, to establish that the allowance of one percent (1%) of the tax has been passed to the purchaser, the invoice must show either: (~~7-1-99~~)()

a. That the amount of the allowance has been passed on; or (7-1-98)

b. A statement that the allowance has been deducted in determining the price. (7-1-98)

~~03. Distributor's Allowance for Special Fuels.~~ (~~EFFECTIVE UNTIL JULY 1, 1998~~) ~~The distributor who reports and pays the special fuels tax retains all of the two percent (2%) allowance and is not required to pass down a portion of the allowance to the retail dealer.~~ (~~7-1-99~~)

043. Exported Fuel. Motor fuels or other petroleum products claimed as exported from Idaho must be supported by records. Records must include the following: (7-1-98)

a. Tax reports or other evidence that will verify that the exported product was reported to and any tax due was paid to the jurisdiction into which the product was claimed to have been exported or evidence that the purchaser is a licensed distributor in the jurisdiction to which the exported product is destined; and (7-1-98)

b. Common carrier shipping documents, bills of lading, manifests, and cost billings; or (7-1-98)

c. Invoices, manifests, bills of lading or other documentation, signed by the receiving party to acknowledge receipt of the product; or (7-1-98)

d. Accounts payable or receivable information for verifying payments to common carriers or payment by out-of-state parties to verify receipt of exported product. (7-1-98)

e. In addition to the above, for a licensed distributor who maintains operations in Idaho, as well as other jurisdictions, evidence such as product inventory and transfer records must be retained to prove the transfer of product out of Idaho. (7-1-98)

054. Bad Debt Write-Off. A tax credit may be taken on the distributor's fuel tax report for fuel taxes paid on sales made after July 1, 1995. The credit is claimed when the debt has been written off for income tax purposes in the business records of the distributor. The credit may be claimed on distributor's fuel tax report each month or at the end of the distributor's tax year after a debt has been written off. (7-1-98)

a. First-in/first-out method for partial payments. When partial payments are received on a specific account that includes taxable fuel sales, nontaxable fuel sales, and/or other sales, the distributor must apply the payments to the unpaid sales on a first-in/first-out basis before claiming a bad debt credit. (7-1-98)

b. Proration of partial payments. When partial payments are received on a specific account, before and/or after a bad debt credit has been claimed on the distributor's fuel tax report, the distributor must prorate the taxable fuel sales, nontaxable fuel sales, and/or other sales which occurred on the same day or on the same invoice for each such account. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

292. CALCULATION OF REFUNDS FOR NONTAXABLE USES OF MOTOR FUELS IN MOTOR VEHICLES. (RULE 292).

01. Fuel Records Required for Refund Claims. Special fuels users may be eligible for a fuels tax refund of tax-paid special fuels if their motor vehicles have accrued nontaxable miles or have power-take-off (PTO) equipment. Records must be kept as described in Subsection 290.01 of these rules. (4-5-00)

02. 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 292.03 of this rule. Miles driven on a construction site would 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~~)()

03. 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)

04. 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)

05. 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, or idle, as defined in Section 63-2401, Idaho Code, 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

(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)

06. Non-Standard Allowances. A request for an allowance not listed in Subsection 292.05 of this rule, 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 83722-0036/0412

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)(____)

07. Nontaxable Gallons of Fuel Claimed by Non-IFTA Licensees. The nontaxable gallons of fuel claimed by non-IFTA licensees may be the allowance gallons listed in Subsections 292.05 and 292.06 of this rule and/or the gallons calculated under Subsection 292.04 of this rule. Only actual MPGs, computed by adjusting total fuel as defined in Subsection 292.01 of these rules by the allowance gallons, may be used to calculate a fuels tax refund based on both nontaxable miles and allowances. Fuels tax refunds based solely on an allowance may be calculated without regard to mileage and fuel consumption (MPG) information. (4-5-00)(____)

08. IFTA Licensees Qualifying for Power Take-Off (PTO) And Auxiliary Engine Allowances (Allowances). Allowances listed in Subsection 292.05 of this rule or established as provided in Subsection 292.06 of this rule 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 292.05 and 292.06 of this rule, 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 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 was calculated 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. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

420. DOCUMENTATION FOR IFTA LICENSEE REPORTING AND SPECIAL FUELS USERS CLAIMING NONTAXABLE USE OF SPECIAL FUELS IN A MOTOR VEHICLE (RULE 420).

01. Records Required for Idaho IFTA Licensee and Special Fuels Users Claiming Nontaxable Use of Special Fuels in a Motor Vehicle. Records are required to verify the accuracy of any tax report or worksheet filed with the State Tax Commission. The taxpayer displaying, or required to display, an IFTA decal or a temporary permit, or a special fuels user claiming nontaxable use of tax-paid special fuels in a motor vehicle using a Form 75, shall retain originals of all invoices or other documents relating to purchases of special fuels and all records relating to the mileage of the motor vehicles. (3-15-02)

02. Fuel Records. In order for the IFTA licensee or other special fuels user seeking a refund for the nontaxable use of special fuels in its motor vehicle to obtain credit for tax-paid purchases, a receipt or invoice, a credit card receipt, or microfilm/microfiche of the receipt or invoice must be retained by the special fuels user showing evidence of such purchases and tax having been paid. An acceptable receipt or invoice for tax-paid purchases taken as credit must include, but not be limited to, the following: (3-15-02)

- a.** The date of each receipt of fuel; (7-1-98)
- b.** The name and address of the person from whom purchased or received; (7-1-98)
- c.** The number of gallons received; (7-1-98)
- d.** Both taxable and nontaxable usage of fuel; (7-1-98)
- e.** The type of fuel; (7-1-98)
- f.** The specific vehicle or equipment into which the fuel was placed; (7-1-98)

g. Detailed records of all withdrawals from bulk storage tanks, including the date of withdrawal, the number of gallons withdrawn, the fuel type, the unit number, the equipment type, and inventory records; and ~~(7-1-98)~~()

h. Documents necessary to substantiate volume, time or weight for power-take-off and auxiliary engine allowances described in Rule 292 of these rules. (3-30-01)

03. Mileage Records. Non-IFTA special fuels users who qualify to use one (1) of the “Standard MPGs” found in Rule 290 of these rules need only record and report Idaho taxable miles. All IFTA licensees and all other special fuels users seeking a fuels tax refund for nontaxable special fuels used in a motor vehicle shall maintain detailed mileage records, such as trip logs or trip sheets, on an individual-vehicle basis. Such records shall contain, but not be limited to: (3-15-02)

a. Total trip miles, including vicinity miles, except for non-IFTA motor vehicle(s) using one (1) of the “standard miles per gallon” (MPG) found in Rule 290 of these rules; (3-30-01)

b. Miles traveled for taxable and nontaxable use. Only taxable miles traveled are required for non-IFTA motor vehicles using one (1) of the “standard miles per gallon” found in Rule 290 of these rules; (3-30-01)

c. Mileage recaps for each vehicle. IFTA licensees are required to keep mileage recaps for each jurisdiction in which the IFTA vehicle operated; (3-15-02)

d. Starting and ending dates of trips; (7-1-98)

e. Trip origin, interim stops and destination; (7-1-98)

f. Hubometer or odometer readings from the beginning and ending of each trip and at the crossing of each jurisdiction’s border. Interstate motor vehicles that, for certain time periods, do not cross jurisdiction borders need only record daily hubometer or odometer readings for those time periods; (7-1-98)

g. Complete routes of travel, including pick up and delivery locations; (7-1-98)

h. Vehicle license number or unit number; and (~~7-1-98~~)()

i. Driver’s name. (7-1-98)

04. Additional Records Requirements. Other records may be required, such as: (7-1-98)

a. Bills of lading or manifest documents; (7-1-98)

b. Vehicle dispatch ledgers; (7-1-98)

c. Accounts payable and receivable; (7-1-98)

d. Lease agreements; (7-1-98)

~~**e.** Quarterly mileage returns filed with the Idaho Transportation Department;~~ (~~7-1-98~~)

~~**f.** Driver pay records;~~ (7-1-98)

~~**g.** Driver logs;~~ (7-1-98)

~~**h.** Fuel use trip permits; and~~ (7-1-98)

~~**i.** Other documents used in preparing fuel tax reports.~~ (7-1-98)

05. Trip Summaries. Individual trips shall be accumulated into monthly, quarterly, or annual summaries. These summaries shall be used as the basis for the miles submitted on the IFTA quarterly or annual reports, and on the worksheet submitted with the Form 75. (7-1-98)

06. Computer Printout Support. Hard copies of summary computer printouts must be supported by trip sheets or logs verifying mileage traveled. (7-1-98)

07. Mileage Information. Information recorded on trip sheets must be legible and reflect actual miles traveled. Mileage records must include all movement of the vehicle including loaded, empty, and tractor-only (bobtail) miles. Non-IFTA special fuels users who qualify to use a "Standard MPG" need only record and report taxable miles in Idaho. (3-15-02)

08. Records Retention. The records required in this rule shall be retained for the greater of three (3) years for Idaho special fuels users or the time during which the taxpayer's income tax return is subject to adjustment by either the State Tax Commission or voluntary action by the taxpayer if the refund claim is filed with the taxpayer's Idaho income tax return. Records shall be retained for four (4) years for IFTA license holders. (7-1-98)

09. U.S./Metric Conversion. The following conversion factors must be used, when necessary, to convert fuel and mileage records to U.S. or metric measurement:

One (1) Liter = .2642 gallons
One (1) Gallon = 3.785 liters
One (1) Mile = 1.6093 kilometers
One (1) Kilometer = .62137 miles

(7-1-98)

10. Mileage Disputes. Whenever a mileage dispute arises between the taxpayer and the State Tax Commission, the official mileage map distributed by the appropriate authority in each jurisdiction will be used to resolve the point-to-point mileage differences. (~~7-1-98~~)()

(BREAK IN CONTINUITY OF SECTIONS)

421. DOCUMENTATION FOR IDAHO INTERNATIONAL REGISTRATION PLAN AND FULL FEE REGISTRANTS (RULE 421).

Records Required For Idaho International Registration Plan and Full Fee Registrants. Registrants must keep records to verify the accuracy of any Idaho International Registration Plan or Full Fee registration application submitted to the Idaho Transportation Department. Registrants must keep the records required by Rule 420 of these rules for all registered vehicles, except for Full Fee vehicles registered at less than sixty-two thousand (62,000) lbs. GVW or those registered at the maximum tier, which is more than fifty thousand (50,000) miles per year. Also, registrants must keep individual vehicle records by registered fleet. ()

~~424~~. -- 499. (RESERVED).

500. IDAHO CLEAN WATER TRUST FUND TRANSFER FEE (RULE 500).
Petroleum Transfer Fee. The fee imposed by Section 41-4908~~2~~(10), Idaho Code, is The Idaho Clean Water Trust Fund Transfer Fee. For simplicity, it shall be called the Petroleum Transfer Fee in these rules. (~~6-23-94~~)()

501. PETROLEUM TRANSFER FEE SUSPENDED (RULE 501).
The Petroleum Transfer Fee was suspended as of October 1, 1999. Imposition of the Petroleum Transfer Fee may be reinstated pursuant to Section 41-4908~~2~~(10), Idaho Code. Unpaid petroleum transfer fees imposed for periods before October 1, 1999, are still due and may be subject to audit, assessment and collection. (~~3-30-01~~)()

502. -- 509. (RESERVED).

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 (\$0.01) 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 63-2402 and 63-2408, 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. (5-3-03)

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 41-490~~89~~, 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

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-0401

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(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 20, 2004.

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 010: Amend Administration and Enforcement Rule 010 to include information related to the filing of returns, other documents, or payments with the Tax Commission by a qualified private delivery service in response to 2004 legislative changes in HB 478.

Rule 210: Amend Administration and Enforcement Rule 210 to replace obsolete references to the office of the county recorder with the Secretary of State. Correct information regarding the extension of a lien.

Rule 310: Section 63-3045, Idaho Code, establishes a formula for calculating the yearly interest rate applied to deficiencies of tax and refunds. The rates are published in Administration and Enforcement Rule 310. Amend Administration and Enforcement Rule 310 to add the interest rate for calendar year 2005.

Rule 450: HB 799, passed by the 2004 Legislature, amended Section 63-3029B, Idaho Code, to change the penalty related to the property tax exemption in lieu of earning the investment tax credit to a recapture of the property tax benefit, when property fails to qualify for the entire five-year recapture period. Since the penalty is no longer applicable, repeal Administration and Enforcement Rule 450.

Rule 704: Amend Administration and Enforcement Rule 704 to include the Board of County Commissioners and County Treasurers as officials the Tax Commission can exchange information with related to a claim for the homeowner's exemption, in response to 2004 legislative changes in HB 739.

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 Janice Boyd, 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 27, 2004.

DATED this 24th day of August, 2004.

Janice Boyd, Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0201-0401

010. DEFINITIONS (RULE 010).

Section 63-3003, Idaho Code.

(3-20-97)

01. Date of Filing or Payment.

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

a. When returns or other documents or payments are delivered to the Tax Commission by United States mail, the date of filing or payment means the date shown by the post office cancellation mark. If a cancellation mark is omitted, illegible or erroneous, the document will be deemed filed on the date the taxpayer establishes by competent evidence that the material was deposited with the United States Postal Service. A postage meter cancellation shall not be deemed a post office cancellation mark. Refer to Section 63-217, Idaho Code.

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

b. When returns or other documents or payments are delivered to the Tax Commission by a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, the date of filing or payment means the date treated as the postmark date for purposes of Section 7502, Internal Revenue Code, as provided by the special rules in Notice 97-26, 1997-1 C.B. 413 and subsequent Notices.

()

c. Materials not mailed with the United States Postal Service or a private delivery service designated as qualifying under Section 7502, Internal Revenue Code, are filed when physically received by the Tax Commission.

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

d. Returns or other documents or payments transmitted electronically are deemed received or paid on the date provided in Section 63-115, Idaho Code.

()

02. Pay, Paid, Payable or Payment. When used in reference to an amount of tax, penalty, interest, fee or other amount of money due to the Tax Commission, the words pay, paid, payable, or payment mean an irrevocable tender to the Tax Commission of lawful money of the United States. As used herein, lawful money of the United States means currency or coin of the United States at face value and negotiable checks that are payable in money of the United States. Acceptance by the Tax Commission of a check that is subsequently dishonored by the bank on which it is drawn does not constitute payment. Nothing herein shall limit the authority of the Tax Commission to refuse to accept a check drawn on the account of a taxpayer who has previously tendered a check dishonored by the bank on which it was drawn.

(3-20-97)

03. Return or Tax Return. Return and tax return mean a form or other document that an individual, corporation or other legal entity reports information, including information necessary to calculate taxes due to the Tax Commission or another governmental agency that requires a return be filed. See Rule 150 of these rules for the requirements of a valid tax return.

(3-20-97)

04. Tax Commission. Tax Commission means the Idaho State Tax Commission established by Article VII, Section 12 of the Idaho Constitution and referred to in Sections 63-101 and 63-3038, Idaho Code.

(3-20-97)

05. These Rules. The term these rules refers to IDAPA 35.02.01, relating to the administration and enforcement of taxes.

(3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

210. PROPERTY SUBJECT TO LIEN (RULE 210).

Section 63-3051, Idaho Code.

(3-20-97)

01. Statutory Lien. A statutory lien is created when demand for payment of any assessed deficiency in tax, interest, penalties, or other charges is made and the taxpayer fails to pay the assessment. The lien extends to all real and personal property, or rights therein, owned or acquired by the taxpayer from the date the lien is created until the time it expires. The lien is deemed to be created on the date demand for payment is made. The lien is not effective as to third-parties until a notice of lien is filed. (3-20-97)

02. Duration of Lien. A notice of lien remains in effect for five (5) years from the date the lien notice is first filed in the ~~county recorder's~~ Secretary of State's office ~~where the taxpayer may have property.~~ The lien may be extended by filing ~~another notice of an amendment to continue the tax lien with the proper county office of the~~ Secretary of State within that period. The lien, as extended, is valid and applies against only the real property of the taxpayer. (3-20-97)()

(BREAK IN CONTINUITY OF SECTIONS)

310. INTEREST RATES (RULE 310).
 Sections 63-3045 and 63-3073, Idaho Code.

(3-20-04)

01. In General. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code. (3-20-04)()

02. Idaho Interest Rates and Applicable Revenue Rulings.

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
<u>Calendar Year 2005</u>	<u>6% simple interest</u>	<u>Revenue Ruling 2004-69</u>

(3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

~~431. -- 449. (RESERVED).~~

~~450. PROPERTY TAX EXEMPTION PENALTY (RULE 450).~~

~~Section 63-3029B, Idaho Code.~~

~~(3-20-04)~~

~~01. In General. If a taxpayer is electing or has elected the property tax exemption allowed by Section 63-3029B, Idaho Code, for property sold or otherwise disposed of, or that ceases to qualify or failed to originally qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a penalty shall be computed by the Tax Commission. See IDAPA 35.01.03, "Property Tax Administrative Rules," Rule 988, for information related to the election of qualified property for exemption. See IDAPA 35.01.01, "Income Tax Administrative Rules," Rule 719, for information related to the requirement that the taxpayer had negative Idaho taxable income in the second preceding taxable year from the taxable year in which the qualified property was placed in service.~~

~~(3-20-04)~~

~~02. Calculation Of Penalty. A penalty of two (2) times the average urban property tax levy of the state of Idaho as calculated by the Tax Commission shall be multiplied by the claimed investment. For purposes of computing the penalty:~~

~~(3-20-04)~~

~~a. Claimed investment shall be the value of the nonqualifying investment that would have been taxable for property tax purposes for the first year of the exemption if such exemption had not been allowed.~~

~~(3-20-04)~~

~~b. Average urban property tax levy of the state shall be the levy computed as such by the Tax Commission for the first year for which property subject to the penalty was exempt.~~

~~(3-20-04)~~

~~03. Notification That Property Ceases To Qualify. If property on which a taxpayer claimed the property tax exemption ceases to qualify during the recapture period or was incorrectly claimed by the taxpayer as qualified investment, the taxpayer shall notify the Tax Commission in writing, of such information. The taxpayer shall provide a schedule that includes a description of each property that ceases to qualify, the county the property was located in, and the original cost for the property.~~

~~(3-20-04)~~

~~04. Notification Of Penalty Amount By Tax Commission. Upon receiving information that property on which the property tax exemption was claimed was sold or otherwise disposed of, or that ceases to qualify or failed to originally qualify during the recapture period, the Tax Commission shall issue a Notice of Deficiency in the manner provided in Section 63-3045, Idaho Code, to the owner of the nonqualifying property.~~

~~(3-20-04)~~

~~05. Protest Of Penalty. If a taxpayer does not agree with the Notice of Deficiency issued to assert the penalty, the taxpayer may file a protest with the Tax Commission to request a redetermination of the deficiency. The protest shall meet the requirements as provided in Section 63-3045, Idaho Code, and Rule 320 of these rules.~~

~~(3-20-04)~~

~~4531. -- 499. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

704. DISCLOSURE OF INFORMATION -- GOVERNMENT AGENCIES AND OFFICIALS. (RULE 704).

Sections 39-8405, 50-1049, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3634A, and 67-4917C, Idaho Code.

~~(3-20-04)~~(____)

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; (5-3-03)
 - b.** Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)
 - c.** County assessors, limited to: (3-20-04)
 - i.** Information relating to the taxpayer's residence or domicile; and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and ~~(3-20-04)~~(____)
 - ii.** Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)
 - d.** Department of Commerce and Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)
 - e.** Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)
 - f.** Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)
 - g.** Idaho Transportation Department, relating to: (3-20-04)
 - i.** Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)
 - ii.** Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)
 - h.** Financial Management Services of the U. S. Department of the Treasury, as allowed by Section 63-3077(1)(a), Idaho Code; (5-3-03)
 - i.** Governing entity of the International Fuels Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; ~~(5-3-03)~~(____)
 - j.** Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, Section 63-3077C, Idaho Code; (5-3-03)
 - k.** Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)
 - l.** Resort cities, as allowed by Section 50-1049, Idaho Code; ~~and~~ ~~(5-3-03)~~(____)
 - m.** Auditorium districts, as allowed by Section 67-4917C, Idaho Code; ~~and~~ ~~(5-3-03)~~(____)
 - n.** County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code. (____)

IDAPA 36 - IDAHO BOARD OF TAX APPEALS

36.01.01 - IDAHO BOARD OF TAX APPEALS RULES

DOCKET NO. 36-0101-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-3808 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 20, 2004.

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 incorporate, as appropriate, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," into the Board of Tax Appeals Administrative Rules. The Board of Tax Appeal Administrative Rules will now supersede IDAPA 04.11.01, with the exception of rules 800 through 860 (Rulemaking).

There are two additional changes:

Rule 030 no longer allows third party non attorney representation before the Board through a Board approved power of attorney. The Attorney General has advised the Board this rule conflicts with Idaho Code Sections 3-401 and 3-420, the unauthorized practice of law.

Rule 075, the discovery rule, limits the scope of discovery. The limitations will simplify the requests to engage in discovery and eliminate abuses or over-burdensome and intimidating requests, particularly for property tax appeals. Streamlining requests to engage in discovery will enhance development of the record, promote hearings without delay, and allow the Board to continue to meet its May 1 statutory decision deadline date.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: Not applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the Board of Tax Appeals is already subject to the Attorney General's Rules of Administrative Procedure, and those rules are now being included in the Board of Tax Appeals Administrative Rules. Rule 030 is in conflict with a statute, therefore no negotiated rulemaking is required, and Rule 075 simplifies and eliminates abusive requests to engage in discovery.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Susan Renfro at 208/334-3354.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this August 20, 2004.

Susan Renfro
Director and Clerk to the Board
Board of Tax Appeals
3380 Americana Terrace, Suite 110
P.O. Box 83720
Boise, ID 83720-0088
Phone 208/334-3354/Fax 208/334-4060

THE FOLLOWING IS THE TEXT OF DOCKET NO. 36-0101-0401

004. (RESERVED).

025005. ORGANIZATION AND OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 5).

~~01. Office.~~ The principal office of the Board shall be at Boise, Idaho, and shall be open each day for the transaction of business, and filing of documents between the hours of 8:00 a.m. and 5:00 p.m., Saturdays, Sundays, and legal holidays excepted. The Board's mailing address, unless otherwise indicated, will be Idaho Board of Tax Appeals, P.O. Box 83720, Boise, Idaho, 83720-0088. The Board's street address is 3380 Americana Terrace Suite 110, Boise, Idaho, 83706. The Board's telephone number is 208-334-3354 and its FAX number is 208-334-4060. (4-5-00)()

~~02. Chairman.~~ The Chairman of the Board shall serve as the administrative officer. (4-5-00)

~~a. Election.~~ The Chairman shall be elected annually by the board members in consideration of experience with the Board and the member's availability to serve and support the Board's administrative duties. (4-5-00)

~~b. Power.~~ The Chairman shall oversee the issuance of acknowledgment letters, notices of hearing, notices of show cause hearings, and is authorized to perform all other procedural duties such as issuing orders on nonsubstantive rulings without a formal meeting of the Board. The Chairman shall not issue any substantive orders in any case, except upon a roll call vote of the board members where a majority concurs in the result. (4-5-00)

0046. PUBLIC RECORDS ACT COMPLIANCE (RULE 6).

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code. Except as provided by Section 125, all materials filed with the Board pursuant to these rules and all materials issued by the Board pursuant to these rules are public documents subject to inspection, examination and copying. (4-5-00)()

007. -- 009. (RESERVED).

00510. DEFINITIONS AND ABBREVIATION (RULE 10).

As used in this chapter: (4-5-00)()

~~01. Answer.~~ Response to allegations, requests or claims of an appeal. ()

~~02. Appellant.~~ Means any Δ party, person, natural or otherwise, or governmental subdivision or agency appealing to the Idaho Board of Tax Appeals. (4-5-00)()

~~03. Board.~~ Means the Idaho Board of Tax Appeals, board members, presiding officer, or hearing officer as the context may dictate whenever it occurs in this chapter. (4-5-00)()

~~034. Case File.~~ Means the oOfficial record maintained by the Board regarding an appeal. The case file is a file folder(s) containing the documentary record including submissions from the parties, plus any recordings of hearings. (4-5-00)()

~~045. Comparable Sales.~~ Means rRecently sold properties that are similar in important respects to the property being appraised. (4-5-00)()

~~056. De Novo.~~ Means tThe Board will decide questions of fact and of law based on the evidence and legal arguments presented in the proceedings before the Board. Parties will need to be prepared to present all exhibits, testimony and argument presented previously to the county board of equalization or the State Tax Commission, or in any other proceedings involving the tax dispute. New evidence and argument may also be

~~presented.~~ (4-5-00)()

067. Findings of fact and Conclusions of Law. ~~Means e~~ Concise statements of the determinations made as to contested issues of fact, and statements of the applicable law as determined by the Board which are applicable to the findings of fact. (4-5-00)()

078. Intervenor. ~~Means a~~ Any party voluntarily intervening in an appeal who meets the qualifications and requirements for intervention under Section 085. (4-5-00)()

089. Parcel. ~~Means e~~ Each separate property ownership as represented by the county assessment rolls. (4-5-00)()

0910. Party. ~~Means any~~ A person, natural or otherwise, or governmental subdivision or agency entitled to or appearing authorized to appear before the Board in any proceedings of the Board. (4-5-00)()

101. Presiding Officer or Hearing Officer. ~~Means any~~ A member of the Board, or any person who is assigned to conduct a conference or hearing by the Board. The presiding officer shall have authority as provided by Section Rule 106. (4-5-00)()

112. Respondent. ~~Means any~~ A party answering or otherwise responding to an appeal. (4-5-00)()

123. Subject Property. ~~Means t~~ The property being appraised under discussion. (4-5-00)()

134. Substantive Issue. ~~Means a~~ An issue where a substantive right, interest or privilege of any party is involved that may be prejudiced as opposed to minor or mere procedural matters dealt with by the Board. (4-5-00)()

011. ABBREVIATIONS (RULE 11).

1401. BTA. ~~Means~~ Idaho Board of Tax Appeals. (4-5-00)()

1502. BOE. ~~Means~~ County Board of Equalization. (4-5-00)()

1603. STC. ~~Means~~ Idaho State Tax Commission. (4-5-00)()

012. ORGANIZATION (RULE 12).

The Chairman of the Board shall serve as the administrative officer. ()

01. Election. The Chairman shall be elected annually by the board members in consideration of experience with the Board and the member's availability to serve and support the Board's administrative duties. ()

02. Power. The Chairman shall oversee the issuance of acknowledgment letters, notices of hearing, notices of show cause hearings, and is authorized to perform all other procedural duties such as issuing orders on nonsubstantive rulings without a formal meeting of the Board. The Chairman shall not issue any substantive orders in any case, except upon a roll call vote of the board members where a majority concurs in the result. ()

00613. -- 019. (RESERVED).

020. PROCEDURE GOVERNED (RULE 20).

01. Procedure. ~~These rules shall govern all practice and procedure before the Board of Tax Appeals of the State of Idaho, hereinafter referred to in these rules as the Board. Regular proceedings shall be governed by Sections 001 through 159 and shall be conducted in conformity with the Administrative Procedure Act set out in Chapter 52, Title 67, of the Idaho Code. Proceedings in the small claims division of the Board shall be governed by Sections 160 through 170. Except as provided in Rules 800 through 860, these rules are affirmatively promulgated to supersede IDAPA 04.11.01, et seq., "Idaho Rules of Administrative Procedure of the Attorney General".~~

(4-5-00)()

02. Purpose. The purpose for the law providing for the establishment of the Idaho Board of Tax Appeals is to provide an independent, fair, expeditious, and less expensive opportunity for taxpayers and other parties to appeal from most tax related decisions of county boards of equalization and the State Tax Commission. (4-5-00)

021. LIBERAL CONSTRUCTION (RULE 21).

These rules will be liberally construed to secure just, speedy, and economical determination of all issues presented to the Board. (4-5-00)()

022. CITATION (RULE 22).

The official citation of this chapter is IDAPA 36.01.01, et seq. For example, this section's citation is IDAPA 36.01.01.022. In documents submitted to the Board or issued by the Board, these rules may be cited as BTA (Board of Tax Appeals) and rule number less leading zeroes. For example, this rule may be cited as BTA Rule 22. ()

~~022. -- 024. (RESERVED).~~

Section 025 has been moved and renumbered to Section 005.

~~0263. -- 029. (RESERVED).~~

030. APPEARANCE REPRESENTATION AND PRACTICE BEFORE THE BOARD (RULE 30).

~~All Proceedings.~~ The right to appear and practice before the Board shall be limited to the following classes of persons: (4-5-00)()

01. Natural Persons. ~~Parties who are~~ A natural persons may ~~representing themselves;~~ himself or herself or be represented by an authorized attorney. (4-5-00)()

02. Authorized Persons Corporations. Duly authorized directors; ~~or officers or designated full-time salaried employees~~ of corporations representing the corporations of for which they are, respectively, directors; ~~or officers or employees;~~ (4-5-00)()

03. Authorized Representation Partnerships, Joint Ventures and Trusts. Duly authorized partners, joint venturers, ~~designated full-time salaried employees;~~ or trustees representing their respective partnerships, joint ventures or trusts; (4-5-00)()

04. Authorized Attorneys. Attorneys duly authorized, who are qualified and entitled to practice in the courts of the state of Idaho; (4-5-00)

05. Public Officers ~~Or Employees.~~ Public officers or designated employees representatives when representing the governmental agency of which they are an officer or employee; (7-1-93)()

~~06. Board Approved Power Of Attorney.~~ A party may designate a representative in writing through a ~~Board approved power of attorney;~~ (4-5-00)

~~07. Intervention.~~ Parties entitled to intervene under Section 085. (4-5-00)

031. INITIAL PLEADING BY PARTY - LISTING OF REPRESENTATIVES (RULE 31).

The initial pleading of each party at the formal stage of a contested case must name the party's representative(s) for service of documents and shall state the representative's(s') address(es) for the purpose of receipt of all documents. Unless authorized by order of the Board, no more than two (2) representatives for service of documents may be listed. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party's representative, the first person signing the pleading will be considered the party's representative. The representative shall provide proof of authorization when representing another person, a corporation, partnership, joint venture, trust or governmental agency. ()

032. SUBSTITUTION OR WITHDRAWAL OF REPRESENTATIVE (RULE 32).

A party's representative may be changed and a new representative substituted by notice to the Board and to all other parties when the proceedings are not unreasonably delayed. The presiding officer may permit substitution of representatives at hearing. Representatives who wish to withdraw, must immediately file a written notice of withdrawal. ()

033. TAKING OF APPEARANCES -- PARTICIPATION BY TAXING AUTHORITY STAFF (RULE 33).

In all proceedings in which the taxing authority may participate, or in any instance where a report or recommendation of the taxing authority may be considered in reaching a decision, at the timely request of any party, or upon the board's motion, a representative of the taxing authority shall appear at any hearing and be available for cross-examination and shall further participate in the hearing in the same manner as a party. ()

~~031.~~ **034. (RESERVED).**

035. CONDUCT (RULE 35).

A party to an appeal, or representative, shall conduct themselves in all proceedings before the Board in an ethical, respectful, and courteous manner. (4-5-00)()

036. ENFORCEMENT (RULE 36).

The Board and each party to an appeal are responsible for the efficient, just, and speedy conduct of the formal hearing and other proceedings before the Board. Board members or the assigned hearing officer may impose sanctions on a party for ~~repeated~~ delays, the failure to comply with a subpoena, discovery order, discovery procedure abuses, and any other matter regarding conduct of the appeal. In imposing sanctions, the Board shall be allowed to use its discretion and shall be guided by the practices of the courts of this state in imposing sanctions for similar offences in civil proceedings. Board sanctions shall include, but not be limited to, dismissal of an appeal or the granting of default judgment. (4-5-00)()

037. EX PARTE COMMUNICATIONS (RULE 37).

Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the proceeding, with any party or representative, except upon notice and opportunity for all parties to participate in the communication. Unless required for the fair disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. When a presiding officer becomes aware of a written ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer shall place a copy of the communication in the file for the case and distribute a copy of it to all parties of record or order the party providing the written communication to serve a copy of the written communication upon all parties of record. Written communications from a party showing service upon all other parties are not ex parte communications. (4-5-00)()

038. -- 039. (RESERVED).

040. PARTIES (RULE 40).

All parties party appealing to the Idaho Board of Tax Appeals shall be known as "Appellant". The party or agency answering said appeal shall be known as "Respondent". ~~Parties~~ A party intervening in an appeal shall be known as "Intervenor". (4-5-00)()

041. -- 044. (RESERVED).

045. NOTICE OF APPEAL -- CONTENTS (RULE 45).

All appeals shall be in writing and shall contain clear and concise statements of the matters that lay a foundation for the relief that may be granted by the Idaho Board of Tax Appeals. All appeals shall allege necessary facts to establish jurisdiction of the Board to hear said appeal. (4-5-00)()

- 01. Appeals.** All appeals shall contain: (4-5-00)
- a. Appellant's full name; (4-5-00)
 - b. Current mailing address; (4-5-00)
 - c. Tax year(s) being appealed; and (4-5-00)
 - d. The telephone number where the appellant can be reached during normal daytime business hours. (4-5-00)
- 02. Appeal Filed by an Attorney or Representative.** If any appeal is filed by an attorney or other representative, the pleading shall contain: (4-5-00)
- a. The attorney's or representative's name, address, telephone number; and (4-5-00)
 - b. ~~For attorneys, the~~ Idaho State Bar License number ~~for attorneys.~~ *Representatives shall include a power of attorney from the appellant.* (4-5-00)(____)
- 03. Board Must Be Informed of Any Changes in Address or Phone Number.** Parties and representatives must keep the Board informed of any changes in address or telephone number. (4-5-00)

046. NOTICE OF APPEAL -- BOE APPEALS (RULE 46).

- 01. Separate Notice.** The party filing the appeal shall ~~substantially~~ complete ~~one (1) an~~ Appeal Form approved by the Board, or a separate notice of appeal; A separate Appeal Form will be completed for any each parcel/assessment of property for which an appeal is brought. Blank Appeal Forms shall be provided by the Board to each county auditor annually by May 1. (4-5-00)(____)
- 02. Contents BOE Appeals.** In the case of appeals brought under Section 63-511, Idaho Code, the notice of appeal shall ~~substantially~~ contain: (4-5-00)(____)
- a. A legal description of the property on which the appellant is appealing the valuation; (4-5-00)
 - b. ~~A summary of the findings and rulings of the county commissioners of the county in which said property is located sitting as a board of equalization and when available a copy of the final decision of the county board of equalization;~~ (4-5-00)(____)
 - c. ~~A summary of~~ The objections to the findings of the board of equalization and the basis of said objections by the appellant to include a clear declaration of the market value alleged by the appellant, and in the case of a property tax exemption claim, the code section(s) involved and a summary of the factual basis supporting why exempt status should be granted or denied; (4-5-00)(____)
 - d. ~~An attached~~ copy of the county's final tax assessment notice for the year in question on the property that is the subject of the appeal. ~~In the event such tax assessment notice is not available, the appellant should set out in his appeal the reason for his failure to provide said notice;~~ and (4-5-00)(____)
 - e. A statement that the appellant or qualified representative has read the notice of appeal and believes the contents to be true, followed by the person's signature, ~~and~~ or the signature of their attorney or representative, ~~if any.~~ (4-5-00)(____)
- 03. Time Limit and Filing Place.** Appeals brought under Section 63-511, Idaho Code, must be filed within thirty (30) days after mailing of notice of a decision of the board of county commissioners sitting as a board of equalization or pronouncement of a decision if this is announced at a hearing. Notice of such appeal, ~~stating the grounds therefor,~~ must be filed in duplicate with the county auditor in the county in which the property assessment originated. Appeals filed under Section 63-511, Idaho Code, cannot be perfected by filing them directly with the Idaho Board of Tax Appeals. Appeals not timely filed as provided by statute and ~~Section 046~~ Rule 46 shall be

dismissed. (4-5-00)()

047. NOTICE OF APPEAL -- STC APPEALS (RULE 47).

01. ~~Section 63-3049, Idaho Code~~ **Contents STC Appeals.** In appeals brought under Section 63-3049, Idaho Code, the notice of appeal ~~should~~ shall include ~~α:~~ (4-5-00)()

a. A copy of the redetermination or final decision by the State Tax Commission appealed from; ()

b. ~~a summary of~~ The objections of the appellant to said the redetermination; or final decision; ()

c. ~~and a summary of~~ The basis for said objections; ()

d. A statement of the amount in dispute shall be included with the notice of appeal ~~if~~ the amount in dispute is different from the redetermination or deficiency determination decision; ~~and then a statement of the amount in dispute shall be included with the notice of appeal. In the event that a copy of the redetermination or decision appealed from cannot be included in the appeal, the appellant should set out his reason for failing to include a copy of said redetermination or decision.~~ ()

e. Proof of compliance with the mandatory deposit requirements as provided in Section 63-3049, Idaho Code, in the form of a receipt from the State Tax Commission. ()

02. **Perfected Appeal - Filing Time.** Appeals brought under Section 63-3049, Idaho Code, must be filed with the Board within ninety-one (91) days after the receipt of notice of the decision of the State Tax Commission ~~denying in whole or in part any protest of the taxpayer.~~ (4-5-00)()

~~**02.** **Section 63-3632, Idaho Code.** In appeals brought under Section 63-3632, Idaho Code, the notice of appeal should include a summary of the decision by the State Tax Commission from which the appellant is appealing, a copy of said decision and a summary of the appellant's objections to said decision, together with his basis for said objections. Appeals brought under Section 63-3632, Idaho Code, must be filed with the Board within thirty (30) days of the date on which notice of redetermination or decision is mailed to or served upon the taxpayer.~~ (4-5-00)

048. NOTICE OF APPEAL -- DEFECTIVE APPEALS (RULE 48).

01. **Amendment or Dismissal.** Upon the filing of any notice of appeal it will be inspected by the Board and if found to be materially defective or not substantially in compliance with the requirements of this chapter the Board may dismiss such appeal or require its amendment. After notice from the Board, the appellant shall have fourteen (14) days to amend and perfect such appeal. Failure to perfect the appeal may result in dismissal of the appeal without further notice. (4-5-00)()

02. **Jurisdiction.** If a notice of appeal fails to set out allegations alleging jurisdiction of the Board, or if such allegations are disputed, the Board may require a separate hearing and may hear evidence on the questions of the Board's jurisdiction, or the Board may require proof of jurisdiction at the hearing of the appeal on its merits. (4-5-00)()

049. NOTICE OF APPEAL -- ACKNOWLEDGMENT LETTER (RULE 49).

The Board will acknowledge receipt of a notice of appeal. ~~When a perfected appeal has been filed, the Board shall provide the appellant with a written acknowledgment of the appeal~~ within fourteen (14) days of receipt of appeal in ~~BTA~~ the Board's office. (4-5-00)()

(BREAK IN CONTINUITY OF SECTIONS)

051. NOTICE OF APPEAL -- FILING STC APPEALS (RULE 51).

~~01.~~ **Filing.** Notices of appeal to the Board from Idaho State Tax Commission decisions and any other papers required to be filed with the Board shall be deemed filed upon actual receipt by the clerk of the Board or, if mailed, such papers shall be deemed filed as of the federal post office postmark date. Postage meters do not designate the mailing date. (4-5-00)()

052. NOTICE OF APPEAL -- FILING BOE APPEALS (RULE 52).

Papers, including notice of appeal, required to be filed with the county auditor shall be deemed filed upon actual receipt by the county auditor or, if mailed, such notice shall be deemed filed as of the federal post office postmark date. Postage meters do not designate the mailing date. (4-5-00)()

~~021.~~ **County Auditor.** Upon receiving a notice of appeal to the Board under Section 63-511, Idaho Code, the county auditor in the county where the notice of appeal is filed shall forward ~~said~~ to the Board: (4-5-00)()

- ~~a.~~ The notice of appeal to the Board, together with including the filing date: ()
- ~~b.~~ Any available exhibits or other evidence considered by the BOE; including a ()
- ~~c.~~ A copy of the written appeal to the BOE; ()
- ~~d.~~ A copy of any decision made or action taken by the BOE; and a ()
- ~~e.~~ A copy of the minutes of the meeting(s) of the county board of equalization BOE dealing with said appeal, or, in the event that no minutes are available, the auditor shall submit to the Board a certified statement to the effect that no such minutes are available. ()

~~02.~~ **Minutes.** The minutes ~~shall~~ should include at a minimum: (4-5-00)()

- ~~a.~~ The full name of persons appearing before the ~~Board of Equalization~~ BOE in the appeal. (4-5-00)()
- ~~b.~~ Clear identification of the parcel(s)/assessment(s) appealed. (4-5-00)
- ~~c.~~ The decision made or action taken by the BOE indicating clearly the value or exempt status decided for each parcel/assessment considered. (4-5-00)
- ~~d.~~ A summary of the basis for any decision made or action taken by the BOE. (4-5-00)

055. CONSOLIDATION -- HEARINGS AND DECISIONS (RULE 55).

01. Appeals and Hearings. Whenever it shall appear to the Board or presiding officer that two (2) or more ad valorem cases from the same county or different counties involve the same or substantially similar issues as well as the same or similar property classes or subclasses, such as assessment categories, or where the same or similar issues exist in other tax type cases, the Board or presiding officer may issue a written or verbal order consolidating the cases for hearing. There shall be no consolidation of cases where the rights of any party would be prejudiced by such procedure. Two (2) or more parties to appeals may also request in writing that cases be consolidated under the same criteria listed above. The Board or presiding officer in issuing a consolidation order in ad valorem appeals shall consider: whether the parcels are contiguous, any response given to a consolidation request, and any other matters deemed appropriate in determining the disposition of the matter. In a consolidated hearing the presiding officer determines the order of the proceeding. (4-5-00)

02. Decisions. The Board may at its discretion issue a written decision in a consolidated format.

(4-5-00)

056. -- 059. (RESERVED).

060. FORM OF PLEADINGS (RULE 60).

~~Pleadings before the Idaho Board of Tax Appeals shall be styled after those provided in the Idaho Rules of Civil Procedure. All pleadings, letters, petitions, briefs, notices, and other documents shall be on white, eight and one-half inches by eleven inches (8 1/2 x 11) paper, legibly written, printed, or typewritten on one (1) side only and include the current mailing address and telephone number and be signed by the appropriate authorized party or any representative of record submitting the same. The Board may require responsive pleadings from the opposing party in order to clarify the issues raised on appeal. Parties may also file responsive pleadings whenever they feel such pleadings are necessary to clarify the issues raised on appeal, whether required by the Board or not. (4-5-00)()~~

01. Form. All pleadings, except those filed on Board forms, submitted by a party and intended to be part of the record must: ()

a. Be submitted on white eight and one-half inch (8 1/2") by eleven inch (11") paper copied on one (1) side only and be legibly written; ()

b. State the title of the pleading and the appeal number, if assigned, at the top of the cover page; ()

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

d. Have at least one inch (1") left and top margins; ()

e. The Board may require a response from the opposing party in order to clarify the issues raised on appeal. Parties may also file a response whenever they feel such is necessary to clarify the issues raised on appeal, whether required by the Board or not; and ()

f. Must be signed by the appropriate authorized party or any representative of record submitting the same. ()

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

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

BEFORE THE BOARD OF TAX APPEALS

(Title of Proceeding) APPEAL NO.
() (TITLE OF DOCUMENT) ()

061. SERVICE OF DOCUMENTS (RULE 61).

01. Service. All notices, pleadings, exhibits, papers, orders, decisions, and all other documents of any kind submitted to the Board shall be served upon all other parties, counsel, or parties' representatives of record. Service by regular mail of such documents will be considered adequate service. If service is made by mail the papers shall be deposited in the post office properly addressed to the person to whom they are being served, with postage prepaid. Proof of such service must be filed with the Board. An affidavit or certificate of service, or acknowledgment of service will be considered adequate proof of service. Decisions or orders of the Board shall be served upon both

the party and party's counsel or representative of record, if any. When a document has been filed by FAX, it must be served upon all other parties with FAX facilities by FAX and upon the remaining parties by overnight mail, hand delivery, or the next best available service if these services are not available. The presiding officer may direct that some or all of these documents be served on interested or affected persons who are not parties. (4-5-00)()

02. Proof of Service. Every document filed with and intended to be part of the Board record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have this day of _____, served the foregoing (name(s) of document(s)) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid or facsimile or hand delivery to: (list names)).

(Signature) ()

062. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 62).
Defective, insufficient or late pleadings may be returned or dismissed. ()

063. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS (RULE 63).
The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective ten (10) days after filing. ()

~~062.~~—064. (RESERVED).

065. COMPUTATION OF TIME (RULE 65).
In computing any period of time prescribed or allowed by these rules or by any applicable statute, except where contrary to other applicable statutes, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included in the count unless it is a holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. (4-5-00)()

066. FILING OF DOCUMENTS (RULE 66).

01. Filing Place. All documents filed with the Board shall be filed with the clerk of the Board *and filed at its Boise office address* at the Board's mailing address or street address. (4-5-00)()

02. Number of Copies. Unless otherwise indicated by the Board, one (1) copy shall be filed. (4-5-00)()

067. -- 069. (RESERVED).

070. PREHEARING CONFERENCES (RULE 70).

01. Subject of Conferences. The Board may direct the appellant, respondent, and any intervenor to appear before it to consider: (4-5-00)

- a. Any and all matters that can be agreed upon. (7-1-93)
- b. Formulating or simplifying the issues. (4-5-00)
- c. Stipulations which will avoid unnecessary proof. (7-1-93)

- d. Preliminary motions to be made prior to the hearing. (7-1-93)
- e. Requiring respondent and appellant to furnish to each other and the Board a list of all witnesses to be called by the parties at the hearing. (4-5-00)
- f. The limitation of the number of expert or lay witnesses and the disclosure of the identity of persons having knowledge of relevant facts and who may be called as a witness. (4-5-00)
- g. The scheduling of discovery, hearings, or other time sensitive matters. (4-5-00)
- h. Discussing settlement. (4-5-00)
- i. Fair hearing procedures. (4-5-00)
- j. Such other matters that may expedite orderly and speedy conduct as will aid in the disposition of the controversy. (4-5-00)

02. 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. Notices for prehearing conference must contain the same information as notices of hearing with regard to the Board's obligations under the American with Disabilities Act. ()

023. Failure to Appear. Failure of either party to appear at the time and place appointed by the Board under Section Rule 070 may result in a dismissal of that party's appeal or the granting of said appeal as the case may be. (4-5-00)()

034. Prehearing Order. The Board or its designate may prepare or require the preparation of an order reciting the findings and action taken at such conference. Such order shall supersede the pleadings and control the subsequent course of the proceeding, unless modified by the Board to prevent manifest injustice. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. (4-5-00)()

045. Determination Upon Results of Conference. If, after the prehearing conference provided for in Section Rule 070, and after appropriate notice to the parties, the Board determines that there is sufficient evidence and stipulation upon which it can make a decision, it may vacate the hearing previously set and determine the appeal upon such evidence and stipulations. (4-5-00)()

~~071.—074.~~ (RESERVED).

072. MOTIONS (RULE 72).

- 01.** Form and Contents. A motion shall: ()
 - a. Fully state the facts upon which it is based; ()
 - b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which it is based; and ()
 - c. State the relief sought. ()

02. Oral Argument – Time for Filing. If the moving party desires oral argument or hearing on the motion it must state so in the motion. Any motion to dismiss, strike or limit an appeal must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within ten (10) days after filing of the answer. Other motions may be filed at any time upon compliance with Subsection 72.03. ()

03. Prehearing Motions. All prehearing motions must be filed at least fifteen (15) days prior to a scheduled hearing to be considered by the Board. ()

073. ANSWERS (RULE 73).

01. Answers to Pleadings Other Than Motions. Answers to pleadings, or appeals must be filed and served on all parties of record within ten (10) days after filing 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 may issue a notice of default. Answers to appeals must admit or deny each material allegation of the appeal. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. ()

02. Answers to Motions. Answers to motions may be filed by persons or parties involved in the appeal. In no event is any party entitled to more than fourteen (14) days to respond to a motion or move for additional time to respond to a motion. ()

074. BRIEFS (RULE 74).

The Board or presiding officer may request briefs from the parties either prior to the hearing of the evidence or after said hearing. ()

075. MEMORANDUMS, BRIEFS AND DISCOVERY RULE 75).

~~**01. Requests For Briefs.** Regardless of whether or not a prehearing conference has been held, the Board or presiding officer may request briefs from the parties either prior to the hearing of the evidence or after said hearing. (4-5-00)~~

021. Discovery -- Written Permission. Parties to a pending appeal may engage in discovery if they obtain prior written permission from the ~~Board~~ presiding officer. ~~The application for discovery must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgment letter. Discovery shall be completed at least ten (10) days prior to scheduled hearing. Service upon other parties is required at the same time as filing with the Board in accordance with the requirements of this chapter. The application for permission should contain a short plain statement of the reason discovery is useful to the preparation of the appeal and describe the intended discovery.~~ The following procedures shall govern discovery: (4-5-00)()

a. The motion for discovery must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgment letter. Only one (1) discovery motion may be filed by a party. ()

b. The motion shall contain a short plain statement of the reason the discovery is useful to the preparation of the appeal. ()

c. The motion shall be accompanied by the complete discovery request. The presiding officer shall deny discovery motions which do not include the complete discovery request. ()

d. Discovery shall be completed at least ten (10) days prior to the scheduled hearing, unless otherwise ordered by the presiding officer. ()

e. Service upon other parties is required at the same time as filing with the Board in accordance with the requirements of this chapter. ()

f. Discovery responses shall be served simultaneously to all other parties and the Board. Supplementation of responses shall be in accordance with the Idaho Rules of Civil Procedure. ()

g. The order compelling discovery may provide that voluminous answers need not be served so long as the documents are made available for inspection and copying under reasonable terms. ()

h. The motion shall be signed by an authorized representative or a party to the appeal. ()

02. Scope of Discovery -- BOE Appeals. Production requests and written interrogatories may be submitted in accordance with the rule or order of the Board. Only the following may be subject to discovery unless otherwise ordered by the presiding officer: ()

a. Information or records concerning appraisal and assessment of the subject property and comparable properties, financial statements and related schedules with respect to the subject property and comparable properties, sale agreements or contracts with respect to the subject property, comparable sales documents and lease agreements with respect to the subject property, completed studies or reports with respect to the subject property and comparable properties. For an exemption appeal, information or documents relating to the exemption. ()

b. The request for production of documents or written interrogatories concerning the matters set forth above are limited to the last three (3) years proceeding the assessment. ()

c. The request for production of documents shall specifically identify each document requested. The request for inspection of land or other property shall be in accordance with the Idaho Rules of Civil Procedure.()

03. Scope of Discovery -- STC Appeals. ()

a. Production requests, requests for admissions and written interrogatories may be submitted in accordance with the rule or order of the Board. ()

b. 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 Board. ()

04. Sanctions. Failure to substantially comply with Board ordered discovery, in a good faith attempt at full compliance, may result in one or more sanctions up to and including a dismissal or default judgment of the appeal(s.) ()

076. -- ~~08479.~~ (RESERVED).

080. DISCOVERY WITHOUT BOARD AUTHORIZATION (RULE 80).

Parties may agree among themselves to provide for discovery without reference to the Board's statutes, rules of procedure, or orders. ()

081. (RESERVED).

082. AGENCY -- CONTRASTED WITH OTHER DISCOVERY (RULE 82).

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

083. -- 084. (RESERVED).

085. INTERVENTION (RULE 85).

01. Intervention of Right. Upon timely application made in writing no later than ~~ten~~ fifteen (15) days prior to the hearing of an appeal, anyone shall be permitted to intervene in an appeal: ~~(4-5-00)~~()

a. When a statute confers an unconditional right to intervene; (7-1-93)

b. When the applicant claims in writing an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(4-5-00)

c. In any appeal in which it is not a party the Idaho State Tax Commission may intervene as a matter of right. (7-1-93)

02. Permissive Intervention. Upon timely application made in writing no later than ~~ten~~ fifteen (105) days prior to the date set for hearing of an appeal anyone may be permitted to intervene in an action: ~~(4-5-00)~~()

a. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition. ()

b. When a statute confers a conditional right to intervene; or (7-1-93)

b.c. In appeals brought under Section 63-511, Idaho Code, when an applicant can show in writing that he is a person aggrieved by the decision or that he is a taxpayer of the county in which said appeal was brought; or (4-5-00)

ed. When an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a federal or a state governmental officer or agency or upon any regulation, order, requirement or agreement issued or made pursuant to the statute or executive order, the officer or agency, upon timely application in writing, may be permitted to intervene in the action. In exercising this discretion the Board shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties. (4-5-00)

086. PUBLIC WITNESSES (RULE 86).
Persons not parties and not called by a party who testify at hearing are called "public witnesses". Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 106 and 107, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits. ()

~~0867.~~ -- ~~0989.~~ (RESERVED).

090. CONSENT AGREEMENT -- DEFINED -- FORM AND CONTENTS (RULE 90).

01. Consent Agreement Defined. Agreements between the taxing authority and another person(s) in which one (1) or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of law, are called "consent agreements". Consent agreements are intended to require compliance with existing law. ()

02. Requirements. A consent agreement must: ()

a. Recite the parties to the agreement; ()

b. Fully state the conduct proscribed or prescribed by the consent agreement. ()

03. Additional. In addition, a consent agreement may: ()

a. Recite the consequences of failure to abide by the agreement; ()

b. Provide for payment of civil or administrative penalties authorized by law; ()

c. Provide for loss of rights, licenses, awards or authority; ()

d. Provide for other consequences as agreed to by the parties; and ()

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

091. -- 099. (RESERVED).

100. FAIR HEARING (RULE 100).

01. Hearing Opportunity. In any case appealed to the Board, all parties shall be afforded an opportunity for a fair hearing after notice of hearing is provided. Opportunity shall be afforded all parties to present evidence and argument. (4-5-00)

02. Purpose of Hearing. The Board's goal in conducting hearings shall be the acquisition of sufficient, accurate evidence to support a fair and just determination of the issues involved in the appeal. ~~(4-5-00)~~()

03. Notice of Hearing -- Mailing. Notice of place, date, and hour of all hearings shall be mailed at least twenty (20) days before the date set for hearing. (4-5-00)

04. Setting of Hearing Date. In all instances where a hearing is deemed necessary by the Board, the Board will schedule a time and place each party may appear and offer evidence and arguments in support of his position. (4-5-00)

05. Telephonic Hearing. The Board may conduct telephonic hearings where each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. (4-5-00)

06. Notice of Hearing -- Contents. The notice of hearing shall include: ~~(4-5-00)~~()

a. A statement of the time, place and nature of the hearing; (7-1-93)

b. A statement of the legal authority and jurisdiction under which the hearing is to be held; (7-1-93)

c. A reference to the particular sections of the statutes and rules involved concerning the Board's legal authority to conduct the hearing; (4-5-00)

d. The name of the hearing officer who will conduct the hearing; (4-5-00)

e. A short and simple statement of the matters asserted or the issues involved. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application a more definite and detailed statement shall be furnished. (4-5-00)

07. Conference at Hearing. The presiding officer may convene the parties before hearing or recess the hearing to discuss formulation of simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. ()

101. FAILURE TO APPEAR -- DEFAULT OR DISMISSAL -- SETTING ASIDE -- APPEARANCES (RULE 101).

01. Default or Dismissal. Failure of either party to appear at the time and place appointed by the Board may result in a dismissal of that appeal or of the granting of the appeal. (4-5-00)

02. Setting Aside. Within ten (10) days after service of a default or dismissal order ~~under Section 101,~~ the party against whom the order was entered may file a written objection requesting that the order be vacated and stating the specific grounds relied upon. The objection must be served on all other parties to the appeal and their representatives in accordance with the requirements of this chapter. The Board may, for good cause, set aside an entry

of dismissal, default, or final order.

(4-5-00)()

03. Waiver of Parties' Appearance. Upon written stipulation of both parties that no facts are at issue, an appeal may be submitted to the Board with or without oral argument. However, the Board in its discretion may require appearance for argument or ~~the collection~~ presentation of evidence. (4-5-00)()

~~102. -- 104. (RESERVED).~~

102. WITHDRAWAL OF PARTIES (RULE 102).

Any party may withdraw from the appeal in writing or on the record at hearing.

()

103. (RESERVED).

104. ALTERNATIVE DISPUTE RESOLUTION (RULE 104).

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

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

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

105. INFORMAL DISPOSITION -- SETTLEMENT (RULE 105).

Any action may be dismissed by the Board by stipulation, agreed written settlement, consent order, or default. For good cause shown and upon written motion made within ten (10) days of entry of a Board order, the Board may set aside such entry, judgment, or order. (4-5-00)()

01. Formalizing Agreements. Agreements by the parties may be put on the record or may be reduced to writing and filed with the Board. ()

02. Confidentiality. 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. ()

03. Settlement Inquiry. Through notice or order on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. ()

04. Consideration of Settlements. Settlements must be reviewed under this rule. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the presiding officer may summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant implication for other persons, the presiding officer may convene an

evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the Board's charge under the law. ()

05. Burden of Proof. Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. ()

06. 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. ()

106. PRESIDING OFFICER (RULE 106).

Any member(s) of the Board or assigned hearing officer(s) may preside at the hearing and shall have power to: (4-5-00)()

01. Oath or Affirmation. Administer oaths or affirmations, call a party or other person present at hearing as a witness, examine witnesses and receive evidence. (4-5-00)

02. Depositions. Take or cause depositions to be taken. (7-1-93)

03. Hearing. Regulate the course of the hearing and maintain an orderly proceeding. (4-5-00)

04. Motions. Dispose of the procedural requests, motions or similar matters. (7-1-93)

05. Certification by Board. Make decisions or proposals for decisions (subject to certification by the entire Board or a majority of the Board). (4-5-00)

06. Official Record. Develop a full and accurate record and certify the record of said appeal on behalf of the Board. (4-5-00)()

07. Other Action. Take any other appropriate action reasonable under the circumstances. (4-5-00)

107. PROCEDURE AND TESTIMONY.

01. Preliminary Procedure. The presiding officer shall call the proceeding for hearing and proceed to take the appearances and act upon any pending motion or motions. Parties may then make opening statements as they may desire. (7-1-93)

02. Testimony. All testimony to be considered by the Board in formal hearings, except matters noticed officially or entered by stipulation at hearings or prehearing conference, shall be taken only on oath or affirmation. (4-5-00)

03. Order of Procedure. The appellant shall go forward to present his case first with the respondent and any intervenor then presenting such matters as he deems proper; ~~provided, however, the order of presentation provided in Section 107 shall have no bearing as to the party's burden of persuasion or proof.~~ Parties may then make closing statements as they may desire in the same order as the presentation of evidence. The presiding officer may require that the parties submit briefs in addition to, or in lieu of, closing arguments. A maximum of two (2) weeks shall be allowed to submit these briefs. The presiding officer may prescribe a different procedure than herein provided ~~if he deems it proper.~~ (4-5-00)()

04. Presentation of Evidence. Evidence may be presented in the following order: (4-5-00)

a. Evidence is presented by appellant. (4-5-00)

b. Evidence is presented by any intervening or opposing party. (4-5-00)

c. Rebuttal evidence is presented by appellant. (4-5-00)

d. Surrebuttal evidence is presented by any intervening or opposing party. (4-5-00)

05. Examination of Witnesses. With regard to any witness who testifies, the following examination may be conducted: (4-5-00)

a. Direct examination conducted by the party who called the witness. (4-5-00)

b. Cross-examination by any intervening or opposing party. (4-5-00)

c. Redirect examination by the party who called the witness. (4-5-00)

d. Recross-examination by any intervening or opposing party. (4-5-00)

e. Examination by the hearing officer. (4-5-00)

108. -- 109. (RESERVED).

110. STIPULATIONS (RULE 110).

With the approval of the presiding officer the parties may stipulate as to any fact at issue, either by written stipulation or introduced in evidence as an exhibit or by oral statement shown upon the hearing record. Any such stipulation shall be binding upon all parties so stipulating and may be regarded by the Board as evidence ~~at the hearing~~. The Board, however, may require evidence of the facts stipulated, notwithstanding the stipulation of the parties. ~~(4-5-00)~~(____)

111. CONTINUANCE -- EXTENSIONS OF TIME (RULE 111).

01. Continuances. A continuance may be ordered by the Board upon filing of a timely and written ~~request~~ motion containing the stipulated agreement and signature of all parties to the appeal. For a scheduled hearing, timely shall mean at least fifteen (15) days prior to hearing. The request/motion shall clearly and convincingly show good cause and contain the specific time extension requested. ~~(4-5-00)~~(____)

02. Consideration. Continuances shall be generally disfavored by the Board. The Board shall grant, or require on its own initiative, a continuance only when unusual and highly pressing circumstances are present. In no instance shall an extension cause a delay in proceedings for more than three (3) months. In no instance shall a second continuance be granted. (4-5-00)

112. -- 114. (RESERVED).

115. OFFICIAL NOTICE (RULE 115).

The Board may take official notice of judicially cognizable facts. In addition, the Board may take notice of general, technical, financial, or scientific facts within the Board's specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed. Parties shall be given a reasonable opportunity to object, review, examine, and rebut or contest the ~~document~~ information sought to be noticed. ~~The Board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.~~ ~~(4-5-00)~~(____)

116. OPEN HEARINGS AND CLOSED DELIBERATIONS (RULE 116).

01. Public Hearings. All hearings conducted by the Board shall be open to the public except where confidential evidence is being taken under a protective order. (4-5-00)

02. Closed Deliberations. After hearing and the close of the record, the Board may recess to closed deliberations for the limited purpose of deciding the matter before it. (4-5-00)

117. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 117).

01. Evidence, Admissibility and Evaluation. ~~Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence as applied in non-jury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder, may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of serious affairs. The Board shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially any part of the evidence may be received in written form. The presiding officer shall rule on the admissibility of all evidence and may grant exceptions to the requirements of Section 117 in the interest of justice. Such ruling may be reviewed by the Board in determining the matter on its merits. Any evidence ruling may be deferred to the entire Board by the presiding officer or taken under advisement by the presiding officer. The presiding officer may receive evidence subject to a motion to strike at the conclusion of the hearing.~~ Evidence should be taken by the Board to assist the parties' development of the record, not excluded to frustrate that development. The presiding officer is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any evidence. The presiding officer, with or without objection, may exclude evidence that is irrelevant, immaterial, unduly repetitious, or inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. The Board shall give effect to rules of privilege recognized by law. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of serious affairs. When proceedings will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form. The Board's experience, technical competence and specialized knowledge may be used in evaluation of the evidence. (4-5-00)()

02. Documentary Evidence. Upon request, parties shall be given an opportunity to compare the copy with the whole of the original document. Filing of a document does not signify its receipt in evidence, and only those documents which have been received in evidence shall be considered as evidence in the official record of the case. ()

03. Depositions. A deposition may be offered into evidence. ()

04. Prepared Testimony. The presiding officer may order a witness's prepared testimony previously distributed to all parties be included in the record of hearing as if read. Admissibility of prepared testimony is subject to the standards expressed in this rule. ()

05. Objections and Exceptions. Where objections are made to the admission or exclusion of evidence, the grounds relied upon shall be stated briefly at the time the evidence is offered. Formal exceptions to rulings are unnecessary and need not be taken. (4-5-00)

06. Evidentiary Rulings. The presiding officer shall rule on the admissibility of all evidence and may grant exceptions to the requirements of this rule in the interest of justice. Such rulings may be reviewed by the Board in determining the matter on its merits. Any evidence ruling may be deferred to the entire Board by the presiding officer or taken under advisement. The presiding officer may receive evidence subject to a motion to strike at the conclusion of the hearing. ()

07. Offer of Proof. An Offer of Proof for the record shall consist of a statement of the substance of the evidence to which objection has been sustained. In any event where the presiding officer rules evidence inadmissible, the party seeking to introduce such evidence must make an Offer of Proof regarding it in order to have such evidence considered by the Board. (4-5-00)

08. Failure to Produce Evidence -- Adverse Inference. The Board may draw an adverse inference when a party or witness fails to produce requested evidence which is reasonably in the party or witnesses's control. ()

118. EXHIBITS (RULE 118).

01. Custody. The Board shall keep all original exhibits in its care and custody unless otherwise provided by law. ()

02. Marking Exhibits. Exhibits will be marked by the presiding officer indicating the sponsoring and offering party. (4-5-00)(____)

03. Form. Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of medium customarily used for them. (____)

04. Copies. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. (____)

05. Objections. Exhibits identified at hearing are subject to appropriate and timely objection before the close of the hearing. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. (____)

119. -- 124. (RESERVED).

125. CONFIDENTIALITY -- PROTECTIVE ORDERS (RULE 125).

The decisions and record in appeals before the Board are public records unless otherwise provided by Title 9, Chapter 3, Idaho Code, or in the event a protective order, consistent with Title 9, Chapter 3, Idaho Code, is issued by the Board requiring that specified parts of the record be kept confidential. A party may file a motion for a protective order showing legal cause why specific information in the record, or likely to become part of the record through discovery or evidence obtained at hearing, should remain confidential. The motion under this rule must be in the form of also contain a statement or sworn affidavit as to the truthfulness of the contents. The ~~taxpayer~~ party requesting a protective order must serve a copy of the request on all other parties and the parties' representatives in accordance with the requirements of this chapter. If any other party opposes the request for a protective order, the party must file a written opposition within ten (10) days of the date of service of the request. The motion for protective order must be filed within twenty (20) days of the mailing date of the Board's notice of appeal acknowledgement letter. (4-5-00)(____)

126. -- 134. (RESERVED).

135. SCOPE OF APPEAL IN AD VALOREM APPEALS (RULE 135).

In all appeals brought under Section 63-511, Idaho Code, in which the appellant appeals only the value or exempt status established by the board of equalization upon either the land or the improvements on the land, the Board shall have jurisdiction to determine the value or exempt status ~~upon when~~ one (1) or the other is appealed. The Board shall have the power to increase or decrease the value of property in market value appeals regardless of which party appealed. If the Board finds that a property classification is in error, it shall determine the correct classification. (4-5-00)(____)

136. -- 139. (RESERVED).

140. DECISIONS AND ORDERS (RULE 140).

01. Submission for a Decision. The proceeding shall stand submitted for decision by the Board after taking of evidence, the filing of briefs or the presentation of oral arguments as may have been prescribed by the Board or the presiding officer unless otherwise specifically provided. (4-5-00)

02. Post Hearing Evidence. Unless requested by the Board, no posthearing evidence will be accepted ~~unless such evidence was in existence at the time of hearing, is new evidence rather than supportive or cumulative evidence, and could not reasonably have been anticipated or discovered prior to hearing.~~ (4-5-00)(____)

03. Proposed Orders. ~~When a case stands submitted for~~ Prior to a final decision on the merits the Board may, in its discretion, request proposed findings of fact and conclusions of law from each party. (7-1-93)(____)

04. Decisions. Board decisions are binding ~~only for the tax year or years at issue~~ pursuant to Section 63-3813, Idaho Code. ~~In connection with any appeal the Board may sustain, reverse, or modify any decision being~~

~~appealed.~~ A recommended decision or substantive order shall become final when signed by at least two (2) board members. Any member who dissents or concurs may state their reasons. (4-5-00)(____)

~~05. Evaluation Of Evidence. The Board may use its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it. (4-5-00)~~

~~065. Service of Orders.~~ Parties shall be notified by mail of any decision or order. Copies of the decision or order shall be served on all parties and the parties' representatives of record. (4-5-00)

~~076. Public Inspection.~~ Decisions and orders of the Board shall be open to public inspection. (7-1-93)

~~087. Decision of Board.~~ A decision of the Board will be based on the ~~evidence and stipulations made by the parties;~~ official record for the case. ~~When no dispute of facts exists,~~ the decision will be based on conclusions of law made by the Board. The Board shall hear and determine appeals as de novo proceedings. Decisions shall contain separately stated findings of fact and conclusions of law upon which the Board's determination is based. (4-5-00)(____)

141. -- 144. (RESERVED).

145. RECONSIDERATIONS -- REHEARINGS (RULE 145).

01. Time for Filing. A party adversely affected by a decision of the Board may move for reconsideration or rehearing within ten (10) days of the time the decision of the Board is mailed ~~to him.~~ ~~Motions for reconsideration or rehearing shall, as to form and content, conform to the requirements of Section 045.~~ The petitioner must file a supporting brief making a strong showing of good cause why reconsideration or a rehearing should be granted. In a motion for rehearing where the presentation of additional evidence is ~~planned sought or anticipated,~~ the motion shall include the reason why such evidence was not presented previously. Filing and service thereof shall conform to the requirements set forth in ~~Sections Rules 045 60 and 0461.~~ If the party requesting rehearing so requests, the matter may be determined by the entire Board. If a rehearing by the entire Board is requested and granted it will be conducted at a regular meeting in Boise or a meeting convened for that purpose at Boise or such other place as may be designated by the chairman of the Board. (4-5-00)(____)

02. Consideration. Reconsideration or rehearing may be granted or ordered on the Board's own motion if, in reaching the decision, the Board ~~or presiding officer~~ has overlooked or misconceived some material fact or proposition of law; misconceived a material question in the case; applied law in the ruling that has subsequently changed; or a party is found to have been denied the opportunity for a fair hearing. (4-5-00)(____)

03. Procedure for Reconsideration. Reconsideration is based on the record, unless the Board allows additional evidence and argument. (4-5-00)

04. Procedure at Rehearing. Rehearings will be conducted in accordance with the procedure at regular hearings, subject to the discretion of the Board or the presiding officer. (4-5-00)

05. Answer to Motion for Reconsideration or Rehearing. Within ten (10) days after a motion for reconsideration or rehearing is filed, any party to the proceeding may file an answer in support of or in opposition to said motion. A copy of the answer must be served on other parties and the representatives of record for such parties. (4-5-00)

06. Disposition. A petition for reconsideration or rehearing shall be deemed denied if, within twenty (20) days from the date the petition is received by the Board, no response is made by the Board. (4-5-00)

146. -- 150. (RESERVED).

151. OFFICIAL RECORD (RULE 151).

01. Content. The record ~~shall consist of the original documents, correspondence between the Board and parties, pleadings and papers or photocopies of the originals of said documents, correspondence, photographs,~~

~~pleadings and papers which have become a part of the official file and a transcript of the hearing, if any. Photocopies of all original documents may be substituted for the originals unless specifically objected to by a party to the proceedings.~~ for a contested case shall include: (4-5-00)()

- a.** All notices of proceedings: ()
- b.** All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding: ()
- c.** All intermediate or interlocutory rulings: ()
- d.** All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing): ()
- e.** All offers of proof, however made: ()
- f.** All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties: ()
- g.** All evidentiary rulings on testimony, exhibits, or offers of proof: ()
- h.** All taxing authority data submitted in connection with the consideration of the proceeding: ()
- i.** A statement of matters officially noticed: ()
- j.** All recommended orders, preliminary orders, final orders, and orders on reconsideration: ()
- k.** Photocopies of all original documents may be substituted for the originals unless specifically objected to by a party to the proceedings; and ()
- l.** The transcript defined in Subsection 151.02. ()

02. Transcript. The official transcript of the hearing will be taken by means of electronic tape recorder. Any party desiring the taking of stenographic notes by a qualified court reporter must request ~~such within ten~~ at least fifteen (15) days before the date set for hearing and must submit to the Board or presiding officer the name of the qualified reporter who is available on the date set for hearing. The party requesting the reporter shall bear the expense of the reporter's fees and if the reporter's transcript is deemed by the Board or presiding officer to be the official transcript of the hearing, the party requesting the reporter shall furnish the Board a transcript free of charge. (4-5-00)()

03. Cost of Transcript. Uncertified ~~tapes of the~~ copies of the transcript tape(s) will be provided at the cost of ten dollars (\$10) per ~~forty-five (45) minute~~ minute tape. (4-5-00)()

152. -- 154. (RESERVED).

155. SUBPOENAS (RULE 155).

01. Form and Purpose. Every subpoena shall be prepared by the requesting party or at the Board's own motion and shall state the name of the Board and the title of the action, and shall command each person to whom it is directed to attend and give testimony and/or produce the books, papers, documents, or tangible things designated therein at the time and place therein specified. A subpoena may be used for the purpose of discovery or for the purpose of presenting evidence at a formal hearing. (4-5-00)

02. Issuance to Parties. Upon written application of parties, attorneys or other representative authorized to practice before the Board for any party in a proceeding, including a showing of relevance and the reasonable scope of the testimony or evidence sought, there shall be issued to such party subpoenas requiring the attendance and testimony of witnesses or the production of evidence in such proceeding. The Board may issue

subpoenas to parties not so represented upon request or upon a showing of general relevance and reasonable scope of the testimony or evidence sought. (4-5-00)

03. Service. Service shall be the responsibility of the requesting party. Unless the service of a subpoena is acknowledged on its face by the person subpoenaed, service shall be made by delivering a copy of the subpoena to such person and by tendering him on demand the fees for one (1) day's attendance and the mileage allowed by law to a witness in civil cases in the district court. (4-5-00)

04. Fees. Witnesses summoned pursuant to subpoena shall be paid by the party at whose instance they appear the same fees and mileage allowed by law to a witness in civil cases in the district court. (7-1-93)

05. Proof of Service. The person serving the subpoena shall make proof of service by filing the subpoena and the required return, affidavit or acknowledgment of service with the Board. (7-1-93)

06. Quashing. Upon motion made promptly, at or before the time specified in the subpoena for compliance, by the person to whom the subpoena is directed and upon notice to the party to whom the subpoena was issued, the Board may: (7-1-93)

a. Quash or modify the subpoena if it is unreasonable or requires evidence not relevant to any matter in issue; or (7-1-93)

b. Condition denial of the motion upon just and reasonable conditions. (7-1-93)

07. Enforcement. If any witness shall fail to properly respond to a subpoena, the Board may petition the district court in and for the county in which the proceeding is pending setting forth the issuance of the subpoena, its proper service and the basis upon which the Board alleges that the witness failed to respond. (7-1-93)

08. Geographical Scope. Such attendance of witnesses and such production of evidence may be required from any place in the state of Idaho at any designated place of hearing. (7-1-93)

156. -- ~~999~~164. (RESERVED).

165. REQUEST FOR WRITTEN TRANSCRIPT (RULE 165).

Upon request of a written transcript, the Board may provide a list of court reporting and transcribing services to the requesting party. Arrangements for preparation of transcript and payment of the fee will be made between the party requesting the transcript and the transcriber. The original tape recorded hearing transcript will remain with the Board until requested by the transcriber, or included in the official record transmitted to the district court. ()

166. -- 999. (RESERVED).

IDAPA 39 - DEPARTMENT OF TRANSPORTATION

39.03.11 - RULES GOVERNING OVERLEGAL PERMITTEE RESPONSIBILITY AND TRAVEL RESTRICTIONS

DOCKET NO. 39-0311-0401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is November 1, 2004.

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 rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 40-312 and 49-1004, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rule-making:

Due to ever increasing traffic volumes on the interstate highways, this rule is being modified to restrict over-width permitted vehicles from operating on certain sections of interstate highways during the hours of high-commuter traffic (6:30 a.m. to 8:30 a.m. and 4:00 p.m. to 6:00 p.m.). There is a minimal impact to industry since they are already subject to high commuter traffic restrictions on non-interstate state highways.

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:

Restricting over-width permitted vehicles from operating on certain section of interstate highways during the hours of high-commuter traffic will protect the public safety.

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: There is no fee or charge associated with this rulemaking.

NEGOTIATED RULE-MAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because immediate implementation will protect the public safety of the traveling public by reducing the congestion already occurring on some stretches of interstate highways.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Alan Frew, Port of Entry Manager, 334-8694.

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 27, 2004.

DATED this 20th day of August, 2004.

Linda L. Emry, Management Assistant
Budget, Policy, and 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.39-0311-0401

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter.

(11-1-04)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."

(11-1-04)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter.

(11-1-04)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.

(11-1-04)T

02. Office Hours. Daily office hours are 7:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays.

(11-1-04)T

03. Telephone and FAX Numbers. The central office may be contacted during office hours by phone at 208-334-8420 or by fax at 208-334-8419.

(11-1-04)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.

(11-1-04)T

0027. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

200. TIME OF TRAVEL RESTRICTIONS FOR OVER LEGAL LOADS.

Oversize loads may be transported on Idaho Highways subject to the following conditions:

(10-2-89)

01. Red-Coded Routes. Daylight travel until 2 p.m. on Friday, no Saturday, no Sunday. Due to low traffic volumes on these routes early in the mornings of Saturday and Sunday, single trip permits may be issued for dawn to 8 a.m. If the movement is not completed by 8 a.m. the permittee will be required to safely park and not proceed until the next day.

(4-5-00)

02. Black-Coded Routes. Loads not in excess of ten (10) feet wide, one hundred (100) feet long or fourteen (14) feet six (6) inches high may travel twenty-four (24) hours per day, seven (7) days per week; loads in excess of ten (10) feet wide, one hundred (100) feet long or fourteen (14) feet six (6) inches high may travel daylight hours seven (7) days per week.

(12-26-90)

03. Interstate. Loads not in excess of ten (10) feet wide, one hundred and twenty (120) feet long or fourteen (14) feet six (6) inches high may travel twenty-four (24) hours per day, seven (7) days per week; loads in excess of ten (10) feet wide, one hundred and twenty (120) feet long or fourteen (14) feet six (6) inches high may travel daylight hours, seven (7) days per week.

(4-5-00)

04. Additional Restrictions.

(8-25-94)

a. Red-Coded Routes: No travel for any load after 2 p.m. on the day preceding a holiday or holiday

weekend. A holiday weekend occurs as three (3) consecutive days, when a designated holiday occurs on a Friday or Monday, or when the designated holiday occurs on a Saturday or Sunday, in which case the preceding Friday or the following Monday shall be included in such three (3) day holiday weekend. Travel may be resumed at dawn on the day following the holiday or holiday weekend. (4-5-00)

b. Black-Coded Routes and Interstate Routes: Loads in excess of ten (10) feet wide, one hundred (100) feet long or fourteen (14) feet six (6) inches high may not travel after 4:00 p.m. on the day preceding a holiday; travel may be resumed at dawn on the day following the holiday. (4-5-00)

c. The following days are designated as holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, and Christmas. (8-25-94)

d. Additional restrictions relating to movement of buildings and houses are listed in IDAPA 39.03.18, "Rules Governing Overlegal Permits for Relocation of Buildings or Houses," Section 400. (4-5-00)

e. Other time of travel restrictions may be noted on the permit due to special circumstances. (8-25-94)

05. Hours Of Darkness. Hours are defined as extending from one-half (1/2) hour after sundown to one-half (1/2) hour before sun rise or at any other time when visibility is restricted to less than five hundred (500) feet. (4-5-00)

06. Heavy Commuter Traffic Restrictions. The movement of oversize vehicles or loads which are in excess of twelve (12) feet in width, ~~in excess of eighty five (85) feet in length, or in excess of sixteen (16) feet in height~~ may be prohibited from movement on all state highways ~~within the urban limits of the following cities: Boise, Caldwell, Coeur d'Alene, Idaho Falls, Lewiston, Nampa, Pocatello, Twin Falls, Garden City, and Chubbuck~~ at times of heavy commuter traffic. Unless otherwise defined on the permit, the times of heavy commuter traffic shall be considered to be 6:30 a.m. to 8:30 a.m., ~~11:30 a.m. to 1:30 p.m.~~ and 4 p.m. to 6 p.m. ~~This restriction may not apply to sections of completed Interstate Highway within the above listed cities. Such a restriction of oversize load travel to avoid conflict with heavy commuter traffic volumes shall appear on the face of the permit.~~ Restrictions for the operation of overlegal vehicles and/or loads during times of heavy commuter traffic shall appear either on the face of the permit or in the attachments for annual permits. ~~(4-5-00)(11-1-04)T~~

07. Hazardous Travel Conditions Restrictions. Extreme caution in the operation of ~~overweight/oversize permitted~~ vehicle combinations shall be exercised when hazardous conditions exist. The movement of overlegal vehicles and/or loads by overlegal permit shall be prohibited and otherwise valid permits shall automatically become invalid enroute when travel conditions become hazardous due to ice, snow or frost; when visibility is restricted to less than five hundred (500) feet by fog, dust, smoke or smog or other atmospheric conditions. ~~(4-5-00)(11-1-04)T~~

08. Delaying Movement. Enforcement personnel responsible for any section of highway may delay movements and carry out enforcement action for violations involving overlegal permit operations. (4-5-00)

09. Map Resources. The Pilot/Escort Vehicle and Travel Time Requirement Map is available at the Idaho Transportation Department Overlegal Permit Office, and Ports of Entry, and District Offices. (4-5-00)

IDAPA 39 - DEPARTMENT OF TRANSPORTATION
39.03.41 - RULES GOVERNING TRAFFIC CONTROL DEVICES

DOCKET NO. 39-0341-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Section(s) 40-313, 49-201(3), AND 67-5203A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

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:

Adopting, by incorporation by reference, the most recent publication of the MUTCD, including Revision One, dated July 21, 2004, with specified exceptions, as noted in the rule-making. All changes and exceptions have been reviewed and approved by FHWA, ACHD and LHTAC. The exceptions are necessary to bring the MUTCD into conformance with Idaho Code, correct errors and accommodate the operations of the department and local transportation agencies. However, unlike previous years, the exceptions are not substantive but necessary due primarily to formatting changes in the 2003 MUTCD.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees or charges associated with this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted. However, FHWA, ACHD, and LHTAC participated in informal negotiations and have reviewed and concurred with all changes and exceptions in this rule-making.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Lance Johnson, Traffic and Highway Safety Manager, 334-8557.

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 27, 2004.

DATED this 25th day of August, 2004.

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. 39-0341-0401

004. INCORPORATION BY REFERENCE.

The "Manual on Uniform Traffic Control Devices for Streets and Highways" is published by the Federal Highway Administration of the U.S. Department of Transportation. The *Millennium 2003* edition of the Manual and all subsequent amendments, through and including revision number one (1) dated ~~December 28, 2001~~ July 21, 2004, are hereby incorporated by reference and made a part of the Rules of the Idaho Transportation Department. The following exceptions to the Manual are adopted by the Idaho Transportation Board: (3-20-04)(____)

01. Section 2H-04, General Design Requirements For Recreational And Cultural Interest Area Symbol Signs. On page 2H-21, modify the first sentence under Standard to read as follows: Recreational and cultural interest area symbol signs shall be square or rectangular in shape and shall have a white symbol or *legend message* and white border on a brown background, with the exception of Scenic Byway signs which shall be allowed to use a multi-colored format. (3-20-04)(____)

02. Section 1A.11, Relation To Other Documents. On page 1A-107, in the first paragraph under Standard, ~~delete the last referenced publication, "Standard Highway Signs, 1979 Edition (FHWA)". At the end of the paragraph add the following sentence: "The latest edition of the 2002 Idaho Transportation Department (ITD) Sign Chart shall be a part of this Manual as a reference for all sign number designations and any additional special signs if used on a highway under the jurisdiction of the Idaho Transportation Department. Add the following as the first sentence under Support, "The "Standard Highway Signs, 2002 Edition (FHWA)" as referenced in this Manual shall be adopted as a supporting document."~~ change the paragraph to read as follows: To the extent that they are incorporated by specific reference, the latest editions of the following publications, or those editions specifically noted, shall be a part of this Manual: Idaho Transportation Department (ITD) Sign Chart; and "Color Specifications for Retroreflective Sign and Pavement Marking Materials" (appendix to subpart F of Part 655 of Title 23 of the Code of Federal Regulations). The "Standard Highway Signs" book (FHWA) shall be a part of this Manual as a supporting document and add the following as the first sentence of the "Support" statement: Idaho Transportation Department Sign Chart includes all signs approved for use on a highway under the jurisdiction of the Idaho Transportation Department, their sign number designations and a cross reference index for comparison of all MUTCD approved signs and those included on the Idaho Transportation Department sign chart. (3-20-04)(____)

03. Section 2C.05, Placement Of Warning Signs. On pages 2C-6 and 2C-7, the attached tables shall be adopted to replace Table 2C-4, "Guidelines for Advance Placement of Warning Signs". **Section 2C.30, Speed Reduction Signs (W3-5, W3-5a)** on page 2C-15, delete "W3-5" from the title of the section and from the first sentence of the Guidance Statement, and Figure 2C-5, Advisory Speed and Speed Reduction Signs, on page 2C-16, remove the W3-5 sign from the figure. (3-20-04)(____)

04. Section 2C.27, CROSS TRAFFIC DOES NOT STOP Plaque (W4-4P). On page 2C-23, delete the third paragraph titled "Guidance" in its entirety. Replace the fourth paragraph titled "Option" with the following: "The CROSS TRAFFIC DOES NOT STOP (W4-4P) plaque (see page 2C-924) may be used in combination with a STOP sign when engineering judgment indicates that drivers frequently misinterpret the intersection as a multi-way stop condition." Replace the fifth paragraph titled "Standard" with the following: "If the W4-4P plaque is used, it shall be installed below the STOP sign." On page 2C-24, revise plaque W4-4P to delete the arrow and use text only. **Section 2C.39, Traffic Signal Signs (W25-1, W25-2).** On page 2C-20, delete the section in its entirety, and Figure 2C-8, Intersection Warning Signs, on page 2C-20, remove the W25-1 and W25-2 signs from the figure. (3-20-04)(____)

05. Section 2D.15, Cardinal Direction Auxiliary Signs (M3-1 through M3-4). On page 2D-126, change the first sentence under Standard to read as follows: "To improve the readability, the first letter of the cardinal direction words shall be ten percent larger, rounded up to the nearest whole number size, except for those sign installations that were in existence prior to the adoption of this rule." (3-20-04)(____)

06. Section 2E.28, Interchange Exit Numbering. On page 2E-3624, in the fourth sentence under Standard, revise the sentence to read as follows: "The standard exit number plaque shall include the word EXIT, the appropriate exit number, and the suffix letter A or B (on multi-exit interchanges) in a single-line format on a plaque 750 mm (30 in) in height, except for those sign installations that were in existence prior to the adoption of this rule." (3-20-04)(____)

07. **Section 2E.37, Interchange Sequence Signs.** On page 2E-5538, revise the last Standard to an Option to read as follows: "Interchange Sequence signs located in the median may be installed at overhead sign height". (3-20-04)()

08. ~~**Section 4C.02, Warrant 1, Eight-Hour Vehicular Volume.**~~ ~~Revise the FHWA compliance dates for the additional roadways to be striped under the new minimum criteria from January 3, 2003 to January 3, 2005.~~ **Table 4C-1, Warrant 1, Eight-Hour Vehicular Volume.** On page 4C-3, remove all references to the 56% volume columns and note "d" and Section 4C.02 Warrant 1, Eight-Hour Vehicular Volume, on page 4C-4, remove the Option statement in its entirety. (3-20-04)()

09. **Section 4D.04, Meaning Of Vehicular Signal Indications.** On page 4D-52, in the second paragraph of Item C.1, substitute the following for the first sentence: "Except when a sign is in place prohibiting a turn on red or a RED ARROW signal indication is displayed, vehicular traffic facing a CIRCULAR RED signal indication may cautiously enter the intersection to turn right, or to turn left from a one (1) way or two (2) way street into a one (1) way street, after stopping in conformance with the provisions of the Idaho Vehicle Code." (3-20-04)()

10. **Section 4K.03, Warning Beacon.** On page 4K-32, in the second paragraph under Standard, revise the second sentence to read as follows: "The beacon shall not be included within the border of the sign." (3-20-04)()

11. **Section 5F.02, Highway-Rail Grade Crossing (Crossbuck) Sign Assembly (R15-1, R15-2).** On page 5F-1, in the title add the word "Assembly" after the word "Sign," and Under Standard, insert the following text as the first sentence: "The Highway-Rail Grade Crossing (Crossbuck) (R15-1) sign (see Figure 5F-1) may be an assembly consisting of separate sign blades, assembled to appear as a single sign when installed at a highway-rail grade crossing." ()

12. **Section 5E.04, STOP or YIELD Signs (R1-1, R1-2).** On page 5F-1, delete the first paragraph titled as Option Statement, retaining the Standard for Stop Ahead (W3-1) or Yield Ahead (W3-2) signs and insert the following paragraph as the second paragraph under Standard: "Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence." ()

13. **Section 7B.11, School Speed Limit Assembly (S4-1, S4-2, S4-3, S4-4, S4-6, S5-1).** On page 7B-87, in the ~~last~~ fourth paragraph under Option, revise the second sentence to read as follows: "The lenses of the Speed Limit Sign Beacon shall not be positioned within the face of the School Speed Limit (S5-1) sign." (3-20-04)()

14. **Section 8B.078, STOP (R1-1) Or YIELD (R1-2) Signs At Highway-Rail Grade Crossings.** On page 8B-76, delete the first five paragraphs titled as "Option, Support and Guidance Statements," retaining the Standard for Stop Ahead or Yield Ahead Advance Warning signs and ~~substitute~~ insert the following; "~~Standard:~~ paragraph as the second paragraph under Standard: "Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence." (3-20-04)()

15. **Section 8B.1822, Dynamic Envelope ~~Delineation~~ Markings.** On page 8B-153, revise the first sentence under Standard to read as follows: "If used, the dynamic envelope shall be contrasting pavement color and/or contrasting pavement texture." And, on page 8B-153, revise the first sentence under Guidance to read as follows: "If used, dynamic envelope pavement markings with contrasting pavement color and/or texture should be placed for a distance of 1.8 m (6 ft) from the nearest rail, installed parallel to the tracks, unless the operating railroad company advises otherwise." (3-20-04)()

146. ~~Figure 8B-48, Typical Train Dynamic Envelope Delineation~~ Pavement Markings. On page 8B-163, delete Figure in it's entirety. (3-20-04)(____)

157. **Section 8D.07, Traffic Control Signals At Or Near Highway-Rail Grade Crossings.** On page 8D-1107, in the first full tenth paragraph titled Standard, add text "if justified by an engineering study", to the end of the final sentence in the paragraph. (3-20-04)(____)

168. **Section 10C.034, STOP (R1-1) Or YIELD (R1-2) Signs (R1-1, R1-2, W3-1a, W3-2a) at Highway-Light Rail Transit Grade Crossings.** On page 10C-12 and 10C-24, delete the five (5) paragraphs titled as "Standard, Guidance, and Option Statements", retaining the Standard for Stop Ahead or Yield Ahead Advance Warning signs and substituting insert the following: "Standard paragraph as the first paragraph under Standard: "Under Idaho law, wherever a highway crosses one (1) or more railroads at grade, the Department or local authorities within their respective jurisdictions, shall place and maintain stop signs, directing vehicular traffic approaching the crossing to come to a full stop prior to entering the crossing at all railroad crossings where electric or mechanical warning signals do not exist. Placement of these stop signs shall be mandatory except when, in the determination of the Department or local authorities, the existence of stop signs at a given crossing would constitute a greater hazard than their absence." (3-20-04)(____)

179. **Section 10C.125 Dynamic Envelope Delineation-Markings.** (3-20-04)(____)

a. ~~Page 10C-9.~~ On page 10C-912, delete the word "markings" in the title and, under Support, delete the word "markings" and replace with contrasting pavement color and/or contrasting pavement texture. (3-20-04)(____)

b. ~~Page 10C-11.~~ On page 10C-112, under Option: revise Replace the sentence to read as follows with the following: "The dynamic envelope may be delineated on the pavement using contrasting pavement color and/or contrasting pavement texture (see Figures 10C-17 and Figure 10C-410):" and (3-20-04)

~~i.~~ On page 10C-112, delete "Standard, relating to pavement markings in its entirety," and (3-20-04)

~~ii.~~ On page 10C-112, revise Guidance, to read as follows: "If used at the light-rail transit crossing, dynamic envelope contrasting pavement color and/or texture should be placed at a distance of 1.8 m (6 ft) from the nearest rail, installed parallel to the tracks, unless the transit authority and/or operating railroad company advises otherwise;" and (3-20-04)

~~iii.~~ On page 10C-112, delete the work "markings" in all four paragraphs under the second Option and replace with "delineation". (3-20-04)(____)

1820. **Figure 10C-28, Typical Light Rail Transit Vehicle Dynamic Envelope Delineation Pavement Markings.** On page 10C-103, delete Figure 10C-28 in it's entirety. (3-20-04)(____)

1921. **Section 10D.06, Traffic Signal Preemption Turning Restrictions.** On page 10D-64, under the third paragraph titled Guidance: add text "if justified by an engineering study," to the end of the final sentence in the paragraph.

Table 2C-4. Guidelines for Advance Placement of Warning Signs (English Units)¹

Posted or 85th Percentile Speed (mph)	Condition A: High judgement required ²	Condition B: Deceleration to the listed advisory Speed (mph) for the condition ⁴							
		03	10	20	30	40	50	60	70
20	225-ft	N/A ⁵	N/A ⁵						
25	325-ft	N/A ⁵	N/A ⁵	N/A ⁵					

Table 2C-4. Guidelines for Advance Placement of Warning Signs (English Units)¹

30	450-ft	N/A5	N/A5	N/A5					
35	550-ft	N/A5	N/A5	N/A5	N/A5				
40	650-ft	125-ft	N/A5	N/A5	N/A5				
45	750-ft	175-ft	125-ft	N/A5	N/A5	N/A5			
50	850-ft	250-ft	200-ft	150-ft	100-ft	N/A5			
55	950-ft	300-ft	275-ft	225-ft	175-ft	100-ft	N/A5		
60	1100-ft	400-ft	350-ft	300-ft	250-ft	175-ft	N/A5		
65	1200-ft	475-ft	425-ft	400-ft	350-ft	275-ft	175-ft	N/A5	
70	1250-ft	550-ft	525-ft	500-ft	425-ft	350-ft	250-ft	150-ft	N/A5
75	1350-ft	650-ft	625-ft	600-ft	525-ft	450-ft	350-ft	250-ft	100-ft

Notes:

- 1- The standard distance calculations in the above chart are based on a sign legibility distance of 175 feet for Condition A which is the appropriate legibility distance for a 5 inch, Series D word legend. The distances for Condition B are based on a sign legibility distance of 250 feet which is appropriate for an alignment warning symbol sign.
- 2- Typical conditions are locations where the road user must use extra time to adjust speed and change lanes in heavy traffic because of a complex driving situation. This may be for a multi-lane facility with vehicle weaving and lane change requirements using several of the traffic flow warning signs such as Merge and Lane Ends that requires the application of Driver Decision Sight Distance. The distances are determined by providing the driver a PIEV time of 14.0 to 14.5 seconds for the vehicle maneuvers (2000 AASHTO Policy, Exhibit 3-3, Decision Sight Distance, Avoidance Maneuver E) minus the legibility distance of 175 feet for the appropriate sign.
- 3- Typical condition is the warning of a potential stop situation. Typical signs are Stop Ahead, Yield ahead, Signal Ahead, and Intersection Advance Warning signs. The distances are based on the 2000 AASHTO Policy, Stopping Sight Distance, Exhibit 3-1, providing a PIEV time of 2.5 seconds, a deceleration rate of 11.2 ft/sec² minus the sign legibility distance of 175 feet.
- 4- Typical conditions are locations where the road user must decrease speed to maneuver through the warned condition. Typical signs are Turn, Curve, Reverse Turn or Curve. The distance is determined by providing a 2.5 second PIEV time, a vehicle deceleration rate of 10 ft/sec² minus the sign legibility distance of 250 feet.
- 5- No suggested minimum distances are provided for these speeds, as the placement location is dependent on site conditions and other signing to provide an adequate advance warning for the driver. The values have been rounded to uniform distances.

Table 2C-4. Guidelines for Advance Placement of Warning Signs (Metric Units)¹

Posted or 85th Percentile Speed (km/h)	Condition A: High judgement required ²	Condition B: Deceleration to the listed advisory Speed (km/h) for the condition ⁴												
		03	40	20	30	40	50	60	70	80	90	100	110	120

30 km/h	60 m	N/A5												
40 km/h	100 m	N/A5												
50 km/h	150 m	N/A5												
60 km/h	180 m	30 m	N/A5	N/A5	N/A5									
70 km/h	220 m	50 m	40 m	30 m	N/A5	N/A5	N/A5							
80 km/h	260 m	80 m	60 m	55 m	50 m	40 m	30 m	N/A5						
90 km/h	310 m	110 m	90 m	80 m	70 m	60 m	40 m	N/A5	N/A5					
100 km/h	350 m	130 m	120 m	115 m	110 m	100 m	90 m	70 m	60 m	40 m	N/A5			
110 km/h	380 m	170 m	160 m	150 m	140 m	130 m	120 m	110 m	90 m	70 m	50 m	N/A5		
120 km/h	420 m	200 m	190 m	185 m	180 m	170 m	160 m	140 m	130 m	110 m	90 m	60 m	40 m	
130 km/h	460 m	230 m	230 m	225 m	220 m	210 m	200 m	180 m	170 m	150 m	120 m	100 m	70 m	50 m

Notes:

1. The standard distance calculations in the above chart are based on a sign legibility distance of 50 m for Condition A which is the appropriate legibility distance for a 125 mm, Series D word legend. The distances for Condition B are based on a sign legibility distance of 75 m which is appropriate for an alignment warning symbol sign.

2. Typical conditions are locations where the road user must use extra time to adjust speed and change lanes in heavy traffic because of a complex driving situation. This may be for a multi-lane facility with vehicle weaving and lane change requirements using several of the traffic flow warning signs such as Merge and Lane Ends that requires the application of Driver Decision Sight Distance. The distances are determined by providing the driver a PIEV time of 14.0 to 14.5 seconds for the vehicle maneuvers (2000 AASHTO Policy, Exhibit 3-3, Decision Sight Distance, Avoidance Maneuver E) minus the legibility distance of 50 m for the appropriate sign.

3. Typical condition is the warning of a potential stop situation. Typical signs are Stop Ahead, Yield Ahead, Signal Ahead, and Intersection Advance Warning signs. The distances are based on the 2000 AASHTO Policy, Stopping Sight Distance, Exhibit 3-1, providing a PIEV time of 2.5 seconds, a deceleration rate of 3.4 m/sec² minus the sign legibility distance of 50 m.

4. Typical conditions are locations where the road user must decrease speed to maneuver through the warned condition. Typical signs are Turn, Curve, Reverse Turn or Curve. The distance is determined by providing a 2.5 second PIEV time, a vehicle deceleration rate of 3.0 m/sec² minus the sign legibility distance of 75 m.

5. No suggested minimum distances are provided for these speeds, as the placement location is dependent on site conditions and other signing to provide an adequate advance warning for the driver. The values have been rounded to uniform distances.

(3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

100. AVAILABILITY OF THE “MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES FOR STREETS AND HIGHWAYS”.

01. Review Of Manual. Persons wishing to review the Manual may do so at any of the locations listed in Section 005. The Manual and subsequent amendments are also available for review at the Idaho State Library.
(3-20-04)

02. Purchase Of Manual. The Manual and all subsequent amendments dated ~~December 28, 2001~~ July 21, 2004, with Revision No. 1 changes may be viewed and printed from the Federal Highway Administration website, <http://mutcd.fhwa.dot.gov> or purchased from a number of organizations described on the website, such as the U.S. Government Printing Office, AASHTO, ATSSA, and ITE.
(~~3-20-04~~)()

IDAPA 40 - IDAHO COMMISSION ON THE ARTS
40.01.01 - RULES OF THE IDAHO COMMISSION ON THE ARTS
DOCKET NO. 40-0101-0401
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-5605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

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 place into rule the current requirements for applicants under the Commission's grant and award programs. The proposed rules do not create new programs or requirements for applicants.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee or charge is imposed or increased pursuant to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposed rules implement the process currently used by the Commission and the arts community and does not alter or expand the process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dan Harpole, Executive Director, at (208) 334-2119.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 20th day of August, 2004.

Dan Harpole
Executive Director
Idaho Commission on the Arts
The Warden's Residence
2410 Old Penitentiary Rd., Boise, ID 83712
Phone: (208) 334-2119 / Fax: (208) 334-2488

THE FOLLOWING IS THE TEXT OF DOCKET NO. 40-0101-0401

000. LEGAL AUTHORITY.

In accordance with Section 67-5602, Idaho Code, the duties of the Idaho Commission on the Arts shall be: to stimulate and encourage throughout the State the study and presentation of the performing and fine arts and public interest and participation therein; to make such surveys as may be deemed advisable of public and private institutions engaged within the state in artistic and cultural activities, including, but not limited to, music, theater, dance, creative

~~writing, painting, sculpture, architecture, and allied arts and crafts and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the State; to take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of our State and to expand the State's cultural resources; to encourage and assist freedom of artistic expression essential for the well-being of the arts. Section 67-5605, Idaho Code gives the Commission authority to promulgate rules necessary to the discharge of the Commission's duties. (11-14-93)()~~

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 40, Title 01, Chapter 01, "Rules of the Idaho Commission on the Arts," IDAPA 40.01.01. ()

02. Scope. These rules ~~constitute the minimum style, format and numbering requirements for administrative rules in Idaho~~ contain the provisions for consideration for a grant or an award under the Commission's programs. (11-14-93)()

002.—006. (RESERVED) WRITTEN INTERPRETATIONS.

~~In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Commission's office. ()~~

003. ADMINISTRATIVE APPEALS.

~~This chapter does not provide for appeal of the administrative requirements for applicants under the Commission's programs as contested cases pursuant to the provisions of Title 67, Chapter 52, Idaho Code. The Commission provides for internal requests for reconsideration of applications under Section 208 of these rules. ()~~

004. INCORPORATION BY REFERENCE.

~~There are no documents that have been incorporated by reference into these rules. ()~~

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

~~The location and mailing address of the Commission is 2410 North Old Penitentiary Road, Boise, Idaho 83712. The offices are open daily from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The Commission's telephone number is (208) 334-2119, and facsimile number is (208) 334-2488. ()~~

0076. OPEN MEETINGS.

~~This agency operates pursuant to the Idaho Open Meetings Law, Sections 67-2340 through 67-2347, Idaho Code. (11-14-93)~~

0087. PUBLIC RECORDS.

~~This agency operates pursuant to the Idaho Public Records Act, Sections 9-337 through 9-348, Idaho Code. (11-14-93)~~

0098. -- 099. (RESERVED).

100. MEMBERSHIP DEFINITIONS.

01. Members. ~~The governing board of the Commission shall consist of thirteen (13) members, representative of the public, Idaho's ethnic and cultural diversity, the various fields of the performing and fine arts, and all geographic areas of the state.~~ **Applicant.** An individual or organization meeting the criteria set forth in Section 202 of these rules, which has submitted an application for a program offered by the Commission. (11-14-93)()

02. Appointment. ~~Each member shall be appointed by the governor from among citizens of the state who are widely known for their interest, competence, and experience in the performing and fine arts. In making such appointments, due consideration shall be given to the recommendations made by representative civic, educational and professional associations and groups concerned with or engaged in production or presentation of the performing~~

~~and fine arts generally (minority representation):~~ **Apprentice.** A student with knowledge of a traditional art who is studying or seeking to study the traditional art under a master and who affirms a commitment to continue practicing the traditional art after the apprenticeship has ended. (11-14-93)()

03. Term. The term of office of each member shall be four (4) years. All vacancies shall be filled for the balance of the unexpired term in the same manner as original appointments. Not more than four (4) terms expire in any one (1) year. **Artist.** An individual who practices the arts as the individual's profession. An individual who practices the arts as a profession and derives a significant portion of the individual's livelihood from performing the arts or engages in frequent or regular exhibitions, performances, publications, or similar public art displays. (11-14-93)()

04. Leadership. The governor shall designate a chairman and a vice chairman from the members of the commission to serve as such at the pleasure of the governor. **Art.** The product of an artist's work. Art includes, but is not limited to, live performances, manuscripts and writings, folk and traditional arts, videotapes, audiotapes and compact disks, photographs, prints, paintings, sculptures, ceramics, drawings, and installations. (11-14-93)()

05. Compensation. The members of the commission shall be compensated as provided by Section 59-509(b), Idaho Code. **Arts.** The conscious production or arrangement of sounds colors, forms, or other elements in a manner that affects the senses. The arts shall include, but are not limited to, the disciplines of literature, performing arts, and visual arts. (11-14-93)()

06. Capital Expenditures. Costs or expenses for the acquisition of or the modification or improvements to real property or fixtures to real property. ()

07. Commission. The Idaho Commission on the Arts. ()

08. Matching Contributions. ()

a. In-kind Contributions. Services and real or personal property, or the use thereof, donated by organizations or individuals to the applicant. ()

b. Cash Contributions. Funds raised by the applicant specifically for the subject of the application. ()

09. Discipline. A grouping of types of arts. The Commission uses the following discipline categories: ()

a. Literature. Arts disciplines resulting in written art. Literature artists include, but are not limited to, fiction, creative nonfiction, and poetry. ()

b. Performing Arts. Arts disciplines resulting in live or recorded performances. Artists engaged in the performing arts include, but are not limited to, dancers, musicians, choreographers, actors, playwrights, set and costume designers, composers, and performers. ()

c. Visual Arts. Arts disciplines resulting in works that are viewed by the public. Visual artists include, but are not limited to, painters, crafters, photographers, printmakers, sculptors, video artists, architects, ceramists, metal smiths, paper, glass and fiber artists, mixed media artists, glass artists, designers, book artists, installation artists, artists working in new technologies, outsider or visionary artists, and folk and traditional arts involving craft. ()

10. Fiscal Year. The period between July 1 of one (1) calendar year and June 30 of the following calendar year. ()

11. Master. An individual who has learned traditional art skills informally and has received peer recognition for achieving the highest level of artistry according to community standards. ()

12. Program. The categories for the award or grant of funds or recognition by the Commission

described in Sections 300 through 504 of these rules. ()

13. Recipient. An applicant receiving an award or grant under a Commission program. ()

14. Traditional Art. The arts practiced by an ethnic or cultural group for multiple generations and based upon the ethnic or cultural group's historical practices. Traditional arts include, but are not limited to, music, song, storytelling, vernacular architecture, crafts, tools and trades, occupational practices, personal experience stories, jokes, rhymes, games and foodways such as food preparation, preservation and presentation. ()

101. -- 199. (RESERVED).

200. EMPLOYEES—EXECUTIVE DIRECTOR DUTIES GENERAL PROGRAM REQUIREMENTS.
The provisions of Sections 201 through 208, of these rules, apply to each program offered by the Commission. ()

~~**01. Employment.** The commission shall employ, and at pleasure remove, an executive director. The executive director shall be the chief executive officer of the commission and shall have general supervision over the affairs of the commission and over its professional staff, subject, however, to the direction and control of the members of the commission and its chairman. (11-14-93)~~

~~**02. Hire And Terminate.** It is designated as the responsibility of the executive director to hire and/or terminate all employees of the Commission. (11-14-93)~~

~~**03. Other Employees.** The executive director may, subject to the approval of the commission, employ and remove any consultants, experts or other employees as may be needed. (11-14-93)~~

~~**04. Contracts.** The executive director may sign and execute, in the name of the commission, any contracts or other documents authorized by the Commission or by the executive committee, except where expressly forbidden to do so by legislative act and except in cases where the signing and execution thereof shall be expressly delegated by the members of the commission to some other officer or agent, and in general shall perform all duties incident to the Office of the Chief Executive Officer of the Commission and such other duties as may from time to time be required by the commission. (11-14-93)~~

~~**05. Staff.** The executive director shall, whenever it may be necessary, in his opinion, prescribe the duties of any subordinate staff whose duties are not otherwise defined. (11-14-93)~~

~~**06. Rulemaking.** Certify and file with the Secretary of State, state of Idaho, an original and copy of these Rules and any amendments thereto. (11-14-93)~~

~~**07. Minutes.** Keep at the principal office of the commission or such other place as the members of the commission or the chairman may direct, a book of minutes of all meetings of the commission with the time and place, whether regular or special, the notices thereof, and the names of those present at the meetings, copies of which minutes shall be mailed to each member after the meeting. (11-14-93)~~

~~**08. Notices.** See that all notices are duly given in accordance with the provisions of these Rules as required by law. (11-14-93)~~

~~**09. Custodian.** Be custodian of the records of the commission. (11-14-93)~~

~~**10. Document Maintenance.** See that the books, reports, statements and all other documents and reports required by law are properly kept and filed. (11-14-93)~~

~~**11. Records.** Exhibit at all reasonable times, to any member of the commission, upon application, the records of the proceedings of the members. (11-14-93)~~

~~**12. Other.** In general, perform all duties of the office of executive director and such other duties as may from time to time be required of the director by the members. (11-14-93)~~

~~13. **Accounting.** Keep an accurate record and necessary books for the proper accounting of all expenditures of the commission. (11-14-93)~~

~~14. **Financial.** Prepare such financial reports and statements as required by the National Endowment for the Arts and the state of Idaho. (11-14-93)~~

201. FUNDING LIMITATIONS.

The Commission will not provide funding for the activities, costs, or projects set forth in this Section. ()

01. Excluded Applications. The Commission will exclude applications for the following from consideration for a grant or award: ()

- a.** Establishment of or contributions to an endowment; ()
- b.** Fund-raising projects that do not raise funds for the arts; ()
- c.** Prizes, scholarships, or free tickets; ()
- d.** Projects or programs to generate or attract audiences; ()
- e.** The offsetting of personal or organizational debts; ()
- f.** Activities that are primarily promotional or created for mass distribution including, but not limited to, duplication of compact disks, creation of portfolios, gallery announcements, self-published books, flyers, brochures, or Internet sites; ()
- g.** Student exhibitions, anthologies, publications, or performances, unless those activities document an arts education grant; ()
- h.** Costs associated with any degree including, but not limited to, tuition, fees, or teaching materials; ()
- i.** Projects or activities already completed or documentation of projects; ()
- j.** Projects that are primarily recreational, therapeutic, vocational, rehabilitative, or religious; ()
- k.** Projects restricted to an organization's membership; ()
- l.** Costs for recurring activities or consecutive attendance at annual activities that are routinely within an arts organization's budget including, but not limited to, conferences of the National Assembly of State Arts Agencies, Americans for the Arts, or the Western Arts Alliance; ()
- m.** Pageants, festivals, or celebrations unrelated to arts, ethnic, or cultural activities; ()
- n.** Journalism; ()
- o.** Historical or academic documentary film; ()
- p.** Scholarly or academic works; ()
- q.** Lobbying expenses or political activities; ()
- r.** Hospitality expenses including, but not limited to, food and drink; ()
- s.** Capital expenditures for individuals; or ()
- t.** Writing intended for youth. ()

202. APPLICANTS.

01. Categories of Applicants. Applicants must fall within one (1) of the following categories: ()

a. An individual artist or arts administrator meeting the criteria set forth in Subsection 202.02, of this rule, who is submitting an application based solely on the applicant's work. ()

b. An organization meeting the criteria set forth in Subsection 202.03 of this rule. ()

c. A collaboration of individual artists where the majority of the artistic effort is that of the primary individual. The application must identify the primary individual as the applicant and the applicant must sign the application, meet the criteria set forth in Subsection 202.02 of this rule, and accept all legal and contractual obligations of the program. The Commission will consider the applicant as submitting the application and receiving the program award for the purposes of the exclusions related to the number of applications and program awards in this section. ()

02. Requirements for Individuals. If the applicant is an individual, the applicant must: ()

a. Be a citizen of the United States or a permanent legal resident or a refugee. ()

b. Be a resident of the state of Idaho for at least twelve (12) months before the date of the application. ()

c. Be over the age of eighteen (18), unless the applicant is an apprentice. ()

03. Requirements for Organizations. If the applicant is an organization, the applicant must: ()

a. Have been operating in the state of Idaho for at least twelve (12) months before the date of the application. ()

b. Be a school, unit of local, county, tribal, or state government, or an organization determined to be tax exempt by the United States Internal Revenue Service whose primary purpose is the production, presentation, or support of the arts. ()

i. Organizations that have applied for a tax-exempt status determination and have not received the determination may submit an application through another tax-exempt organization as its designated fiscal agent. Service as a fiscal agent does not exclude an organization from applying for programs on behalf of the organization serving as a fiscal agent. ()

ii. Tax-exempt organizations must have an independent board of directors empowered to formulate policies and be responsible for the governance and administration of the organization, its programs, and its finances. ()

c. Compensate artists and arts administrators at no less than the legal minimum wage or in accordance with a written agreement. ()

04. Application and Funding Limits. An applicant shall submit no more than one (1) application per program each fiscal year. Applicants under the QuickFund\$ programs may submit one (1) QuickFund\$ application per application deadline and shall receive funds under no more than one (1) QuickFund\$ grant each fiscal year. ()

203. APPLICATIONS.

01. Application Forms. Applications shall include a completed application form in the format provided by the Commission for the applicable program, produced on eight and one-half inch by eleven inch (8½" x

11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point. Application forms may include questions requiring narrative answers and a proposed budget. Application forms shall not exceed the page limit for the program specified on the application form. The Commission may decline to consider pages in excess of the page limit. ()

02. Submission. Applications shall be hand delivered to the Commission or sent to the Commission by the United States mail or other courier or delivery service. The Commission will not accept applications or supporting materials submitted by facsimile transmission or electronically. The Commission will accept applications for a program for a period beginning one (1) month prior to the next application deadline for the program and concluding on the application deadline. ()

03. Ownership and Return of Applications. Upon submission, applications shall become the property of the Commission. At the request of the applicant, the Commission will return work samples. The return of work samples shall be at the risk and expense of the applicant. The Commission may require pre-payment of packing and shipping costs for the return of work samples. ()

04. Work Samples and Supporting Materials. Each application shall include the work samples and supporting materials specified in these rules for the applicable program. ()

a. Work samples shall be no more than five (5) years old. ()

b. Applicants shall not send original work samples or master copies of work samples. ()

c. Requirements for work samples are as follows: ()

i. Slides. Applicants must submit no more than ten (10) two inch by two inch (2" x 2") slides. No more than two (2) detail shots may be included in slide submissions. Slides must be submitted in a plastic sheet, numbered one (1) to ten (10) in order of presentation, and labeled with the applicant's name, title, medium, dimensions, and date of the work. Applicants should place a red dot on the lower front left corner of the slide to indicate the placement of the slide. Applicants must submit a slide list containing the applicant's name, title, medium, dimensions, and date of the work. Applicants may include comments about each slide on the slide list. ()

ii. Videotapes. Applicants must submit no more than two (2) properly cued videotapes. Unless approved by the Commission in writing, Videotapes shall be in VHS format. Each videotape cassette shall be labeled with the applicant's name, title of the work, and the date written, produced, or performed. Videotapes must be accompanied by an information list including the applicant's name, title of the work, the date written, produced, or performed, a description of the work sample, an explanation of what the Commission is seeing, and the applicant's responsibilities in the work. ()

iii. Audiotapes and Compact Disks. Applicants must submit no more than two (2) properly cued audiotapes or compact disks. If applicable, applicants must indicate the track(s) to be reviewed by the Commission on each compact disk or audiotape. Audiotapes or compact disks must be labeled with the applicant's name, title of the work, and the date of the work. Audiotapes or compact disks must be accompanied by an information list including the applicant's name, title of the work, the date of the work, a description of the work, and the applicant's responsibilities in the work. ()

iv. Manuscripts. Manuscripts must specify the completion date of the work. Applicants shall limit fiction and nonfiction work samples to three (3) short works of no more than twenty (20) pages or two (2) excerpts from larger works of not more than twenty (20) pages. Poetry work samples must be no more than fifteen (15) pages. Poems of less than one (1) page in length must be printed one (1) poem to a page. Manuscripts must be produced on eight and one-half inch by eleven inch (8½" X 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point. ()

05. Resumes. Resumes shall be no longer than two (2) pages and describe the applicant's professional development as an artist or arts administrator. Resumes must be produced on eight and one-half inch by eleven inch (8½" X 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve-point (12). Resumes may contain academic training, publications, honors and awards, locations of exhibitions

or performances, or a short personal biography concerning training in a traditional art. ()

06. Artist Statements. Artist statements shall be no longer than one (1) page and must be produced on eight and one-half inch by eleven inch (8½" X 11") paper and typed, reproduced on a computer, or neatly handwritten. The font or typeface must be at least twelve (12) point. An artist statement should discuss the purpose of the work and provide the reader with a personal perspective of the artist concerning the work. ()

07. Publication, Performance, and Production Information. Publication, performance, or production information shall be restricted to the applicant's resume. ()

08. Matching Contributions. At the request of the Commission, the applicant shall provide documentation of matching contributions for Commission review. Contributions of services must be uncompensated and, if the applicant is an organization, shall not include the services of the applicant's board members. In-kind contributions must be valued at the reasonable rate for the services or property provided to the applicant in the applicant's community. If cash contributions are raised through fund-raising activities or donations from individuals, private foundations, or private companies, the applicant must identify the source of the cash contribution and maintain documentation substantiating the source of the cash contribution. ()

204. DISQUALIFICATION.

The Commission may disqualify an applicant for any one (1) of the following: ()

01. Non-Compliance with Rules. Failure to satisfy the requirements of these rules. ()

02. Application Information, Samples, and Supporting Materials. Failure to provide information requested on the application form, to submit work samples or other supporting materials required by these rules, or to sign the application. ()

03. Prior Non-Compliance. Failure to comply with the terms and conditions of a prior grant to the applicant by the Commission. ()

205. PROGRAM GRANTS AND AWARD AMOUNTS.

Program grants and awards are subject to funds availability and may be awarded in any amount at the discretion of the Commission. The Commission may decline to accept applications or to issue an award or grant for any program due to a lack of funding. At the discretion of the Commission, a recipient may receive travel expense reimbursement. ()

206. FINAL REPORTS.

Recipients must submit a final report to the Commission no later than the earlier of sixty (60) days following completion of the project or the last day of the final fiscal year of the award term. ()

207. DELEGATION.

The Commission may delegate its roles, responsibilities, or duties under these rules to Commission staff, artists, or community volunteers including, but not limited to, the review of program applications. ()

208. RECONSIDERATION OF APPLICATIONS.

Applicants may request reconsideration of an application within thirty (30) days of a program grant or award notification issued by the Commission. Requests for reconsideration must be in writing and filed with the executive director of the Commission at the Commission's offices. The Commission considers requests for reconsideration where the applicant demonstrates a misinterpretation or misunderstanding of the application, work samples, or supporting materials. The Commission will not consider a request for reconsideration based upon incomplete or incorrect applications, work samples, or supporting materials. ()

~~209.~~ -- 299. (RESERVED).

300. COMPENSATION PROGRAMS SUPPORTING INDIVIDUALS.

The commission administers the programs for individuals or collaborations of individuals set forth in Sections 301 through 304 of these rules. ()

01. ~~*Director. The salary of the executive director shall be established by action of the commission.*~~ (11-14-93)

02. ~~*Other Employees. Salaries of all other employees of the commission shall be established by the executive director and shall, in general, be in accordance with those set in the classification and pay plan under the state of Idaho merit system law.*~~ (11-14-93)

301. QUICKFUND\$.

QuickFund\$ provides grants to support new or exemplary arts projects, activities, or professional development for individuals working in all disciplines and for the professional growth of arts administrators. QuickFund\$ grants are available to individuals for professional development and QuickProjects. ()

01. QuickFund\$ - Professional Development. QuickFund\$ for professional development provides reimbursement to artists for gatherings where they will teach or learn from their peers and to arts administrators for attending a conference, seminar, workshop, or other form of career advancement training. The Commission will not accept QuickFund\$ for professional development applications: ()

a. For the same event or opportunity from more than one (1) member or staff of a single organization with a budget over fifty thousand dollars (\$50,000). ()

b. For the same event or opportunity from more than two (2) members or staff of a single organization with a budget under fifty thousand dollars (\$50,000). ()

c. For attendance at the same opportunity or event that was the subject of award to the applicant in the prior fiscal year. ()

d. From an applicant who has received a QuickFund\$ grant in the same fiscal year. ()

02. QuickFund\$ - QuickProjects. QuickProjects provides support for activities that allow an applicant to develop significant and specific projects or new works that will be shared with the public. ()

03. QuickFund\$ - Evaluation Criteria. QuickFund\$ grant applications for individuals are evaluated on a point scale with a total of one hundred (100) points. ()

a. Artistic Quality. A maximum of fifty (50) points are awarded for artistic quality. Artistic quality is evaluated as follows: ()

i. For artists, evaluation of artistic quality is based upon the skill demonstrated by the work samples submitted by the applicant and whether the project, purpose, or goal of the applicant is a logical extension of the applicant's previous work or aesthetic interest. ()

ii. For arts administrators, evaluation of artistic quality is based upon whether the applicant's past work history indicates professional experiences with respected arts organizations or projects, or whether the organization for which the applicant works produces programs of high artistic quality that are appropriate for the organization's stated mission. ()

b. Feasibility. A maximum of twenty-five (25) points are awarded for feasibility. The evaluation of feasibility is based upon whether the applicant's ability and plan demonstrates that the applicant can realistically accomplish the project or activity and whether the budget is clear and correlates with the applicant's description of the project or activity. ()

c. Artistic Growth. A maximum of twenty-five (25) points are awarded for artistic growth. The evaluation of artistic growth is based upon whether the opportunity has the potential to significantly affect or enhance the applicant's ability, career, artistic development, technique, or managerial skills. Where appropriate, the evaluation considers whether there the opportunity includes the public, such as with an exhibition, performance, reading, or demonstration. ()

d. Preferences. The Commission may give preference to applicants who have not previously received funds through a Commission program. ()

04. QuickFund\$ - Matching Contributions. Applicants for a QuickProjects grants must provide Cash contributions equaling one-third (1/3) of the requested funds. Applicants for professional development must provide cash contributions equaling the requested funds. ()

05. QuickFund\$ - Application Requirements. Applicants for QuickFund\$ for individuals shall submit an application form, a resume, an artist statement, and work samples appropriate to the applicant. Artist statements are not required for writers or arts administrators. ()

06. QuickFund\$ - Application Deadlines. QuickFund\$ applications must be postmarked or hand delivered to the Commission on or before the first Monday of March, June, September, or December. ()

302. FELLOWSHIPS. Fellowships recognize the outstanding work and artistic excellence of Idaho artists. Fellowships are intended to reward dedication to a discipline, promote public awareness, and to advance an artist's career. ()

01. Fellowships - Evaluation Criteria. Fellowship applications are evaluated on a points scale with a total of one hundred (100) points. ()

a. Artistic Excellence. A maximum of eighty-five (85) points are awarded for artistic excellence. The evaluation of artistic excellence is based upon the originality, distinguished consistency, and preeminent quality of the applicant's work. If the applicant practices traditional arts, the evaluation is also based upon the quality of the execution of the applicant's work and the applicant's affiliation to community esthetics. ()

b. Professional History. A maximum of fifteen (15) points are awarded for professional history. The evaluation of professional history is based upon the applicant's level of professional recognition and achievement and the applicant's community involvement. If the applicant practices traditional arts, the evaluation is also based upon the artist's commitment to their cultural community's artistic and cultural traditions through continued practice, excellence of work, and teaching. ()

02. Fellowships - Limitations on Award. The Commission will not accept applications from recipients receiving a Fellowship in the prior fiscal year. The Commission will not award more than three (3) fellowships to an artist. The Commission will not award a literature fellowship to applicants who have previously received a Writer in Residence award from the Commission. ()

03. Fellowships - Coordination With Writer in Residence Program. Applicants may apply for both the Writer in Residence program and the Fellowship program on one (1) application. If selected for award under both programs, the applicant shall accept only one (1) program award. ()

04. Fellowships - Discipline Rotation. Fellowship awards are awarded to artists based upon discipline in a three (3) year rotation. Beginning with fiscal year 2005, the rotation cycle is as follows: ()

a. Year one (1) - literature; ()

b. Year two (2) - visual arts; and ()

c. Year three (3) - performing arts. ()

05. Fellowships - Application Requirements. The Commission reviews applications for fellowships anonymously. Notwithstanding the requirements for work samples and supporting materials in these rules, applicants shall follow the directions contained in the application form for preserving the applicant's anonymity. Applicants for fellowships shall submit an application form, a resume, an artist statement, and work samples appropriate to the applicant. ()

06. Fellowships - Application Deadline. Fellowship applications must be postmarked or hand delivered to the Commission on or before the last business day of January. ()

303. WRITER IN RESIDENCE.

the Writer in Residence appointment is the highest recognition of achievements in literature and the largest financial award accorded an Idaho writer by the state of Idaho. ()

01. Writer in Residence - Recipient Obligations. Recipients of a Writer in Residence appointment shall give twelve (12) public readings throughout the state of Idaho during the appointment term. Eight (8) public readings shall be in communities with populations of fewer than twenty-five thousand (25,000) residents. The public readings shall be conducted at regular intervals, approved by the Commission, during the term of the appointment. In its discretion, the Commission may require the recipient to give up to three (3) additional readings at special public events. ()

02. Writer in Residence - Limitations on Award. The Commission will not recommend applicants with two (2) prior Writer in Residence appointments for subsequent appointment to Writer in Residence. The Commission will not award a Literature Fellowship to applicants who have previously received a Writer in Residence appointment. ()

03. Writer in Residence - Evaluation Criteria. Writer in Residence applications are evaluated on a points scale with a total of one hundred (100) points. ()

a. Literary Excellence. A maximum of sixty (60) points are awarded for literary excellence. The evaluation of literary excellence is based upon the originality, distinguished consistency, and preeminent quality of the applicant's work. ()

b. Past Work and Contributions to Literature. A maximum of twenty (20) points are awarded based upon the quality of the applicant's past work and the applicant's contributions to Literature. ()

c. Effectiveness of Oral Reading. A maximum of twenty (20) points are awarded for the effectiveness of the applicant's oral reading. ()

03. Writer in Residence - Coordination with Fellowships. Applicants may apply for both the Writer in Residence program and the Fellowship program on one (1) application. If selected for award under both programs, the applicant shall accept only one (1) program award. ()

04. Writer in Residence - Award and Term. The Commission submits recommended appointments under the Writer in Residence program to the Governor. Appointments to Writer in Residence are made in the sole discretion of the Governor. The term of a Writer in Residence appointment is three (3) years beginning with the date of appointment specified in the announcement of award by the Commission. ()

05. Writer in Residence - Application Requirements. The Commission reviews applications for the Writer in Residence program anonymously. Notwithstanding the requirements for work samples and supporting materials in these rules, applicants shall follow the directions contained in the application form for preserving the applicant's anonymity. Applicants for the Writer in Residence program shall submit an application form, a resume, manuscripts, and an audiotape or compact disk of the applicant's oral reading. ()

06. Writer in Residence - Application Deadline. Writer in Residence applications must be postmarked or hand delivered to the Commission on or before the last business day of January. ()

304. TRADITIONAL ARTS APPRENTICESHIPS.

The Traditional Arts Apprenticeships program supports a learning partnership between a master and an apprentice. ()

01. Traditional Arts Apprenticeships - Funding Limitations and Requirements. ()

a. The traditional art practiced by the master must represent a shared cultural tradition of the

apprentice. ()

b. If the apprentice is under eighteen (18) years of age, the traditional art must traditionally be taught or passed down to persons under eighteen (18) years of age. ()

c. A master may train more than one (1) apprentice where the traditional art is traditionally practiced by a group or taught or passed down in a group. ()

d. A master may reside outside of Idaho if the ethnic or cultural group represented by the traditional art extends beyond Idaho. ()

02. Traditional Arts Apprenticeships - Evaluation Criteria. Traditional arts apprenticeships applications are evaluated on a points scale with a total of one hundred (100) points. ()

a. Quality. A maximum of fifty (50) points are awarded for quality. The evaluation of quality is based upon the community recognition accorded to the master, the benefit to the applicant from working with the master, and the commitment of the applicant to advancing his skills in the traditional art and to carrying on the traditional art. ()

b. Community. A maximum of twenty-five (25) points are awarded for community. The evaluation of community is based upon whether the master and the applicant share the same cultural background, whether the traditional art is significant to the cultural or ethnic community from which it arises and to the broader community, and whether the traditional art's practice is endangered or there are few artists practicing the traditional art. ()

c. Feasibility. A maximum of twenty-five (25) points are awarded for feasibility. The evaluation of feasibility is based upon whether the goals for the apprenticeship are clear, whether the applicant has submitted a clear, complete, and appropriate budget, and whether the work plan provides an appropriate time for interaction between the applicant and the master. ()

d. Preferences. The Commission may give preference to traditional art forms with few practicing artists. ()

03. Traditional Arts Apprenticeships - Length of Apprenticeships. The length of an apprenticeship under the traditional arts apprenticeships program shall not exceed ten (10) months. The Commission, in its sole discretion, may grant an extension of the length of an apprenticeship upon receipt of a written request submitted prior to the expiration of the length of the originally awarded apprenticeship. ()

04. Traditional Arts Apprenticeships - Work Plan. The master and the applicant shall cooperatively develop a work plan for the apprenticeship. The work plan shall include the meeting schedule, meeting locations, and the materials needed for the apprenticeship. The work plan should consider the availability of seasonal materials and the preparation of materials prior to use. ()

05. Traditional Arts Apprenticeships - Instructional Fees. Traditional arts apprenticeships awards shall include payment of an hourly instructional fee at a rate determined by the Commission to the master for the number of instructional hours approved by the Commission. ()

06. Traditional Arts Apprenticeships - Application Requirements. Applications for traditional arts apprenticeships award shall submit an application form, a work plan, two (2) to three (3) letters of support from community members that describe the applicant's artistic contributions to the community and how the applicant's traditional art relates to the applicant's heritage, work samples appropriate to the applicant, and work samples appropriate to the master. Applicants are also encouraged to submit the master's resume. ()

07. Traditional Arts Apprenticeships - Application Deadlines. Traditional arts apprenticeships applications must be postmarked or hand delivered to the Commission on or before the first business day of March. ()

3015. -- 399. (RESERVED).

400. **MEETINGS PROGRAMS SUPPORTING ORGANIZATIONS.**

The Commission administers the programs for organizations set forth in Sections 401 through 405 of these rules.

()

01. **Meetings Held.** ~~The regular meetings of the Idaho Commission on the Arts shall be held at least twice annually.~~ **Organizations - Significant Changes.** Applicants that experience significant changes in the applicant's staff, programming, or finances following submission of an application and prior to a program award must notify the Commission of the changes in writing. (11-14-93)()

02. **Location.** ~~The regular meetings of the commission shall be held at any place within the State designated by the chairman. Special meetings shall be held at the place designated in the notice of such meetings and all meetings shall be valid wherever held.~~ **Organizations - General Evaluation Criteria.** The Commission reviews applications for support of organizations using the following general criteria. These general criteria are encompassed within the point totals and specific evaluation criteria of each program. Applicants should include substantiation for each of the criteria in the application. (11-14-93)()

a. Community support through fund-raising or other community financial support. ()

b. Accuracy of the budget submitted with the application. ()

c. Involvement of Idaho artists and arts organizations. Use of out-of-state resources is permitted if the applicant demonstrates that the resources are not available with Idaho or if their use supplements the resources available locally. ()

d. The applicant's financial need and access to financial and artistic resources. ()

e. The applicant's commitment to make the arts accessible to all members of the public. Accessibility includes the ability of persons with special needs, ethnic groups, occupational groups, senior citizens, and young audiences to access the arts. Accessibility also includes consideration of the location and ease of use of facilities, content of the activities, and the planning process. Applicants must include documentation showing that the applicant invited pertinent cultural and community groups to participate in the applicant's planning process. ()

f. The applicant's commitment to fairly compensating artists. ()

g. The applicant's use of admission fees, where applicable, to provide financial support for the subject of the application. The Commission encourages the use of admission fees. ()

03. **Notice.** ~~Notice of each meeting of the Commission shall be given at least thirty (30) days prior to the date thereof by mailing a copy of the notice to each member at his last known residence. Each notice shall specify the place, the day, the hour of the meeting, and, in the case of special meetings, the nature of the business to be transacted.~~ **Acquisition or Commission of Works.** Applicants seeking funding for the acquisition of works of art or the commission of new works of art must meet the following criteria. The applicant must: (11-14-93)()

a. Maintain a permanent exhibition facility that is open to the public. ()

b. Demonstrate excellent management and security practices. ()

c. Maintain an ongoing exhibition program or a permanent collection. ()

04. **Public Comments.** ~~Members of the public may be permitted to speak before the Commission upon making official request to the Chairman before adjournment.~~ **College and University Applicants.** The Commission will accept applications from college and university applicants if the applicant presents and markets its arts activities to the general public and the subject of the application is supplementary to the applicant's regular curriculum. College and university applicants are not eligible for General Operating Support grants or for Cultural Facilities grants. College and university applicants must provide matching contributions from non-public funds. The Commission will

not classify organizations affiliated with a college or university, operating as a separate tax-exempt organization and applying as the separate tax-exempt organization, as a college or university applicant. (H-14-93)(____)

401. QUICKFUND\$ FOR ORGANIZATIONS.

QuickFund\$ grants provide timely assistance to arts organizations for professional advice or training, pilot arts projects, projects essential to the initial growth of an organization, or new programs. The Commission will not award QuickFund\$ grants for programs, events, or aspects of events that occur annually or that exceed the term of the award. QuickFund\$ grants are available to organizations for QuickProjects and training and advice. (____)

01. QuickFund\$ - QuickProjects. QuickProjects provides funds for pilot arts projects, projects essential to the initial growth of an organization, or new programs. (____)

02. QuickFund\$ - Training and Advice. Training and advice awards provide funds for management consultancies and artistic consultancies. Management consultancies address aspects of the organization's operations such as fund-raising, technology, marketing, public relations, organizational development, audience development, long-range planning, program development, accessibility planning, and board or financial management. Artistic consultancies address aspects of the organization's arts projects such as voice instruction, lighting design, exhibition design, or conservation studies. (____)

03. QuickFund\$ - Evaluation Criteria. QuickFund\$ grant applications from organizations are evaluated on a point scale with a total of one hundred (100) points. Encompassed within the criteria below are the general criteria set forth in Subsection 400.03 of these rules. (____)

a. Artistic Quality. A maximum of fifty (50) points are awarded for artistic quality. The evaluation of artistic quality is based upon the programs produced by the applicant and the appropriateness of the applicant's projects to the applicant's mission. (____)

b. Management. A maximum of twenty-five (25) points are awarded for management. The evaluation of the applicant's management is based upon whether the applicant's resources and the plan for carrying out the subject of the application demonstrate that the applicant can accomplish the project or activity successfully. The evaluation also includes whether the applicant has submitted a clear, complete, and appropriate budget and whether applicants for training and advice awards have clearly identified the purpose and need for the award. (____)

c. Community Involvement And Access. A maximum of twenty-five (25) points are awarded for community involvement and access. The evaluation of community involvement and access is based upon the appropriateness and breadth of community involvement in the proposed project or activity and the public's access to the project or activity. (____)

d. Preferences. The Commission may give preference to applicants whose annual operating budget is less than fifty thousand dollars (\$50,000) and to applicants who have not previously received funds from a Commission program. (____)

04. QuickFund\$ - Matching Contributions. The applicant must provide matching contributions equaling the requested funds. (____)

05. QuickFund\$ - Application Requirements. Applicants for QuickFund\$ for organizations shall submit an application form; the resumes of key consultants, artists, or personnel; a list of the current board of directors of the organization with affiliation and contact information; an Internal Revenue Service tax determination letter, if applicable; and work samples reflecting prior projects or as applicable to the project or activity that is the subject of the application. Applicants should also submit no more than five (5) documents supporting the application such as brochures, letters from community partners, or work samples of participating artists. (____)

06. QuickFund\$ - Application Deadlines. QuickFund\$ applications must be postmarked or hand delivered to the Commission on or before the first Monday of March, June, September, or December. (____)

402. CULTURAL FACILITIES GRANTS.

Cultural Facilities Grants encourage local, public, and private support for feasibility studies, renovation or

construction of performance, exhibition or artist spaces, purchases of equipment and fixtures for such spaces, and public arts projects. Cultural Facilities Grants are awarded for single-phase projects that can be completed in one (1) year and multi-phase projects where all of the individual phases of the project can be completed over a period that does not exceed five (5) years. The award of funding by the Commission does not guarantee funding for more than one (1) phase of a multi-phase project. ()

01. Cultural Facilities Grants - Funding Limitations and Requirements. ()

a. Applicants who have received Cultural Facilities Grants for five (5) consecutive fiscal years are ineligible for Cultural Facilities Grants for one (1) fiscal year. ()

b. College and university applicants are ineligible for Cultural Facilities Grants. ()

c. The Commission will not award a Cultural Facilities Grant for the purchase or maintenance of motorized or non-motorized vehicles. ()

d. Construction and renovation using a Cultural Facilities Grant must comply with all federal, state, and local laws including laws governing the access of persons with disabilities, facilities on the National Register of Historic Places, and building, zoning, and other codes. ()

e. The Commission will not fund construction and renovation using a Cultural Facilities Grant unless the primary purpose of the construction or renovation is for the presentation of the arts to the public. ()

02. Cultural Facilities Grants - Feasibility Studies. Applicants for renovation or construction of facilities must submit a feasibility study. The extent of the feasibility study must match the significance of the project. The feasibility study must contain an analysis of the vision and planning for the project. ()

03. Cultural Facilities Grants - Evaluation Criteria. Cultural Facilities Grant applications from organizations are evaluated on a point scale with a total of one hundred (100) points. Encompassed within the criteria below are the general criteria set forth in Subsection 400.03 of these rules. ()

a. Planning. A maximum of fifty (50) points are awarded for planning. The evaluation of planning is based upon evidence of community-wide involvement in and need for the project, attention given to maintaining the building's historic integrity, if applicable, the adequacy of the facility to house equipment or fixtures purchased with the funds, and the relevance of equipment or fixtures purchased with the funds to the applicant's mission or programming. ()

b. Management. A maximum of fifty (50) points are awarded for management. The evaluation of management is based upon the community impact or support for the project, and whether the applicant's resources and the plan for carrying out the project demonstrates that the applicant can accomplish the project successfully. The evaluation also includes whether the applicant has submitted a clear, complete, and appropriate budget, whether a multi-phase project is on schedule, and the applicant's ability to address the long-term care and conservation of public art acquired during the project. ()

04. Cultural Facilities Grants - Matching Contributions. The applicant must provide cash contributions equaling the requested funds. ()

05. Cultural Facilities Grants - Application Requirements. ()

a. Single-phase Projects. Applicants for single-phase Cultural Facilities Grants shall submit an application form; the resumes of key consultants, artists, or personnel; a list of the current board of directors of the organization with affiliation and contact information; an Internal Revenue Service tax determination letter, if applicable; three (3) current competitive bids for the project; a feasibility study, if applicable; a timeline for the project; blueprints and design drawings, if applicable; an historic significance report, if applicable; evidence of property or facility ownership or lease of the property or facility if the project involves construction or the installation of equipment or fixtures; and proof of adequate liability and fire insurance for the project. Applicants should also submit no more than five (5) documents supporting the application such as brochures, letters from community

partners, or work samples of participating artists. Applicants are also encouraged to submit a list of in-kind contributions to the project. ()

b. Multi-phase Projects. Applicants for multi-phase Cultural Facilities Grants shall submit the items required of applicants for single-phase Cultural Facilities Grants. The feasibility study shall have been completed in the prior three (3) years. In addition, applicants for multi-phase Cultural Facilities Grants shall submit a progress report based upon the original project plan containing an explanation of any delays or changes to the plan, and the original specifications for bids with a comparative summary sheet. Applicants for public art projects are not required to submit the original specifications for bids for the project. ()

06. Cultural Facilities Grants - Application Deadline. Cultural Facilities Grant applications must be postmarked or hand delivered to the Commission on or before the last business day of January. ()

403. GENERAL OPERATING SUPPORT GRANTS.

General Operating Support Grants are designed to stabilize the financial base of Idaho's established arts organizations, assist the organization in long-range planning, and aid in expansion of current programs. General Operating Support Grants are awarded as single-year grants or multi-year grants. ()

01. General Operating Support Grants - Funding Limitations and Requirements. ()

a. The primary mission of the applicant must be the production, presentation, or support of the arts. ()

b. College and university applicants are ineligible for General Operating Support Grants. ()

c. Applicants for a single year grant must have been operating as a tax-exempt organization for thirty-six (36) months prior to the application deadline. Applicants for a multi-year grant must have been operating as a tax-exempt organization for sixty (60) months prior to the application deadline. ()

d. The responsibility for the applicant's operation must rest with a single individual. If the applicant is seeking a multi-year grant, a full-time paid staff person must hold the responsibility. ()

e. The applicant must employ artists. Applicants for multi-year grants must employ artists on a regular basis and compensate artists according to the prevailing community standard for the artist's discipline. ()

f. Applicants who have failed to reduce or have increased a budget deficit for three (3) consecutive years must demonstrate that the applicant has ended the applicant's most recent fiscal year with a balanced budget and that the applicant has made a significant effort to reduce the deficit during the applicant's current fiscal year. Applicants with a budget deficit must also provide a deficit-elimination schedule approved by the applicant's governing body and acceptable to the Commission. ()

02. General Operating Support Grants - Evaluation Criteria. General Operating Support Grant applications are evaluated on a point scale with a total of one hundred (100) points. Encompassed within the criteria below are the general criteria set forth in Subsection 400.03 of these rules. Applicants of similar size and resources are reviewed based upon their gross annual operating budget, staff, longevity, location in a rural or urban county, and the criteria listed below. ()

a. Artistic Quality. A maximum of fifty (50) points are awarded for artistic quality. The evaluation of artistic quality is based upon whether the applicant produces programs of high artistic quality that are appropriate for the organization's stated mission. ()

b. Management. A maximum of twenty-five (25) points are awarded for management. The evaluation of management is based upon whether the applicant's resources and the plan for using the grant and marketing during the term of the grant demonstrates that the applicant can successfully operate during and after the grant period. The evaluation also includes whether the applicant has submitted a clear, complete, and appropriate budget and whether there is an effective means of evaluating the organization's progress following award of a grant. ()

c. Community Involvement and Access. A maximum of twenty-five (25) points are awarded for community involvement and access. The evaluation of community involvement and access is based upon the applicant's knowledge of audience and community needs, the applicant's use of local cooperative planning, the extent to which community needs are met by the applicant's plan for use of grant funds, whether the applicant's plan for use of grant funds includes and benefits new, underserved, or nontraditional constituencies, and whether the applicant provides access to its programs to persons with disabilities. ()

03. General Operating Support Grants - Matching Contributions. Applicants must provide matching contributions equal to the requested funds. ()

04. General Operating Support Grants - Discipline Rotation. Multi-year General Operating Support Grants are awarded to applicants based upon the discipline primarily supported by the applicant in a three (3) year rotation. Beginning with 2005, the rotation cycle is as follows: ()

a. Year one (1) - literature; ()

b. Year two (2) - visual arts; and ()

c. Year three (3) - performing arts. ()

05. General Operating Support Grants - Application Requirements. ()

a. Initial Application. Applicants for General Operating Support Grants shall submit an application form; a copy of the applicant's financial statement for the most recent fiscal year of the applicant, with authorizing signatures; the resumes of key consultants and personnel; a list of the current board of directors of the organization with affiliation and contact information; a current two (2) to five (5) year long-range plan; an Internal Revenue Service tax determination letter; work samples reflecting prior and on-going projects; and a list of potential and confirmed programming events for the applicant's current programming season. Applicants should also submit no more than five (5) documents supporting the application such as brochures or letters from community partners. ()

b. Interim Applications. Recipients of multi-year General Operating Support Grants shall submit an interim application form on or before the last business day in January of the first and second years of the grant. ()

06. General Operating Support Grants - Application Deadlines. General Operating Support Grant applications must be postmarked or hand delivered to the Commission on or before the last business day of January. ()

404. PROJECT SUPPORT GRANTS.

Project Support Grants encourage a variety of quality arts activities in the state of Idaho by supporting specific arts associated projects. A project may be a single event or activity or a season of events or activities. ()

01. Project Support Grants - Funding Limitations and Requirements. ()

a. Applicants may collaborate with one (1) or more organizations on the event or activity. The applicant must control the use of funding from the Project Support Grant, sign the application, and accept all legal and contractual obligations of the program. The Commission will consider the applicant as submitting the application and receiving the program award for the purposes of the exclusions related to the number of applications and program awards in Subsection 202.04 of these rules. ()

b. Current applicants for or recipients of a General Operating Support Grant are eligible for a Project Support Grant only if the project is not a part of the recipient's normal season and is not included in the budget submitted with the General Operating Support application. The Commission will evaluate the project proposals of current applicants for or recipients of a General Operating Support Grant as provided in the criteria for artistic quality set forth in Subsection 404.02(a) of this rule. ()

02. Project Support Grants - Evaluation Criteria. Project Support Grant applications are evaluated on a point scale with a total of one hundred (100) points. Encompassed within the criteria below are the general criteria set forth in Subsection 400.03 of these rules. ()

a. Artistic Quality. A maximum of fifty (50) points are awarded for artistic quality. The evaluation of artistic quality is based upon the artistic merit and rationale for the project, the relationship of the program to the organization's stated mission, and whether an applicant who is a recipient of or has applied for a General Operating Support Grant is proposing a project that is new, risk-taking, serves a non-traditional audience, or is a collaboration between two (2) or more arts organizations or other community development organizations. ()

b. Management. A maximum of twenty-five (25) points are awarded for management. The evaluation of management is based upon whether the applicant's resources and the plan for using the grant and marketing during the term of the grant demonstrates that the applicant can successfully carry out the project. The evaluation also includes whether the applicant has submitted a clear, complete, and appropriate budget and whether there is an effective means of evaluating the project. ()

c. Community Involvement And Access. A maximum of twenty-five (25) points are awarded for community involvement and access. The evaluation of community involvement and access is based upon the applicant's use of local cooperative planning, the extent to which community needs are met by the applicant's plan for use of grant funds, whether the applicant's plan for use of grant funds includes and benefits new, underserved, or nontraditional constituencies, and whether the applicant provides access to its programs to persons with disabilities. ()

d. Preferences. The Commission may give preference to applicants who have not applied for a General Operating Support Grant. ()

03. Project Support Grants - Grant Amounts and Matching Contributions. The Project Support Grant shall not exceed one-half (1/2) of the costs for the event or activity. Applicants must provide cash contributions equaling the requested funds. ()

04. Project Support Grants - Application Requirements. Applicants for Project Support Grants shall submit an application form; the resumes of key consultants and personnel; a list of the current board of directors of the organization with affiliation and contact information; an Internal Revenue Service tax determination letter, if applicable; work samples reflecting prior and on-going projects; and a list of potential and confirmed programming events for the applicant's current programming season. Applicants should also submit no more than five (5) documents supporting the application such as brochures or letters from community partners. Applicants are encouraged to submit a list of in-kind contributions to the project. ()

05. Project Support Grants - Application Deadline. Project Support Grant applications must be postmarked or hand delivered to the Commission on or before the last business day of January. ()

405. TUMBLEWORDS.

TumbleWords is a cooperative effort among twelve (12) western states to bring writers into communities where residents may be underexposed to creative writing because of geographical or economic circumstances. Under the TumbleWords program, writers of fiction, nonfiction, and poetry give readings and hold writing workshops. ()

01. TumbleWords - Eligibility and Funding Requirements. Applicants for the TumbleWords program must satisfy the following: ()

a. A unit of local, county, or tribal government, or an organization determined to be tax-exempt by the Internal Revenue Service must serve as the applicant by controlling the use of funding from the TumbleWords program, signing the application and accepting all legal and contractual obligations of the program. ()

b. The application must demonstrate an interest within the community in increasing access to literature. Community interest shall include sufficient volunteers or staff to meet the requirements of the TumbleWords program in the community. ()

c. The applicant must provide or secure a facility for readings, workshops, and other public activities that complies with all federal, state, and local laws and regulations. ()

02. **TumbleWords - Funding and Community Match.** TumbleWords program awards are subject to funds availability including the availability of funding from the Western States Arts Federation. The applicant must provide matching contributions equaling requested funds. ()

03. **TumbleWords - Application Requirements.** Applicants for the TumbleWords program shall submit an application form; the resumes of key writers or personnel; a list of the current board of directors of the organization with affiliation and contact information; and an Internal Revenue Service tax determination letter, if applicable. ()

04. **TumbleWords - Application Deadlines.** The Commission accepts TumbleWords program applications during its regular business hours. ()

~~4046.~~ -- 499. (RESERVED).

500. VOTING RIGHTS SUPPORT FOR ARTS EDUCATION.

The Commission administers the programs supporting arts education set forth in Sections 501 though 504 of these rules. The following programs are available to individuals: Arts in Education Artist Roster, QuickFund\$ for professional development for educators, and QuickFund\$ Teacher Incentive Grants. The following programs are available to organizations: QuickProjects for education, ArtsPowered Learning Grants, and Creative Alternatives for Youth Grants. The Commission will not issue an award to organizations under a program for individuals or issue an award to an individual under a program for organizations. ()

~~**01.** *Chairman.* At every meeting, the chairman of the commission, or, in his absence, the vice-chairman, may act as chairman. In the absence of the chairman and vice chairman, the chairman may appoint another person to act as Chairman Pro-Tem.~~ (11-14-93)

~~**02.** *Majority.* A simple majority of the members of the Idaho Commission on the Arts shall constitute a quorum for the transaction of business and when a quorum is present, business may be transacted upon a simple majority vote of the members present at such meeting. In the absence of a quorum, any meeting may be adjourned by a vote of the majority of the members present thereat but no other business may be transacted.~~ (11-14-93)

~~**03.** *Vote.* Each member of the commission shall be entitled to one vote on any matter of business before the commission and voting rights may not be exercised by proxy.~~ (11-14-93)

501. ARTS IN EDUCATION ARTIST ROSTER.

The Arts in Education Artist Roster is an online listing of artists who share their unique art forms in schools and communities. The Arts in Education Artist Roster does not provide funding to recipients. Recipients may set fees, schedules, and activities in collaboration with schools. ()

01. **Arts in Education Artist Roster - Evaluation Criteria.** Applicants for the Arts in Education Artist Roster are evaluated based upon the applicant's artistic skills, communication skills, and the applicant's proposals for arts in education. ()

02. **Arts in Education Artist Roster - Application Requirements.** Applicants for the Arts in Education Artist Roster shall submit an application form, a resume, an artist statement, work samples appropriate to the applicant's discipline, three (3) letters of recommendation from persons familiar with the applicant's artistic ability and communication skills, and support materials such as letters of acceptance, brochures, articles, workshop information, and resumes of master artists under which the applicant has studied. ()

03. **Arts in Education Artist Roster - Application Deadlines.** Arts Education Artist Roster applications must be postmarked or hand delivered to the Commission on or before the first business day of June. ()

502. QUICKFUND\$ FOR ARTS EDUCATION.

QuickFund\$ grants support professional development or short-term projects that enliven or improve arts learning as an integral part of the education of Idaho's youth. QuickFund\$ grants are available for professional development for educators, teacher incentive grants, and QuickProjects for education. ()

01. QuickFund\$ - Professional Development for Educators. QuickFund\$ for professional development for educators provides support to teachers, educators, and artists on the Arts in Education Artist Roster to attend conferences, seminars, workshops, or summer educational events that provide training in arts curricula, arts teaching, arts assessment, arts integration, or related topics. ()

02. QuickFund\$ - Teacher Incentive Grants. Teacher incentive grants provide support to teachers for activities that enliven or improve arts learning in the classroom. ()

03. QuickFund\$ - QuickProjects for Education. QuickProjects for education provides support for short-term projects that enliven or improve arts learning as an integral part of the education of Idaho's youth. ()

04. QuickFund\$ - Evaluation Criteria. ()

a. Professional Development for Educators and Teacher Incentive Grants. QuickFund\$ applications for professional development for education and teacher incentive grants are available to individuals who are educators or an artist on the Arts in Education Artist Roster. Applications are evaluated on a point scale with a total of one hundred (100) points. ()

i. Artistic and Individual Quality. A maximum of fifty (50) points are awarded for artistic and individual quality. Artistic and individual quality is evaluated based upon whether the applicant's past work history demonstrates experience working with arts or education projects of high quality, the artistic or educational merit and the rationale of the proposed project or experience, and the relation or application of the proposed activity or event to the vision or the mission of the school or organization where the applicant teaches Idaho youth. ()

ii. Feasibility. A maximum of twenty-five (25) points are awarded for feasibility. The evaluation of feasibility is based upon whether the applicant's ability and plan demonstrates the applicant can realistically accomplish the activity or event and whether the budget is clear and correlates with the applicant's description of the activity or event. ()

iii. Professional and Artistic Growth. A maximum of twenty-five (25) points are awarded for professional and artistic growth. The evaluation of artistic growth is based upon whether the opportunity has the potential to significantly affect or enhance the applicant's artistic development, professional skills, or teaching skills. The evaluation also considers whether the applicant demonstrates that the activity or event will improve student learning in the arts. ()

b. QuickProjects for Education. QuickFund\$ applications for QuickProjects for education are available to organizations and are evaluated on a point scale with a total of one hundred (100) points. ()

i. Artistic Quality. A maximum of fifty (50) points are awarded for artistic quality. Artistic quality is evaluated based upon the artistic and educational merit and rationale of the project, the relation of the project to the vision or mission of the school or organization where it will be implemented, and whether the artists, consultants, personnel, and presenters carrying out the project are qualified to carry out the project's activities and appropriate for the Idaho youth attending the project. ()

ii. Management. A maximum of twenty-five (25) points are awarded for management. The evaluation of management is based upon whether the roles and responsibilities of key personnel, community, and school partners, artists, and outside consultants are identified and clearly defined and whether the budget is clear and correlates with the applicant's description of the activity or event. ()

iii. Community Involvement and Access. A maximum of twenty-five (25) points are awarded for community involvement and access. The evaluation of community involvement and access is based upon whether the plan for the project reflects the community's demographics, including students, teachers, parents, administrators, and other community members. The evaluation is also based upon the applicant's plans to inform and involve the

community, including publicity efforts. ()

c. Preferences. The Commission may give preference to applicants who have not previously received funds through a Commission program. ()

05. QuickFund\$ - Matching Contributions. Applicants for a professional development for educators QuickFund\$ grant must provide matching contributions equaling the requested funds. Applicants for a teacher incentive QuickFund\$ grant must provide matching contributions equaling one third (1/3) of the requested funds. Applicants for a QuickProjects for education grant must provide matching contributions equaling the requested funds. College and university applicants shall not use in-kind contributions as matching funds. ()

06. QuickFund\$ - Application Requirements. ()

a. Professional Development for Educators and Teacher Incentive Grants. Applicants for professional development for educators or a teacher incentive QuickFund\$ grant shall submit an application form, a resume, work samples appropriate to the applicant, and supporting materials such as letters of acceptance, brochures, articles, or workshop information. ()

b. QuickProjects for Education. Applicants for a QuickProjects for education grant shall submit an application form; resumes of key consultants, artists, or personnel; work samples reflecting prior projects or activities as applicable to the project or activity that is the subject of the application; and, no more than five (5) documents supporting the application such as brochures, letters from community partners, or work samples of participating artists. Applicants eligible to use in-kind contributions must also submit a list of in-kind contributions used as matching contributions. All applicants are encouraged to submit a list of in-kind contributions to the project. ()

07. QuickFund\$ - Application Deadlines. QuickFund\$ applications for arts education must be postmarked or hand delivered to the Commission on or before the first Monday of March, June, September, or December. ()

503. ARTSPOWERED LEARNING GRANTS.

ArtsPowered Learning Grants support teaching and learning opportunities for youth through grade twelve (12) by supporting artist in residence projects exceeding ten (10) days in length, school touring of performances or arts exhibitions, the development and implementation of programs and activities to improve teacher practice and student learning in and through the arts, and professional consultancies to assist in the alignment between educational goals of schools and the needs of educators with community-based arts resources. ()

01. ArtsPowered Learning - Evaluation Criteria. ArtsPowered Learning grant applications are evaluated on a point scale with a total of one hundred (100) points. ()

a. Artistic and Educational Quality. A maximum of thirty (30) points are awarded for artistic and educational quality. The evaluation of artistic and educational quality is based upon whether the program or activity is aligned with the Interdisciplinary Humanities achievement standards of the Idaho State Board of Education and reflect the needs of the students; whether the goals and objectives of the program or activity identify specific concepts, processes, and skills that students will master as a result of their participation; whether the artists, consultants, personnel, and presenters are highly qualified to carry out the activities or program and are appropriate for the students; whether the program addresses the applicant's long-term educational goals; and whether the supporting materials, such as handouts, study guides, and compact disks, are of high quality, support the goals of the program or activity, and are appropriate for the students. ()

b. Planning, Implementation, and Evaluation. A maximum of thirty (30) points are awarded for planning, implementation, and evaluation. The evaluation of planning, implementation, and evaluation is based upon whether the outcomes of the program or activity are clearly defined and based upon the needs of the students; whether the activity or program is appropriate to achieve the desired outcomes; whether the students are involved in the planning, implementation, and evaluation of the activity or program; whether the evaluation methods are aligned with the curricula; whether the evaluation methods measure short-term and long-term results of the program or activity; whether the evaluation findings are incorporated into ongoing planning for the applicant; whether the applicant has used past evaluations to refine its programs or activities; whether the applicant supports the evaluation with adequate

documentation; and whether the applicant disseminates the evaluation results to appropriate parties. ()

c. Management. A maximum of twenty (20) points are awarded for management. The evaluation of management is based upon whether the applicant has submitted a clear, complete, and appropriate budget; whether there is a broad base of support for the application from public and private sources; and whether the roles and responsibilities of key personnel, community, and school partners artists, and outside consultants are identified and clearly defined. ()

d. Access and Community Involvement. A maximum of twenty (20) points are awarded for access and community involvement. The evaluation of access and community involvement is based upon whether the applicant has shown that it engaged in planning that included a broad based committee reflective of community demographics including students, teachers, parents, administrators, and community members; whether the program or activity includes plans for publicity efforts to inform and involve the community; and whether the applicant has shown efforts to identify and include underserved populations in the program or activity. ()

02. ArtsPowered Learning - Matching Contributions. Applicants must provide matching contributions equaling one-half (1/2) of the requested funds. In-kind contributions shall not exceed one-half (1/2) of the required matching contributions. ()

03. ArtsPowered Learning - Application Requirements. Applicants for ArtsPowered Learning grants shall submit an application; a list of the project or activity's key personnel; a list of planning or advisory committee members that includes the individual's role, professional expertise, and affiliation; resumes of key consultants, artists, or personnel; three (3) to six (6) letters of support from executive directors of organizations, school principals, planning or advisory committee members, or other appropriate supports that demonstrate an understanding of and commitment to the project or activity; up to five (5) pieces of audio, visual, or published materials from the applicant or key partners, curriculum guides, or examples of past student work that will help the Commission understand the artistic and professional quality of the program or activity; and work samples appropriate to artists participating in the program or activity that are not on the Arts in Education Artist Roster. If the applicant will use in-kind contributions, the applicant must also submit a list of in-kind contributions to the project. ()

04. ArtsPowered Learning - Application Deadlines. ArtsPowered Learning applications must be postmarked or hand delivered to the Commission on or before the first Friday in March. ()

504. CREATIVE ALTERNATIVES FOR YOUTH.

The Creative Alternatives for Youth program supports out-of-school opportunities for young people at risk of not making a successful transition from adolescence to young adulthood. The Creative Alternatives for Youth program encourages meaningful collaborations between arts organizations and other community organizations, especially social service agencies that nurture the development and expression of the creative spirit of youth. ()

01. Creative Alternatives for Youth - Evaluation Criteria. Creative Alternatives for Youth grant applications are evaluated on a point scale with a total of one hundred (100) points. ()

a. Artistic and Educational Quality. A maximum of thirty (30) points are awarded for artistic and educational quality. The evaluation of artistic and educational quality is based upon whether the program or activity reflects the needs of the students; whether the goals and objectives of the program or activity identify specific concepts, processes, and skills that students will master as a result of their participation; whether the planned activities or program will support the students' intellectual and creative processes, experimentation, and growth; whether the artists, consultants, personnel, and presenters are highly qualified to carry out the activities or program and are appropriate for the students; whether the program addresses the applicant's long-term educational goals; and whether the supporting materials, such as handouts, study guides, and compact disks are of high quality, support the goals of the program or activity, and are appropriate for the students. ()

b. Planning, Implementation, and Evaluation. A maximum of thirty (30) points are awarded for planning, implementation, and evaluation. The evaluation of planning, implementation, and evaluation is based upon whether the applicant has demonstrated a collaborative planning process that includes all partners in the project in the design, implementation, and commitment of resources; whether the outcomes of the program or activity are clearly defined and based upon the needs of the students; whether the activity or program is appropriate to achieve the

desired outcomes; whether the students are involved in the planning, implementation, and evaluation of the activity or program; whether the evaluation findings are incorporated into ongoing planning for the applicant; whether the applicant has used past evaluations to refine its programs or activities; whether the applicant supports the evaluation with adequate documentation; and whether the applicant disseminates the evaluation results to appropriate parties. ()

c. Management. A maximum of twenty (20) points are awarded for management. The evaluation of management is based upon whether the applicant has submitted a clear, complete, and appropriate budget; whether there is a broad base of support for the application from public and private sources; whether the project or activity is supported by adequate resources such as funding, materials, equipment, and facilities; and whether the roles and responsibilities of key personnel, community and school partners, artists, and outside consultants are identified and clearly defined. ()

d. Access and Community Involvement. A maximum of twenty (20) points are awarded for access and community involvement. The evaluation of access and community involvement is based upon whether the applicant has shown that it engaged in planning that included a broad based committee reflective of community demographics including students, teachers, parents, administrators, and community members; whether the program or activity includes plans for publicity efforts to inform and involve the community; and whether the applicant has shown efforts to identify and include underserved populations in the program or activity. ()

02. Creative Alternatives for Youth - Matching Contributions. Applicants must provide matching contributions equaling one-half (1/2) of the requested funds. In-kind contributions shall not exceed one-half (1/2) of the required matching contributions. ()

03. Creative Alternatives for Youth - Application Requirements. Applicants for ArtsPowered Learning grants shall submit an application; a list of the project or activity's key personnel and planning or advisory committee members that includes the individual's role, professional expertise, and affiliation; resumes of key consultants, artists, or personnel; three (3) to six (6) letters of support from executive directors of organizations, school principals, planning or advisory committee members, or other appropriate supports that demonstrate an understanding of and commitment to the project or activity; up to five (5) pieces of audio, visual, or published materials from the applicant or key partners; curriculum guides or examples of past student work that will help the Commission understand the artistic and professional quality of the program or activity; and work samples appropriate to artists participating in the program or activity that are not on the Arts in Education Artist Roster. If the applicant will use in-kind contributions, the applicant must also submit a list of in-kind contributions to the project. ()

04. Creative Alternatives for Youth - Application Deadlines. Creative Alternatives for Youth applications must be postmarked or hand delivered to the Commission on or before the first Friday in March. ()

501. -- 5999. (RESERVED).

600. ~~COMMITTEES.~~

~~**01.** *Executive Committee. There shall be an executive committee of the Idaho Commission on the Arts and such other standing committees as the chairman may, from time to time, determine.* (11-14-93)~~

~~**02.** *Executive Committee Members. The executive committee shall be appointed annually at the first regular meeting of the commission following the end of the year, or at the pleasure of the chairman, and shall consist of the chairman of the commission, the vice chairman of the commission and three members, in addition to the chairman and vice chairman.* (11-14-93)~~

~~**03.** *Powers. The executive committee shall, during the interval between meetings of the commission, possess and exercise all of the powers of the commission except as to such matters as the commission has by resolution expressly reserved to itself.* (11-14-93)~~

~~**04.** *Records. The executive committee shall keep full and accurate records and accounts of its proceedings and transactions. All action by the executive committee shall be reported to the commission at its meeting next succeeding such action and shall be subject to revision and alteration by the commission.* (11-14-93)~~

- ~~05. **Chairman.** The chairman of the commission shall be the chairman of the executive committee. (11-14-93)~~
- ~~06. **Meetings Held.** Meetings of the executive committee shall be held on the call of any member of the committee, but the committee shall be deemed to be in continuous session between called meetings, and may act upon the vote of its members taken by telephone, telegraph or otherwise, and duly recorded. (11-14-93)~~
- ~~07. **Vacancies.** A vacancy occurring in the executive committee shall be filled by the chairman at its next meeting. (11-14-93)~~
- ~~08. **Rules.** Committees may make such rules as from time to time they may deem proper for their own government and for the transaction of business for the commission and shall mail a written report of significant actions to the commission members as soon after they are taken as conveniently may be. (11-14-93)~~
- ~~09. **Standing Committee.** Any vacancy in a standing committee shall be filled by the chairman. (11-14-93)~~
- ~~10. **Quorum.** Three (3) shall constitute a quorum and the committee may act upon the majority vote of its members. (11-14-93)~~
- ~~11. **Ex Officio Members.** The chairman of the commission and the executive director serve as ex officio members of all committees. (11-14-93)~~
- ~~601.—699. (RESERVED).~~
- ~~700. **REPORTS.**
The Idaho Commission on the Arts shall report biannually to the Governor and the Legislature of the state of Idaho on the state of the arts. It may also publish other reports or studies on matters affecting the state of the arts in the growth and development of the state of Idaho. All such reports shall be provided to the Governor, and upon request, to the general public. (11-14-93)~~
- ~~701.—899. (RESERVED).~~
- ~~900. **CONSIDERATION OF PROJECT APPLICATIONS.**
The Commission cannot consider applications from any school, organization, or individual without a properly signed and completed application form, provided by the Commission, filed with the Commission by the published postmark deadline. (11-14-93)~~
- ~~901.—999. (RESERVED).~~

IDAPA 49 - BOARD OF CERTIFIED SHORTHAND REPORTERS

49.01.01 - RULES OF PROCEDURE OF THE IDAHO CERTIFIED SHORTHAND REPORTERS BOARD

DOCKET NO. 49-0101-0401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-3107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2004.

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 majority of the proposed changes are housekeeping or clerical in nature: updating references to office address and contact information; adding standard formatting rules required by the Office of Administrative Rules; and eliminating "rules" that reference information or requirements already appearing in statute (for instance, the details of examination requirements) or that provide internal operating mechanisms not appropriate for inclusion in the rules (such as the order of business for meetings). The rules are also being revised to eliminate the previous disciplinary hearing provisions and to incorporate the contested case provisions of the Idaho Administrative Procedures Act.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee or charge is imposed or increased pursuant to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the relatively simple nature of the rule making and due to a lack of identifiable representatives of affected interests.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Margaret Odedo, Executive Secretary, at (208) 334-2517.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 24th day of August, 2004.

Margaret Odedo
Executive Secretary
Idaho Certified Shorthand Reporters Board
3350 Americana Terrace, Ste. 243
P. O. Box 83720, Boise, ID 83720-0017
Phone: (208) 334-2517
Fax: (208) 334-5211

THE FOLLOWING IS THE TEXT OF DOCKET NO. 49-0101-0401

002. ~~(RESERVED)~~ WRITTEN INTERPRETATIONS.

Written interpretations, if any, of this chapter are available for review at the board office. ()

003. ADMINISTRATIVE APPEALS.

~~The Board shall hold hearings on disputed matters or complaints as provided for in the Act, in these Rules of Procedure, or in Title 67, Chapter 52, Idaho Code. The chairman, or a member of the Board appointed by the chairman, shall act as presiding officer at all hearings. Rules of procedure for the conduct of such hearings shall be in accordance with the applicable provisions of the Act, of these Rules of Procedure, and of Administrative appeals shall be governed by the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code.~~ (1-1-97)()

004. INCORPORATION BY REFERENCE.

No documents are incorporated by reference in these rules. ()

005. OFFICE INFORMATION.

01. Street Address. The offices of the Idaho Certified Shorthand Reporters Board are located at 3350 Americana Terrace, Suite 243, Boise, Idaho. ()

02. Mailing Address. The mailing address of the board is P. O. Box 83720, Boise, Idaho 83720-0017. ()

03. Telephone Number. The telephone number of the board is (208) 334-2517. ()

04. Facsimile. The board's FAX number is (208) 334-5211. ()

05. Electronic Address. The board's web address is www2.state.id.us/csr. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are subject to and in compliance with the Idaho Public Records Act. ()

007. FILING OF DOCUMENTS.

All written communications and documents that are intended to be part of an official record for decision in a rulemaking or contested case must be filed with the Executive Secretary of the board. One (1) original is sufficient for submission to the hearing officer, with one (1) copy for the board and one (1) copy submitted to the opposing party. Whenever documents are filed by facsimile transmission (FAX), originals shall be deposited in the mail the same day or hand delivered the following business day to the hearing officer or the board, and opposing parties. ()

008. CHANGES IN NAME AND ADDRESS – ADDRESS FOR NOTIFICATION PURPOSES.

01. Change of Name. Whenever a change of registrant name occurs, the board must be immediately notified of the change. Documentation confirming the change of name must be provided to the board on request. ()

02. Change of Address. Whenever a change of registrant mailing address occurs, the board must be immediately notified of the change. ()

03. Address for Notification Purposes. The most recent mailing address on record with the board will be utilized for purposes of all written communication with the registrant including, but not limited to, notification of renewal and notices related to disciplinary actions. ()

004.—009. (RESERVED).

010. DEFINITIONS.

For the purpose of these rules: (7-1-93)

01. Act. Title 54, Chapter 31, Idaho Code. (1-1-97)

~~02. **Shorthand Reporting.** The making of written symbols or abbreviations in shorthand or machine shorthand writing of a verbatim record of any oral court proceedings, deposition, or proceedings before any grand jury, referee, or commission. (1-1-97)~~

~~03. **Certified Shorthand Reporter Or Its Abbreviation C.S.R.** Any person holding a valid regular or temporary certificate as a shorthand reporter as provided in the Act. (1-1-97)~~

~~04. **Board.** The Idaho Certified Shorthand Reporters Board. (7-1-93)~~

~~05. **Official Court Reporter.** The official court reporter of a federal district court in the state or the district court reporter of the state district court, but does not include any reporter of the magistrates' division of the state district court. (7-1-93)~~

~~06. **Freelance Reporter.** Any shorthand reporter engaged in the practice of shorthand reporting as defined in the Act, who is not an official court reporter. (1-1-97)~~

~~07. **Temporary Certified Shorthand Reporter.** Any person who possesses the education, character, and proficiency as specified in Section 54-3109, Idaho Code. (7-1-93)~~

011. -- 099. (RESERVED).

100. GENERAL PROVISIONS BOARD MEETINGS.

~~01. **Offices.** The principal office of the Board shall be maintained at 550 West State Street, Boise, Idaho. The mailing address is P.O. Box 83720, Boise, Idaho 83720-0017, to which all correspondence, and fees shall be directed. The telephone number of the Board is (208) 334-2517. (1-1-97)~~

~~02. **Meetings.** The Board shall meet at least once a year. In addition to this annual meeting, the president may call special meetings from time to time when it is deemed necessary, or upon request of two (2) or more members of the Board. (1-1-97)()~~

~~03. **Order Of Business.** The order of business at meetings shall be as follows: (7-1-93)~~

~~a. **Reading of minutes.** (7-1-93)~~

~~b. **Financial report.** (7-1-93)~~

~~c. **Reports of officers.** (7-1-93)~~

~~d. **Reports of committees.** (7-1-93)~~

~~e. **Reading of communications.** (7-1-93)~~

~~f. **Unfinished business.** (7-1-93)~~

~~g. **New business.** (7-1-93)~~

~~h. **Consideration of applications and fees.** (7-1-93)~~

~~i. **Consideration of charges, suspensions and revocations.** (7-1-93)~~

~~j. **Election of officers for the ensuing year.** (7-1-93)~~

~~k. **Miscellaneous.** (7-1-93)~~

~~l. **Adjournment.** (7-1-93)~~

~~m. Roberts' Rules of Order shall govern procedure of the Board except as otherwise provided by the Act or these rules and Rules of Procedure. (1-1-97)~~

04101. OFFICERS.

Officers elected from the Board shall be president, and secretary/treasurer. An executive secretary may be appointed who is not a member of the Board. (1-1-97)(____)

~~a. The president shall be the executive head of the Board and shall: preside at meetings; appoint committees; perform all duties pertaining to the office of the president. (1-1-97)~~

~~b. The secretary/treasurer shall, with the assistance of the executive secretary and under the direction of the Board, perform the following functions and duties: (1-1-97)~~

~~i. Keep correct minutes of the Board and furnish a copy to all members of the Board; (1-1-97)~~

~~ii. Send written notice of all regular and special Board meetings to each certified shorthand reporter member in good standing not less than ten (10) days in advance thereof; (1-1-97)~~

~~iii. Review each application for temporary or regular certification for essential data prior to consideration thereof by the Board; (1-1-97)~~

~~iv. Address inquiries, where deemed necessary, to references of applicants to verify qualification, experience, or character; (1-1-97)~~

~~v. Make arrangements, as required by the Board, for examinations, interviews and hearings; (1-1-97)~~

~~vi. Report to the Board members the result of every examination; (1-1-97)~~

~~vii. Keep all records, including minutes, register of applicants for examination and a roster of Idaho certificate holders; (7-1-93)~~

~~viii. Receive and deposit all funds and fees, as provided by the Act, and keep records of all deposits and disbursements; (1-1-97)~~

~~ix. Perform all other duties as prescribed by the Act or which normally pertain to the office of secretary/treasurer. (1-1-97)~~

05102. COMMITTEES.

Regular or special committees may be appointed by the president and shall present reports to the Board at the time specified or at the earliest regular or special meeting of the Board. A special voluntary committee from the public, which may include members of the Board, may be formed to render special services during examinations or as the Board may assign to them. (1-1-97)

061. Quorum. ~~As provided in the Act, a~~ A quorum shall be at least three (3) members of the Board legally holding office at the time of meeting. ~~Official business of the Board~~ president shall ~~be conducted only at Board meetings with a quorum present~~ not vote except to break a tie. (1-1-97)(____)

~~07. Fees. The Board shall be entitled to charge and collect such fees as authorized in the Act. (1-1-97)~~

082. Certificates. Certificates of registration shall be issued to each certified shorthand reporter, as prescribed by the Act, on forms adopted by the Board. Certificates shall be displayed by certified shorthand reporters in their place of business. A new certificate may be issued by the Board to replace one lost, destroyed, or mutilated upon receipt of a replacement fee of ten dollars (\$10). Each certificate shall bear an individual number as assigned to that particular C.S.R. by the Board. (1-1-97)

~~09. Amendments. The rules may be amended by a majority vote of Board membership at any regular~~

~~or special meeting of the Board after prior notice by publication as may be required by the provisions of Title 67, Chapter 52, Idaho Code.~~ (1-1-97)

~~1073.~~ -- 199. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

300. EXAMINATIONS.

01. ~~Time And Place Examination Process.~~ (1-1-97)(____)

~~a. Examinations for certified shorthand reporter shall be held annually or semi-annually, the exact time and place to be determined by the Board.~~ (1-1-97)

~~b.~~ Late applicants shall not be admitted to the examination room. (1-1-97)

~~02. Examination Required. Every applicant for certification shall take and pass an examination as prescribed by the Board except as may be specifically exempted from such examination under the terms of the Act.~~ (1-1-97)

~~03. Eligibility.~~ (7-1-93)

~~a. Any person having graduated from an accredited high school or having had an equivalent education shall be entitled to take an examination for certification as a shorthand reporter as provided in the Act.~~ (1-1-97)

~~b. An applicant shall further be of good moral character and shall have filed a complete application with the Board, accompanied by the nonrefundable required fee, as set forth in the Act.~~ (1-1-97)

~~04. Residence. Residency is not required to practice court reporting in Idaho. Nonresidents who pass the Idaho examination shall be issued a valid Idaho certificate.~~ (7-1-93)

~~05. Picture Identification. Picture identification shall be shown by all applicants before taking an examination.~~ (7-1-93)(____)

~~06. Examination Irregularities.~~ (7-1-93)

~~c. Examinees are forbidden to receive any unauthorized assistance during the examination. Communication between examinees or possession of unauthorized material or devices during the examination is strictly prohibited.~~ (1-1-97)

~~b.~~ Only scheduled examinees, Board members, the executive secretary and authorized personnel shall be admitted to the examination room. (1-1-97)

~~07. Scope of Examination.~~ (7-1-93)

~~a. The complete examining procedure for certification as a certified shorthand reporter consists of two (2) sections. The first section is the written examination covering subjects as are ordinarily given in a school of court reporting and which are common to all fields of practice. The second section is the skills portion which shall consist of the following "takes" and speeds.~~ (1-1-97)

~~i. Question and Answer - Two hundred twenty-five (225) words per minute.~~ (1-1-97)

~~ii. Jury Charge - Two hundred (200) words per minute.~~ (1-1-97)

- iii. Literary - One hundred eighty (180) words per minute. (1-1-97)
- iv. Density of Exam - The syllabic content of the dictated exam shall be one point four (1.4). (7-1-93)
- b. Examination prepared and graded by the National Court Reporters Association (NCRA) may be used by the Board. (1-1-97)
- c. The examination is the same for all applicants. (7-1-93)
- d. The examining committee which shall consist of the three C.S.R. Board members, shall inform applicants of the approximate time allowed for typing the skills portion of the examination. (1-1-97)
- e. These "takes" can be passed individually for the Idaho examination. ()
- 083. Grading.** (7-1-93)
- a. Each applicant must attain a grade of seventy-five percent (75%) or above to pass the written examination and ninety-five percent (95%) or above in each "take" to pass the skills portion. (1-1-97)
- b. Every applicant receiving a grade of less than seventy-five percent (75%) in the written examination shall be deemed to have failed such examination and shall have the application denied without prejudice. (1-1-97)
- c. Every applicant receiving a grade of less than ninety-five percent (95%) in each "take" shall be deemed to have failed such examination and shall have the application denied without prejudice. (1-1-97)
- d. An applicant failing either the written section, or the skills portion, and having filed a new application for examination, shall be required to take and pass within a two-year period only the section for which a failing grade was received. (1-1-97)
- 094. Inspection of Examination.** (7-1-93)
- a. An applicant who fails to obtain a passing grade in the skills portion may inspect his/her examination papers at such times and locations as may be designated by the Board. Inspection of such examination papers shall be permitted within a thirty (30) day period after receipt of notice by the applicant of his/her failure to pass the examination. (1-1-97)
- b. At the time of inspection no one other than the examinee or his/her attorney and a representative of the Board shall have access to such examination papers. (1-1-97)
- 105. Inspection Review.** (7-1-93)
- a. Within thirty (30) days after the date notice of the results of the examination has been mailed to him/her, an applicant who was unsuccessful in the examination may petition the Board for a review of his/her examination papers. (1-1-97)
- b. The petition for review shall be made in writing stating the reason for such review and citing the item or items against which the request is directed. (7-1-93)
- c. The Board shall, upon receiving such petition for review, conduct a hearing at the next scheduled Board meeting. (1-1-97)
- 106. Retention of Examinations.** The Board shall retain for at least six (6) months, all examination papers and notes submitted by applicants. (1-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

401. -- 4999. (RESERVED).

~~500. RULES FOR REVOCATION, SUSPENSION OR REINSTATEMENT OF CERTIFIED SHORTHAND REPORTERS' CERTIFICATES.~~

~~01. Scope And Purpose. Pursuant to Title 54, Chapter 31, Idaho Code, the following procedures are adopted to govern the revocation, suspension, or reinstatement of the regular or temporary certificate of a certified shorthand reporter by the Idaho Certified Shorthand Reporters Board. (1-1-97)~~

~~02. Grounds For Revocation Or Suspension. The Board may revoke or suspend a certificate for any of the reasons provided by law. (1-1-97)~~

~~03. Complaint And Preliminary Investigation. (7-1-93)~~

~~a. Upon receiving a verified complaint in writing, which is not obviously unfounded or frivolous, from a member of the Board, from a reporter, or from any person claiming to have been injured or defrauded, setting forth possible grounds for revocation or suspension of a certificate, the Board shall determine if a preliminary investigation is to be conducted. (1-1-97)~~

~~b. Upon receiving such information from other sources or in forms other than a verified complaint, as provided in Subsection 500.03.a. above, the Board may cause a preliminary investigation to be conducted. (1-1-97)~~

~~c. The preliminary investigation shall be conducted by a person appointed by the Board. A written report of the investigation shall be furnished to the Board. (1-1-97)~~

~~d. The reporter in question shall be notified upon commencement of a preliminary investigation, unless the Board determines that early notice may impair the investigation. In any event, the reporter shall be notified, and afforded an opportunity to provide information to the investigator before completion of the preliminary investigation. The notice shall furnish such information as may be necessary to inform the reporter of the subject matter and purpose of the preliminary investigation. (1-1-97)~~

~~e. Upon receipt of the report of preliminary investigation, the Board shall determine any of the following: (1-1-97)~~

~~i. The matter should be closed for lack of reasonable cause to believe that there exists any grounds for revocation or suspension of the certificate; (1-1-97)~~

~~ii. The matter should be closed upon informal admonition to the reporter; (7-1-93)~~

~~iii. Formal proceedings for revocation or suspension of the certificate should be instituted. The reporter and any complaining party shall be notified promptly of the Board's determination. (1-1-97)~~

~~f. Any papers submitted to, or other information received by the Board before or during the preliminary investigation, shall be confidential and privileged. However, confidentiality shall cease if waived by the reporter or if public statements are made by any party, requiring the Board to respond in order to clear the public record. Moreover, if the Board institutes formal proceedings, it shall cause a formal proceedings file to be created, containing all papers and information relevant to the formal proceedings; and such papers and information shall no longer be confidential. (1-1-97)~~

~~04. Interim Suspension Of Certificate. If the Board institutes formal proceedings, and if the Board finds from the report of preliminary investigation that fraud or injury to any person, or irreparable harm to the administration of justice is likely to result from allowing a certificate to remain in force during formal proceedings, the Board may, upon furnishing the reporter in question a reasonable opportunity to be heard, suspend the certificate or impose conditions for allowing it to remain in force while formal proceedings are pending. The Board may review~~

~~and modify any such order upon notice and reasonable opportunity to be heard, at any time until formal proceedings are concluded. (1-1-97)~~

~~**05. Formal Proceedings. (7-1-93)**~~

~~**a.** Upon determining to institute formal proceedings, the Board may appoint an examiner, who may have been the investigator, but who must be the attorney general of the state of Idaho or one of his/her assistants designated by him/her, to prepare and assist in a complaint for revocation or suspension of the certificate. (1-1-97)~~

~~**b.** The complaint shall be filed with the Board and served personally upon the reporter, together with a summons to answer. The time and method of answering, all other procedures, and the record compiled, shall be provided in Title 67, Chapter 52, Idaho Code, and as provided in the Idaho Rules of Civil Procedure to the extent that such rules are not inconsistent with the Act or with the rules set forth herein. (1-1-97)~~

~~**c.** The Board shall be the hearing body. The secretary of the Board shall maintain the file of formal proceedings. Any member of the Board may administer oaths and affirmances, or subpoena witnesses. The Board may hear and receive evidence at any location in the state of Idaho, upon at least twenty (20) days' notice to the reporter in question. The Board may continue its hearing from time to time, and from place to place, as justice may require. (1-1-97)~~

~~**d.** The reporter shall have the right to be represented by counsel at all stages of formal proceedings. (7-1-93)~~

~~**06. Disposition. (7-1-93)**~~

~~**a.** At any time prior to conclusion of formal proceedings, the Board may dismiss the complaint if it finds that the evidence is unlikely to establish grounds for revocation or suspension of the certificate, or dismissal otherwise would be in the interest of justice. (1-1-97)~~

~~**b.** Upon conclusion of formal proceedings, or upon the filing of a stipulation by the reporter, the Board shall prepare written findings of fact and conclusions of law, and shall enter an order of any of the following: (1-1-97)~~

~~**i.** Dismissing the complaint; (7-1-93)~~

~~**ii.** Revoking or suspending the certificate; (7-1-93)~~

~~**iii.** Censuring the reporter and/or allowing the certificate to remain in force, subject to certain conditions; (7-1-93)~~

~~**e.** Where grounds for revocation or suspension are established, the Board may consider other circumstances, including any prior actions taken by the Board against the reporter, in selecting the appropriate disposition. (1-1-97)~~

~~**d.** Censure or imposition of conditions may be selected where grounds for revocation or suspension have been established, but the Board determines, from all the circumstances, that justice requires a lesser sanction. Suspension may be coupled with imposition of such other concurrent or subsequent conditions as the Board may deem just. (1-1-97)~~

~~**07. Change Of Disposition.** The Board may reinstate a certificate that has been revoked or suspended, or may modify or discontinue any conditions imposed, when the reporter submits a verified application with an application fee as set forth in the Act, if the Board finds that. (1-1-97)~~

~~**a.** Grounds for revocation, suspension or imposition of condition no longer exists; or (7-1-93)~~

~~**b.** The reporter has made adequate restitution for any damages caused by his/her prior actions or omissions, (including the costs of proceedings before the Board), has complied with any other condition imposed by~~

~~the Board, and has demonstrated good moral character sufficient to indicate that the misconduct shall not recur. If the certificate was originally revoked or suspended for incompetency, the reporter shall also be required to take and pass the reporters' examination and to pay an examination fee.~~ (1-1-97)

~~**08. Right To Appeal.** Any person who shall be aggrieved by any action of the Board in denying, refusing to renew, suspending or revoking a certified shorthand reporter certificate may appeal to the district court. The appeal shall be as provided in Idaho Code Section 54-3114, and Idaho Code Section 67-5270.~~ (1-1-97)

~~**09. Miscellaneous Provisions.**~~ (1-1-97)

~~**a.** No reporter member of the Board shall participate as a Board member in any investigation or proceedings in regard to his/her own certificate; nor shall any judge member of the Board participate as a Board member in any investigation or proceedings as to an official reporter appointed by him.~~ (1-1-97)

~~**b.** The Board may send any notice required under these rules by certified mail to a reporter at his/her last address indicated in the records of the Board.~~ (1-1-97)

~~**501.—999. (RESERVED).**~~

IDAPA 51 - IDAHO BEEF COUNCIL
51.01.01 - IDAHO BEEF COUNCIL RULES
DOCKET NO. 51-0101-0401
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-2906(9), 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 20, 2004.

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 updates references to the Idaho Beef Council's address and includes the new logo, eliminating mention of a copyright that does not exist. As a result of its merger with the National Cattlemen's Association, the Beef Industry Council of the National Livestock and Meat Board no longer exists. The rulemaking deletes the outdated reference to the Beef Industry Council and replaces it with generic language permitting the funds to be sent to a "national beef promotion program".

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

This rulemaking does not impose or increase any fee or charge.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the corrections made by this rulemaking are non-controversial.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Laura Wilder, Executive Director, at (208) 376-6004.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2004.

DATED this 24th day of August, 2004.

Laura Wilder
Executive Director
Idaho Beef Council
2118 Airport Way
Boise, Idaho 83705-5156
Fax: (208) 376-6002

THE FOLLOWING IS THE TEXT OF DOCKET NO. 51-0101-0401

007. OFFICE ADDRESS--OFFICE HOURS.

The Idaho Beef Council is located at ~~212 South Cole Road~~ 2118 Airport Way, Boise, Idaho, 83709~~5~~, telephone (208) 376-6004, FAX (208) 376-6002. The Idaho Beef Council office is open from 8 a.m. to 5 p.m., Monday through Friday. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

200. DISBURSEMENTS.

01. Collection Fee, Brand Inspector. The Idaho Beef Council shall reimburse the State Brand Inspector for the reasonable and necessary expenses incurred in the collection of the assessment in an amount determined by the Beef Council and the State Brand Inspector, not to exceed five percent (5%) of gross collections. (7-1-93)

02. National Beef Promotion And Research Board. Of the one dollar (\$1) national assessment, the Idaho Beef Council will receive fifty cents (\$.50) credit per head of cattle assessed. The remaining fifty cents (\$.50) will be forwarded to the Cattlemen's Beef Promotion and Research Board. (Federal Register, July 18, 1986, 7 CFR Part 1260). (7-1-93)

03. ~~Beef Industry Council Of The National Livestock And Meat Board~~ Beef Promotion Program. A total of at least twenty percent (20%) of the Idaho credit shall be paid by the Idaho Beef Council to ~~the Beef Industry Council of the National Livestock and Meat Board~~ a national beef promotion program for ~~their~~ use in promotion, research and educational activities. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

400. LOGO.

As often as possible some form of the logo will be used on publications of the Beef Council. ~~A copyright has been approved for the logo.~~ (7-1-93)()

IDAPA 57 - SEXUAL OFFENDER CLASSIFICATION BOARD

57.01.01 - RULES GOVERNING THE SEXUAL OFFENDER CLASSIFICATION BOARD

DOCKET NO. 57-0101-0401 (NEW CHAPTER - FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2004.

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 18-8314, Idaho Code.

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

Saturday, November 6, 2004
1:00 p.m. - 3:00 p.m. - Department of Correction Basement Training Room
Syringa Bank Building, 1299 N. Orchard St, Boise, ID 83706

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This is a new chapter. (1) Rulemaking addresses the need for quality, uniformity and consistency in sexual offender evaluations provided to the courts prior to sentencing; (2) Establishes an application system to certify sexual offender evaluators; (3) Provides quality assurance for evaluators and evaluations; (4) Adopts into rule, procedures set by the Sexual Offender Classification Board for designating high-risk sexual offenders as Violent Sexual Predators.

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: Protection of public health, safety, and welfare. This rulemaking is initiated to comply with the provisions of Senate Bill 1002 passed by the 2003 Legislature and signed into law by the Governor on April 8, 2003.

FEE SUMMARY: An application-processing fee is required for all qualified providers seeking sexual offender evaluator certification. The application fee for initial certification is \$75. The application fee for annual certification renewal is \$50.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, informal negotiated rulemaking was conducted. A public hearing was held on February 21, 2004. In addition, the SOCB conducted informal meetings with concerned parties, invited parties to board administrative business meetings, and distributed draft language to affected entities for comment.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kathy Baird, Management Assistant, at (208) 658-2149.

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 November 6, 2004.

DATED this 19th day of August, 2004.

Kathy Baird, Management Assistant
Sexual Offender Classification Board
1299 N. Orchard St Suite 110, Boise, ID 83706
(208) 658-2149 phone; (208) 327-7102 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 57-0101-0401

IDAPA 57 - SEXUAL OFFENDER CLASSIFICATION BOARD

IDAPA 57
TITLE 01
CHAPTER 01

57.01.01 – RULES OF THE SEXUAL OFFENDER CLASSIFICATION BOARD

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 18-8314(7), Idaho Code, to implement the provisions of Sections 18-8312 through 18-8321, Idaho Code. (10-1-04)T

001. TITLE AND SCOPE.

01. Title. These rules are cited as IDAPA 57.01.01, “Rules of the Sexual Offender Classification Board”. (10-1-04)T

02. Scope. These rules provide procedures for the Sexual Offender Classification Board to: (10-1-04)T

a. Determine whether a sexual offender should be designated as a Violent Sexual Predator; (10-1-04)T

b. Set certified evaluator qualifications and standards; (10-1-04)T

c. Approve, issue, renew, deny, suspend or revoke psychosexual evaluator certification; and (10-1-04)T

d. Establish fees for initial psychosexual evaluator certification and annual psychosexual evaluator certification renewal. (10-1-04)T

03. Relationship to the Department of Correction. The board is created in the Idaho Department of Correction, and relies upon the department for fiscal and administrative support. The governor appoints the board members. The powers and duties of the board are separate from the Department of Correction, and are set forth in Section 18-8314, Idaho Code. (10-1-04)T

002. WRITTEN INTERPRETATIONS.

The board may have written statements that pertain to the interpretation of the rules of this chapter. These interpretations, if any, may be found on the board’s website. (10-1-04)T

003. ADMINISTRATIVE APPEALS.

The Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General”, shall govern administrative appeals. (10-1-04)T

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (10-1-04)T

01. “Association for the Treatment of Sexual Abusers Professional Code of Ethics, 2001 Edition.”

This document is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005. (10-1-04)T

02. "Practice Standards and Guidelines for Members of the Association for the Treatment of Sexual Abusers, 2001 Edition." This document is available from the Association for the Treatment of Sexual Abusers, 4900 SW Griffith Drive, Suite 274, Beaverton, Oregon 97005. (10-1-04)T

03. The Sexual Offender Board's "Required Format for Psychosexual Evaluation Reports, July 2004 Revision." This document is available from the board, and is posted on the board's website. (10-1-04)T

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

The Sexual Offender Classification Board administrative office is located at the Department of Correction headquarters, 1299 North Orchard, Suite 110, Boise, Idaho 83706. Business hours are typically 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is Office of the Sexual Offender Classification Board, 1299 North Orchard, Suite 110, Boise, Idaho 83706. The telephone number is (208) 658-2149. The facsimile number is (208) 327-7102. The board's website address is <http://www2.state.id.us/socb/>. (10-1-04)T

006. PUBLIC RECORDS ACT COMPLIANCE.

01. Administrative Rules. The rules contained herein are promulgated pursuant to Title 67, Chapter 52, Idaho Code, and are public records. (10-1-04)T

02. Public Records Requests. Requests for public information are processed in compliance with Sections 18-8321, 18-8323, and 20-223, Idaho Code; IDAPA 06.01.01, "Rules of the Board of Correction"; and the Idaho Public Records Act. (10-1-04)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Board. The Sexual Offender Classification Board described in Section 18-8312, Idaho Code. (10-1-04)T

02. Central Roster of Certified Evaluators. A roster of evaluators who meet the qualifications, and are certified by the board to perform psychosexual evaluations. (10-1-04)T

03. Certified Evaluator. Either a psychiatrist licensed by this state pursuant to Title 54, Chapter 54, Idaho Code, or a master's or doctoral level mental health professional licensed by this state pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. The evaluator shall have by education, experience and training, expertise in the assessment and treatment of adult sexual offenders, shall meet the qualifications and shall be approved by the board to perform psychosexual evaluations in this state, as described in Sections 18-8314, Idaho Code. (10-1-04)T

04. Client. A person receiving mental health services from a certified evaluator. A client may be a person who is not a sexual offender. (10-1-04)T

05. Evaluation. For the purpose of certification eligibility, defined as the direct provision of comprehensive evaluation and assessment services to an adult who has been convicted of a sexual offense. The evaluation must be related to the client's sexual offending behavior. (10-1-04)T

06. Mental Abnormality. A congenital or acquired condition affecting the emotional or volitional capacity of a person in a manner that predisposes him to commit criminal sexual acts to a degree that makes him a menace to the health, safety, or both, of other persons. (10-1-04)T

07. Personality Disorder. A congenital or acquired physical or mental condition resulting in a general lack of power or desire to control sexual impulses. (10-1-04)T

08. Predatory. Actions directed at an individual who was selected by the offender for the primary

purpose of engaging in illegal sexual behavior. (10-1-04)T

09. Psychosexual Evaluation. A comprehensive evaluation and assessment specifically addressing an offender's sexual development, sexual deviancy, sexual history and risk of re-offense. (10-1-04)T

10. Quality Assurance. Technical review of a psychosexual evaluation report to assure minimum standards are met. The board conducts the review. (10-1-04)T

11. Sexual Offender. A person convicted of an offense as listed in Section 18-8304, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth, or other jurisdiction of the United States including tribal courts and military courts. (10-1-04)T

12. Sexually Violent Offense. (10-1-04)T

a. A criminal offense as listed in Section 18-8314, Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth or other jurisdiction of the United States, including tribal courts and military courts; or (10-1-04)T

b. Engaging in physical contact with another person with intent to commit sexual abuse or aggravated sexual abuse as described in Sections 2241 and 2242 of Title 18, United States Code, and Section 18-8303(1), Idaho Code. (10-1-04)T

13. Treatment. For the purpose of certification eligibility, defined as the provision of face-to-face individual, group, or family therapy with a person who has been investigated by law enforcement or child protective services for commission of a sexual offense, or who has been adjudicated or convicted of a sexual offense. Treatment must be directly relevant to the client's sexually offending behavior. (10-1-04)T

14. Victim. A person, including the immediate family of a minor, named in the complaint, information or indictment, who suffers physical or emotional injury as the result of the offender's criminal conduct. (10-1-04)T

15. Violent Sexual Predator. A person convicted of an offense listed in Section 18-8314, Idaho Code, and who is determined by the board to pose a high risk of committing an offense or engaging in predatory sexual conduct. (10-1-04)T

011. ABBREVIATIONS.

01. ATSA. The Association for the Treatment of Sexual Abusers. (10-1-04)T

02. DSM-IV. The "Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition," published by the American Psychiatric Association. (10-1-04)T

03. IDOC. The Idaho Department of Correction. (10-1-04)T

04. VSP. Violent Sexual Predator. (10-1-04)T

012. -- 019. (RESERVED).

020. RECORDKEEPING.

01. Evaluators. Records on all applicants and certifications issued, renewed, denied, suspended, and revoked shall be maintained for a period not less than five (5) years. (10-1-04)T

02. Violent Sexual Predators. The file on a sexual offender that is maintained by the board is considered the official file for all purposes. (10-1-04)T

021. BOARD MEETINGS.

01. Meetings. The board meets at least quarterly and may meet more frequently. All business of the board is conducted in compliance with the open meeting law, pursuant to Title 67, Chapter 23, Idaho Code, and Section 18-8315, Idaho Code. (10-1-04)T

02. Agenda. An agenda for each regularly scheduled meeting is posted in the IDOC central office at least twenty-four (24) hours prior to the regularly scheduled meeting. (10-1-04)T

022. -- 030. (RESERVED).

031. OFFENDERS SUBJECT TO EVALUATION.

01. Pre-Sentence. A sexual offender who is convicted on or after July 1, 1993 of any offense listed in Section 18-8304, Idaho Code, is subject to psychosexual evaluation prior to sentencing, if ordered by the court. (10-1-04)T

02. Pre-Release. Prior to release from incarceration, a sexual offender whose conviction is listed in Section 18-8314(1), Idaho Code, and who has been referred by the IDOC or the Commission for Pardons and Parole, shall be considered by the board for review for possible VSP designation. (10-1-04)T

03. Under IDOC Supervision. (10-1-04)T

a. Upon recommendation by the supervising officer, the Commission for Pardons and Parole may request the board to consider a sexual offender for review for possible VSP designation. The offender must be under parole supervision for a crime as listed in Section 18-8314(1), Idaho Code. (10-1-04)T

b. Upon recommendation by the supervising officer, the court having jurisdiction over a sexual offender may request the board to consider the offender for review for possible VSP designation. The offender must be under court ordered probation for a crime as listed in Section 18-8314(1), Idaho Code. (10-1-04)T

04. Under Federal Supervision. The federal court having jurisdiction over a sexual offender who is residing in Idaho may request the board to consider the offender for review for possible VSP designation. The offender must be under federal supervision for conviction of a crime as listed in Section 18-8214(1), Idaho Code, or a substantially equivalent offense under the laws of another state, territory, commonwealth or other jurisdiction of the United States, including tribal courts and military courts. (10-1-04)T

032. -- 039. (RESERVED).

040. CERTIFIED EVALUATOR QUALIFICATIONS.

Each evaluator who performs an adult psychosexual evaluation pursuant to Sections 18-8316 and 18-8317, Idaho Code, must meet the qualifications as set forth in this section and be certified by the board. (10-1-04)T

01. Credential. The credential of a certified evaluator must be in good standing with no currently pending disciplinary action by the issuing authority. The certified evaluator shall be a recognized professional, who specializes in evaluation, treatment, or both, of adult sexual offenders. (10-1-04)T

02. Educational and Professional Qualifications. A certified evaluator must be: (10-1-04)T

a. A licensed psychiatrist pursuant to Title 54, Chapter 18, Idaho Code; or (10-1-04)T

b. A licensed masters or doctoral level mental health professional pursuant to Title 54, Chapters 23, 32, or 34, Idaho Code. (10-1-04)T

03. Specialized Training. (10-1-04)T

a. For initial certification, the certified evaluator applicant must have attended forty (40) hours of formal conferences, symposia, or seminars in the following areas as relevant to the treatment and evaluation of adult sexual offenders, within the preceding two (2) years: (10-1-04)T

- i. Assessment and diagnosis of sexual offenders; (10-1-04)T
- ii. Psychometric and psychophysiological testing; (10-1-04)T
- iii. Psychopathology; (10-1-04)T
- iv. Sexual offender risk assessment; (10-1-04)T
- v. Counseling and psychotherapy; (10-1-04)T
- vi. Cognitive therapy; (10-1-04)T
- vii. Couples and family therapy; (10-1-04)T
- viii. Family reunification; (10-1-04)T
- ix. Pharmacological therapy; (10-1-04)T
- x. Relationship and social skills training; (10-1-04)T
- xi. Sexual offense relapse prevention; (10-1-04)T
- xii. Social support networks; and (10-1-04)T
- xiii. Victim awareness and empathy. (10-1-04)T

04. Experience Qualifications. For initial certification, the certified evaluator applicant shall have at least two thousand (2000) hours of adult sexual offender treatment and evaluation experience within the preceding ten (10) years. The two thousand (2000) hours must include: (10-1-04)T

- a. At least two hundred fifty (250) hours of adult sexual offender evaluation experience; and (10-1-04)T
- b. At least two hundred fifty (250) hours of adult sexual offender treatment experience. (10-1-04)T

05. Continuing Education Requirement. For certification renewal, the certified evaluator shall have attended forty (40) hours of formal conferences, symposia, or seminars relevant to the treatment and evaluation of adult sexual offenders within the preceding two (2) years. (10-1-04)T

06. Understanding. A certified evaluator shall have a thorough understanding of counter-transference issues and a broad knowledge of sexuality in the general population. A certified evaluator shall also have a good understanding of basic theories and typologies of sexual offenders and sexual assault victims. (10-1-04)T

041. -- 049. (RESERVED).

050. STANDARDS FOR PROFESSIONAL CONDUCT AND CLIENT RELATIONS.

- 01. General Considerations.** A certified evaluator shall: (10-1-04)T
 - a. Be fully aware of and adhere to the standards of his area of credentialing; (10-1-04)T
 - b. Subscribe to the ATSA treatment philosophy, the ATSA Professional Code of Ethics, and the ATSA Practice Standards and Guidelines, as referenced in Section 004 of these rules; (10-1-04)T
 - c. Be knowledgeable of statutes and scientific data relevant to specialized adult sexual offender evaluation; (10-1-04)T

- d.** Be familiar with the statutory requirements for assessments and reports for the courts, pursuant to Sections 18-8316 and 18-8317, Idaho Code; (10-1-04)T
- e.** Be committed to community protection and safety; (10-1-04)T
- f.** Avoid relationships with clients that may constitute a conflict of interest, impair professional judgement and risk exploitation; and (10-1-04)T
- g.** Have no sexual relationships with any client. (10-1-04)T

051. RECIPROCITY.

The board may consider reciprocity for any applicant who has been licensed or certified to perform sexual offender evaluations in another state. An applicant requesting consideration for reciprocity shall submit an initial certification application as outlined in Section 060 of these rules. (10-1-04)T

052. -- 059. (RESERVED).

060. CERTIFIED EVALUATOR APPLICATION.

- 01. Application for Initial Certification.** An applicant seeking certified evaluator status must submit: (10-1-04)T

 - a.** A completed application on forms provided by the board, and accompanied by documents indicated in Subsection 060.02 of this rule; and (10-1-04)T
 - b.** An application fee of seventy-five dollars (\$75) payable to the board. (10-1-04)T
- 02. Documentation.** The certification application must be submitted to the board, accompanied by: (10-1-04)T

 - a.** Proof of professional licensure; (10-1-04)T
 - b.** The assurances and release form; (10-1-04)T
 - c.** Verification of educational, professional, and experience qualifications as established in Section 040 of these rules; and (10-1-04)T
 - d.** Copies of two (2) psychosexual evaluation reports completed by the applicant within the past year. These evaluations must have names and identifying characteristics redacted, and may not have been submitted previously to the board. (10-1-04)T
- 03. Certification Period, Posting Requirement, and Notification of Changes.** Evaluator certification is effective for one (1) calendar year from the date of issue printed on the certificate, unless the certification is suspended or revoked. The evaluator certification applies only to the person named therein and is not transferable. The board must be notified in writing within thirty (30) days of any change in the certified evaluator's business address, phone number, or both. (10-1-04)T
- 04. Expiration and Renewal of Certification.** No certification shall be renewed, except as follows: (10-1-04)T

 - a.** At least sixty (60) days prior to the expiration of the certification, the certified evaluator shall apply for renewal of the certification on forms provided by the board. (10-1-04)T
 - b.** The renewal application must be accompanied by: (10-1-04)T

 - i.** Proof of professional licensure; (10-1-04)T

- ii. The assurances and release form; (10-1-04)T
 - iii. Verification of continuing education participation as required in Subsection 040.05 of these rules; (10-1-04)T
 - iv. An application renewal fee of fifty dollars (\$50) payable to the board; and (10-1-04)T
 - v. Copies of two (2) psychosexual evaluation reports completed by the applicant within the past year. These evaluations must have names and identifying characteristics redacted, and may not have been submitted previously to the board. (10-1-04)T
- c. An evaluator who has not renewed his certification shall be removed from the evaluator roster thirty (30) days after his certification has expired. (10-1-04)T
 - d. An evaluator whose certification has been expired for less than one (1) year may reapply for certification by following the certification renewal process outlined in Subsection 060.04 of this rule. (10-1-04)T
 - e. An evaluator whose certification has been expired for one (1) year or longer may reapply for certification by following the initial certification process outlined in Subsection 060.01 of this rule. (10-1-04)T
- i. The board may require a written and verifiable plan for supervised practice by a supervisor approved by the board. (10-1-04)T
 - ii. The board shall determine the duration for supervised practice of a certified evaluator for certification purposes. (10-1-04)T

061. REQUEST FOR CONDITIONAL WAIVER.

The board may consider an applicant's request for conditional waiver. Conditional waiver requests shall only be considered for deficiencies in experience qualifications as established in Subsection 040.04 of these rules. (10-1-04)T

01. Request. A request for conditional waiver must be submitted with the initial certification application. (10-1-04)T

02. Representation. An applicant who is granted a conditional waiver may not represent himself as a certified evaluator. (10-1-04)T

a. An evaluator who is granted a conditional waiver shall indicate on the psychosexual evaluation report signature line that he is an approved psychosexual evaluator by waiver. (10-1-04)T

b. The roster of certified evaluators shall identify an evaluator who is granted a conditional waiver, and the waiver's expiration date. (10-1-04)T

03. Renewal. A conditional waiver is limited to a period of three (3) years. Conditional waivers may not be extended or renewed after the third year. (10-1-04)T

a. An evaluator who has been granted a conditional waiver may apply to renew his waiver after the first year by following the certification renewal process outlined in Subsection 060.04 of these rules. (10-1-04)T

b. Documentation must be included with the renewal application verifying the applicant's progress in attaining full qualification requirements. (10-1-04)T

c. An evaluator who fails to demonstrate progress in attaining full qualification requirements may not be approved for renewal of the conditional waiver. The evaluator shall be removed from the evaluator roster. (10-1-04)T

062. -- 079. (RESERVED).

080. CENTRAL ROSTER OF CERTIFIED EVALUATORS.

01. Identification. The board shall publish a roster of evaluators who are approved to conduct pre-sentence psychosexual evaluations pursuant to Section 18-8316, Idaho Code. The roster shall indicate: (10-1-04)T

- a.** The evaluator's name; (10-1-04)T
- b.** The evaluator's business address and telephone number; (10-1-04)T
- c.** Whether an evaluator is a certified evaluator or approved evaluator by conditional waiver; and (10-1-04)T
- d.** The expiration date of the evaluator's certification or conditional waiver. (10-1-04)T

02. Availability. A copy of the roster may be obtained from the board, and shall be posted on the board's website. (10-1-04)T

081. EXCLUSION.

Each mental health employee of the Department of Correction who conducts psychosexual evaluations, is exempt from the evaluator certification process. This exemption shall apply only while the employee is acting within the course and scope of his employment with the IDOC. (10-1-04)T

082. -- 089. (RESERVED).

090. DENIAL AND REVOCATION OF CERTIFICATION.

01. Cause. The board may deny, suspend, or revoke certification of an applicant or certified evaluator for any of the following reasons: (10-1-04)T

- a.** Failure to comply with any portion of this chapter. (10-1-04)T
- b.** Failure to meet the evaluator qualifications as required in Section 040 of these rules. (10-1-04)T
- c.** Falsification of any information or documentation, or concealing a material fact in the application for certification. (10-1-04)T
- d.** Failure to furnish any data, information, or records as requested. (10-1-04)T
- e.** Demonstration of inadequate knowledge. (10-1-04)T
- f.** Performance of two (2) or more psychosexual evaluations during the current certification period that the board finds are below standard. (10-1-04)T
- g.** Refusal or failure to participate in the quality assurance process. (10-1-04)T
- h.** A guilty plea or conviction for a felony criminal offense or a misdemeanor offense against a person. (10-1-04)T
- i.** A domestic violence protective order issued against the applicant or evaluator within the previous five (5) years. (10-1-04)T
- j.** A criminal, civil or administrative determination that the evaluator has committed, permitted, or aided and abetted the commission of any illegal act while holding an evaluator certification. (10-1-04)T
- k.** Accepted a gift or favor from a sexual offender being assessed, from the family of the sexual

offender being assessed, or from their agent. (10-1-04)T

l. Provided a gift or favor to a sexual offender being assessed, to the family of the sexual offender being assessed, or to their agent. (10-1-04)T

m. Demonstration of a conflict of interest by providing both the psychosexual evaluation and treatment or by referring the sexual offender to the evaluator's employer or business associate, unless permitted by the court pursuant to Section 18-8316, Idaho Code. (10-1-04)T

02. Reapplication. An applicant or certified evaluator may reapply for certification under the following conditions: (10-1-04)T

a. An applicant whose certification is denied may reapply when evidence is available confirming that he meets the required qualifications outlined in Section 040 of these rules. (10-1-04)T

b. A certified evaluator whose certification has been revoked may request permission to reapply for certification after one (1) year following his certification revocation. (10-1-04)T

c. The board has sole discretion in granting an evaluator permission to reapply for certification after that evaluator's certification has been revoked. (10-1-04)T

3. Second Revocation. No subsequent certification request shall be approved following an evaluator's second certification revocation. (10-1-04)T

091. -- 099. (RESERVED).

100. NOTICE OF INTENT.

The board must provide the applicant or certified evaluator with notice of intent to deny, suspend, or revoke certification, and the right to appeal. (10-1-04)T

01. Notification of Applicant. The board shall notify the applicant or certified evaluator of the board's intent to deny, suspend, or revoke certification. (10-1-04)T

a. The notice shall be mailed to the applicant or certified evaluator by certified mail. (10-1-04)T

02. Contents of Notice. The notice shall: (10-1-04)T

a. State the basis for the intended action of the board; (10-1-04)T

b. May suggest means by which the matter might be remedied; and (10-1-04)T

c. Shall provide the applicant or certified evaluator an opportunity to answer, or to show cause in the matter. (10-1-04)T

101. APPEAL.

The applicant or certified evaluator shall have not more than thirty (30) days from the date on which the board's notice of intended action is served upon him to file a written appeal with the board. The written appeal shall include documentation supporting the appellant's argument refuting the board's intended action. (10-1-04)T

102. HEARING OFFICER.

A hearing officer designated by the board shall receive and distribute copies of the written appeal, and any additional information, data, documents or references to all board members for their consideration. The hearing officer shall set the appeal hearing time and place, and submit notices to all parties. (10-1-04)T

103. HEARING.

01. Hearing Procedures. The Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and

IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," govern procedures for a hearing before the board. (10-1-04)T

a. The appeal hearing shall be conducted during a regular board meeting. The board shall review the written appeal, and any additional information, data, documents or references furnished by the appellant. The board reserves authority to place reasonable limitations on the time allotted to conduct the hearing. The board also reserves the option to delegate authority to the hearing officer to conduct additional fact finding, for further review by the board. (10-1-04)T

b. Appeal hearings may be conducted by teleconference. (10-1-04)T

c. All board members are entitled to attend and participate in a hearing. (10-1-04)T

d. Appeal determinations shall be conducted during executive session. (10-1-04)T

02. Final Notice. The applicant or certified evaluator shall be notified by certified mail within two (2) weeks of the board's final decision concerning the action being appealed. (10-1-04)T

104. -- 109. (RESERVED).

110. COMPLAINTS.

01. Complaints. Any individual may file against an evaluator by submitting a written complaint to the board. A complaint must include: (10-1-04)T

a. The full name and address of the complainant; (10-1-04)T

b. The name, address, and telephone number (if known) of the evaluator; and (10-1-04)T

c. A clear and accurate statement of the facts describing the allegations against the evaluator. (10-1-04)T

02. Screening. The hearing officer shall investigate all complaints to determine appropriateness for board action. (10-1-04)T

a. Complaints determined to be more appropriate for intervention by another oversight agency shall be referred to that oversight agency. (10-1-04)T

b. Some complaints may be appropriate for intervention by the board and referral to another oversight agency. (10-1-04)T

c. If the facts and evidence after investigation are insufficient to warrant board review, no further action shall be taken. (10-1-04)T

111. NOTICE OF COMPLAINT.

01. Notice. The certified evaluator shall be notified in writing of the complaint filed against him and the board's investigation of the complaint. (10-1-04)T

02. Rights to Hearing. The certified evaluator shall be provided the opportunity to appear before the board to present his position concerning the allegations of the complaint. Hearing procedures, outlined in Section 103 of these rules, shall apply. (10-1-04)T

112. -- 119. (RESERVED).

120. QUALITY ASSURANCE AND TECHNICAL REVIEW.

The board shall develop policies for technical review and quality assurance of psychosexual evaluation reports. These

policies shall also address board recommendations regarding improvement in psychosexual evaluation performance and report quality. (10-1-04)T

121. -- 129. (RESERVED).

130. PSYCHOSEXUAL EVALUATION.

Psychosexual evaluation reports shall be written following the "Required Format for Psychosexual Evaluation Reports" as referenced in Section 004 of these rules. (10-1-04)T

01. Testing. The evaluator shall attempt utilization of testing instrumentation and assessment measures as identified in the "Required Format for Psychosexual Evaluation Reports". (10-1-04)T

02. Offender Participation. The offender being evaluated may refuse or decline to participate in any testing, assessment measure, or physiological measure used for the pre-sentence psychosexual evaluation. The evaluator shall document the offender's refusal or declination in the psychosexual evaluation report. Further, a written statement indicating the offender's refusal or declination shall be signed by the offender and appended to the psychosexual evaluation report. (10-1-04)T

03. Physiological and Viewing Time Measures. The use of physiological or viewing time measures, or both, is highly recommended to further understand the offender's level of deception and denial. (10-1-04)T

131. POLYGRAPH EXAMINATION.

A full disclosure polygraph is highly recommended, as a further risk assessment component for the psychosexual evaluation process. (10-1-04)T

01. Consent. When a polygraph is conducted, the polygraph examiner shall obtain written consent to proceed from the offender being evaluated. (10-1-04)T

02. Offender Participation. If the offender refuses or declines to participate in a polygraph examination, such refusal or declination shall be documented in the psychosexual evaluation report. Further, a written statement indicating the offender's refusal or declination shall be signed by the offender and appended to the psychosexual evaluation report. (10-1-04)T

132. -- 149. (RESERVED).

150. EVALUATION FOR VIOLENT SEXUAL PREDATOR REVIEW.

The sexual offender referred to the board for VSP review shall be evaluated as set forth in Section 130 of these rules. (10-1-04)T

01. Evaluation Process. (10-1-04)T

a. The evaluator shall inform the sexual offender that the psychosexual evaluation is part of the board's review to determine if the offender should be designated as a VSP. (10-1-04)T

b. The sexual offender shall have an opportunity for input at the time of the psychosexual evaluation. (10-1-04)T

c. The board may waive a polygraph examination. (10-1-04)T

151. FAILURE TO COOPERATE.

Public safety takes precedence over the decision of a sexual offender not to cooperate with the evaluation for VSP designation review. The sexual offender shall be informed that the board may designate an offender as a VSP if he fails to cooperate with the psychosexual evaluation process or refuses to release records for the board's VSP designation review. (10-1-04)T

152. INTENTION TO RE-OFFEND.

If credible evidence supports a finding that a sexual offender has indicated an intention to re-offend, the offender shall

be referred to the board for VSP designation review. Pursuant to Section 18-8314(5), Idaho Code, the sexual offender shall be designated as a VSP. (10-1-04)T

153. SCOPE OF EVALUATION.

The board and the evaluator conducting the psychosexual evaluation may have access to and may review all obtainable records on the sexual offender to conduct the VSP designation assessment. If required, the offender shall sign a release of information to comply with state or federal regulations. (10-1-04)T

154. -- 169. (RESERVED).

170. BOARD REVIEW.

The board shall assess how biological, psychological, and situational factors, may cause or contribute to the offender's sexual behavior. (10-1-04)T

01. Evidence. (10-1-04)T

a. The board may collect documentary evidence in the form of copies, facsimiles, hearsay, or excerpts. (10-1-04)T

b. The board may take notice of any facts that could be judicially noticed in the courts of this state, and generally recognized technical or scientific facts within the board's specialized knowledge. (10-1-04)T

c. The board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (10-1-04)T

d. The board may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds. (10-1-04)T

e. The board is not obligated to accept or review oral statements or documents, other than those of the victim. (10-1-04)T

f. All other evidence may be admitted. (10-1-04)T

02. Review. The board's review for VSP designation is conducted in executive session pursuant to Section 18-8315, Idaho Code. The board may authorize individuals to attend a designated period of the executive session. (10-1-04)T

03. Teleconference. A review conducted by teleconference is permitted. (10-1-04)T

171. DEMONSTRATION OF HIGH RISK.

The board determines if a prima facie case exists to justify the sexual offender's designation as a VSP. A sexual offender shall be designated as a VSP if his risk of re-offending sexually or threat of violence is of sufficient concern to warrant the designation for the safety of the community. (10-1-04)T

172. BOARD VOTE.

The board reviews documentation and makes a determination whether a sexual offender presents a high risk of re-offense, and whether the sexual offender should be designated as a VSP. (10-1-04)T

01. Member Exclusion. A board member who has had prior association with the sexual offender being reviewed is excluded from the discussion and voting process on that offender. (10-1-04)T

02. Vote. A majority vote to designate a sexual offender is required. (10-1-04)T

a. Votes are taken and recorded in executive session pursuant to Section 18-8315, Idaho Code. (10-1-04)T

b. Votes of individual members are not public record. (10-1-04)T

03. Decision. (10-1-04)T

a. The board may conclude from the evidence that the sexual offender has or probably has a mental abnormality or personality disorder, causing or contributing to the sexual offender's risk of re-offense. (10-1-04)T

b. The board may designate a sexual offender as a VSP with or without a finding of mental abnormality or personality disorder. (10-1-04)T

c. The decision of the board is recorded in the minutes of the regular meeting. (10-1-04)T

d. The results of any designation action may be requested by submitting a public record request to the board. (10-1-04)T

173. FINDINGS.

The board makes written findings that include the risk assessment; the reasons upon which the risk assessment was based; the determination whether the sexual offender should be designated as a VSP; and the reasons upon which the determination was based. (10-1-04)T

174. NOTICE OF DESIGNATION AS A VIOLENT SEXUAL PREDATOR.

Pursuant to Sections 18-8319(2) and 18-8320, Idaho Code, the sexual offender, the sheriff of the county where the sexual offender resides or intends to reside upon release, the central registry, and the IDOC are notified of the offender's designation as a VSP. Notice is in the form of the board's written findings. (10-1-04)T

175. -- 189. (RESERVED).

190. JUDICIAL REVIEW.

A sexual offender designated as a VSP has the right to judicial review of the designation, pursuant to Section 18-8321, Idaho Code. A request for judicial review must be filed with the courts no more than fourteen (14) calendar days after receiving the "Notice of Designation as a VSP" from the board. (10-1-04)T

191. -- 199. (RESERVED).

200. VICTIMS.

The board respects and complies with the rights of victims as identified in Section 19-5306, Idaho Code, and Article I, Section 22, Idaho Constitution. (10-1-04)T

201. LOCATING VICTIMS.

01. Attempt to Locate. The board shall make a good faith effort to locate the victim of the sexual offender's crime of conviction. The purpose for this effort is to inform the victim of the sexual offender's referral for VSP designation review. (10-1-04)T

02. Methods. In effort to locate the victim, the board may use information contained in IDOC or Commission for Pardons and Parole records, telephone directories, or contact with the county where the case was tried. (10-1-04)T

03. Decision. If the victim has been located, the board shall notify the victim of the VSP designation action. (10-1-04)T

04. No Contact. The board respects the right of the victim to not be contacted. (10-1-04)T

202. VICTIM PARTICIPATION.

The victim, person representing the victim, or both, is afforded an opportunity to testify or submit written documents for consideration by the board. (10-1-04)T

01. Meeting. The victim, person representing the victim, or both, is permitted to attend the portion of

the executive session review that pertains to the associated sexual offender. The chairman has discretion to limit the allotted time for testimony. The victim, person representing the victim, or both, is excluded during any board discussion or vote. (10-1-04)T

a. The victim, person representing the victim, or both, is permitted to review documents not restricted by law, that are being considered as evidence by the board. (10-1-04)T

b. Before taking testimony from the victim, the board shall use reasonable means to verify the identity of the victim, person representing the victim, or both, or to verify the authenticity of written statements. (10-1-04)T

c. The board may exclude evidence if the board determines the evidence is irrelevant, unduly repetitious, unreliable, or excludable on constitutional or statutory grounds. (10-1-04)T

02. Victim Confidentiality Protected. Communications between the board and victim, person representing the victim, or both, are confidential. Information identifying the victim or the location of the victim is exempt from disclosure, pursuant to Section 18-8321(3)(a) and (b), Idaho Code. (10-1-04)T

203. -- 999. (RESERVED).

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LEGAL NOTICE

Summary of Proposed Rulemakings

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

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

IDAPA 01 - IDAHO BOARD OF ACCOUNTANCY PO Box 83720, Boise, ID 83720-0002

01-0101-0402, Idaho Accountancy Rules. Updates incorporation by reference documents, references to the CPCFA of the AICPA and definitions; Board administrative costs will be paid by firms that are subject to peer review.

IDAPA 02 - DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701-0790

02-0104-0401, Rules Governing the Idaho Preferred Promotion Program. Clarifies requirements for wine, honey, honey-related products, nursery products and beef products to participate in the voluntary Idaho Preferred™ promotion program.

02-0303-0401, Rules Governing Pesticide and Chemigation Use and Application. Changes waiting period for applicants to retake failed exams to one week.

02-0406-0401, Rules Governing Requirements for Licensed Dairy Plants. Updates the CFR incorporation by reference.

02-0407-0401, Rules Governing Grade A Condensed/Dry Milk and Whey Products. Repeal of chapter.

02-0408-0401, Rules Governing Grade A Milk and Milk Products. Adopts the “2003 Grade 'A' Pasteurized Milk Ordinance” by reference.

02-0409-0401, Rules Governing Methods of Making Sanitation Ratings of Milk Supplies. Adopts by reference the 2003 Revision of “Methods of Making Sanitation Ratings of Milk Shippers.”

02-0410-0401, Rules Governing the Cooperative State/Public Health Services and FDA Program for Certification of Interstate Milk Shippers. Incorporates by reference the 2003 Revision of the “Procedures Governing the Cooperative State Public Health Services, FDA Program for Certification of Interstate Milk Shippers”.

02-0412-0401, Rules of the Department of Agriculture Governing Standards for the Fabrication of Single-Service Containers and Closures for Milk and Milk Products. Repeal of chapter.

****02-0419-0401, Rules Governing Domestic Cervidae.** Requires visible identification of domestic cervidae, wild ungulate herd plans, and makes technical corrections.

****02-0425-0401, Rules Governing the Private Feeding of Big Game Animals.** Designates an eastern Idaho area where private feeding of big game animals is prohibited and how the interaction of livestock and big game animals on feedlines will be regulated.

02.06.02 - Rules Pertaining to the Idaho Commercial Feed Law.

02-0602-0401 - Adds required section and definitions, and incorporates by reference the "2004 Official Publication" of AAFCO and the Merck Index.

02-0602-0402 - Incorporates by reference the "2005 Official Publication" of AAFCO.

02-0612-0402, Rules Pertaining to the Idaho Fertilizer Law. Incorporates by reference the "2005 Official Publication" of the AAPFCO.

02.06.41 - Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001.

02-0641-0401, Incorporates by reference the "2004 Official Publication" of the AAPFCO and the Merck Index.

02-0641-0402, Incorporates by reference the "2005 Official Publication" of the AAPFCO.

IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS**PO Box 83720, Boise, ID 83720-0285**

05-0101-0401, Rules of the Department of Juvenile Corrections and Standards for Private Contract Providers. Repeal of chapter.

05-0101-0402, Rules for Contract Providers. Chapter rewrite outlines standards for good care and treatment of juveniles placed with contract providers and for risk management.

05-0103-0401, Rules of the Custody Review Board. Requires that juveniles be seen by the Board prior to age 19 not just referred and, if seen but not retained, may be kept in custody for no more than 45 days after turning 19 for transition plans to be finalized.

05-0104-0401, Uniform Standards for Juvenile Probation Services. New chapter implements and establishes uniform standards for county juvenile probation services.

IDAPA 07 - DIVISION OF BUILDING SAFETY**1090 E. Watertower St., Meridian, ID 83642**

****07-0103-0403, Rules of Electrical Licensing and Registration - General.** Negotiated rulemaking.

07-0106-0403, Rules Governing the Use of the National Electrical Code. Updated incorporation by reference document to include new products used for safer installation and fusing on light poles.

07-0203-0401, Rules Governing Permit Fee Schedule. Sets inspection fees for the installation of multipurpose residential fire sprinkler and domestic water supply systems in a one- or two-family residence.

07.02.05 - Rules Governing Plumbing Safety Licensing.

07-0205-0401, Establishes a staggered schedule of apprentice and specialty apprentice registration and renewal per Idaho Code.

07-0205-0402, Revises the expiration date of the plumbing contractor and journeyman certificates of competency to a staggered schedule per Idaho Code.

07-0205-0403, Clarifies the four-year apprenticeship training requirements and number of hours required in each school year.

07-0207-0401, Rules Governing Civil Penalties. New chapter establishes civil penalties for plumbing code violations and a process to appeal imposed penalties.

07-0309-0401, Rules Governing Manufactured Homes - Consumer Complaints - Dispute Resolution. Establishes a dispute resolution program for manufacturers, retailers and installers of manufactured homes.

07-0311-0401, Rules Governing Manufactured/Mobile Home Licensing. Increases industry fees for issuance and renewals of licenses for dealers, manufacturers, service companies, installers, salesmen, and responsible managing employees.

07-0313-0401, Rules Governing Mobile Home Rehabilitation. Establishes a \$50 processing fee that can be charged to applicants requesting a mobile home rehabilitation checklist and compliance certification. Fee will self-fund program.

07.07.01 - Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems.

07-0701-0402, Redefines “specialty contractor”; specifies issuance date for certificates of competency; lists additional qualifications for HVAC contractors; and designates a supervising journeyman.

07-0701-0403, Deletes permit expiration language that is already in Idaho Code.

IDAPA 08 - BOARD OF EDUCATION/ DEPARTMENT OF EDUCATION

650 W. State St., Room 307, Boise, ID 83720 (Board)

PO Box 83720, Boise, ID 83720-0027 (Department)

08.02.02 - Rules Governing Uniformity.

****08-0202-0403,** Updates the “Standards for Idaho School Buses and Operations” manual that is incorporated by reference.

****08-0202-0405,** Updates the “Idaho Standards for the Initial Certification of Professional School Personnel” manual that is incorporated by reference.

****08-0202-0406,** Updates the “Standards for Commercial Driving Schools” manual that is incorporated by reference.

08-0202-0407, Updates the “Idaho Standards for Public School Driver Education and Training” manual that is incorporated by reference.

****08-0202-0408,** Outlines state accreditation requirements all school districts must meet including developing and implementing district-wide strategic plans and school improvement plans.

08-0202-0409, Clarifies payment responsibilities for conducting both in-state and out-of-state teacher preparation program reviews.

08-0203-0404, Rules Governing Thoroughness. Clarifies award criteria to be consistent with federal requirements.

08.02.04 - Rules Governing Charter Schools.

****08-0204-0401,** Repeal of chapter.

****08-0204-0402,** Rewrite of chapter updates rules to conform to changes in Idaho law.

08-0301-0401, Rules of the Public Charter School Commission. New chapter outlines governance and oversight authority of the commission overseeing new charter schools.

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

PO Box 83720 Boise, ID 83720-0093

09.01.30 - Rules of the Benefits Bureau.

09-0130-0401, Adds definitions relating to electronic signatures for electronic filing and reporting on claims.

09-0130-0402, Requires all holiday pay to be reported in the week the holiday occurs to simplify reporting.

09.01.35 - Rules of the Employer Accounts Bureau.

09-0135-0401, Clarifies what an employer must do to qualify for a good cause waiver from penalties imposed by Employment Security Law.

09-0135-0402, Eliminates the option of reporting the workers of the client employer under the PEO's experience rate without transferring the prior benefit claims experience of the client employer.

09-0204-0401, Idaho Gem Grant Program. Eliminates requirement that rural communities be certified as “Gem Communities” to be eligible for a Gem Community Implementation Grant.

IDAPA 11 - IDAHO STATE POLICE

PO Box 700, Meridian, ID 83680-0700

11-1101-0401, Rules of the Idaho Peace Officer Standards and Training Council. Addresses military discharges; requires more timely notices of employment and entrance into academies; adds continuing training requirements;

eliminates some course attendance requirements for officers challenging the academy; and updates the patrol academy curriculum to accurately reflect what is being taught.

**IDAPA 13 - DEPARTMENT OF FISH AND GAME
PO Box 25, Boise, ID 83707**

13-0102-0401, Rules Governing Public Safety. Clarifies that the Hunter Education Program requirements may be completed through classroom study, home study, or an on-line computer course, and that the department will manage the program.

13-0104-0401, Rules Governing Licensing. Allows for nonresident license refund request to be filed within 1 year of a licensee's death; extends military personnel refund or raincheck rule for the 2004 season; sets nonresident deer and elk tag quotas.

13-0106-0401, Rules Governing Classification and Protection of Wildlife. Updates classification lists.

13-0107-0401, Rules Governing the Taking of Upland Game Animals. Sets biennial season limits; restricts motorized vehicle use for hunting in identified units; closes an area to hunting at Mann's Lake in Nez Perce County.

13-0108-0401, Rules Governing the Taking of Big Game Animals in the State of Idaho. Updates big game season limits; prohibits hunting within enclosures; clarifies motorized vehicle hunting restriction and the use of the nonresident junior mentored hunting license and tags; requires an adult with a tag for the same species and area to accompany nonresident junior mentored hunters; deletes mandatory check requirement of Panhandle elk; lists areas closed to hunting; defines four-point deer; simplifies the evidence of sex requirements.

13-0109-0401, Rules Governing the Taking of Game Birds in the State of Idaho. Sets biennial season limits; restricts motorized vehicle use for hunting in identified units; closes an area to hunting at Mann's Lake in Nez Perce County; sets a 10 a.m. start of shooting hours on certain Wildlife Management Areas.

13-0111-0401, Rules Governing Fish. Sets biennial season limits for fishing; clarifies definitions of float tube and snagging; and clarifies steelhead and salmon rules.

13-0112-0401, Rules Governing Commercial Fishing. Restricts use of nets to take lake trout in Lake Pend Oreille.

13-0113-0401, Rules Governing the Taking of Migratory Birds in the State of Idaho. Changes chapter name; sets biennial season limits and closes an area to hunting at Mann's Lake in Nez Perce County.

13-0114-0401, Rules Governing Falconry. Sets biennial season limits.

13-0116-0401, Rules Governing the Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals. Sets biennial season limits; defines bait; clarifies otter reporting requirement; increases the reimbursement for certain nontarget animals; identifies a closure area.

13-0119-0401, Rules Covering Operating, Discontinuing, and Suspending Vendors. Simplifies requirements and documentation for proving residency status for license sales.

**IDAPA 14 - BOARD OF REGISTRATION OF PROFESSIONAL GEOLOGISTS
PO Box 83720, Boise, ID 83720-0033**

14-0101-0401, Rules of Procedure of the Board of Registration of Professional Geologists. Updates office address.

**IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO COMMISSION ON AGING
3380 Americana Terrace, Ste. 120, Boise, ID 83706**

15-0101-0401, Rules Governing Senior Services Program. Updates rule to reflect current practices and procedures and modifies the cost sharing payment rules to accommodate the growing need of low-income individuals.

15-0102-0401, Rules Governing Area Agency Adult Protection Program. Changes “performance based agreements” to “contracts” and clarifies “substantiated” as it relates to ICOA investigations into allegations of the abuse, neglect, and exploitation of vulnerable adults.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

PO Box 83720, Boise, ID 83720-0036

16-0226-0401, Rules Governing Idaho Children's Special Health Program. Changes enrollment and eligibility criteria.

16.03.09 - Rules Governing the Medical Assistance Program.

16-0309-0404, Allows for annual reviews of certain patients rather than quarterly reviews of nursing facilities. ****16-0309-0405,** Changes reimbursement methodology and rates used by Medicaid for ground and air ambulance services.

16-0309-0406, Clarifies what services and costs are covered by Medicaid reimbursement and the rate of payment for Home Health Agencies.

16-0309-0407, Clarifies who is required to have a criminal history background check and when the individual is available to provide services.

16.03.10 - Rules Governing Medicaid Provider Reimbursement in Idaho.

16-0310-0401, Changes and updates definitions, and adds provider record keeping and audit requirements.

16-0310-0402, Clarifies the current prospective payment methodology used in reimbursement to nursing home providers.

16-0317-0401, Service Coordination. Adds criminal history check requirement; extends to 60 days time allowed to develop service plan Service Coordination.

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

PO Box 83720, Boise, ID 83720-0041

17-0602-0401, Boiler and Pressure Vessel Safety Rules. Designates appointment of a chief inspector who will sit on the National Board.

17-0701-0401, Safety Rules for Elevators, Escalators, and Moving Walks. Chapter repeal. Program has been moved to Division of Building Safety.

IDAPA 18 - DEPARTMENT OF INSURANCE

PO Box 83720, Boise, ID 83720-0043

18-0156-0401, Rebates and Illegal Inducements to Obtaining Title Insurance Business. Places additional limitations on title entities for donations and sponsorship of trade association events; updates self-promotional advertising standards and permitted business entertainment standards for title entities.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

1109 Main St., Suite 220, Boise, ID 83702

24-0101-0401, Rules Governing the Board of Architectural Examiners. Clarifies that the Intern Development Program is in addition to the required 8 years' experience; provides an effective date for continuing education.

24-0201-0401, Rules Governing the Board of Barber Examiners. Reduces fee for original and renewal licenses for barbers, barber stylists, and barber teachers to \$25.

24-0501-0401, Rules Governing the Board of Drinking Water and Wastewater Professionals. New chapter implements state law and outlines the qualifications, definitions and continuing education requirements.

24-0601-0401, Rules Governing the Board of Hearing Aid Dealers and Fitters. Increases annual renewal fees;

clarifies the examination and reexamination process.

24-0701-0401, Rules Governing the Board of Landscape Architects. Increases original license and annual renewal fees to fund Board's operation.

24-0901-0401, Rules Governing the Board of Examiners of Nursing Home Administrators. Clarifies application review process; provides qualifications for endorsement applicants; requires nursing home administrators-in-training work in a licensed nursing home and complete a pertinent course of study.

24-1201-0401, Rules Governing the Board of Psychologist Examiners. Increases renewal fee to cap of \$225; deletes definition and supervision requirements for psychology interns.

24-1401-0401, Rules Governing the Board of Social Work Examiners. Defines supervision requirements; sets guidelines for supervisor registration for licensure as clinical social worker; allows audio tapes and internet courses as continuing education; deletes references to pastoral counselors; clinical and independent practice is being extended until July 1, 2006; clarifies that 3000 hours of supervised experience in not less than 2 years is required; outlines limitations on supervisors.

24-1501-0401, Rules Governing the Idaho Board of Counselors and Marriage and Family Therapists. Clarifies required examination; deletes references to pastoral counselors; adds a special exemption for continuing education requirement for renewal of a license.

24-1601-0401, Rules Governing the State Board of Dentistry. Increases renewal fee.

24-1701-0401, Rules Governing the Idaho Board of Acupuncture. Clarifies source for distance learning continuing education; provides hardship exemption for continuing education; adds section that outlines discipline as provided by statute.

24-1801-0401, Rules Governing the Idaho Board of Real Estate Appraisers. Updates incorporation by reference; makes changes to definitions and continuing education requirements.

24-1901-0401, Rules Governing the Board of Examiners of Residential Care Facility Administrators. Includes good moral conduct and suitability as qualifications for licensure.

**IDAPA 27 - IDAHO STATE BOARD OF PHARMACY
PO Box 83720, Boise, ID 83720-0067**

27.01.01 - Rules of the Idaho State Board of Pharmacy.

27-0101-0402, Allows for two telepharmacy pilot projects to be conducted in the state.

27-0101-0403, Makes Ephedrine products available through prescription only.

27-0101-0404, Adds new standards of conduct within the practice of pharmacy including reporting unprofessional conduct and cooperating in investigations; violation of these standards is unprofessional conduct.

27-0101-0405, Extends the expiration date of prescriptions from 1 year to 15 months.

**IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION
PO Box 83720, Boise, ID 83720-0074**

31-1101-0401, Safety and Accident Reporting Rules for Utilities. Updates CFR incorporation by reference.

31.21.01 - Utility Customer Relations Rules.

31-2101-0401, Allows a public utility to transfer a customer deposit to a new account or apply it to the account balance owing on an existing account; allows a public utility to forward abandoned deposits or advanced payment to a financial assistance program certified by the Commission.

****31-2101-0402,** Negotiated rulemaking.

31-4101-0401, Telephone Customer Relations Rules. Changes address deposits, medical certificates and adoption of the updated federal slamming regulations.

IDAPA 34 - OFFICE OF THE SECRETARY OF STATE**PO Box 83720, Boise, ID 83720-0080**

34-0301-0401, Rules Implementing the Sunshine Law. Requires that lobbyists and their employers certify annual reports on expenditures; references online availability of reporting forms.

IDAPA 35 - IDAHO STATE TAX COMMISSION**PO Box 36, Boise, ID 83722-0410****35.01.01 - Income Tax Administrative Rules.**

35-0101-0401, Numerous changes comply with federal and state law changes; adjusts tax rates; clarifies, adds, and removes certain deductions and exemptions.

35-0101-0402, Numerous changes made in response to Multistate Tax Commission (MTC) regulation changes.

35.01.02 - Idaho Sales and Use Tax Administrative Rules.

35-0102-0401, Removes obsolete provisions; brings rules into compliance with Idaho statutes; provides for variable tax filing cycles for retailers; updates Form 852 Idaho Sales Tax Return - County Assessors or Sheriffs; provides for refunds of sales tax paid in error.

35-0102-0402, Treats fiber optic cable as personal property not a real property improvement.

35.01.03 - Property Tax Administrative Rules.

35-0103-0401, Updates incorporation by reference documents; corrects statutory citations; implements and complies with statutory changes; clarifies certain exemptions.

35-0103-0402, Changes definition of "previously eligible" to recognize eligibility at any time since 1981 and deletes definition of "continued to be eligible".

35-0105-0401, Motor Fuels Tax Administrative Rules. Adds required sections; deletes obsolete language; makes idling an activity not eligible for a special fuels tax refund; adds recordkeeping requirements for certain registrant's of motor vehicles and removes others.

35-0201-0401, Tax Commission Administration and Enforcement Rules. Removes obsolete provisions; implements statutory changes for calculating interest rates and allowing for exchange of information.

IDAPA 36 - IDAHO BOARD OF TAX APPEALS**PO Box 83720, Boise, ID 83720-0088**

36-0101-0401, Idaho Board of Tax Appeals Rules. No longer allows third party representation before the Board through a Board approved power of attorney; simplifies and eliminates abusive requests to engage in discovery.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT**PO Box 7129, Boise ID 83707-1129**

39-0311-0401, Rules Governing Overlegal Permittee Responsibility and Travel Restrictions. Restricts over-width permitted vehicles from operating on certain sections of interstate highways during the hours of high-commuter traffic.

39-0341-0401, Rules Governing Traffic Control Devices. Adopts by incorporation by reference the most recent publication of the MUTCD with noted exceptions.

IDAPA 40 - IDAHO COMMISSION ON THE ARTS**2410 Old Penitentiary Rd., Boise, ID 83712**

40-0101-0401, Rules of the Idaho Commission on the Arts. Sets requirements for applicants under the Commission's grant and award program.

IDAPA 49 - BOARD OF CERTIFIED SHORTHAND REPORTERS**PO Box 83720, Boise, ID 83720-0017**

49-0101-0401, Rules of Procedure of the Idaho Certified Shorthand Reporters Board. Eliminates previous disciplinary hearing provisions and adds APA contested case provisions; makes housekeeping changes.

IDAPA 51 - IDAHO BEEF COUNCIL**2118 Airport Way, Boise, ID 83705-5156**

51-0101-0401, Idaho Beef Council Rules. Deletes outdated reference to the Beef Industry Council and replaces it with generic language permitting the funds to be sent to a “national beef promotion program”; makes housekeeping changes.

IDAPA 57 - SEXUAL OFFENDER CLASSIFICATION BOARD**1299 N. Orchard St., Suite 110, Boise, ID 83706**

****57-0101-0401, Rules Governing the Sexual Offender Classification Board.** New chapter outlines requirements for pre-sentence evaluations provided to the courts; establishes an application system to certify evaluators; provides quality assurance for evaluators and evaluations; sets Board procedures for designating high-risk sexual offenders as Violent Sexual Predators. Comment by: 11/6/04.

**The Deadline For Submitting Written Comments For These Rulemakings
Is October 27, 2004, Unless Otherwise Listed.**

****Public Hearings And Meetings Have Been Scheduled For These Dockets.**

Please refer to the Idaho Administrative Bulletin, **October 6, 2004, Volume 04-10** for notices and text of all rulemakings, public hearing schedules, proclamations, Governor’s executive orders, and agency contact names.

Idaho Administrative Bulletin

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CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**FOR THE ABOVE LINK TO WORK YOU HAVE
TO BE CONNECTED TO THE INTERNET**

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

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