COMMERCE AND HUMAN RESOURCES COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2010 Legislative Session

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IDAPA 09 - DEPARTMENT OF LABOR

09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, 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:

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009 Idaho Administrative Bulletin, Vol. 09-8, pages 40 and 41.

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

There will be no impact on the general fund as a result of this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Roger Holmes, Unemployment Insurance Benefits Bureau Chief, 332-3570 ext. 3233.

DATED this 16th day of September, 2009.

Roger Holmes
Unemployment Insurance Benefits Bureau Chief
Department of Labor
317 W. Main St.
Boise, ID 83735
Phone 332-3570 ext. 3233
Fax 334-6125

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-1333, 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 August 19, 2009.

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

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

IDAPA 09.01.30.225 is being changed to provide that benefits are the property of the claimant's estate rather than stating that benefits are payable to the administrator, who may include heirs other than a surviving spouse or dependent children.

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

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

There will be no impact on the general fund as a result of this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the agency determined it was not feasible due to of the simple nature of the change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Roger Holmes, Unemployment Insurance Benefits Bureau Chief, (208) 332-3570 ext. 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 August 26, 2009.

DATED this 2nd of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. INCORPORATED BY REFERENCE.
There are no documents that have been incorporated by reference into this rule. ( )

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The principle place of business of the Department of Labor is in Boise, Idaho. ( )

01. Street Address and Hours. The office is located at, 317 W. Main St., Boise, Idaho 83735, and is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. ( )

02. Mailing Address. The mailing address is: Department of Labor, 317 W. Main St., Boise, Idaho, 83735. ( )

03. Telephone. The telephone of the office is (208) 332-3570. The facsimile number of the office is (208) 334-6455. ( )

006. PUBLIC RECORDS ACT COMPLIANCE.
The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. ( )

00~~4~~7. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

225. DECEASED CLAIMANTS.
Upon the death of a benefit claimant who has completed a compensable period prior to his death, distribution of benefits due him shall be made to the surviving spouse or, if none, to the dependent child or children. If there is no surviving spouse nor dependent child or children, the benefits shall become ~~*payable to the administrator of*~~ the property of the claimant's estate. ~~*An administrator of the estate may include children other than dependent children, surviving parents, the personal representative named in a will, or the personal representative appointed by a court. Ref. Sec. 72-1370, Idaho Code.*~~ ~~*(3-19-99)*~~( )

IDAPA 09 - DEPARTMENT OF LABOR

09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-0902

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, 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 September 2, 2009 Idaho Administrative Bulletin, Vol. 09-9, pages 22 through 25.

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

There will be no impact on the general fund as a result of this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Roger Holmes, Unemployment Insurance Benefits Bureau Chief, 332-3570 ext. 3233.

DATED this 16th day of October, 2009.

Roger Holmes
Unemployment Insurance Benefits Bureau Chief
Department of Labor
317 W. Main St.
Boise, ID 83735
Phone 332-3570 ext. 3233
Fax 334-6125

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2010.

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 72-1333, 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 September 16, 2009.

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

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

IDAPA 09.01.30, Subsection 175.12 is being changed to provide that under certain circumstances a claimant may seek only part-time work to reflect the statutory language found in the newly enacted subsection (c) of I.C. 72-1366(4). This subsection (c) provides that a claimant who establishes that a majority of the weeks worked in their base period were for less than full-time work may be eligible for unemployment insurance benefits.

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

Compliance with deadlines in amendments to governing law.

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

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

There is no impact on the state general fund resulting from this rulemaking. The infusion of Federal Reed Act money into the state unemployment insurance trust fund will minimize the amount of money the state will have to borrow when the fund is depleted. This will also impact employers by lessening the amount of employment taxes imposed for years 2010 and 2011. It is estimated that this law change will have a cost to the unemployment insurance trust fund of $500,000 per year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because IDAPA 09.01.30.175.12 is being changed to accurately reflect statutory language and conform with the new subsection (c) of I.C.72-1366(4) passed during 2009 Legislative Session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Roger Holmes 332-3570 ext. 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 September 23, 2009.

DATED this 14th of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

175. AVAILABLE FOR WORK.
The phrase "available for work" is defined as a state of mind which involves a readiness and willingness to work, and a desire to find a job, including the possibility of marketing one's services in the claimant's area of availability. There must remain a reasonable possibility of a claimant finding and obtaining, or being referred and hired for, suitable work. Ref. Sec. 72-1366(4), Idaho Code. (3-19-99)

01. Alternate Permanent Work. A claimant laid off from regular employment for a short period and who expects to be called back at any moment does not need to be available for alternate permanent work to be eligible for benefits. (3-19-99)

02. Availability Requirements. The type of work for which the claimant is available must exist in the claimant's area to the extent that a normal unemployed person would generally find work within a reasonable period of time. (3-19-99)

03. Child Care. Child care must be arranged so as not to restrict a claimant's availability for work or for seeking work. (3-19-99)

04. Compelling Personal Circumstances. A claimant must be available for the whole of the workweek for which he claims benefits except if he is unavailable due to compelling personal circumstances, his unavailability does not exceed a minor portion of his workweek, and during which time he does not refuse or miss suitable work that would have provided wages greater than one-half (1/2) of his weekly benefit amount. For the purposes of this rule, compelling personal circumstances are defined as: (4-11-06)

a. A situation in which the claimant required the assistance of emergency response personnel; (4-11-06)

b. The serious illness or death or funeral of an immediate family member; or (4-11-06)

c. The wedding of the claimant or an immediate family member. (4-11-06)

d. For the purposes of this rule, "immediate family member" is defined as a claimant's spouse, child, foster child, parent, brother, sister, grandparent, grandchild, or the same relation by marriage. (4-11-06)

05. Conscientious Objection. No person shall be held to be unavailable for work solely because of religious convictions not permitting work on a certain day. (3-19-99)

06. Contract Obligation. A person who is bound by a contract which prevents him from accepting other employment shall not be eligible for benefits. (3-19-99)

07. Distance to Work. A claimant seeking work must be willing to travel the distance normally traveled by other workers in his area and occupation. (3-19-99)

08. Domestic Circumstances. A claimant is not eligible for benefits if domestic circumstances take precedence over the claimant's availability for work or for seeking work. (3-19-99)

09. Equipment. Claimants will be required to provide necessary tools or equipment in certain occupations. The lack of these tools or equipment will directly affect a claimant's availability for work, unless he will accept other work. (3-19-99)

10. Evidence. A claimant is responsible for providing proof of his availability for work and for seeking work if his availability is questioned or proof is required by these rules. (3-19-99)

11. Experience or Training. A claimant is expected to be available for work consistent with his past experience or training, provided there is no change in his ability to perform that work. (3-19-99)

12. Full-Time/Part-Time Work. ~~*A*~~ To be eligible for benefits, a claimant must be available for a full workweek and a full, normal workday ~~*to be eligible for benefits. A claimant restricting his availability to only part-time work shall be ineligible for benefits. This rule does not apply to claimants who establish*~~ unless the claimant establishes that a majority of the weeks worked in his base period were for less than full-time work or the claimant establishes eligibility under the Americans with Disabilities Act. ~~*Ref. Sec. 72-1366(6), Idaho Code.*~~ An individual who restricts his availability to part-time work pursuant to Section 72-1366(4)(c), Idaho Code, will be considered fully employed and ineligible to receive benefits if the individual works hours comparable to his part-time work experience in his base period. ~~*(3-19-99)*~~( )

13. Incarceration/Work Release. A claimant who is incarcerated for any part of the claimant's normal workweek is not eligible for benefits for that week, unless the claimant can establish he has work release privileges which would provide him a reasonable opportunity to

meet his work search requirements and obtain full-time employment. (3-19-99)

14. Jury Duty/Subpoenas. A claimant serving on jury duty or subpoenaed is excused from the availability and work-seeking requirements of the law for that time period. A claimant is not ineligible if he must refuse work because of the jury duty or subpoena. (3-19-99)

15. Licensing or Government Restrictions. A claimant prohibited by law from engaging in certain work must be available for other employment to be eligible for benefits. (3-19-99)

16. Moving to Remote Area. A claimant who moves to a remote locality where there is very little possibility of obtaining work will be ineligible for benefits. (3-19-99)

17. Prospects for Work. A claimant who is unemployed for a long period of time is expected to lower his expectations for employment and become available for work which may not have been previously considered suitable. (3-19-99)

18. Public Official. A public official who receives pay and performs "full-time" service is not unemployed or eligible for benefits. Part-time officials, even though receiving pay, may be considered available for work the same as any other individual employed on a part-time basis. Ref. Sec. 72-1312(1). (3-19-99)

19. Public Service. Performing public service, including voluntary non-remunerated service, does not disqualify an individual for benefits as long as he is meeting the availability and work-seeking requirements. (3-19-99)

20. Questionable Availability. A claimant must be notified of his questionable availability status and given an opportunity to provide proof of his availability before a determination is made on the issue. (3-19-99)

21. Restricting Work to Within the Home. A claimant who restricts his availability to only work done within the home which severely limits the work available to him is ineligible for benefits. (3-19-99)

22. School Attendance or a Training Course. A person who is attending school or a training course may be eligible for benefits if the attendance does not conflict in any way with that person's availability for work or for seeking work and if he will discontinue attendance upon receipt of an offer of employment if there is a conflict between employment and the schooling or training. (3-19-99)

23. Temporary Absence from Local Labor Market to Seek Work. All claimants, regardless of their attachment to an industry or employer, must meet the same standard of remaining within their local labor market area during the workweek in order to be considered available for work, unless the primary purpose of a temporary absence is to seek work in another labor market. (3-19-99)

24. Time. (3-19-99)

a. Time Restrictions. A claimant shall not impose restrictions on his time, including either hours of the day or days of the week, which will limit his availability to seek or accept suitable work. (3-19-99)

b. Shift Restrictions. A claimant who restricts his availability to a single shift may not be fully available for work if the restriction significantly reduces his chances of becoming employed. (3-19-99)

25. Transportation Difficulties. Lack of transportation is not a bona fide reason for a claimant to fail to be available for or to seek work. Transportation is the responsibility of the claimant. (3-19-99)

26. Unreasonable Restrictions on Working Conditions. A claimant who places unreasonable restrictions on working conditions so as to seriously hinder his availability and search for work is ineligible for benefits. (3-19-99)

27. Vacation. A person on a vacation approved by his employer during time when work is available is not considered available for work nor eligible for benefits. (3-19-99)

28. Wages. A claimant shall not be ineligible for benefits if the wages or other conditions of available work are substantially less favorable to the claimant than those prevailing for similar work in the local area. Ref. Sec. 72-1366(7)(b), Idaho Code. (3-19-99)

a. Demanding Higher Wages. A claimant shall be ineligible for benefits if he unduly restricts his availability for work by insisting on a wage rate that is higher than the prevailing wage for similar work in that area. (3-19-99)

b. Prior Earnings. The claimant's prior earnings and past experience shall be considered in determining whether he is available for suitable work. (3-19-99)

29. Waiver of One-Year Training Limitation. For purposes of approving a waiver of the one (1) year limitation on school or training courses, specified by Idaho Code Section 72-1366(8)(c)(ii), for claimants who lack skills to compete in the labor market, the following criteria must be met: (3-19-99)

a. Financial Plan. The claimant must demonstrate a workable financial plan for completing the school or training course after his benefits have been exhausted. (3-19-99)

b. Demand for Occupation. The claimant must establish there is a demand for the occupation in which the claimant will be trained. A "demand occupation" is one in which work opportunities are available and there is not a surplus of qualified applicants. (3-19-99)

c. Duration of Training. At the time that the claimant applies for the waiver, the duration of the school or training course is no longer than two (2) years to completion. (3-19-99)

d. Denial. No claimant shall be denied a waiver of the one (1) year limitation on school or training because the claimant is already enrolled or participating in the school or training at the time he requests the waiver. (3-19-99)

IDAPA 09 - DEPARTMENT OF LABOR

09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, 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:

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009 Idaho Administrative Bulletin, Vol. 09-8, pages 42 and 43.

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

There will be no impact on the general fund as a result of this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Unemployment Insurance Compliance Bureau Chief, 332-3570 ext. 3258.

DATED this 16th day of September, 2009.

Don Arnold
Unemployment Insurance Compliance Bureau Chief
Department of Labor
317 W. Main St., Boise, ID 83735
Phone 332-3570 ext. 3258
Fax 334-6301

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-1333, 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 August 19, 2009.

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

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

IDAPA 09.01.35.241 is being changed to delete from subsection (c) and move to a new subsection (d), with minor changes, the following: "In order to exclude the value of lodging from an employee's gross wages, the employer must show that the wages paid to the employee for services performed meets the prevailing wage for those services. If the employer's records do not show or establish that the employee received the prevailing wage for services performed, then the reasonable or fair market value of the lodging will be included in the employee's gross income as wages."

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the agency determined it was not feasible due to of the simple nature of the change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Don Arnold, Unemployment Insurance Compliance Bureau Chief, (208) 332-3570 ext. 3258.

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 August 26, 2009.

DATED this 2nd of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

241. BOARD, LODGING, MEALS.
When board, lodging, meals, or any other payment in kind considered as payment for services performed by an employee constitute a part of wages or wholly comprise an employee's wages, the value of such board, lodging, or other payment shall be determined as follows: (3-19-99)

01. Cash Value. If a cash value for such board, lodging, or other payment is agreed upon in any contract of hire, the amount so agreed upon shall be used provided it is a reasonable, fair market value. If there is no agreement, or if the contract of hire states an amount less than a reasonable, fair market value, the Department of Labor shall determine the reasonable or fair market value to be used. Ref. Sec. 72-1328, Idaho Code. (3-30-01)

02. Meals and Lodging Not Included in Gross Wages. The value of meals and lodging furnished by an employer to the employee will not be included in the employee's gross income if it meets the following tests: (4-11-06)

a. The meals or lodging are furnished on the employer's business premises; (3-19-99)

b. The meals or lodging are furnished for the employer's convenience; and (3-19-99)

c. In the case of lodging (but not meals), the employees must be required to accept the lodging as a condition of their employment. This means that they must accept the lodging to allow them to properly perform their duties. (____)

d. In ~~*addition, in*~~ order to exclude the value of lodging from an employee's gross wages, the employer must show that the wages paid to the employee for services performed meets the prevailing wage for those services. If the employer's records do not show or establish that the employee received the prevailing wage for services performed, then the reasonable or fair market value of the lodging will be included in the employee's gross income as wages. Ref. Sec. 72-1328, Idaho Code. ~~*(3-19-99)*~~(____)

03. Meals or Lodging for Employer Convenience. Meals or lodging furnished will be considered for the employer's convenience if the employer has a substantial business reason other than providing additional pay to the worker. A statement that the meals or lodging are not intended as pay is not enough to prove that either meals or lodging are furnished for the employer's convenience. Ref. Sec. 72-1328, Idaho Code. (3-19-99)

04. Subsistence Remuneration. In the case of employees who receive remuneration in the form of subsistence, such as groceries, staples, and fundamental shelter, the fair value of such subsistence will be determined by the Director. Ref. Sec. 72-1328, Idaho Code. (3-19-99)

IDAPA 09 - DEPARTMENT OF LABOR

09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-0902

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, 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:

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009 Idaho Administrative Bulletin, Vol. 09-8, pages 44 and 45.

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

There will be no impact on the general fund as a result of this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Unemployment Insurance Compliance Bureau Chief, 332-3570 ext. 3258.

DATED this 16th day of September, 2009.

Don Arnold
Unemployment Insurance Compliance Bureau Chief
Department of Labor
317 W. Main St., Boise, ID 83735
Phone 332-3570 ext. 3258
Fax 334-6301

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-1333, 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 August 19, 2009.

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

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

IDAPA 09.01.35.262.01 is being changed to insert "paid" to accurately reflect that wages must be paid for this rule to apply.

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

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

There will be no impact on the general fund as a result of this rule change.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the agency determined it was not feasible due to of the simple nature of the change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Don Arnold, Unemployment Insurance Compliance Bureau Chief, (208) 332-3570 ext. 3258.

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 August 26, 2009.

DATED this 2nd of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

262. DETERMINATION OF PROPER QUARTER IN WHICH TO ASSIGN AND REPORT WAGES.

01. Wage Assignment to Proper Calendar Quarter. Wages paid shall be assigned to the calendar quarter in which the wages were: ~~(3-19-99)~~(____)

a. Actually paid to the employee in accordance with the employer's usual and customary payday as established by law or past practice; or (3-30-01)

b. Due the employee in accordance with the employer's usual and customary payday as established by law or past practice but not actually paid on such date because of circumstances beyond the control of the employer or the employee; or (3-30-01)

c. Not paid on the usual or customary payday as established by law or past practice but set apart on the employer's books as an amount due and payable or otherwise recognized as a specific and ascertainable amount due and payable to the worker in accordance with an agreement or contract of hire under which services were rendered. Ref. Sec. 72-1367, Idaho Code. (3-19-99)

02. Draws and Advances on Wages. Payments to employees made prior to regular or established paydays will be assignable and reportable during the quarter in which they would have been paid unless a practice is established whereby all employees or a class of employees are given an opportunity to take a "draw" by which such action, another "regular" payday appears to have been created. (3-19-99)

03. Judgments of Wages. Amounts received as a result of labor relations awards or judgments for back pay, or for disputed wages, constitute wages and will be reported in the quarter or quarters in which the award or judgment has become final, after all appeals have been exhausted, or the quarter or quarters to which the court assigns the wages, if different. Ref. Sec. 72-1328, Idaho Code. (3-15-02)

04. Awarded Damages Against Employers. Amounts awarded to the claimant as a penalty or damages against the employer, other than for lost wages, do not constitute wages. Ref. Sec. 72-1328, Idaho Code. (3-19-99)

IDAPA 09 - DEPARTMENT OF LABOR

09.03.01 - RULES OF THE RURAL BROADBAND DEVELOPMENT MATCHING FUND PROGRAM

DOCKET NO. 09-0301-0901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 72-1333, 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:

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, page 232.

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

There will be no impact on the general fund as a result of this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Bob Fick, Communications & Legislative Liaison, (208) 332-3570 ext. 3628.

DATED this 29th day of October, 2009.

Bob Fick
Communications & Legislative Liaison
Idaho Department of Labor
317 W. Main St.
Boise, Idaho 83735
(208) 332-3570 ext. 3628, Fax (208) 334-6455

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 72-1333, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: **The Broadband Development Matching Fund program is no longer funded by the legislature.**

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: **The repeal of this rule confers a cost saving benefit to the public and the State.**

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the legislative appropriation for this program ended June 30, 2008.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Bob Fick, Communications & Legislative Liaison, (208) 332-3570 ext. 3628.

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 Wednesday, October 28, 2009.

DATED this 10th day of August, 2009.

IDAPA 09.03.01 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.03 - SECURITY FOR COMPENSATION

DOCKET NO. 17-0203-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, 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 original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 18 through 28.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Scott McDougall, (208) 334-6063.

DATED this 10th day of November, 2009.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

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

Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72, 803, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

1. **Requires self-insured employers to maintain a licensed resident claims adjuster located within Idaho to alleviate the need for employees with no expertise or licensure to service claims.**

2. **Medical reports are often mailed out of state for scanning which increases the length of time for the information to reach the in-state adjuster which runs counter to the requirement for "prompt" claims adjusting. This change would require documents to be date-stamped with the name of the receiving office and by each receiving agent or vendor acting on behalf of the claims office to determine where delays in claims processing may be occurring.**

3. **Sureties, upon approval, designate one in-state adjuster to service their claims. Sureties usually have more than one adjuster or later assign additional adjusters and often change adjusters for certain employers without the changes being reported to the Commission. This creates a problem of identification of the correct adjuster for the claimant and Commission. This change would require prompt and accurate reporting of each adjuster for each policyholder of the surety.**

4. **Deletion of an order adopted as a rule in 1969 in regards to a petition by an insurance carrier that is no longer an Idaho insurer to establish rules for banks that hold security deposits required by the Industrial Commission.**

5. **Reporting and assessment dates changed to coincide with 72-327, Idaho Code.**

6. **Updating language or "housekeeping" to keep terminology uniform throughout the rules.**

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated

rulemaking was not conducted because the changes are not considered to be controversial. However, the rule does have the approval of the Industrial Commission's Advisory Committee.

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

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

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

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

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

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

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

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

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

d. That an Idaho licensed adjuster or adjusters have been appointed, resident in Idaho, to whom have been given authority to make compensation payments and adjustments of claims arising under the Act and the name of said adjuster or adjusters and residence thereof. If

more than one (1) adjuster is utilized in Idaho, a list of every such adjuster and all corresponding policyholders shall be provided. ~~*(5-26-72)*~~(____)

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

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

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

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

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

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

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

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

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

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

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

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

k. That ~~*is*~~ said carrier will make such reports to the Commission as it may require in reference to matters under the ~~*Workmen's*~~ Workers' Compensation Law. IC Form 3~~5~~6, Report on Outstanding Awards, must be filed ~~*monthly*~~ quarterly with the Commission. ~~*(5-26-72)*~~(____)

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

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

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

b. In addition to the security required in Subsection 012.01.a., above, each insurance ~~*company*~~ carrier shall deposit an amount equal to the total unpaid outstanding awards of said insurance ~~*company*~~ carrier. Such deposit shall be in the form of cash, U. S. obligations, Idaho municipal bonds, or a surety bond in the form set forth in Subsectoin 011.02.f. of these rules. If a surety bond is deposited, the surety company shall be completely independent of the principal and authorized to transact such business in the state of Idaho. ~~*(3-23-98)*~~(____)

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

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

03. Maintain Resident Idaho Office. Each insurance ~~*company*~~ carrier shall maintain

an Idaho licensed resident adjuster or adjusters, or its own adjusting offices or officers resident in Idaho who have been appointed and have been given authority as to claims arising under the Act. (____)

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

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

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

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

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

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

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

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

d. The most recent proof of coverage information contained in the Industrial Commission's database shall be presumed to be correct for the purpose of determining the

insurance ~~*company*~~ carrier providing coverage. ~~*(3-23-98)*~~(____)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

l. The report shall indicate in Column 6 the total amount of compensation paid to date. (3-23-98)

m. The report shall indicate in Column 7 adjustments due to clerical error or status changes such as remarriage or death. (3-23-98)

n. The report shall indicate in Column 8 the unpaid balance in each claim. (3-23-98)

11. Comply with Law and Rules. Each insurance ~~*company*~~ carrier shall comply with the statutes of the state of Idaho and the rules of the Industrial Commission to ensure that payments of compensation shall be sure and certain and not unnecessarily delayed. ~~*(3-23-98)*~~(____)

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

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

~~***01. Order Allowing Deposit of Securities in Bank****. IT IS HEREBY ORDERED, and this does order, that upon request by any self-insured employer, the State Fund of Idaho, or surety companies, and upon approval of the state of Idaho in each instance, said requests by said self-insured employers, State Fund, or surety companies shall allow and permit certain securities required under Section 72-801, Idaho Code, to be placed in the Trust Department of a bank approved by the Industrial Commission and the State Treasurer for safekeeping and custody;*~~

~~*however, further provided that said deposits shall be made with and held by the Trust Department of said approved established bank located in Boise, Idaho, and further approved by the Industrial Commission and the State Treasurer, and said security is to be further held by the Trust Department of said bank under custodial arrangements likewise approved by the Industrial Commission and the State Treasurer. It is further provided, in each instance, that the cost of any such custodial arrangement shall be born by the self-insured employer, State Insurance Fund, or surety company making said request. Further, neither the state of Idaho, nor any of its departments or agencies, shall have responsibility for the safekeeping of said deposited securities in the Trust Department of said designated and approved, established bank. (5-27-69)*~~

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

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

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

~~***05. Provisions for Release, Exchange or Substitution of Securities****. IT IS FURTHER PROVIDED AND ORDERED under this rule that in no event are any of the securities so deposited with the Trust Department of said banking institution to be released to any individual, business, firm or institution, except upon order of a court of competent jurisdiction or upon proper certified order of the Industrial Commission, either for purposes of release of said securities or for substitution or exchange thereof, and in this regard, in all instances said securities so deposited for custody and safekeeping with Trust Department of said established banks are to be kept with the Trust Department of said designated banking institutions. (5-27-69)*~~

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

014~~4~~3. RULES GOVERNING SELF-INSURED EMPLOYERS.
Upon receiving the approval of the Industrial Commission to be a self-insured employer under Section 72-301, Idaho Code, to continue such approval a self-insured employer shall: (4-1-90)

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

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

SELF-INSURER'S COMPENSATION BOND

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

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

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall pay compensation according to the terms, provisions, and limitations of Idaho Code, Title 72, Chapter 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto, to its injured employees or the dependents of its killed employees contemplated by the terms of and

covered under the said law, and shall furnish medical, surgical, nursing and the hospital services and attention and funeral expenses as provided for in said law (all of which shall be understood to be included in the term "compensation" as hereinafter used), then this obligation shall be null and void, otherwise to remain in full force and effect, subject, however to the following express conditions and agreements:

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

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

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

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

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

Countersigned

By

Resident Agent Principal

SEAL

SEAL By _____

By _____

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

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

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

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

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

d. Enter into compensation agreements and lump sum settlements with Claimants; (4-1-90)

e. Provide at the employer's expense necessary forms to any employee who wishes to file a claim under the Workers' Compensation Law. (4-1-90)

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

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

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

01~~5~~4. -- 050. (RESERVED).

051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.
All sureties, self-insured employers, and licensed adjustors servicing Idaho workers'

compensation claims shall comply with the following requirements: (5-5-93)

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

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

a. Notice of Injury and Claim for Benefits; (5-5-93)

b. Copies of bills for medical care; (5-5-93)

c. Copy of lost-time computations, if applicable; (5-5-93)

d. Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.); (5-5-93)

e. Employer's Supplemental Report; and (5-5-93)

f. Medical reports. (5-5-93)

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

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

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

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

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

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

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

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

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

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

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

a. Payment of medical bills in accordance with the provisions of IDAPA 17.02.08, Miscellaneous Provisions, Sections 031 and 032. ~~*(formerly IDAPA 17.01.03.803.A and B);*~~ ~~*(5-5-93)*~~(____)

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

271. RULE GOVERNING REPORTING INDEMNITY PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND ASSESSMENT.
Pursuant to Section 72-327, Idaho Code, the state insurance fund, every authorized self-insurer, and every surety authorized to transact workers' compensation insurance in Idaho shall report ~~*semi-*~~annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. ~~*(3-23-98)*~~(____)

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

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

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

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

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

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

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

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

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

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-0902

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, 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 original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 29 through 32.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Scott McDougall, (208) 334-6063.

DATED this 10th day of November, 2009.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

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

Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72, 803, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

There is no fiscal impact to the general fund.

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

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

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

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

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

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

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

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

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

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

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

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

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

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

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

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

i. In a case in which no hearing on the merits has been held, twenty-five percent

(25%) of available funds shall be presumed reasonable; or (7-1-94)

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

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

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

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

b. An attorney representing a claimant in a Workers' Compensation matter shall in any proposed lump sum settlement, or upon request of the Commission, file with the Commission, and serve the claimant with a copy of the fee agreement, and an affidavit or memorandum containing: (7-1-94)

i. The date upon which the attorney became involved in the matter; (7-1-94)

ii. Any issues which were undisputed at the time the attorney became involved; (7-1-94)

iii. The total dollar value of all compensation paid or admitted as owed by employer immediately prior to the attorney's involvement; (7-1-94)

iv. Disputed issues that arose subsequent to the date the attorney was hired; (7-1-94)

v. Counsel's itemization of compensation that constitutes available funds; (7-1-94)

vi. Counsel's itemization of costs and calculation of fees; and (7-1-94)

vii. Counsel's itemization of medical bills for which claim was made in the underlying action, but which remain unpaid by employer/surety at the time of lump sum settlement, along with counsel's explanation of the treatment to be given such bills/claims following approval of the lump sum settlement. (____)

viii. The statement of the attorney identifying with reasonable detail his or her fulfillment of each element of the charging lien. (7-1-94)

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

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

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

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

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

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

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

State of Idaho
Industrial Commission

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

DISCLOSURE STATEMENT

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

2. Depending upon the circumstances of your case, you and your attorney may agree to a

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

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

Client's Signature Date

Attorney's Signature Date (7-1-94)

~~***05. Effective Dates****. Subparagraphs i., ii., and iii. of Subsection 033.01.e. are effective as to fee agreements entered into on and after December 1, 1992. All other provisions shall be effective on and after December 20, 1993.* *(7-1-94)***~~

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-0903

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, 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 original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 33 through 36.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Patti Vaughn, (208) 334-6084.

DATED this 10th day of November, 2009.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

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

Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72, 803, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

There is no impact to the general fund.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, (208)334-6084.

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

DATED this 26th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES UNDER THE IDAHO WORKERS' COMPENSATION LAW.
Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter "the Commission") hereby adopts the following rule for determining acceptable charges for medical services provided under the Idaho Workers' Compensation Law: (3-12-07)

01. Definitions. Words and terms used in this rule are defined in the subsections which follow. (6-1-92)

a. "Acceptable charge" means the lower of the charge for medical services calculated in accordance with this rule or as billed by the provider, or the charge agreed to pursuant to written contract. (3-12-07)

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

c. "Hospital" is any acute care facility providing medical or hospital services and which bills using a Medicare universal hospital billing form. (4-2-08)

i. Large hospital is any hospital with more than one hundred (100) acute care beds. (4-2-08)

ii. Small Hospital is any hospital with one hundred (100) acute care beds or less. (4-2-08)

d. "Provider" means any person, firm, corporation, partnership, association, agency, institution or other legal entity providing any kind of medical service related to the treatment of an industrially injured patient which are compensable under Idaho's Workers' Compensation Law. (3-12-07)

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

f. "Medical Service" means medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses, and related service, facility, equipment and supply. (3-12-07)

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

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

i. "Customary" means a charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. (3-12-07)

02. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services. (3-12-07)

a. Adoption of Standard. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law by providers other than hospitals and ASCs. The standard for determining the acceptable charge for hospitals and ASCs shall be: (4-2-08)

i. For large hospitals: Eighty-five percent (85%) of the appropriate inpatient charge. (4-2-08)

ii. For small hospitals: Ninety percent (90%) of the appropriate inpatient charge. (4-2-08)

iii. For ambulatory surgery centers (ASCs) and hospital outpatient charges: Eighty percent (80%) of the appropriate charge. (4-2-08)

iv. Surgically implanted hardware shall be reimbursed at the rate of actual cost plus fifty percent (50%). (4-2-08)

v. Paragraph 031.02.e., shall not apply to hospitals or ASCs. The Commission shall determine the appropriate charge for hospital and ASC services that are disputed based on all relevant evidence in accordance with the procedures set out in Subsection 032.10. (4-2-08)

b. Conversion Factors. The following conversion factors shall be applied to the fully-implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	**CODE RANGE(S)**	**DESCRIPTION**	**CONVERSION FACTOR**
Anesthesia	00000 - 09999	Anesthesia	$~~*58.19*~~ 60.05
Surgery - Group One	22000 - 22999 23000 - 24999 25000 - 27299 27300 - 27999 29800 - 29999 61000 - 61999 62000 - 62259 63000 - 63999	Spine Shoulder, Upper Arm, & Elbow Forearm, Wrist, Hand, Pelvis & Hip Leg, Knee, & Ankle Endoscopy & Arthroscopy Skull, Meninges & Brain Repair, Neuroendoscopy & Shunts Spine & Spinal Cord	$~~*140*~~ 144.48

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	**CODE RANGE(S)**	**DESCRIPTION**	**CONVERSION FACTOR**
Surgery - Group Two	28000 - 28999 64550 - 64999	Foot & Toes Nerves & Nervous System	$~~125~~ 129.00
Surgery - Group Three	13000 - 19999 20650 - 21999	Integumentary System Musculoskeletal System	$~~110~~ 113.52
Surgery - Group Four	20000 - 20615 30000 - 39999 40000 - 49999 50000 - 59999 60000 - 60999 62260 - 62999 64000 - 64549 65000 - 69999	Musculoskeletal System Respiratory & Cardiovascular Digestive System Urinary System Endocrine System Spine & Spinal Cord Nerves & Nervous System Eye & Ear	$~~85~~ 87.72
Surgery - Group Five	10000 - 12999 29000 - 29799	Integumentary System Casts & Strapping	$~~67~~ 69.14
Radiology	70000 - 79999	Radiology	$~~85~~ 87.72
Pathology & Laboratory	80000 - 89999	Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 90799 94000 - 94999 97000 - 97799 97800 - 98999	Immunization, Injections, & Infusions Pulmonary / Pulse Oximetry Physical Medicine & Rehabilitation Acupuncture, Osteopathy, & Chiropractic	$~~45~~ 46.44
Medicine - Group Two	90800 - 92999 96040 - 96999 99000 - 99607	Psychiatry & Medicine Assessments & Special Procedures E / M & Miscellaneous Services	$~~64.50~~ 66.56
Medicine - Group Three	93000 - 93999 95000 - 96020	Cardiography, Catheterization, & Vascular Studies Allergy / Neuromuscular Procedures	$~~70~~ 72.24

~~(4-2-08)~~(_____)

c. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996. (4-2-08)

d. Adjustment of Conversion Factors. The conversion factors set out in this rule shall be adjusted each fiscal year (FY), starting with FY 2009, as determined by the director of the Department of Health and Welfare using the methodology set forth in section 56-136, Idaho Code, pursuant to Section 72-803, Idaho Code. (4-2-08)

e. Services Without CPT Code, RVU or Conversion Factor. The acceptable charge

for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 031.02.b., determine the acceptable charge for that service, based on all relevant evidence in accordance with the procedures set out in Subsection 032.10. (4-2-08)

f. Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows: (3-12-07)

i. Modifier 50: Additional fifty percent (50%) for bilateral procedure. (3-12-07)

ii. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. (3-12-07)

iii. Modifier 80: Twenty-five percent (25%) of coded procedure. (3-12-07)

iv. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. (3-12-07)

IDAPA 17 - INDUSTRIAL COMMISSION

17.06.01 - BOILER AND PRESSURE VESSEL SAFETY RULES -- GENERAL

DOCKET NO. 17-0601-0901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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. This is a Chapter Repeal. The notice of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, page 37.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alvin Caine, Division of Building Safety, (208) 332-7153.

DATED this 10th day of November, 2009.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

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

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

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

DATED this 27th day of August, 2009.

IDAPA 17.06.01 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 17 - INDUSTRIAL COMMISSION

17.06.02 - BOILER AND PRESSURE VESSEL SAFETY RULES -- ADMINISTRATION

DOCKET NO. 17-0602-0901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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. This is a Chapter Repeal. The notice of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, page 38.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alvin Caine, Division of Building Safety, (208) 332-7153.

DATED this 10th day of November, 2009.

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

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

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

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

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

DATED this 27th day of August, 2009.

IDAPA 17.06.02 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 17 - INDUSTRIAL COMMISSION

17.06.03 - BOILER AND PRESSURE VESSEL SAFETY RULES - INSPECTIONS

DOCKET NO. 17-0603-0901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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. This is a Chapter Repeal. The notice of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, page 39.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alvin Caine, Division of Building Safety, (208) 332-7153.

DATED this 10th day of November, 2009.

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

THE FOLLOWNG NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

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

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

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

DATED this 27th day of August, 2009.

IDAPA 17.06.03 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 17 - INDUSTRIAL COMMISSION

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

DOCKET NO. 17-0604-0901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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. This is a Chapter Repeal. The notice of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, page 40.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alvin Caine, Division of Building Safety, (208) 332-7153.

DATED this 10th day of November, 2009.

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

THE FOLLOWNG NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

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

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

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

DATED this 27th day of August, 2009.

IDAPA 17.06.04 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 17 - INDUSTRIAL COMMISSION

17.06.05 - BOILER AND PRESSURE VESSEL SAFETY RULES - BOILER ATTENDANTS

DOCKET NO. 17-0605-0901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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. This is a Chapter Repeal. The notice of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, page 41.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Alvin Caine, Division of Building Safety, (208) 332-7153.

DATED this 10th day of November, 2009.

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

THE FOLLOWNG NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

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

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

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

DATED this 27th day of August, 2009.

IDAPA 17.06.05 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 17 - INDUSTRIAL COMMISSION

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

DOCKET NO. 17-0801-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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 original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 42 through 46.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Steve Keys, Division of Building Safety, (208) 332-8986.

DATED this 10th day of November, 2009.

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

THE FOLLOWNG NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

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

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2009.

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

009. EMPLOYER'S RESPONSIBILITY.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ii. Interfere with the use of any method or process adopted for the protection of any

employee, including himself, in such employment or place of employment. (7-1-97)

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

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

i. A definite procedure for checking the welfare of all workers during working hours shall be instituted and all workmen so advised. The employer shall assume responsibility of work assignments so that no worker shall be required to work in a position or location so isolated or hazardous that he is not within visual or audible signal contact with another person who can render assistance in case of emergency. In any operation where cutting, yarding, loading, or a combination of these duties are carried on there shall be a minimum crew of two (2) persons who shall work as a team, and shall be in visual or audible signal contact with one another. This does not apply to operators or motorized equipment, watchmen, or certain other jobs which, by their nature are singular workmen assignments. There shall be some method of checking the men in at the end of the shift. Each immediate supervisor shall be responsible for his crew being accounted for. This standard also includes operators of moveable equipment. (7-1-97)

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

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

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

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

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

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

d. Regular safety inspection of all rigging, logging, machinery, rolling stock, bridges,

and other equipment shall be made as often as the character of the equipment requires. Defective equipment or unsafe conditions found shall be replaced, repaired or remedied. (7-1-97)

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

010. EMPLOYEE'S RESPONSIBILITY.

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

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

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

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

03. Study Requirements. So that each worker may be better qualified to cooperate with his fellow workmen in preventing accidents, he shall study and observe these and any other safety standards governing his work. (7-1-97)

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

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

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

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

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

e. The employee shall at all times apply the principles of accident prevention in his daily work and shall use proper safety devices and protective equipment. No employee shall remove, displace, damage, destroy, or carry off any safety device or safeguard furnished and provided for use in any employment or interfere in any way with the use thereof by any other

person or interfere with the use of any method or process adopted for the protection of any employee in such employment or fail or neglect to do every other thing reasonably necessary to protect the life and safety of himself and fellow employees, and by observing safe practice rules shall set a good example for his fellow workmen. (7-1-97)

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

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

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

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

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

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

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

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

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

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

p. The employee should keep physically fit, and obtain sufficient rest. (7-1-97)

q. The employee should be certain, after receiving instructions, that they are understood completely before starting the work. (7-1-97)

r. The employee should actively participate in safety programs. (7-1-97)

s. The employee should study the safety educational material posted on the bulletin boards and distributed by the employer or safety committee. (7-1-97)

t. The employee should advise inexperienced fellow-employees of safe ways to do their work and warn them of dangers to be guarded against. (7-1-97)

u. It is the employer's responsibility to see that the foregoing provisions are complied with. (7-1-97)

IDAPA 17 - INDUSTRIAL COMMISSION

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

DOCKET NO. 17-0802-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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 original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 47 through 53.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Steve Keys, Division of Building Safety, (208) 332-8986.

DATED this 10th day of November, 2009.

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

THE FOLLOWNG NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2009.

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. FIRST AID.

01. Transportation. (7-1-97)

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

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

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

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

02. Communication. (7-1-97)

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

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

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

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

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

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

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

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

04. First Aid Training. ~~*Persons in charge of workers shall be required to have*~~

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

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

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

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

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

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

TABLE 010.06 SUGGESTED CONTENTS	
1. Gauze pads (at least 4 x 4 inches)	9. Tweezers
2. Two (2) large gauze pads (at least 8 x 10 inches)	10. Adhesive tape
3. Box adhesive bandages (band-aids)	11. Latex gloves

TABLE 010.06 SUGGESTED CONTENTS	
4. One (1) package gauze roller bandage (at least two (2) inches wide)	12. Resuscitation equipment such as resuscitation bag, airway, or pocket mask
5. Two (2) triangular bandages	13. Two (2) elastic wraps
6. Wound cleaning agent such as sealed moistened towelettes	14. Splint
7. Scissors	15. Directions for requesting emergency assistance
8. At least one (1) blanket	

~~*(7-1-97)*~~(_____)

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

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

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

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

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

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

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

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

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

~~***c.*** *First Aid Stations shall be equipped with hot and cold running water, or a means to heat water, and with a cot, blankets and pillows. If both men and women are employed, a means*~~

~~*shall be provided to furnish privacy for each sex.*~~ ~~*(7-1-97)*~~

011. SAFETY EQUIPMENT AND PERSONAL PROTECTIVE EQUIPMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IDAPA 17 - INDUSTRIAL COMMISSION

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

DOCKET NO. 17-0803-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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 original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 54 and 55.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Steve Keys, Division of Building Safety, (208) 332-8986.

DATED this 10th day of November, 2009.

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

THE FOLLOWNG NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

There is no fee being imposed or increased through this rulemaking.

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

There is no fiscal impact.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2009.

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. EXPLOSIVES AND BLASTING.

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

a. The transportation, handling and storage of explosives including blasting agents, shall be performed only by or under the supervision of a person or persons of proven experience and ability in blasting operations and of dependable character. (7-1-97)

b. All operations with explosives shall be conducted in accordance with the requirements of applicable Local, State and Federal Laws. (7-1-97)

c. Manufacturer's recommendations in the handling and use of the explosives or powders should be followed. (7-1-97)

d. Explosives or blasting powders shall not be stored together with detonators. (7-1-97)

e. Handling and use of explosives shall be restricted to as few employees as practical. (7-1-97)

f. All drill holes shall be of greater diameter than the diameter of cartridges of explosives used. (7-1-97)

g. All holes which have been "Sprung" shall not be loaded until sufficient time has been allowed for the hole to cool. (7-1-97)

h. All hand tamping shall be done with wooden tamper. (7-1-97)

i. Primers shall have caps firmly seated in cartridges. (7-1-97)

j. Where fused detonators (caps) are used, standard crimpers shall be provided and used.

~~*NOTE: Crimping with the teeth is expressly prohibited.*~~ ~~*(7-1-97)*~~(____)

k. Primers shall not be forced into prepared blasting holes. (7-1-97)

l. Fuse selection for each shot or series of shots shall be of ample length to allow adequate escape time. (7-1-97)

m. No blasting or preparation for blasting shall be done during the approach or progress of an electrical storm. (7-1-97)

n. Before firing shots, clear personnel from area, post a guard at all access routes and the warning "FIRE-IN-THE-HOLE" shall be given. (7-1-97)

o. Approved methods of electrical firing shall be used with electric detonators. (7-1-97)

p. The number of charges to be fired shall be counted to be certain that no misfires are left before work in the area is resumed. (7-1-97)

q. Misfires shall be handled only by an experienced and competent powder man in accordance with procedure recognized by the Institute of Makers of Explosives, U.S. Bureau of Mines or other recognized agencies. (7-1-97)

r. Workers handling explosives shall not carry loose caps or primers in their pockets or smoke while in the vicinity of explosives, powder, or caps. (7-1-97)

s. Explosives, primers, or caps shall not be carried on any vehicle when transporting employees other than those using the explosives. (7-1-97)

t. All detonators, detonating fuses, and explosives left over at the end of the day shall be promptly returned to their proper magazines. (7-1-97)

IDAPA 17 - INDUSTRIAL COMMISSION

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

DOCKET NO. 17-0805-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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 original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 56 and 57.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Steve Keys, Division of Building Safety, (208) 332-8986.

DATED this 10th day of November, 2009.

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

THE FOLLOWNG NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

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

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

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

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

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

011. SIGNALING.

01. One Worker to Give Signals. (7-1-97)

a. ~~*Only one (1) worker in any crew shall give signals at the point where chokers are being set.*~~ Worker sending drag shall be the only one to give signals. ~~*(7-1-97)*~~(____)

b. Any person is authorized to give a stop signal when a worker is in danger or other emergency condition are apparent. (7-1-97)

02. Signal Must Be Clear and Distinct. (7-1-97)

a. Machine operators shall not move any line unless the signal received is clear and distinct. (7-1-97)

b. If in doubt the operator shall repeat the signal as understood and wait for confirmation. (7-1-97)

03. Hand Signal Use Restricted. (7-1-97)

a. Hand signals are permitted only when in plain sight of the operator. (7-1-97)

b. Hand signals may be used at any time as an emergency stop signal. (7-1-97)

04. Persons in Clear Before Signal Given. All persons shall be in the clear before a signal is given to move logs or turns. (7-1-97)

05. Throwing Material Prohibited. Throwing of any type of material as a signal is prohibited. (7-1-97)

06. Use of Jerk Wire Prohibited. The use of jerk wire whistle system for any type of yarding operations is prohibited. (7-1-97)

07. Audible Signaling to Be Installed and Used. A whistle, horn or other audible signaling device, clearly audible to all persons in the affected area, shall be installed and used on all machines operating as yarders ~~*or swings*~~. ~~*(7-1-97)*~~(____)

08. Audible Signaling Device at the Machine to Be Activated. When radio or other means of signal transmission is used, an audible signal must be activated at the machine. (7-1-97)

IDAPA 17 - INDUSTRIAL COMMISSION

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

DOCKET NO. 17-0808-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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 original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 58 through 63.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Steve Keys, Division of Building Safety, (208) 332-8986.

DATED this 10th day of November, 2009.

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

THE FOLLOWNG NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

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

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

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

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

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. FALLING AND BUCKING.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

m. While wedging, fallers shall watch for limbs or other material which might be jarred loose. Cutting of holding wood in lieu of using wedges is prohibited. (7-1-97)

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

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

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

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

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

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

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

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

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

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

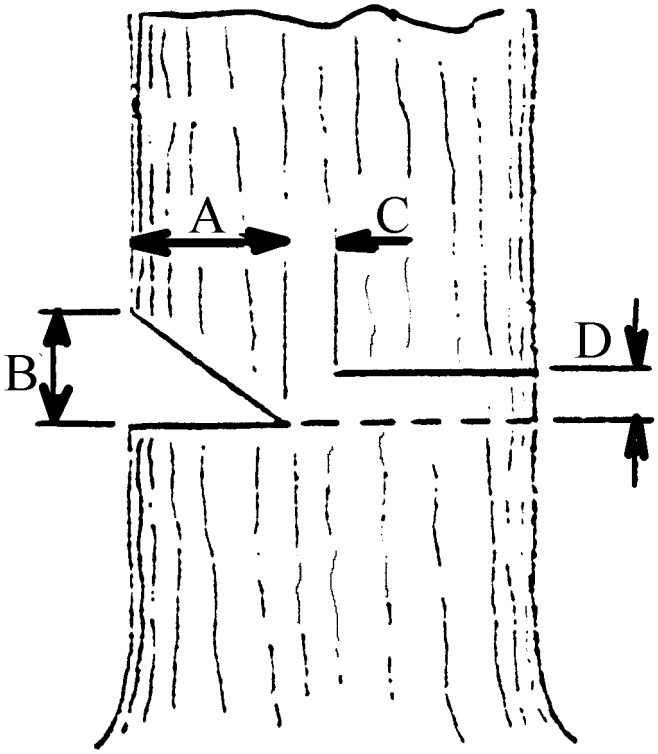
x. All personnel shall wear approved head protection, proper clothing and footwear. (7-1-97)

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

011. ILLUSTRATION OF UNDERCUTS.

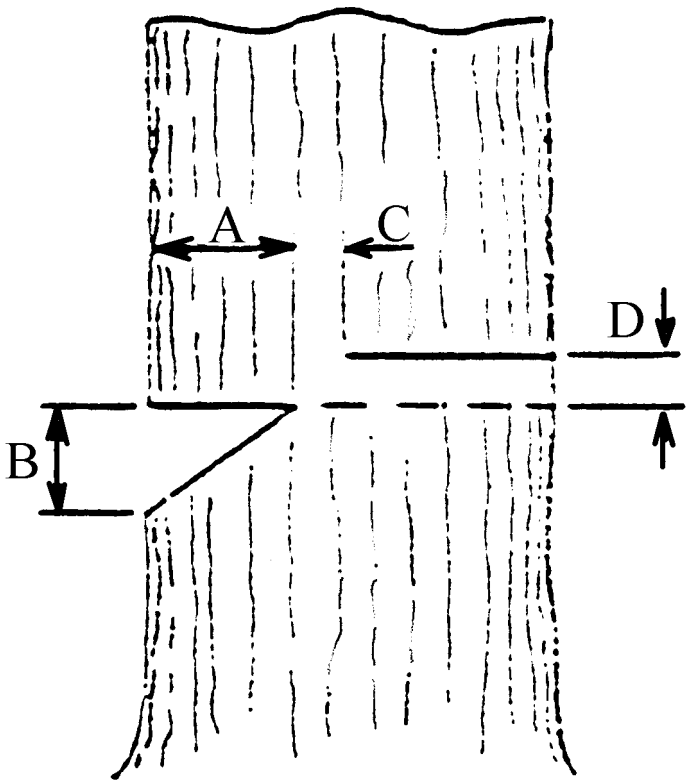
01. Illustration of Undercuts. (7-1-97)

FIGURE 011.01-A **- CONVENTIONAL UNDERCUT**



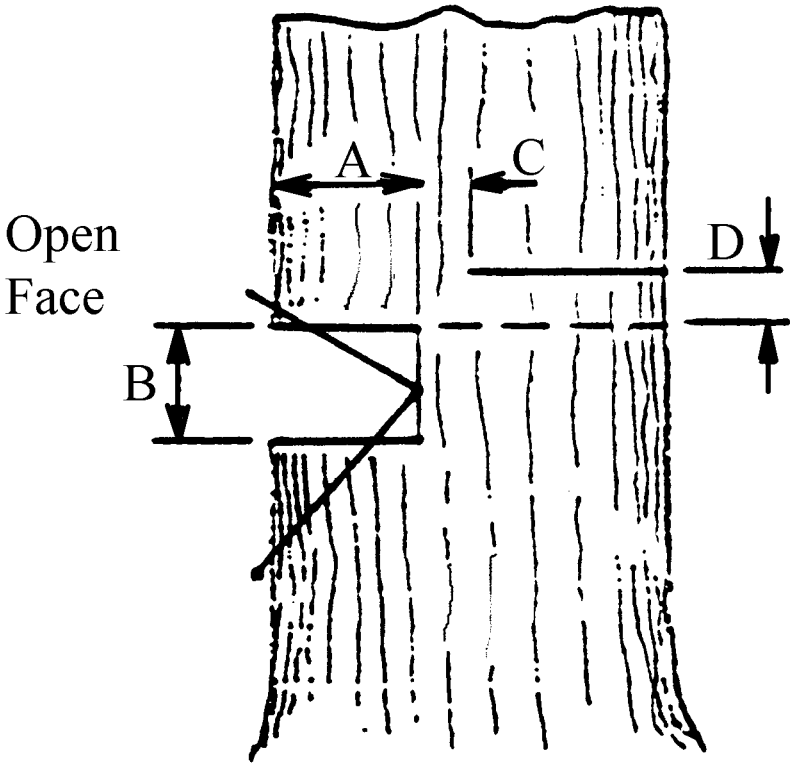
a. Conventional Undercut (Figure 011.01-A) - Can be made with parallel saw cut and a diagonal cut. ~~*(7-1-97)*~~(____)

FIGURE 011.01-B - <u>HUMBOLT UNDERCUT</u>



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

FIGURE 011.01-C



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

FIGURE 011.01-D IS BEING DELETED

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

IDAPA 17 - INDUSTRIAL COMMISSION

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

DOCKET NO. 17-0809-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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 original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 64 through 67.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Steve Keys, Division of Building Safety, (208) 332-8986.

DATED this 10th day of November, 2009.

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

THE FOLLOWNG NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

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

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

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

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

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

012. LINES, SHACKLES AND BLOCKS.

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

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

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

02. Splices. (7-1-97)

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

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

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

(7-1-97)

03. Clips. (7-1-97)

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

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

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

(7-1-97)

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

FIGURE 012.03-A

RIGHT

(7-1-97)

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

FIGURE 012.03-B

WRONG

WRONG

(7-1-97)

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

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

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

06. Shackles. (7-1-97)

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

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

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

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

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

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

TABLE 012.09-A -- TYPICAL WIRE ROPE SPECIFICATIONS, (6X19, OR 6X25 IWRC*)					
Cable Dimensions		Improved Plow Steel		Extra-Improved Plow Steel	
Diameter (inches)	Weight per foot (pounds)	Safe working load** (pounds)	Breaking strength (pounds)	Safe working load (pounds)	Breaking strength (pounds)
1/4	0.116	1,960	5,880	2,270	6,800
5/6	0.18	3,050	9,160	3,510	10,540
3/8	.26	4,370	13,120	5,000	15,100
7/16	.35	5,930	17,780	6,800	20,400
1/2	.46	7,700	23,000	89,800	26,600
9/16	.59	9,700	29,000	11,200	33,600
5/8	.72	12,000	36,000	13,700	41,200
3/4	1.04	17,100	53,200	19,600	58,800
7/8	1.42	23,100	69,200	26,500	79,600
1	1.85	30,000	90,000	64,500	103,500
1 1/8	2.34	37,700	113,200	43,300	130,000

TABLE 012.09-A -- TYPICAL WIRE ROPE SPECIFICATIONS, (6X19, OR 6X25 IWRC*)					
Cable Dimensions		Improved Plow Steel		Extra-Improved Plow Steel	
Diameter (inches)	Weight per foot (pounds)	Safe working load** (pounds)	Breaking strength (pounds)	Safe working load (pounds)	Breaking strength (pounds)
1 1/4	2.89	46,300	139,000	53,300	159,800
1 3/8	3.5	55,700	167,000	64,000	192,000
1 1/2	4.16	65,900	197,800	76,000	228,000
1 5/8	4.88	76,000	230,000	88,000	264,000
1 7/8	6.50	101,300	304,000	116,000	348,000
2	7.39	114,739	344,000	132,000	396,000
2 1/8	8.25	128,700	386,000	147,300	442,000
2 1/4	9.36	143,300	430,000	164,700	494,000
2 1/2	11.6	175,300	526,000	201,300	604,000
2 3/4	14.0	209,300	628,000	204,700	722,000

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

IDAPA 17 - INDUSTRIAL COMMISSION

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

DOCKET NO. 17-0810-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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 original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 68 and 69.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Steve Keys, Division of Building Safety, (208) 332-8986.

DATED this 10th day of November, 2009.

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

THE FOLLOWNG NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

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

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

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

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

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

011. TRACTORS AND SIMILAR LOGGING EQUIPMENT.

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

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

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

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

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

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

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

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

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

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

07. Seatbelts. (7-1-97)

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

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

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

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

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

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

IDAPA 17 - INDUSTRIAL COMMISSION

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

DOCKET NO. 17-0816-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final adoption. 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 72-508, 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 original text of the proposed rule was published in the October 7, 2009 Idaho Administrative Bulletin, Volume 09-10, pages 70 through 76.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Steve Keys, Division of Building Safety, (208) 332-8986.

DATED this 10th day of November, 2009.

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

THE FOLLOWNG NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 72-508, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

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

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

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

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

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

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

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

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

DATED this 27th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. -- 00~~8~~7. (RESERVED).

00~~9~~8. DEFINITIONS.
For definitions refer to IDAPA 17.08.01, "Idaho Minimum Safety Standards and Practices for Logging -- General Provisions," Section 007. (7-1-97)

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

(BREAK IN CONTINUITY OF SECTIONS)

011. FIRE AND SAFETY POLICY.

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

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

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

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

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

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

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

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

a. Personal protection devices (approved head protection, ear plugs, knee pads, proper eye protection, respirators, etc.) (7-1-97)

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

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

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

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

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

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

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

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

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

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

10. Management of Personnel. ( )

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

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

11. Assignment of Responsibilities. ( )

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

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

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

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

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

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

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

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

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

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

f. Establishes safety committee. (____)

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

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

~~*b*~~**i.** He shall assist the safety committee in developing agendas for their meetings. ~~*(7-1-97)*~~(____)

~~*09*~~**13. Foreman Responsibilities**. No theorem is more thoroughly proven and widely accepted than: the foreman is the key man in attaining proper work habits in any operation. It is the obligation of management to give the most careful attention to the selection, education, and training of foremen and train him in the proper way to train employees in correct and safe work methods to attain the best production in the safest way. (7-1-97)

1~~0~~4. First Aid Training. ~~*(7-1-97)*~~

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

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

1~~1~~5. Accident Record and Reporting System. (7-1-97)

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

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

c. The injury frequency rate shall be the number of lost time injuries to all employees per one million (1,000,000) man hours of exposure. The frequency rate is computed by multiplying the number of lost time injuries by one million (the standard of measurement) and

dividing the product by the total number of man hours worked during the period. The formula is expressed as follows: Frequency equals the number of lost time injuries times one million (1,000,000) total man hours of exposure. (7-1-97)

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

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

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

1~~2~~6. Training and Education. (7-1-97)

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

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

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

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

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

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

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

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

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

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

iv. Correct until the employee does it right; (7-1-97)

v. Supervise to see that the employee keeps doing it right. (7-1-97)

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

1~~3~~7. Employer, Employee, and Labor Representative Cooperation. (7-1-97)

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

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

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

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

1~~4~~8. Maintenance of Safe Working Conditions. (7-1-97)

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

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

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

15~~5~~9. Remedial Measures of Corrective Action. (7-1-97)

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

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

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

IDAPA 28 - DEPARTMENT OF COMMERCE

28.02.01 - IDAHO COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM (ICDBG)

DOCKET NO. 28-0201-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-4702, 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.

There are no changes to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the July 1, 2009 Idaho Administrative Bulletin, Vol. 09-7, pages 108 through 122.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dennis Porter, Community Development Manager, (208) 334-2650 ext. 2145.

DATED this 30th day of July, 2009.

Donald Dietrich, Director
Department of Commerce
700 W. State St.
P. O. Box 83720
Boise, ID 83720-0093
Phone: (208) 334-2470
Fax: (208) 334-2631

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-4702, 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 July 15, 2009.

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

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

The rule change is necessary to take advantage of available federal funding sources. The proposed changes will increase flexibility in providing access to federal funding for city and county projects.

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

The temporary rulemaking will confer a benefit on affected city and county entities.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: No state funding sources will be impacted.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dennis Porter, Community Development Manager, (208) 334-2650 ext. 2145.

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 July 22, 2009.

DATED this 19th day of May, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.
In 1981 Congress amended the Community Development Act of 1974 to allow states to assume the Department of Housing and Urban Development's Small Cities Community Development Block Grant Program. The Department of Commerce, through these rules, is implementing the state's administration of the Small Cities Community Development Block Grant program as authorized by the Housing and Community Development Act of 1974, as amended, (42 USC, Sec. 5301) and Department of Housing and Urban Development Rules 24 CFR, Part 570, Subpart I. Funds which are appropriated annually by Congress are allocated by statutory formula to each state. This chapter is adopted in accordance with Section 67-4702(2), Idaho Code. ~~*(7-6-94)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

002. WRITTEN INTERPRETATIONS.
The Department may have written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. These documents are available for public inspection at the Department's office. ( )

003. ADMINISTRATIVE APPEALS.
IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Section 100, et seq., shall apply. ( )

004. INCORPORATION BY REFERENCE.
IDAPA 28.02.01 incorporates by reference the following: ( )

01. 24 CFR 570.489, pages 41 and 43, dated April 1, 2004. Access to this document is available through the Department of Commerce website at this address: http://commerce.idaho.gov/. ( )

02. 24 CFR 570.611, page 46, dated April 1, 2004. Access to this document is available through the Department of Commerce website at this address: http://commerce.idaho.gov/. ( )

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The street address of the office of the Idaho Department of Commerce is 700 W. State Street,

Boise, Idaho 83720. The mailing address of the Department is P. O. Box 83720, Boise, Idaho 83720-0093. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The telephone number of the Department is (208) 334-2470. The Department's facsimile number is (208) 334-2631. ( )

006. PUBLIC RECORDS ACT COMPLIANCE.
Department records are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

00~~3~~7. -- 00~~9~~8. (RESERVED).

00~~2~~9. DEFINITIONS.
For the purposes of these rules, the following words are defined. (7-6-94)

01. Allocation. The state of Idaho's share of the Small Cities Community Development Block Grant Program as determined by the funding formula contained in the Housing and Community Development Act of 1974, as amended. (7-6-94)

02. Appropriation. The Federal funding, as set by Congress, for the Department of Housing and Urban Development (HUD). (7-6-94)

03. CDBG. The Community Development Block Grants, especially the Small Cities Program administered by HUD. (7-6-94)

04. Department. The Idaho Department of Commerce. ( )

0~~4~~5. Grant. The transfer of ICDBG funds, in accordance with state and federal law, from the Department to a unit of local government for the specific purpose of accomplishing the project described in the Application. (7-6-94)

0~~5~~6. ICDBG. The Idaho Community Development Block Grants. The Idaho Department of Commerce administered Small Cities ICDBG Program. (7-6-94)

(BREAK IN CONTINUITY OF SECTIONS)

016. BENEFIT TO LOW AND MODERATE INCOME PERSONS.

01. Definition. Members of a family having an income within family income standards established by HUD for housing and community development programs. Unrelated individuals are considered one (1) person families. Low income is defined as families with income of fifty percent (50%) or less of the county median income. Moderate income is defined as families with income of eighty percent (80%) or less of the county median income. HUD established that county median income is the greater of either the county median income or the median income of the "non-entitlement" area of the state. Activities considered to benefit LMI persons are divided into four (4) categories: area benefit activity, limited clientele activity,

housing activity, and job creation or retention activity. (7-6-94)

02. Area Benefit Activity. A grant project which meets the needs of LMI persons residing in an area where at least fifty-one percent (51%) of the residents are LMI persons. The benefits of this project are available to all persons in the area regardless of income. Such an area need not have the same boundaries as census tracts or other officially recognized boundaries but must be the entire area served by the project. A project that serves an area that is not primarily residential in character (i.e. street construction in an industrial park) shall not qualify under this category. (7-6-94)

03. Limited Clientele Activity. A grant project which benefits a specific group of people, at least fifty-one percent (51%) of whom are LMI persons. Limited clientele activities also include special projects to remove material and architectural barriers which restrict the mobility and accessibility of elderly or persons with disabilities to publicly-owned and privately-owned non-residential buildings. To qualify in limited clientele activity, the activity must meet one (1) of the following tests: (7-6-94)

a. Benefits a clientele group who are generally presumed to be principally LMI persons. Currently, the following groups are presumed by HUD to meet this criterion: elderly persons, homeless persons, persons with disabilities, migrant farm workers, abused children, battered spouses, illiterate persons; or (7-6-94)

b. Information on family size and income proves that at least fifty-one percent (51%) of the clientele are persons whose family income does not exceed the LMI limit; or (7-6-94)

c. Income eligibility requirements limit the activity exclusively to LMI persons; or (7-6-94)

d. By the nature and location it may be concluded that the clientele will primarily be LMI persons; or (7-6-94)

e. A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or persons with disabilities to publicly owned and privately owned non-residential buildings, facilities and improvements, and the common areas of residential structures containing more than one (1) dwelling unit. (7-6-94)

04. Housing Activity. A grant project which adds to or improves permanent, residential structures which, upon completion, will be occupied by LMI households. This project may include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction. (7-6-94)

a. The housing may be either one (1) family or multifamily structures. If the structure contains two (2) dwelling units, at least one (1) must be so occupied, and if the structure contains more than two (2) dwelling units, at least fifty-one percent (51%) of the units must be so occupied. Where two (2) or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under

this criterion. The unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose. (7-6-94)

b. The following shall also qualify under this criterion. When less than fifty-one percent (51%) of the units in a structure will be occupied by low and moderate income households, ICDBG assistance may be provided in the following limited circumstances: the assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project; not less than twenty percent (20%) of the units will be occupied by low and moderate income households at affordable rents; and the proportion of the total cost of developing the project to be borne by ICDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households. (7-6-94)

05. Job Creation or Retention Activity. A grant project which creates or retains permanent jobs, at least fifty-one percent (51%) of which are either taken by LMI persons or considered to be available to LMI persons. (7-6-94)

a. Acceptable documentation on applicant/employee family income includes any of the following: (3-20-97)

i. Notice that employee/applicant is a referral from state, county, or local employment agency or other entity that agrees to refer individuals who they determine to be low or moderate income based on HUD's criteria. These entities must maintain documentation which is to be available for grantee, Department, or federal inspection; or (3-20-97)

ii. Written certification signed by the employee/applicant of family income and size to establish income status showing either: The actual income of the family; or, a statement that the family income is below that required by CDBG standards. These forms must include a statement that they are subject to verification by the local or federal government; or (3-20-97)

iii. Evidence that employee/applicant qualifies for assistance under another program with income qualification criteria at least as restrictive as those used by HUD (e.g., referrals from the Workforce Investment Act (WIA) program), except for referrals under the WIA program for dislocated workers. (4-11-06)

b. For an activity designed to create permanent jobs where at least fifty-one percent (51%) of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate income persons. For an activity that creates jobs, the unit of general local government must document that at least fifty-one percent (51%) of the jobs will be "held by", or will be made "available to", low and moderate income persons. The unit of local government and the business must determine at the time of pre-application whether they will use "held by" or the "available to" criteria as their method of documenting LMI jobs. The option chosen cannot be changed at a later date. (3-20-97)

c. For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the ICDBG assistance and that either or both of the following conditions apply with respect to at least fifty-one percent (51%) of the jobs at the time the ICDBG assistance is provided: The job is known to be held by a low or moderate

income person; or the job can reasonably be expected to turn over within the following two (2) years and that it will be filled by, or that steps will be taken to ensure that it is made available to, a low or moderate income person upon turnover. (7-6-94)

d. Jobs will be considered to be "available to" low and moderate income persons for these purposes only if: special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and the unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs. First consideration shall consist of the business using a hiring practices that in all likelihood will result in over fifty-one percent (51%) of persons hired being LMI persons, the business must seriously consider/interview an adequate number of LMI applicants, the availability of transportation must be considered to allow LMI persons to commute to the job site. The hiring practice used to make jobs available to LMI persons shall be identified in the pre-application and approved by the Department. (3-20-97)

e. As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph, except: in certain cases, such as where ICDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park), the requirement may be met by measuring jobs in the aggregate for all the businesses that locate on the property, provided the businesses are not otherwise assisted by ICDBG funds; and where ICDBG funds are used to pay for the staff and overhead costs of a subrecipient specified in Section 105(a)(15) of the Act making loans to businesses from non-ICDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one (1) year period. (7-6-94)

f. In any case where ICDBG funds are used for public improvement (e.g., water, sewer and road) and the national objective is to be met by job creation or retention as a result of the public improvement, the requirement shall be met as follows: the assistance must be reasonable in relation to the number of jobs expected to be created or retained by the affected business(es) within two (2) years from the completion of the public improvement. If the ICDBG assistance is under ten thousand dollars ($10,000) per job created or retained, then only businesses applying for ICDBG assistance need to be assessed for low and moderate income job creation or retention. If the ICDBG equals <u>or exceeds</u> ten thousand dollars ($10,000) per job then any business benefiting by the public improvement, for a period of up to one (1) year after the physical completion of the public improvement, must be assessed for low and moderate income job creation or retention. ~~*(3-19-99)*~~<u>( )</u>

(BREAK IN CONTINUITY OF SECTIONS)

096. REVIEW AND RANKING NARRATIVE FOR BUSINESS EXPANSION PROJECTS.

The following are the review and ranking narrative requirements for those projects which assist business expansion through the provision of infrastructure and creation of jobs. The following minimum criteria must be included in the application by the application deadline in order for staff

to review and rank the project and recommend it to the Economic Advisory Council for consideration. (3-30-01)

01. Minimum Criteria. (7-6-94)

a. The project must meet the national objective of benefiting LMI persons through job creation. Fifty-one percent (51%) of all the new jobs created or retained must be held by or made available to a member of a low and moderate income family. (LMI as defined in Section 016). Family income must be certified by the employee at time of hire and must be able to be verified or may be documented through a Department of Commerce screening referral agency. (3-19-99)

b. The applicant must certify compliance with applicable federal circulars A-87, A-110, and A-122 and meet the necessary assurances as listed in Subsection 074.08 as applicable. (4-11-06)

c. A public hearing shall be held on the Application in accordance with Subsection 074.05.d. (7-6-94)

d. The project may qualify as a Special Economic Development Project under Subsections 040.02.a. and 040.02.b. if the project meets the Public Benefit Standards described in 24 CFR Part 570.482 (e) and (f). (3-30-07)

e. Attach an eight and one-half inch (8-1/2") by eleven inch (11") map showing the location of the proposed project in the community. Attach a site plan of the proposed project showing existing and proposed improvements both business and infrastructure; existing and proposed land uses in the surrounding area and natural features and conditions on the site and nearby. (3-20-97)

f. Attach a brief analysis of the business to be assisted, including the market for the product/services to be produced, the business' position in the market, and the financial and managerial capabilities of the business(es) to be assisted. This should also include financial statements and balance sheets for the business(es) to be assisted indicating sales, income, and net position for the prior three (3) years, and the names and experience of senior managers of the business. (4-11-06)

g. Attach a letter of commitment from the business(es) stating their agreement to be part of the grant project, their ability to accomplish their expansion, their understanding of and compliance with all applicable federal regulations, their understanding of and compliance with the payback liability if the jobs creation does not meet federal standards; and their willingness to make available all records and information necessary to document all jobs created by completing and signing the Grant Assistance Agreement and Certification of Compliance with Grant Conditions. (4-11-06)

h. Attach a description of the type and number of all the jobs to be created, a calculation of fulltime equivalents (FTE), and a beginning payroll of the business(es) at the location of the proposed project, a detailed description of the hiring process and any training to be provided. The information should include both current job information and the job creation

projected for two (2) years beyond the completion of the grant funded construction. If training is necessary, a training plan and schedule outlining the responsibilities must be included in the application. A description of the quality of new and retained jobs shall be included. A description of the median annual income and fringe benefits package for new or retained jobs shall be provided. (4-11-06)

02. Ranking Criteria (one thousand (1,000) points possible). (7-6-94)

a. Direct new or retained jobs, in fulltime equivalents (FTE's), created within two (2) years of grant construction completion. Net new jobs are those created as a result of the ICDBG, over and above employment at the business site prior to the grant, and which do not include relocated jobs from the assisted business in the same labor market area. Retained jobs are those that would be lost without the ICDBG assistance. A job creation cost of more than ~~*ten*~~ thirty thousand dollars ($~~*1*~~30,000) ICDBG per job will not be considered. If jobs are not being created or retained, a project cannot be funded. ~~*(4-11-06)*~~( )

b. Quality of New or Retained Jobs (one hundred (100) points). Points in this category are assigned based upon a comparison of the full time equivalent (FTE) wages or salaries created (excluding benefits, and the average county salary as determined by the most recent quarterly Idaho Department of Commerce survey. To convert part time or seasonal positions, take the total number of hours of employment created for a given pay rate and divide by one thousand five hundred sixty (1,560). If the average county wage exceeds the state average wage; comparison with the state average will be used. The grantee will be awarded points based upon the percentage of FTE's exceeding the state or county average salary. The formula is: Percentage of jobs above state or county average salary x one hundred (100) = Wage Quality Points. (4-11-06)

c. Fringe Benefits (one hundred (100) points). The businesses creating or retaining jobs as a result of ICDBG assistance shall document their fringe benefit plans. Points will be given as follows: fifty (50) points for an employer funded health plan and fifty (50) points for an employer funded pension plan. The business must provide both to receive full points. (4-11-06)

d. Business Risk and Management (zero (0) to one hundred twenty-five (125) points). The probability of achieving the projected jobs and payroll within one (1) and two (2) years, as determined by the Department. The determination may be made on the basis of: the business plan and schedule, the financial position and a credit analysis of the business; the performance record of senior management of the business project; and other criteria reasonably required by the Department. Projects receiving less than seventy-five (75) points in this category will be eliminated from further consideration. (4-11-06)

e. Planning, Schedule and Cost (one hundred and seventy (170) points possible). Describe planning efforts to enhance economic development. A detailed and reliable cost estimate and a project construction schedule is required of all Applications. Cost analysis and schedule will receive equal emphasis. Because of the priority the Department and Economic Advisory Council places on project costs and schedule, applicants are advised to seek experienced construction management counsel for their Application. (4-11-06)

i. Planning (fifty (50) points). Describe planning efforts to identify and detail all

steps related to the implementation of the entire project. Identify all participants in the process. Describe all the partnerships and relationships involved in implementing the project. This will include local government actions, the business actions, other agency and utility actions, real estate, environmental, legal, financial and grant considerations. (4-11-06)

ii. Schedule (fifty (50) points). A detailed and reliable schedule of all actions identified in the plan. Also a separate grant funded project construction schedule is required of all Applications. (4-11-06)

iii. Cost (fifty (50) points). Detailed cost estimates of all actions, permits, construction, real estate, etc. should be prepared by an engineer or architect. Because of the priority the Department and Economic Advisory Council places on project costs and schedule, applicants are advised to seek experienced construction management counsel for their Application. (4-11-06)

iv. Environmental Scoping (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has completed a Field Notes Checklist as prescribed in the ICDBG Application Handbook. (4-11-06)

f. Minority Benefit (fifteen (15) points). Applicants for job creation projects that are for business expansion or retention shall receive minority points if the business documents minority hiring on their current payrolls. If the percentage of minority participation is equal to or greater than the county in which they are locating, they shall receive full points. (4-11-06)

g. Local Investment Leverage (maximum of one hundred (100) points). The total of all local match will be divided by the total of all local match plus the ICDBG amount requested to determine the percentage of local match in the project. This percentage will then be multiplied by one hundred (100) to determine the point value. Applicants shall state if there is a Revolving Loan Fund (RLF) available in their region and, if so, describe what attempts have been made to secure funds from the RLF for the project. Program Income from previous grants to be used in this project may be considered as local match. (4-11-06)

h. Distressed Areas (twenty (20) points). Maximum points will be given if the project is located in a historically underutilized business (HUB) zone. (4-11-06)

i. Existing Idaho Business (twenty (20) points). To qualify for points, a business must have a significant Idaho presence. (4-11-06)

j. Private Leverage (one hundred (100) points). The points in this category will be calculated by dividing the total of all private investment provided by the business in the project by the ICDBG amount requested and multiply it by one hundred (100). The business' private investment is the capital facilities, real estate and site development costs. Applicants shall provide documentation on the status of private investment, i.e. financing approvals. Payroll and start-up costs are not included in this calculation. (4-11-06)

k. Activities (twenty-five (25) points). Points will only be awarded for the percentage of ICDBG dollars committed to the acquisition, construction, or reconstruction of public infrastructure (Section 024); and for publicly-owned commercial building acquisition and/or

rehabilitation for the purpose of assisting a business or businesses. (4-11-06)

l. Grant Management (twenty-five (25) points). If the grant funded activities are managed by the grantee, twenty-five (25) points will be awarded. Grantee management includes management under contract with a Department approved Grant Manager. (4-11-06)

m. Economic Advisory Council Evaluation (two hundred (200) points). The EAC will evaluate each Application on the basis of overall value, including its ability to make a significant impact on the Idaho economy and the commitment of the community to the project. The EAC evaluation process shall be prescribed in the ICDBG Application Handbook. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

152. GRANT AWARD.

01. Funding Allocations. Each year the Department will receive an allocation from the Department of Housing and Urban Development. This allocation is derived from the formula contained in 42 USC, Sec. 5301, the Housing and Community Development Act of 1974, as amended. The allocation shall be generally divided in the following manner to establish target amounts for decision making by the Economic Advisory Council (EAC): first, ~~*one hundred thousand dollars ($100,000) plus two percent (2%) of the total*~~ the amount specified in 24 CFR 570.489 (see Subsection 004.01) shall be reserved for the Department's administrative costs; second, one percent (1%) of the total shall be reserved for Technical Assistance; third, five percent (5%) or three hundred thousand dollars ($300,000), whichever is less, of the total allocation shall be set aside for Imminent Threat (IT) grants; fourth, six percent (6%) or six hundred thousand dollars ($600,000) whichever is less, of the total allocation, shall be set aside for Community Center (CC) or Senior Citizen Center (SR) grants; fifth, any program income, recaptured funds, or carryover funds from the previous fiscal years shall be added to the remainder; and finally, of the remainder, fifty percent (50%) shall be reserved for Public Facilities or Housing (PFH) grants and fifty percent (50%) for Economic Development (ED) grants. These targeted amounts may be more or less than the actual amount funded in each category depending on the needs and requests identified in the applications submitted and may shift according to Subsection 152.02. ~~*(3-30-07)*~~(____)

02. Shifting of Funds. The above allocation divisions are to establish target amounts for decision making by the Economic Advisory Council (EAC). This division shall be made for the January EAC meeting. These targets may be modified at any time by the Department Director with the advice of the EAC depending on the needs and requests identified in the applications submitted. If in any quarter there are surplus funds in the ED category, the Department Director, with the advice of the EAC, may shift funds back to the PFH or CC and SR category to fund standby projects. Otherwise, surplus funds not awarded to ED projects in a quarter shall be carried into the succeeding quarter ED set-aside. (3-30-07)

03. Standby Applications. At its quarterly meeting in April of each year, the Economic Advisory Council (EAC) may recommend PFH or CC and SR Applications for

funding even though not enough funds are available to fund the project(s). These Applications become "standby projects." Standby projects shall be eligible for funding should additional funds become available or surplus funds exist in the ED category. At any subsequent quarterly meeting, the Advisory Council may review and recommend a standby project to the Governor for funding. Standby status shall continue through the fourth quarterly meeting. Any standby projects not funded shall automatically be invited to submit an Addendum for the next Fiscal Year, thus bypassing the Application stage of the application process. However, the Application must remain eligible and must continue to meet all requirements of the program rules. The standby applicant shall update its Application during the Addendum process. (7-1-98)

04. Termination of Project Selection for Funding. (7-6-94)

a. If, during the period between the award of a grant and signing of a grant contract, a project loses its viability, its status of being selected for funding may be terminated by the Department. The Department shall, by letter, notify the applicant that in the judgment of the Department, the applicant's project is no longer viable and that the applicant has a clearly stated period of time no less than fourteen (14) days to demonstrate the project's viability. If viability cannot be demonstrated within the stated period of time the award of the grant status shall be considered terminated and the funds be made available for the next standby project. (7-6-94)

b. After a grant contract has been executed, the Department shall periodically evaluate the progress of the project. If, at any time, the project loses viability and/or cannot be completed as described in the Application, the Department shall, by letter, notify the grantee that the grant contract shall be terminated within a clearly stated period of time of no less than fourteen (14) days from the date of the letter. The grantee may, within the stated period of time, demonstrate substantial progress on the project and request the Department revoke the termination. If viability cannot be demonstrated within the specified amount of time, the grant shall be considered terminated. (7-6-94)

c. Loss of viability will be defined to include: the inability to secure the other project financing; the lack of due diligence to pursue the implementation of project requirements; the lack of local coordination with all funding and regulatory agencies; the inability to develop agreements necessary to manage the cash flow and ownership of the project where several different entities are involved in the project; and the inability to complete a project of the same general size and benefits as presented in the application. (7-6-94)

05. Excessive Funds. In the event a project can be completed for less than the grant amount, the difference between actual project costs and the grant amount shall be reserved by the Department for standby projects, or added to the total of the next fiscal year allocation for distribution. The Department shall amend the grant contract to reflect the reduced costs. In extraordinary circumstances the excess funds may be used for an eligible activity which further enhances the project as described in the Application. Before the Department decides to allow the additional activity, the grantee must demonstrate the activity will provide an equal or greater benefit than the original project; it will increase the benefits to low and moderate income persons, it will be completed within the original time frame, and the additional activity will be completed with the excess funds. The grantee must also show completion of the original project, its objectives and benefits. (7-6-94)

06. Amendment of Project. A funded project as described in the Application shall not be changed without prior approval from the Department Director. Any amendment of the project shall be reviewed to determine if the project will retain its competitive ranking in the Application review and ranking system. Any amendment shall provide equal or greater benefits than the original project. In unusual circumstances, the Department Director may approve a grant amendment increasing the grant amount, provided unobligated funds are available. In unusual circumstances the Department Director may waive the ten percent (10%) limitation on administrative costs when, in the opinion of the Department, the complexity of the project warrants an increase. (7-6-94)

07. Allowable Costs. Once an applicant has been invited to submit an Addendum and prior to the effective date of a grant contract an applicant submitting an Addendum may obligate and spend out of local funds for the purpose below. If awarded a grant and after the effective date of the grant contract, the grantee may be reimbursed for these costs provided such locally funded activities are undertaken in compliance with the program requirements (including but not limited to procurement, financial, acquisition, environmental and the ten percent (10%) limitation on administrative costs). Other project costs shall not be incurred until the Special Terms and Conditions of the contract are completed by the grantee and the funds released by the Department. (See Section 080.) (7-6-94)

a. Planning, Design and Administration. Procure and proceed with administrative and architectural or engineering services, adopting the Fair Housing Resolution and the Anti-Displacement Plan, and having public hearings. (7-6-94)

b. Project Costs, such as: preliminary and final Engineering Design, preliminary and final Architectural Design, conducting the Environmental Assessment, and completing procedural requirements for acquisition, but not the cost of the property. (7-6-94)

08. Audit Requirements. All ICDBG projects shall be audited annually or biannually in accordance with Sections 50-1010 and 31-1701, Idaho Code, the Single Audit Act of 1984, the implementing regulations in OMB Circular A-133, and all applicable federal audit standards, and other applicable state laws. Audits shall include any management letters associated with the audit. The audit shall be submitted to the Legislative Auditors Office within thirty (30) days of completion. Grantees shall require sub-grantees to provide audits conducted according to applicable federal and state laws, regulations and standards. The grantee shall have these audits reviewed as part of the grantee's audit. This review shall be commented and noted in the audit report. This review shall opine that sub-grantees are in compliance with the applicable program laws, regulations, contracts, and standards. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

171. PROGRAM INCOME.
Program income will be administered in accordance with 24 CFR 570.489 (see Subsection 004.01). ( )

~~***01. Definition***. Program income *is monies earned by a grantee or its sub-grantee that were generated from the use of ICDBG funds. Program income includes, but is not limited to, the following: payments of principal and interest on loans made using ICDBG funds; proceeds from the sale of loans made with ICDBG funds; interest earned on ICDBG funds held in a revolving fund account; proceeds from the lease or disposition of real property acquired with ICDBG funds; gross income from the use or rental of property acquired, constructed or improved with ICDBG funds less the costs incidental to the generation of the income; interest earned on any program income pending disposition of such income; proceeds from the disposition of equipment purchased with ICDBG funds; proceeds from sale of loans secured by ICDBG funds; funds collected through "special assessments" made against properties owned and occupied by non-LMI households, where the "special assessment" is used to recover all or part of the ICDBG funds used to improve a public facility; and gross income for an equity position or interest in a for-profit entity which was acquired with ICDBG funds.* (7-6-94)~~

~~***02. Requirements on Usage***. *A grantee or sub-grantee may retain the program income only as long as it is used for the purpose and jurisdiction for which the funds were originally granted. Any other use of program income shall require the grantee to repay the program income to the Department. Other governing requirements of program income depend on when the income is received and the status of the grant. See Section 173. (Carry Forward of Program Income to Subsequent Grants), Section 176. (Program Income on Hand at Closeout), and Section 181. (Program Income Remaining in Closed Out Projects) for more applicable requirements.* (7-6-94)~~

~~***03. Responsibility of Grantee or Sub-Grantee***. *Program income that is retained by the grantee or its sub-grantees and earned before or after grant closeout remains the revenue and responsibility of the local government grantee. These conditions shall be contained in the sub-grant contract between the local government grantee and the sub-grantee.* (7-6-94)~~

~~***04. Exception to Requirements***. *Receipts derived from the operation of a public work or facility which received an ICDBG grant for its construction do not constitute program income. Examples of receipts include admission fees paid by persons using recreational facilities constructed with grant funds and service fees paid by households using a water facility constructed with grant funds.* (7-6-94)~~

~~***05. Minor Amounts Exemption***. *If the total amount of program income earned in one (1) program year (state fiscal year) is less than twenty-five thousand dollars ($25,000); the amount is not considered program income and is exempt from these rules. The total amount is the total earned by the grantee and its subrecipients from all open ICDBG grants.* (3-20-97)~~

~~***172. USE OF PROGRAM INCOME BEFORE DRAWDOWN OF ADDITIONAL GRANT FUNDS.***~~
~~*Before making additional drawdowns from the Department to finance approved community development activities, program income shall be disbursed as follows:* (7-6-94)~~

~~***01. Repayments***. *Program income in the form of repayments to a revolving loan fund (RLF) established to carry out an approved economic development activity, shall be substantially or completely disbursed from the RLF fund before additional drawdowns are made from the Department for the RLF. For example, a county receives a grant to establish an RLF through a Local Development Corporation (LDC) for the purpose of making several business loans, the first*~~

~~*loan is made and the business begins repaying the loan before the second loan is made; the program income on hand must be used as part of the second loan, and only the balance of funds needed for the second loan can be requested from the Department.* *(7-6-94)*~~

~~***02.*** ***Other Program Income****. All other program income shall be substantially or completely disbursed for any approved activity before additional drawdowns are made from the Department.* *(7-6-94)*~~

~~***03.*** ***Uses of a RLF to Distribute Program Income****. A RLF is a separate fund established through an LDC (with a set of accounts that are independent of other program accounts) established to carry out a business loan program which, in turn, generates repayments to the fund to make additional loans. The grantee may establish a RLF program to provide a mechanism to hold program income for redistribution for additional business loans. Normally the grantee must disburse program income on hand for any immediate cash need. Revolving loan funds allow the grantee to hold program income for distribution to business loans and continue to drawdown ICDBG grant funds for other budgeted activities. The grantee must define what activities the fund has been set up to serve in the re-use plan and grant Application. Program income in the RLF, including amounts which cover only a portion of the drawdown need, must be used to meet cash needs for business loans to be funded by the RLF. When a grantee requests funds to meet immediate cash needs for the type of activities which the RLF is designed to fund, the grantee must use program income on hand to meet those needs before any additional ICDBG grant funds are drawn down. The grantee may have to use a combination of ICDBG grant funds and program income to meet the business loans' cash needs. Revolving loan funds are capitalized with program income, not grant funds. Grant funds are awarded and budgeted for specific business loans.* *(7-6-94)*~~

~~***173. CARRY FORWARD OF PROGRAM INCOME TO SUBSEQUENT GRANTS.***~~
~~*If the grantee has a concurrent, open grant contract, the program income received from previous grants (before and after the previous grant closeout) shall be treated as program income of the active grant contract and shall be subject to the ICDBG requirements and the terms of the grant contract.* *(7-6-94)*~~

~~***174. REPORTING OF PROGRAM INCOME.***~~
~~*Grantees shall record the receipt and expenditure of revenues related to the project as a part of the grant project transactions. This includes the receipt and expenditure of program income received by sub-grantees such as local development corporations and sewer and water districts. The grantee is responsible for ensuring sub-grantee's use of the program income in accordance with these rules.* *(7-6-94)*~~

~~***175. RE-USE PLANS FOR PROGRAM INCOME.***~~
~~*The local government shall include in the Application a re-use plan for any program income expected to be received from the grant funds. The plan shall identify the project's national objective, identify the eligible activity(ies), provide a time frame for project completion, and identify the process and procedure for using the program income. Use of funds must meet the requirements of Section 074. This plan shall be reviewed and modified, if necessary, and approved along with the Application. The plan shall become part of the grant project and govern the use of program income. The Department may require changes to be made at any time to ensure program income is used in accordance with ICDBG rules and HUD guidelines. For specific applicable*~~

~~*requirements on program income see appropriate Subsections in Section 171 of this rule.(7-6-94)*~~

~~***176. PROGRAM INCOME ON HAND AT CLOSEOUT OF GRANT.***~~

~~***01. Closing Procedure**. When preparing to close a grant with a grantee, the Department must ascertain what program income, if any, the grantee or sub-grantee has earned through the use of ICDBG funds. The Department may close the grant, even though program income governed by the ICDBG requirements remains on hand, and does not need to wait until the program income has been expended. (7-6-94)*~~

~~***02. Restrictions on Use**. If program income is held by the local government (or a sub-grantee) when the grant is closed, this program income shall be used in accordance with the provisions of Title I of the Housing and Community Development Act of 1974, as amended, and Subpart I of Part 570, and IDAPA 28.02.01. (7-6-94)*~~

~~***03. Return of Income to the Department**. The program income shall be returned to the Department if the following conditions exist: the program income cannot be spent on the same community development activity from which the program income was generated. The same activity is the activity as defined in Section 022, entitled Eligible Activities, which was the basis for awarding the original grant; and there is no expectation of additional program income. (7-6-94)*~~

~~***04. Usage After Closeout**. If the grantee is allowed to keep the program income received prior to closeout, the grantee shall have twelve (12) months from the date of closeout, to identify an approved eligible project on which to spend the program income. Any unobligated program income at the end of the twelve (12) months shall be returned to the Department. (7-6-94)*~~

~~***177. – 180. (RESERVED).***~~

~~***181. PROGRAM INCOME REMAINING IN CLOSED OUT PROJECTS.***~~

~~***01. Receipt of Income After Closeout**. Except as otherwise provided under the terms of the grant or the closeout agreement, program income received after grant closeout may be treated by the grantee as miscellaneous revenue, the use of which is not subject to the requirements of the Act and Subpart and these rules, notwithstanding any subsequent participation by the unit of local government in a community development grant program. (7-6-94)*~~

~~***02. Existing Income as of October 1, 1990**. In those projects closed out prior to October 1, 1990 where program income exists that is still governed by ICDBG rules, the Department shall require the grantee to develop or update the program income re-use plan to identify specific eligible activities on which to use the program income. The grantee shall have six (6) months starting October 1, 1990 in which to identify and receive Department approval of the project. They shall have an additional six (6) months within which to expend the program income on the approved project. By October 1, 1991 any existing program income in closed out projects shall be expended or returned to the Department. (7-6-94)*~~

~~182. ADMINISTRATIVE COSTS PAID FROM PROGRAM INCOME.~~
~~In addition to the budgeted administrative line item, a grantee or sub-grantee may use up to ten percent (10%) of any program income received for eligible administrative costs incurred. All costs and the accounting of such costs shall be in accordance with OMB Circulars A-102, A-87, A-110 and A-122. The total of administrative costs incurred by the grantee and its sub-grantee shall not exceed ten percent (10%) of the total grant and ten percent (10%) of any program income. (7-6-94)~~

~~183. RECIPIENT ACCOUNTING SYSTEM FOR PROGRAM INCOME.~~
~~The Department requires that program income be subject to all ICDBG requirements. The Department requires that a process be established at the local level to identify and account for program income. (7-6-94)~~

~~01. Objectives~~*~~. The accounting system objectives are to provide a means for the recording of program income in the accounting records, provide a methodology for assuring that all program income is collected and properly classified, and assure that the handling of program income complies with federal and state requirements. (7-6-94)~~*

~~02. Accounts~~*~~. The typical accounting entry to record program income is a debit to "cash" or "accounts receivable" and a credit to "program income." At the completion of the grant program, the program income account balance should be equal to the total amount of program income received and applied to the program. Once the proper accounts are established, accounting procedures and internal controls must be adequate to assure that all program income is properly recognized. This, in part, requires the recipient to establish a system which allows it to anticipate repayments of loans and take appropriate actions when loan repayments are delinquent. Program income recording involves a minimum of two (2) ledger accounts: (7-6-94)~~*

~~a.~~ *~~Cash Account. The cash account is debited when the program income is received and credited when it is disbursed. Generally, it will not be necessary for a recipient to establish a new cash account on its books for program income since all receipts for a particular grant may be included in the cash account already established by the recipient. Likewise, it is not necessary to establish a separate bank account for program income. A recipient may include program income cash in its bank account with other cash, provided its accounting records adequately disclose the ICDBG portion of the cash balance. (7-6-94)~~*

~~b.~~ *~~Program Income Account. This account should be classified as a revenue account similar to the ICDBG grant account. Additional program income accounts may be established to reflect the different types of program income which may be received. (7-6-94)~~*

~~184. PROCEDURES FOR PROGRAM INCOME ACCOUNTING SYSTEM.~~

~~01. Principal Factors~~*~~. The principal factors to be addressed by the recipient's accounting procedures and internal controls include: procedures to assure collection of all program income due to the recipient (e.g., loan payments); procedures to assure that all funds received by the recipient are accurately classified and coded to the accounts to be credited; procedures to safeguard and prevent the misappropriation of funds; procedures to assure that funds are immediately deposited into the proper bank account; and procedures to assure that program income funds are disbursed before requesting additional grant funds. (7-6-94)~~*

~~***02. Retaining and Expending Program Income****. Recipients that retain and expend program income on their programs are required, by the Department, to include program income data in the financial reports in requests for funds to the Department.* *(7-6-94)*~~

1~~85~~72. -- 190. (RESERVED).

191. CONFLICT OF INTEREST.

~~***01. Policy.***~~ It is the policy of the ICDBG Program that the grant management shall be conducted in an equitable manner and that public funds shall be expended in a fair, efficient and effective manner. Therefore every effort should be made to assure the public that no conflicts of interest exist in the management of the program funds and that those cases that do occur from time to time shall be disclosed and that appropriate actions have been taken to avoid and abstain from conflict of interest situations. The Conflict of Interest Policy shall be administered in accordance with Sections 59-701 through 59-705, Idaho Code, "Ethics in Government Act of 1990," and 24 CFR 570.611 (see Subsection 004.02). ~~*(7-6-94)*~~( )

~~***02. General Standard of Conduct****. The general standard of conduct is to avoid any action that might result in or create the appearance of using public office for private gain; or giving preferential treatment to anyone; or impeding governmental efficiency or economy; or the loss of independence and impartiality in the decision-making process; or making decisions outside of the official decision-making process; or creating a lack of public confidence in the integrity of the government.* *(7-6-94)*~~

~~***03. Conflicts****. The general rule that shall be followed is that a covered person (described in Section 192) who exercises or has exercised any functions or responsibilities with respect to ICDBG activities or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, shall not obtain any personal interest or any financial interest or program/project benefit, except for approved eligible administrative or personnel costs, from the activity or have any interest in any contract, subcontract or agreement, or proceeds either for themselves or those with whom they have family or business ties, during their tenure or for one (1) year thereafter.* *(7-6-94)*~~

~~***04. Additional Requirements****. These rules supplement requirements contained in Section 59-701 through 59-705, Idaho Code "Ethics in Government Act of 1990" and Code of Federal Regulations 24 CFR 570.611 "Conflict of Interest."* *(7-6-94)*~~

~~***192. PERSONS COVERED.***~~

~~***01. Persons Covered****. These conflict of interest provisions shall apply to any person who is a (an) employee, agent, contractor, consultant, official, officer, elected official, or appointed official of the Department or any city or county grantee or any sub-grantee receiving funds from the ICDBG program.* *(7-6-94)*~~

~~***02. Kinship Definition****. Family ties are defined as kinship relationships and dependents. Kinship includes grandparents, parents, aunts and uncles, children, siblings, grand children and in-laws of the same types.* *(7-6-94)*~~

~~***03. Business Tie Definition****. A business tie is defined as: having more than a five thousand dollar ($5,000) value interest in any sole proprietorship, partnerships, association, trust, estate, business trust, for-profit-corporation, not-for-profit corporation, or any other legal entity; or being a (an) agent, director or officer, or employee thereof. (7-6-94)*~~

~~***193. TYPES OF CONFLICTS.***~~
~~*An official, officer, employee or agent of the Department, of a grantee or a sub-grantee shall neither profit financially, directly or indirectly, from ICDBG funds under their control or authority; nor shall they have a private business tie, financial, personal, or a family in any contract or grant made by them in their official capacity or under their authority; nor shall they have conflicting responsibilities in the management of the grant funds. (7-6-94)*~~

~~***194. DISCLOSURE PROCEDURES.***~~

~~***01. Disclose****. Any covered person having an interest in any discretionary matter concerning the grant coming before him in the daily course of his official duties, whether the matter be regulatory, contractual, or the formation of public policy, shall not act, but immediately disclose the conflict of interest and withdraw from the proceedings. They shall then refrain from any discussion, recommendation, action, or voting on the matter. (7-6-94)*~~

~~***02. Disclosure Into Minutes****. At or before any meeting during which a conflict of interest arises, a covered person shall make a Declaration of a Conflict of Interest, or potential conflict of interest, either by letter or verbal declaration and it shall be entered in to the minutes of the meeting. (7-6-94)*~~

~~***03. Contents of Disclosure****. The declaration shall contain the nature of the conflict, the parties involved in the conflict, the impact of the conflict on their duties, and the method of resolving the conflict. For example: If a city council member is a partner in a construction company bidding on an ICDBG-funded project the declaration would include a statement to the effect that Councilman X, being a full partner in XYZ Construction Company, will not be able to participate in reviewing bid proposals, and if awarded, will refrain or absent himself from discussing or voting on any actions involving the Company, including payments, change orders, contract negotiations, etc. (7-6-94)*~~

~~***04. ICDBG Project Files****. The documentation shall also be maintained in the ICDBG project files. (7-6-94)*~~

~~***195. – 200. (RESERVED).***~~

~~***201. EXCEPTIONS AND WAIVERS.***~~
~~*Upon the written request of the grantee, the Department may grant an exception to the Conflict of Interest restrictions on a case-by-case basis when the Department determines that such an exception will serve to further the purposes of a grant project and the effective and efficient management of the grantee's program or project. An exception may be considered only after the grantee has provided the following: a disclosure of the nature of the conflict, accompanied by documentation that there has been public disclosure of the conflict and a description of how the public disclosure was made; and an opinion of the grantee's attorney that the conflict of interest*~~

~~*situation for which the exception is sought would not violate these rules or any other state law or local ordinance.* *(7-6-94)*~~

~~***202. FACTORS TO BE CONSIDERED, BY THE DEPARTMENT, FOR EXCEPTIONS.***~~
~~*In determining whether to grant a requested exception, after the grantee has satisfactorily met the requirements of Section 201, the Department shall consider the cumulative effect of the following factors, where applicable:* *(7-6-94)*~~

~~***01. Significant Cost Benefit or Expertise****. Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available.*~~
~~*(7-6-94)*~~

~~***02. Open Competitive Bidding or Negotiation****. Whether an opportunity was provided for open competitive bidding or negotiation.* *(7-6-94)*~~

~~***03. Low to Moderate Income Persons****. Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity and the exception will permit such person to receive generally the same interests or benefits as are provided to the group or class.* *(7-6-94)*~~

~~***04. Functions, Responsibilities or the Decision Making Process****. Whether the affected person has withdrawn from the functions, responsibilities or the decision-making process with respect to the specific assisted activity in question.* *(7-6-94)*~~

~~***05. Interest or Benefit****. Whether the interest or benefit was present before the affected person was in a position as described in Section 191.* *(7-6-94)*~~

~~***06. Undue Hardship****. Whether undue hardship will result either to the grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict.* *(7-6-94)*~~

~~***07. Any Other Relevant Consideration****.* *(7-6-94)*~~

~~***203. DEPARTMENT GRANTED EXEMPTIONS OR WAIVERS.***~~
~~*The Department shall grant a waiver or exemption by letter which shall describe: the nature of the conflict, the parties involved, the nature of their responsibilities, the opinion of the local government attorney that the above requirements have been met, and any conditions, safeguards or actions the person and the grantee must take to ensure the conflict is limited or resolved.*~~
~~*(7-6-94)*~~

~~***204. EFFECT OF VIOLATIONS AND PENALTIES.***~~
~~*Any covered person who intentionally or negligently fails to disclose a conflict of interest shall be subject to the penalties contained in Section 59-705, Idaho Code which provides for a maximum fine of five hundred dollars ($500). Actions in Violation of Rules. The Department may determine any action in violation of these conflict of interest rules to be null and void.* *(7-6-94)*~~

192. -- 204. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

213. GRANT ADMINISTRATOR APPLICATION PROCESS AND ANNUAL REVIEW.
To apply for grant administrator certification status individuals shall submit an application to the Department. Applicants shall submit a letter requesting approval and a resume describing their experience and performance. The Department will review the application, the examination results and the Department's experience with the individual (Subsection 212.02). This application and review will occur on an ~~*annual*~~ as needed basis beginning with the annual grant awards. The Department will determine when an individual has sufficient qualification and experience to be placed on the approved grant administrator list. ~~*(3-30-07)*~~(____)

IDAPA 28 - DEPARTMENT OF COMMERCE

28.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 28-0203-0901 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-4715, 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 October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, page 265.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact Cathy Bourner, Grant Analyst, (208) 334-2470, ext. 2153.

DATED this 29th day of October 2009.

Karen Ballard, Administrator
Division of Tourism
Idaho Department of Commerce
700 W. State St., Boise, ID

P. O. Box 83720, Boise, ID 83720-0093
Phone: (208) 334-2470, ext. 2100
Fax: (208) 334-2631

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-4715, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009. The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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

This rulemaking will repeal this chapter of rules. The rules are being rewritten under Docket No. 28-0203-0902.

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

This chapter of rules is being repealed and rewritten to allow the Idaho Travel Council the flexibility to advise and execute the travel grant program, which will confer a benefit on non-profit organizations with travel and convention programs applying for an Idaho Travel Council Regional Travel and Convention Promotion grant.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cathy Bourner, Grant Analyst, (208) 334-2470, ext. 2153.

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

DATED this 28th day of August, 2009.

IDAPA 28 - DEPARTMENT OF COMMERCE

28.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 28-0203-0902 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is August 1, 2009. This pending rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 67-4715, Idaho Code.

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

The change in text is necessary to clarify the language in two sections of the rule. The phrase "contract period" more accurately describes the duration of the grant cycle; and the word "obligated" was deleted because it doesn't describe the nature of the grant process.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in Book 2 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 266 through 272.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Karen Ballard, (208) 334-2470, ext. 2100.

DATED this 29th day of October 2009.

Karen Ballard
Division of Tourism Administrator
Idaho Department of Commerce
700 W. State St., Boise, ID
P. O. Box 83720, Boise, ID 83720-0093
Phone: (208) 334-2470, ext. 2100
Fax: (208) 334-2631

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2009.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-4715, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2009.

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

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

This rulemaking is a complete rewrite of this chapter of rules. The rules are being repealed under Docket No. 28-0203-0901. This rewrite of the Idaho Travel Council's (ITC) Regional Travel and Convention Grant program is an attempt to refine the administrative rules currently in place, allowing for more flexibility in the ITC's ability to administer the program. Presently, the rules contain administrative details that require legislative action to modify or update. This rewrite will redefine these details as rules subject to ITC approval, and alleviate the necessity for legislative action to make minor changes in the grant program. There is no intent to remove legislative oversight of the program or dilute any existing rules insofar as they provide a framework for the distribution of grant funds. In fact, there are some additions being made to the existing rules which clarify legislative intent. Due to the extent of the changes being made, and in consideration of the expenses that would be incurred in making such extensive changes, the ITC determined a repeal and rewrite of the rules was most appropriate.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the

Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This chapter of rules is being repealed and rewritten to allow the Idaho Travel Council the flexibility to advise and execute the travel grant program, which will confer a benefit on non-profit organizations with travel and convention programs applying for an Idaho Travel Council Regional Travel and Convention Promotion grant.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cathy Bourner, Grant Analyst, (208) 334-2470, ext. 2153.

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

DATED this 28th day of August, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 28
TITLE 02
CHAPTER 03

28.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

000. LEGAL AUTHORITY.

These rules have been adopted pursuant to Sections 67-4715, 67-4717, and 67-4718, Idaho Code, which imposes a two percent (2%) tax on the sale of hotel/motel and private campground accommodations and created the Idaho Travel and Convention Industry Committee, herein referred to as the Idaho Travel Council (ITC). The revenues generated by this tax (less ten percent

(10%) administrative expense) are to be invested one-half (1/2) by the state and one-half (1/2) by the local regions within Idaho in well-planned promotional programs. The ITC, through the Idaho Department of Commerce (Department), has been given the responsibility of administering this program which includes the local regional grant program. ( )

001. TITLE AND SCOPE.

01. Title. These rules are cited as IDAPA 28.02.03, "Rules of the Idaho Regional Travel and Convention Grant Program" (ITC Grant Program). ( )

02. Scope. The primary objective is the creation and implementation of plans designed to stimulate and expand the travel and convention industry within the state's seven (7) planning regions. ( )

002. WRITTEN INTERPRETATIONS.
In accordance with Sections 67-5201(19)(b)(iv), 67-4715, 67-4717 and 67-4718, Idaho Code, this agency has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection and copying at cost at the Idaho Department of Commerce, 700 West State Street, Boise, Idaho. ( )

003. ADMINISTRATIVE APPEALS.
This chapter does not provide for appeal of the administrative requirements for agencies. ( )

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 central office for the Idaho Travel Council Grant Program is located at the Idaho Department of Commerce. The office is open daily from 8 a.m. and 5 p.m., except Saturday, Sunday, and legal holidays. Appropriate ITC grant program documents may be filed at, or mailed to: Idaho Travel Council Grant Program, Idaho Department of Commerce, 700 West State Street, P. O. Box 83720, Boise, Idaho 83720-0093. ( )

006. PUBLIC RECORDS ACT COMPLIANCE.
Information regarding ITC applications or awarded grants are considered to be public information and will be released upon request. These documents are available for public inspection and copying at cost. ( )

007. -- 009. (RESERVED).

010. DEFINITIONS.
As used in this chapter: ( )

01. Council. The Idaho Travel Council (ITC) as set forth in Section 67-4712, Idaho Code. ( )

02. Division of Tourism. The staff of the Division of Tourism Development unit of

the Idaho Department of Commerce. ( )

03. Department. The Idaho Department of Commerce as set forth in Section 67-4701, Idaho Code. ( )

04. Grant Program Guidelines. Interpretation of these rules by the Idaho Travel Council. ( )

011. PROGRAM INTENT.
The intent of the ITC's Regional Grant Program is to distribute grant funds to non-profit, incorporated organizations which have in place a viable travel or convention promotion program, or both, in their area of operation. Preference is given to programs of Destination Marketing Organizations (DMOs) with a primary focus of promoting overnight visitation in their area. ( )

012. GRANT AWARD SCHEDULE.

01. Application Deadlines. Grants will be awarded annually at the first ITC meeting of the fiscal year, approximately August 1. A schedule of application deadlines will be posted on the Department's website and is available by request from the Division of Tourism. ( )

02. Grant Award Status. Applicants will be notified of their grant award status within seven (7) days of the ITC's grant award date. ( )

03. Grant Cycle. Grant ~~*cycle is approximately*~~ *contract period is* fourteen (14) months, beginning with the ITC's grant award date and ending on September 30 of the following year. Funded activities should be completed within the fourteen (14) month cycle.
~~*(8-1-09)T*~~*( )*

013. DISTRIBUTION OF FUNDS.
The Idaho Regional Travel and Convention Grant is a reimbursement grant. ( )

01. Documentation of Funds Expended. The Department will allocate funds to the grantee upon submission of complete documentation of funds expended. ( )

02. Documentation of Reimbursable Expenses. Documentation for reimbursable expenses will be determined by the Department and the ITC as outlined in the guidelines. ( )

014. NON-PROFIT STATUS.
If not already on file with the Department, grant applicants must provide the following documents as proof of non-profit status prior to or with their application. ( )

01. Proof of Non-Profit Status. State of Idaho Certificate of Incorporation and Articles of Incorporation from the Secretary of State or a letter of determination from the Internal Revenue Service. ( )

02. Employer Identification Number. Notice of Employer Identification Number assigned by the Internal Revenue Service. ( )

015. POTENTIAL CONFLICT OF INTEREST.
An affiliation with a profit-making organization could imply a conflict of interest. Such conflict could render the application ineligible. ( )

016. CATEGORIES OF APPLICANTS.
The area of impact of the non-profit applicant will determine the application type as follows: ( )

01. Local/Regional Grant Application. A non-profit organization whose area of impact lies within the boundaries of a single region. ( )

a. Regional applicants serve as an umbrella organization, promoting travel to locations throughout the region. ( )

b. Tourism regions are defined in Section 67-4711, Idaho Code. ( )

02. Multi-Regional Application. A non-profit organization that represents more than one (1) region or has a presence in each region of the state. The association serves as an umbrella organization, promoting travel to locations throughout the state. ( )

017. ELIGIBLE PROJECTS.
Eligible projects under the Regional Travel and Convention Grant Program must be consistent with the legislative declaration of policy in Title 67, Chapter 47, Idaho Code. Programs that are eligible for consideration must fall under the basic definition of travel or convention promotion. ( )

018. INELIGIBLE PROJECTS.
It is not the purpose of this grant program to fund the day-to-day, administrative expenses of organizations that have a travel or convention promotion element. ( )

01. Organizational Administrative Expense. Rent, phone, supplies, wages and salaries, other overhead and administrative expenses are not reimbursable; however, the actual cost of staff wages and benefits (Other Personnel Expenses (OPE)) may be used as cash match with documentation. ( )

02. Salary or Personnel. Expenses related to grant writing are not eligible. ( )

03. Alternative Funding Sources. Projects that have alternative funding sources (for example, regular Chamber of Commerce budgets) or that have been funded previously with the agency's own funds may be deemed ineligible. ( )

019. LOCAL EVENTS.
It is not the intent of the Council to fund the promotion of local events. However, the Council will consider the unique benefits of events that have the potential of having a measurable impact on consumer travel and spending patterns. Such requests for funding will be judged on their specific merits. ( )

020. REPETITIVE FUNDING OF PROJECTS.
The Council may fund repetitive projects. However, applicants should not conclude that a plan will be funded because it has been funded in the past. When a previously funded plan is resubmitted, the applicant should show the return on investment as it relates to ITC program intent. ( )

021. PROGRAM CREDIT.
All projects funded by the Idaho Regional Travel and Convention Grant Program must credit said program as determined appropriate by the ITC. ( )

022. GRANT ADMINISTRATION GUIDELINES.

01. Noncompliance with Guidelines. Noncompliance with administrative guidelines may lead to grant termination or omission from future grant awards, or both. ( )

02. Usage of Funds. Applicant must agree that funds will be used in accordance with ITC grant contract and guidelines, including: ( )

a. Submitting narrative progress reports according to contract schedule; ( )

b. Using appropriate forms with accompanying documentation; ( )

c. Abiding by subcontract procedures in the guidelines; and ( )

d. Providing complete audit documentation when applicable. ( )

023. ADHERENCE TO STATE LAWS AND REGULATIONS.

01. Applicable Laws and Regulations. The applicant must agree to use the grant funds in accordance with all applicable state laws and regulations relative to purchasing, fiscal, and audit requirements. ( )

02. Sales Tax. Receipt of an ITC grant does not exempt an organization from paying sales tax. ( )

024. AUDIT REQUIREMENT.
Grantees who receive one hundred thousand dollars ($100,000) or more in grant funds must have an audit. The audit must be performed by a Certified Public Accountant and submitted to the Department within sixty (60) days following the close of the grant cycle. The Council may also require an audit for grants less than one hundred thousand dollars ($100,000). Estimated audit costs must be included in the grant application. Audits are exempt from match requirements. ( )

02~~5~~4. -- 199. (RESERVED).

200. APPLICANT ORGANIZATIONAL REQUIREMENTS.
Applicants for this grant program must show in their application that they have: ( )

01. Plan. A goal-oriented plan for travel or convention promotion, or both, with measurements appropriate to the scope of work. ( )

02. Resources. Adequate resources to: ( )

a. Carry out the plan as outlined in the grant application; and ( )

b. Operate and maintain a financial management system for the plan. ( )

03. Ability to Manage. The ability to manage the grant. ( )

201. MATCHING FUNDS.
Match must be documented in the application. ( )

01. Match Required. The Idaho Regional Travel and Convention Grant Program requires match from all organizations applying for funding as a way to increase the regional or local commitment to the plan, and to assist in generating more dollars for tourism promotion. ( )

02. Match Percentage. All plans must provide cash match of twelve and one-half percent (12.5%) of the amount awarded. All match must be outlined in the scope of work within the grant application. Audits are exempt from match requirements. ( )

03. Match Definition. Match is defined in the guidelines, but is considered documented cash contributions, wages and benefits or income used to fund a project. ( )

04. Expenditures. Expenditures claimed for projects funded previously by the grantee, such as brochures and publications, will not be allowed as match. ( )

05. Marketing. Marketing dollars spent by a for-profit enterprise within their marketing program may not be claimed as cash match by a grantee, not to exclude approved co-op programs. ( )

06. Audits. Funds awarded for audits are exempt from match requirements. ( )

202. -- 220. (RESERVED).

221. GRANT APPLICATION PROCESS.

01. Meeting with Regional ITC Representative. A meeting with the regional ITC representative to discuss grant application is strongly encouraged. ( )

02. Idaho Travel Council Presentation. Applicants for grants of fifty thousand dollars ($50,000) or greater are strongly encouraged to present their travel and convention plan at the final ITC meeting of the fiscal year. Applicants for grants of less than fifty thousand dollars ($50,000) may present their grant application at the same meeting. ( )

03. Grant Application. Grant applications must be submitted on-line through the

Department website www.tourism.idaho.gov. Submittal deadline will be determined by the Division of Tourism and posted on the Division website. ( )

04. Technical Review. The following criteria are considered in the review of the application: ( )

a. Application Completeness - Scope of work and budget filled out correctly. ( )

b. Cash Match - Potential sources identified. ( )

c. Commitment - Evidence the plan has local/regional support. ( )

d. Fiscal Competency - Presence of an adequate financial management system. ( )

e. Need - Addresses identified needs of the travel economy in the impacted region. ( )

f. Regional Impact - Will increase local/regional awareness, encourage visitors to stay longer, or promote intra-regional travel. ( )

g. Continuing Benefits - Plan has benefits beyond the grant cycle. ( )

h. Plan Design - Achieving goals and objectives within a reasonable time frame. ( )

i. Innovation. ( )

j. Evaluation - Plan demonstrates a sound methodology for measuring achievement of the stated project objectives. ( )

k. Cost Analysis - Applicant shows evidence that other resources are not available to support the plan fully, and requested funds are sufficient to accomplish plan objectives. ( )

222. GRANT AWARD.

The ITC is responsible for the selection of applications to be awarded ITC Grants. Once the ITC has selected plans to be funded, the Department will notify all applicants, by letter, of their funding status. ( )

01. Term of Contract. All contracts will be in effect for a period of no more than fourteen (14) months unless otherwise stipulated in the contract. ( )

02. Special Conditions. If applicable, special conditions of funding will be outlined. ( )

03. Effective Date. The grant will take effect upon the date of award. Grant monies cannot be ~~*obligated or*~~ expended until that date. ~~*(8-1-09)T*~~*(____)*

04. Reimbursement. No expenditures can be reimbursed until the contract is signed by the Director of the Department or his designee. ( )

~~024~~223.AUDIT REQUIREMENT.
Grantees who receive one hundred thousand dollars ($100,000) or more in grant funds must have an audit. The audit must be performed by a Certified Public Accountant and submitted to the Department within sixty (60) days following the close of the grant cycle. The Council may also require an audit for grants less than one hundred thousand dollars ($100,000). Estimated audit costs must be included in the grant application. Audits are exempt from match requirements. ( )

22~~3~~4. EXTENSIONS AND AMENDMENTS.
Extensions and amendments to ITC approved grants are discouraged. However, if the grantee can offer a compelling reason why more time is needed to complete the approved plan, or if a suitable opportunity requiring a change to the scope of work becomes available, an extension of the grant year or amendment to the approved plan or budget may be requested. ( )

01. Extensions. An extension of up to three (3) months may be obtained from the grant manager with the Division of Tourism. However, if the grantee requires additional time to complete approved projects, beyond the three (3) months, the request will be reviewed by the ITC and must receive a majority vote of the members in order for the extension to be allowed. ( )

02. Amendments. If the scope of any element changes or a budget shift in excess of limits set by the Council in the guidelines is requested, it will be reviewed by the ITC and must receive a majority vote of the members in order for the amendment to be allowed. ( )

22~~4~~5. GRANT TERMINATION.

01. Plan, Project or Organization Loses Viability. If at any time a travel and convention promotion plan or project loses its viability, or the organization awarded the grant ceases to actively function, the grant may be terminated. This determination will be made by the ITC, the Division of Tourism staff, and may include the grantee. If such a decision is made, the Department will terminate the plan or project and the funds will be reverted to the regional pool for the next cycle grant awards. ( )

02. Conflict of Interest. If at any time the Council becomes aware of an apparent or potential conflict of interest between a grantee and a private entity which may influence grant funds, the Council may request a meeting with the grantee's representatives. The Council may, at that meeting, terminate the grant if an inappropriate conflict of interest is found. ( )

03. Inappropriate Use of Funds. If at any time the Council becomes aware of a grantee's inappropriate or illegal use of grant funds, or inappropriate request for reimbursement, the Council may request a meeting with the grantee's representatives. The Council may, at that meeting, terminate the grant if impropriety is found. ( )

22~~5~~6. -- 999. (RESERVED).

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.03 - CONTRIBUTION RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0103-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective March 1, 2010, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

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

Adds a new rule (102) to provide for an additional employee contribution of .04% applicable to public safety officers, as defined in Section 59-1352A, Idaho Code. Section 59-1352A, Idaho Code, provides for a $100,000 disability benefit for public safety officers and provides that the benefit shall be funded by public safety officer contributions (not employer contributions). Renumber existing rule 102 as Rule 103.

There are no changes to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009, Idaho Administrative Bulletin, Vol. 09-8, pages 147 and 148.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfoy, PERSI, 287-9271.

DATED this 1st day of September, 2009.

Don Drum
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702

P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-287-9230
Fax: 208-334-3408

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 59-1314(1) and 72-1405, 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 August 19, 2009.

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

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

Add a new rule (Rule 102) to provide for an additional employee contribution of .04% applicable to public safety officers, as defined in Section 59-1352A, Idaho Code. Section 59-1352A, Idaho Code provides for a $100,000 disability benefit for public safety officers and provides that the benefit shall be funded by public safety officer contributions (not employer contributions). Renumber existing Rule 102 as Rule 103.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfoy, Deputy Attorney General, PERSI, 287-9271.

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 August 26, 2009.

DATED this 1st day of July 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

102. PUBLIC SAFETY OFFICER DISABILITY CONTRIBUTIONS UNDER SECTION 59-1352A, IDAHO CODE (RULE 102).
In accordance with Section 59-1352A, Idaho Code, public safety officers, as that term is used in Section 59-1352A, Idaho Code, shall pay an additional contribution rate of .04% of salary until next determined by the board. ( )

10~~2~~3. EMPLOYEE CONTRIBUTIONS BASED ON GROSS SALARY (RULE 10~~2~~3).
Employee contributions shall be based on the employee's total gross salary regardless of source or employer funds from which the employee is paid. (1-1-94)

10~~3~~4. -- 110. (RESERVED).

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.05 - SEPARATION FROM SERVICE RULES FOR THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0105-0901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

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

Amend Rule 103 to add a new Subsection 103.04 regarding interest applicable to waiting period payments.

There are no changes to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009, Idaho Administrative Bulletin, Vol. 09-8, pages 149 and 150.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfoy, PERSI, 287-9271.

DATED this 1st day of September, 2009.

Don Drum
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702
P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-287-9230
Fax: 208-334-3408

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 59-1314(1) and 72-1405, 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 August 19, 2009.

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

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

Amend Rule 103 to add a new Subsection 103.04 regarding interest applicable to waiting period payments.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfoy, Deputy Attorney General, PERSI, 287-9271.

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 August 26, 2009.

DATED this 1st day of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

103. METHODS OF REPAYMENT OF SEPARATION BENEFITS (RULE 103).

01. Periodic and Lump-Sum Payments. Where an active member elects to repay a separation benefit to reinstate previous service as provided in Section 59-1360, Idaho Code, the member may request that repayment be made in periodic payments or in a lump-sum payment. No service will be reinstated until the full repayment has been made. (3-30-01)

02. Repayments Initiated on or After March 1, 2000. For all repayments initiated on or after March 1, 2000, except as provided in Rule 101 of this chapter, a repayment amount will be determined which shall be the sum of the separation benefit(s) plus regular interest from the date of the benefit payment(s) until the date of the first payment. The repayment amount will be amortized over the repayment period at the reinstatement rate in effect on the date of the first periodic payment. (3-30-01)

03. Repayments Initiated Before March 1, 2000. For all periodic repayments initiated before March 1, 2000, a repayment amount will be determined which shall be the sum of the separation benefit(s) plus regular interest from the date of the benefit payment(s) until the date of the first payment. The repayment amount will be amortized over the repayment period at four point seventy-five percent (4.75%) interest. This is a grandfathered rate based on the rate in effect December 31, 1999, and will apply so long as payments exceed interest charges on a calendar year basis. If payments fail to exceed interest charges in any calendar year, the grandfathered rate will be forfeited and replaced by the reinstatement rate beginning in January immediately after the year in which the failure occurs. For purposes of these rules, a repayment is initiated by signing an agreement and making a payment. (3-30-01)

04. Repayments Under Section 59-1331(2), Idaho Code. For (waiting period) payments made pursuant to Section 59-1331(2), Idaho Code, a repayment amount shall be determined which shall be the sum of contributions that would have been made plus regular interest from December 31, 1975 until the date of the first payment. The repayment amount will be amortized over the payment period at the reinstatement rate in effect on the date of the first periodic payment. (____)

IDAPA 59- PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

DOCKET NO. 59-0106-0902

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2010 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 59-1314(1) and 72-1405, Idaho Code.

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

Amend Rules 553, 554 and 576 to remove the requirement for "group insurance related to retiree insurance for which unused sick leave dollars can be used to pay premiums. Amend Rule 554.02 to remove obligation on PERSI to deduct insurance premiums from retirement allowance once unused sick leave credits are exhausted. Make technical corrections to Rules 131, 132 and 146 to correct cross-reference. Amend Rules 550, 552, 576 and 577 to change incorrect reference to Section 67-5339, Idaho Code to correct reference to Section 67-5333, Idaho Code.

There are no changes to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the August 5, 2009, Idaho Administrative Bulletin, Vol. 09-8, pages 151 through 154.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joanna L. Guilfoy, PERSI, 287-9271.

DATED this 1st day of September, 2009.

Don Drum
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th Street, Boise, ID 83702

P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-287-9230
Fax: 208-334-3408

THE FOLLOWING NOTICE PUBLISHED WITH THE 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 59-1314(1) and 72-1405, 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 August 19, 2009.

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

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

Amend Rules 553, 554 and 576 to remove the requirement for "group" insurance related to retiree insurance for which unused sick leave dollars can be used to pay premiums. Amend Rule 554.02 to remove obligation on PERSI to deduct insurance premiums from retirement allowance once unused sick leave credits are exhausted. Make technical corrections to Rules 131, 132 and 146 to use correct cross-reference. Amend Rules 550, 552, 576 and 577 to change incorrect reference to Section 67-5339, Idaho Code to correct reference to Section 67-5333, Idaho Code.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because it would be inconsistent with the Retirement Board's exclusive fiduciary responsibility for plan operations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfoy, Deputy Attorney General, PERSI, 287-9271.

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 August 26, 2009.

DATED this 1st day of July, 2009.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

131. ELECTED OR APPOINTED OFFICIAL WORKING FOR MULTIPLE EMPLOYERS (RULE 131).
An active member separated from employment by one (1) employer for whom he or she did normally work twenty (20) hours or more per week and who is eligible to retire but remains an elected or appointed official with a different employer, may retire and continue in that elected or appointed position provided that position is one in which he or she does not normally work twenty (20) hours or more per week. The member shall receive retirement allowances under the conditions provided by ~~*Section 59 -1356(2), Idaho Code*~~ Rule 145.

Statutory References: Sections 59-1344 and 59-1356(2), Idaho Code. ~~*(1-1-94)*~~(____)

132. ELECTED OR APPOINTED OFFICIAL RETIRING IN PLACE (RULE 132).
An active member serving as an elected or appointed official who does not normally work twenty (20) hours or more per week who achieves service retirement eligibility and who is not an eligible employee with another employer pursuant to Rule 101 of IDAPA 59.01.02, "Eligibility Rules of PERSI," may then retire and continue in that position. The member shall receive retirement allowances under the conditions provided by ~~*Section 59-1356(2), Idaho Code*~~ Rule 145.

Statutory References: Sections 59-1344 and 59-1356(2), Idaho Code. ~~*(5-8-09)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

146. RETIRED MEMBER BECOMING AN ELECTED OR APPOINTED OFFICIAL (RULE 146).
A PERSI retired member who is subsequently elected or appointed by an employer to public office and who is not normally required to perform services of twenty (20) hours or more per week in that position may continue to receive retirement allowances in the status of a reemployed retired member under conditions outlined by ~~*Section 59-1356(2), Idaho Code*~~ Rule 145.

Statutory Reference: Section 59-1356, Idaho Code. ~~*(1-1-94)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

550. COMPUTING VALUE OF SICK LEAVE (RULE 550).
For those members who accrue sick leave based upon each month of service, the rate of pay for purposes of computing the monetary value of a retired member's unused sick leave as outlined in Sections 59-1365, 67-533~~9~~3, and 33-2109A, Idaho Code, shall be the base hourly rate of compensation reported by the employer during the month of separation from employment prior to

retirement, not including any temporary increases, bonuses, or payoffs. For those members employed on a contract basis under Section 33-1228, Idaho Code, the rate of pay for purposes of computing the monetary value of a retiring member's unused sick leave based upon each month of service shall be determined at a daily rate by dividing the annual contract amount by the required days of work. No temporary increases, bonuses or payoffs shall be included in the contract amount. Where the daily rate is affected by changes in the work week such as adoption of a four (4) day work week or similar events, adjustments shall be made to convert the daily rate to maintain equity within the pool. No other forms of leave may be converted to sick leave or otherwise considered in computing the value of unused sick leave. (Amended 3-30-01)(Amended 4-11-06) ~~*(4-11-06)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

552. SICK LEAVE FUNDING RATES (RULE 552).
The sick leave pools shall be funded by employer contributions as follows: (3-30-01)

01. State Agencies and Junior College Districts. All employer groups participating in the pools established by Sections 33-2109A and 67-533~~9~~3, Idaho Code, shall contribute point sixty-five percent (.65%) of employee covered payroll. ~~*(3-30-01)*~~(____)

02. Schools. All employer groups participating in the pool established by Section 33-1228, Idaho Code, shall contribute the percentage of employee covered payroll based on the number of days of paid sick leave permitted during the contract year for certified teachers as set forth in the following table:

Beginning:	July 1, 2006	July 1, 2011	July 1, 2012
9-10 days	1.16%	1.18%	1.21%
11-14 days	1.26%	1.35%	1.44%
More than 14 days	Individual rate to be set by the Retirement Board based on current cost and actuarial data and reviewed annually		

Where a four (4) day work week or similar policies have been adopted, adjustments shall be made to convert the number of days of paid sick leave to the contribution level necessary to maintain equity within the pool. (Amended 3-30-01) (Amended 4-11-06). (3-1-09)T

03. Subdivisions. All employer groups participating in the pool established by Section 59-1365, Idaho Code, shall make contributions as provided in Rule 578. (3-30-01)

553. LIMITATION ON INSURANCE PROGRAMS (RULE 553).
The ~~*group*~~ health, accident, and life insurance programs maintained by employers as outlined in Sections 59-1365, ~~*67-5339,*~~ 33-1228, and 33-2109A, Idaho Code, are limited to ~~*group*~~ plans where the policy holder is the employer or a consortium of employers. Insurance programs outlined in Section 67-5333, Idaho Code, shall be maintained by the employer. The board may require ~~*group*~~ plans to sign an agreement before participating. ~~*(3-30-01)*~~(____)

554. PAYMENT OF INSURANCE PREMIUMS (RULE 554).
Upon certification by the employer and the insurance carrier that a ~~*group*~~ plan qualifies under Rule 553, of this chapter, the board may pay the monthly premiums for a retired member using unused sick leave account funds as prescribed by Idaho Code. ~~*(1-1-94)*~~(____)

01. Adjustments. Coverage and premium changes or adjustments must be submitted to PERSI no less than thirty (30) days prior to their effective date unless PERSI has previously agreed in writing to a shorter period. (3-30-01)

02. Duration of Payments. Premium payments will continue to be made from the unused sick leave account until credits are insufficient to make a premium payment, or until the retiree's death, whichever first occurs. ~~*Unless otherwise notified in writing by the member, when unused sick leave credits become depleted and are insufficient to meet additional premium payments, PERSI will continue to pay monthly premiums if the member's net monthly benefit is greater than the monthly premium, deducting the same from the member's monthly retirement allowance.*~~ ~~*(3-30-01)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

576. PARTICIPATION IN SUBDIVISION UNUSED SICK LEAVE POOL (RULE 576).
Any PERSI employer meeting the following requirements may elect to participate in the unused sick leave pool authorized by Section 59-1365, Idaho Code: (3-30-01)

01. No Current Plan. The employer does not participate in any other statutorily created plan that offers benefits for unused sick leave, including but not limited to, those plans created under Sections 33-1228, 33-2109, and 67-533~~9~~3, Idaho Code. ~~*(3-30-01)*~~(____)

02. All Inclusive Participation. All of a participating employer's employees who are PERSI members and who accrue sick leave must be participants in the plan, except that employers may exclude certain distinctive classes of employees for legitimate business reasons. For example, a city could exclude employees covered by a collective bargaining agreement, or a county may choose to exclude elected officials. (3-30-01)

03. No Other Options for Unused Sick Leave. No employee may be given any option to receive benefits from unused sick leave other than through this plan. For example, no employee, other than those properly excluded under Subsection 576.02, may be given the option of exchanging sick leave for cash or other forms of payment or leave. (3-30-01)

04. Fixed Annual Accrual of Sick Leave. Employer must comply with a policy that offers a fixed amount of sick leave annually that is applicable to all employees or employee groups. A "personal leave" option that fails to distinguish between sick, vacation, or other forms of leave is not permitted. (3-30-01)

05. Medicare Eligible Retirees. Employer's ~~*group*~~ plan must provide coverage to all

retired employees eligible for unused sick leave credits, including retirees that become Medicare eligible. ~~*(3-30-01)*~~(____)

577. OPERATION OF SUBDIVISION POOL (RULE 577).
Upon separation from employment by retirement, in accordance with Chapter 13, Title 59, Idaho Code, every employee of a participating employer shall, upon payment by the employer under Rule 578, receive a credit for unused sick leave in the same manner and under the same terms as provided in Section 67-533~~9~~3(1), Idaho Code. ~~*(3-30-01)*~~(____)