# *COMMERCE & HUMAN RESOURCES COMMITTEE*

## *ADMINISTRATIVE RULES REVIEW*

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## *2010 Legislative Session*


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# IDAPA 01 - BOARD OF ACCOUNTANCY

## 01.01.01 - IDAHO ACCOUNTANCY RULES

## DOCKET NO. 01-0101-0901

## 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) 54-204(1), Idaho Code.

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

**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 23 through 25.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Barbara R. Porter, Executive Director, at 208-334-2490.

DATED this 13rd day of November, 2009.

Barbara R. Porter, Executive Director
Idaho State Board of Accountancy
1109 Main Street, Owyhee Plaza Suite 470
PO Box 83720
Boise, Idaho 83720-0002
Phone: 208-334-2490
Fax: 208-334-2615
E-mail: barbara.porter@isba.idaho.gov

### *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 54-204(1) 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:

**Modify Rule 502.02.c. to change the age a licensee can apply for a retired license from age 60 to age 55. Idaho Code was modified in 2008 to allow licensees to apply for a retired license at age 55, but the rule was not updated.**

**Rule 006 refers to Section 9-340B (1), Idaho Code. Because of changes to that section of Idaho Code, it should refer to Sections 9-340B and 9-340C. Rule 616 refers to Idaho Code Section 9-340B (1). It should refer to Section 9-340C, for the same reason.**

**Modify Rules 004.01 and 004.03 to remove the reference to the calendar year in these two sets of professional standards that are incorporated by reference. The year reference was put in a few years ago. However, it is apparent that the Board's regulatory authority is jeopardized by doing so. Our national model has language that says standards should be incorporated "as applicable under the circumstances and at the time of the services." The Board receives complaints against licensees for professional services provided at a particular point in time. This work must be done in accordance to the standards in place for those services at that point in time. But putting in a discrete calendar year, licensees are being held to standards that may not have been in place at the time services were provided. Conversely, clients may not be protected if we are not holding licensees to appropriate standards.**

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed in public meetings and newsletters, without any objections from the public.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Barbara R. Porter, Executive Director, at 208-334-2490.

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 20th Day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**004. INCORPORATION BY REFERENCE (RULE 004).**
The following documents are hereby incorporated by reference into IDAPA 01.01.01 and can be obtained at the Board office. Licensees are required to comply with the following standards when applicable. (3-1-05)

**01. AICPA Standards**. ~~*2008*~~ The AICPA Professional Standards as applicable under the circumstances and at the time of the services, except as superceded by Section 54-206(8), Idaho Code. ~~*(5-8-09)*~~(  )

**02. CPE Standards**. 2002 Statements on Standards for Continuing Professional Education Programs jointly approved by NASBA and AICPA. (4-2-03)

**03. PCAOB Standards**. ~~*2008*~~ The Standards issued by the Public Company Accountability Oversight Board, as applicable under the circumstances and at the time of the services. ~~*(5-8-09)*~~(  )

**04. NASBA Model Code of Conduct**. 2008 Model Code of Conduct issued by the National Association of State Boards of Accountancy. (5-8-09)

***(BREAK IN CONTINUITY OF SECTIONS)***

**006. PUBLIC RECORDS (RULE 006).**

**01. Documents Exempt from Public Disclosure**. Pursuant to Sections 9-340B~~*(1)*~~ and 9-340C, Idaho Code, the Board office shall not disclose the filing of a complaint, the nature of a complaint, nor the details of an investigation, except to disclose such information to appropriate authorities in cases where the Board is cooperating with other states in investigation and enforcement concerning violations of the Idaho Accountancy Act and rules and comparable acts of other states. ~~*(5-8-09)*~~(  )

**02. Documents Open for Public Inspection**. (4-2-03)

**a.** Final, formal enforcement actions such as fines, assessment of expenses, revocations or suspensions. (4-2-03)

**b.** Probations and conditions may be subject to public disclosure whenever the Board believes it is in the public interest. Following a hearing or the entry of a consent agreement, the

Board may publish a summary of any order issued by it, in a newsletter or newspapers of general circulation. The Board may also advise anyone requesting such information of the contents of any order issued by it. (4-2-03)

**c.** All rules issued by this agency. (4-2-03)

***(BREAK IN CONTINUITY OF SECTIONS)***

**502. EXCEPTIONS, EXTENSIONS, AND EXEMPTIONS (RULE 502).**

**01. Exceptions and Extensions**. The Board may make exceptions to the CPE requirements or grant extensions of time for completion of the CPE requirements, where reasons of health as certified by a medical doctor prevent compliance by the licensee, or other good cause exists. (4-2-03)

**a.** Licensees asking for exceptions or extensions under these conditions must apply annually on the reporting form for the year in which the extension or exemption is sought, and within the time period set for CPE reporting, stating the reasons for asking for such exception or extension. Any licensee failing to file a timely application shall be subject to the late fee prescribed in Rule 703, in addition to any additional proceeding that may be instituted for violation of these rules. (4-2-03)

**b.** A penalty of no more than fifty percent (50%) of the hours a licensee is short in meeting the calendar year CPE requirement may be assessed for extensions. In such cases, the licensee shall be required to complete the CPE hours and any assessed penalty no later than May 31. The penalty for non-compliance with ethics CPE is to obtain the mandatory hours of ethics CPE plus fifty percent (50%) penalty hours in ethics CPE prior to May 31. The penalty for non-compliance with state-specific ethics for Idaho is to complete the course plus fifty percent (50%) penalty hours in ethics CPE prior to May 31. (5-8-09)

**02. Exemptions for Inactive or Retired**. Licensees who elect inactive or retired status shall be exempt from any CPE requirements provided that: (3-20-04)

**a.** The licensees do not perform or offer to perform for the public services involving: (4-2-03)

i. The use of accounting or auditing skills including the issuance of reports on financial statements, or of management advisory, financial advisory or consulting services; or (4-2-03)

ii. The preparation of tax returns, or the furnishing of advice on tax matters as a licensee. (4-2-03)

**b.** Licensees granted such exemption must place the word “inactive” adjacent to their CPA or LPA title on any business card, letterhead or any other document or device. The Board

shall issue a wall certificate for public display that indicates the license is inactive; (4-2-03)

**c.** Those individuals who are inactive and have reached ~~*sixty*~~ fifty-five (~~*60*~~55) years of age may substitute the word "retired" for the word "inactive"; ~~*(4-2-03)*~~(____)

**d.** Licensees granted the exemption as either "inactive" or "retired" shall annually pay the license renewal fee as prescribed in Rule 701; and (4-2-03)

**e.** Licensees granted the exemption must comply with a return to active status competency requirement as set out in Rule 510 before they may discontinue use of the word "inactive" or "retired" in association with their CPA or LPA title. (4-2-03)

***(BREAK IN CONTINUITY OF SECTIONS)***

**616. CONFIDENTIALITY (RULE 616).**
The letter and any documentation submitted to the Board pursuant to Rule 606 is confidential as authorized by Section 9-340~~*(B)(9)*~~C, Idaho Code, unless an Order is issued by the Board pursuant to Section 54-219, Idaho Code. ~~*(4-2-03)*~~(____)

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.01.03 - RULES OF ELECTRICAL LICENSING AND REGISTRATION - GENERAL

## DOCKET NO. 07-0103-0901

## 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 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 54-1005, 54-1006, and 54-1008, 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 in 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 22 and 23.**

**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 a temporary negative fiscal impact to the agency as current contractor licenses will be extended until the month of their original issuance date; but the impact will disappear after the first transitional year and will not represent a continuing adverse fiscal impact.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 30th day of July, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 Sections 54-1005, 54-1006, and 54-1008, 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:

**Section 54-1008, Idaho Code, requires that the Electrical Board promulgate rules providing for a staggered system of issuing and renewing licenses. Electrical Contractor licenses are currently all renewed on July 1 of each year and are not renewed through a staggered system throughout the year. Other electrical license categories are already issued and renewed in accordance with a staggered system; however, in order to comply with the statute, a rule providing for a staggered system of issuing and renewing licenses is required. The rule change clarifies that the licensure period commences as of the date of original issuance, and thereafter must be renewed during the month of the date of original issuance. The rule change further provides that the license expires on the last day of the renewal month, and that applicants have until the last day of their renewal month in which to renew the license, and provides that any license not renewed in the anniversary month, but revived within the subsequent 12-month period shall continue to have the original license anniversary date for the purposes of future renewals.**

**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 rule change confers a benefit upon individuals applying for or renewing Electrical Contractor licenses.**

**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 will be a temporary negative fiscal impact to the agency as current contractor licenses will be extended until the month of their original issuance date; but the impact will disappear after the first transitional year and will not represent a continuing adverse fiscal impact.**

**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 Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 26th day of May, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**011. LICENSE APPLICATION FORMS/APPRENTICE REGISTRATION FORMS.** Application forms for Electrical Contractor, Master Electrician, Journeyman Electrician Licenses, Specialty Electrical Licenses, and registration forms for Apprentice Electricians and Specialty Electrical Trainees shall be printed and made available by the Electrical Bureau of the Division of Building Safety, state of Idaho. (4-5-00)

**01. Application Forms**. All applications for licenses and all registrations shall be properly completed, giving all pertinent information, and all signatures shall be notarized. (4-5-00)

**02. Application Fee**. All applications for electrical licenses shall be accompanied by the fifteen dollar ($15) application fee; apprentice and specialty trainee registration forms shall be accompanied by the ten dollar ($10) registration fee as provided by Section 54-1014, Idaho Code. (4-5-00)

**03. Application Submission**. An application for license shall be submitted to the Electrical Bureau and shall be approved by an authorized representative of the Bureau before any examination is given and before any license is issued. (4-5-00)

**04. Examination**. An applicant for licensure must take the required examination within ninety (90) days of the date of application, or the application shall be considered to be null and void. (4-5-00)

**05. License**. Following the approval by an authorized representative and the successful completion of the required examination, the applicant must purchase a license prior to engaging in business within the state of Idaho. Applicants who fail to purchase a license within ninety (90) days of the date of successful examination shall be required to reapply for licensure, again obtain the approval of an authorized representative, and re-examine. (4-5-00)

**06. License Period**. All original licenses and registrations shall be issued by the Division immediately upon receipt of the licensure fee and other necessary documentation from the applicant which date shall be designated as the original license anniversary date and signify the commencement of the licensing period. All license and registration renewals shall be effective in the year renewed as of the original license anniversary date. All license and registration periods shall end at midnight on the last day of the final month of the licensing or registration period. Licenses and registrations not renewed by this date shall have expired. Any expired license revived within the twelve (12) month period following the expiration date will continue to have the original license anniversary date for purposes of subsequent renewal. ( )

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING

## DOCKET NO. 07-0104-0901

## 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 54-1005, 54-1006, and 54-1008, 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 in 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 24 and 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 a temporary negative fiscal impact to the agency as current specialty contractor licenses will be extended until the month of their original issuance date; but the impact will disappear after the first transitional year and will not represent a continuing adverse fiscal impact.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 30th day of July, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 Sections 54-1005, 54-1006, and 54-1008, 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:

**Section 54-1008, Idaho Code, requires that the Electrical Board promulgate rules providing for a staggered system of issuing and renewing licenses. Electrical Specialty Contractor licenses are currently all renewed on July 1 of each year and are not renewed through a staggered system throughout the year. Other electrical license categories are already issued and renewed in accordance with a staggered system; however, in order to comply with the statute, a rule providing for a staggered system of issuing and renewing licenses is required. The rule change clarifies that the licensure period commences as of the date of original issuance, and thereafter must be renewed during the month of the date of original issuance. The rule change further provides that the license expires on the last day of the renewal month, and that applicants have until the last day of their renewal month in which to renew the license, and provides that any license not renewed in the anniversary month, but revived within the subsequent 12-month period shall continue to have the original license anniversary date for the purposes of future renewals.**

**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 rule change confers a benefit upon individuals applying for or renewing Electrical Specialty Contractor licenses.**

**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 will be a temporary negative fiscal impact to the agency as current specialty contractor licenses will be extended until the month of their original issuance date; but the impact will disappear after the first transitional year and will not represent a continuing adverse fiscal impact.**

**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 Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 26th day of May, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**016. LICENSURE PERIOD AND ~~*RENEWAL*~~ FEES.**
All original specialty licenses and registrations shall be issued by the Division immediately upon receipt of the licensure fee and other necessary documentation from the applicant which date shall be designated as the original license anniversary date and signify the commencement of the licensing period. All specialty license and registration renewals shall be effective in the year renewed as of the original license anniversary date. All license and registration periods shall end at midnight on the last day of the final month of the licensing or registration period. Specialty licenses and registrations not renewed by this date shall have expired. Any expired license revived within the twelve-month period following the expiration date will continue to have the original license anniversary date for the purposes of subsequent renewal. The license fee and renewal fee for each type of specialty license shall be as provided for by Section 54-1014, Idaho Code, for other journeyman licenses. ~~*(7-9-84)*~~(  )

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.01.06 - RULES GOVERNING THE USE OF NATIONAL ELECTRICAL CODE

## DOCKET NO. 07-0106-0901

## 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 54-1006(5), 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 Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 142 through 144.**

**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 proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 54-1006(5), 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:

**A new exception to the National Electrical Code (NEC) related to wiring in unfinished basements and crawl spaces is expected to be included in the next edition of the code. The exception allows the installation of certain cables in crawl spaces to be run at angles with floor joists without the need for drilling holes or a running board. Participants within the industry have voiced complaints that the existing code provision is unnecessarily restrictive, and have urged the Board to proactively adopt this new provision prior to its eventual inclusion in the next edition of the code (NEC). The proposed rule would provide an amendment to Article 334.15(C) of the NEC prior to the promulgation of the next code edition by allowing the installation of certain cables in crawl spaces that are not more than four and a half (4½) feet in height to be run at angles with floor joists without the need for drilling holes or a running board.**

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**011. ADOPTION AND INCORPORATION BY REFERENCE OF THE NATIONAL ELECTRICAL CODE, 2008 EDITION.**

**01. Documents**. Under the provisions of Section 54-1001, Idaho Code, the National Electrical Code, 2008 Edition, (herein NEC) is hereby adopted and incorporated by reference for the state of Idaho and shall be in full force and effect on and after July 1, 2008, with the exception of the following: (4-2-08)

**a.** Where the height of a crawl space does not exceed one point four (1.4) meters or four point five (4.5) feet it shall be permissible to secure NM cables, that run at angles with joist, to the bottom edge of joist. NM cables that run within two point one (2.1) meters or seven (7) feet of crawl space access shall comply with Article 320.23. (____)

**~~a~~b.** Compliance with Article 675.8(B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located. (5-3-03)

**~~b~~c.** Compliance with Article 550.32(B) shall limit installation of a service on a manufactured home to those homes manufactured after January 1, 1992. (5-3-03)

**~~c~~d.** Poles used as lighting standards that are forty (40) feet or less in nominal height and that support no more than four (4) luminaires operating at a nominal voltage of three hundred (300) volts or less, shall not be considered to constitute a structure as that term is defined by the National Electrical Code (NEC). The disconnecting means shall not be mounted to the pole. The disconnecting means may be permitted elsewhere in accordance with NEC, Article 225.32, exception 3. SEC special purpose fuseable connectors (model SEC 1791–DF or model SEC 1791-SF) or equivalent shall be installed in a listed handhole (underground) enclosure. The enclosure shall be appropriately grounded and bonded per the requirements of the NEC applicable to Article 230-Services. Overcurrent protection shall be provided by a (fast-acting – minimum - 100K RMS Amps 600 VAC) rated fuse. Wiring within the pole for the luminaires shall be protected by supplementary overcurrent device (time-delay – minimum - 10K RMS Amps 600 VAC) in break-a-away fuse holder accessible from the hand hole. Any poles supporting or incorporating utilization equipment or exceeding the prescribed number of luminaires, or in excess of forty (40) feet, shall be considered structures, and an appropriate service disconnecting means shall be required per the NEC. All luminaire-supporting poles shall be appropriately grounded and bonded per the NEC. (4-6-05)

**~~d~~e.** Compliance with Article 210.12 Arc-Fault Circuit-Interrupter Protection. (4-2-08)

i. Definition. Arc-Fault Circuit-Interrupter is a device intended to provide protection from the effects of arc faults by recognizing characteristics unique to arcing and by functioning to de-energize the circuit when an arc fault is detected. (4-2-08)

ii. Dwelling Unit Bedrooms. All one hundred twenty (120)-volt, single phase, fifteen (15)-ampere and twenty (20)-ampere branch circuits supplying outlets installed in dwelling unit bedrooms shall be protected by a listed arc-fault circuit interrupter, combination type installed to provide protection of the branch circuit. (4-2-08)

**~~e~~f.** Compliance with Article 680.26 Bonding. (4-2-08)

i. Performance. The bonding required by this section shall be installed to eliminate voltage gradients in the pool area as prescribed. FPN: This section does not require that the eight (8) AWG or larger solid copper bonding conductor be extended or attached to any remote panelboard, service equipment, or any electrode. (4-2-08)

ii. Bonded Parts. The parts specified in 680.26(B)(1) through (B)(5) shall be bonded together. (4-2-08)

(1) Metallic Structural Components. All metallic parts of the pool structure, including the reinforcing metal of the pool shell, coping stones, and deck, shall be bonded. The usual steel tie wires shall be considered suitable for bonding the reinforcing steel together, and welding or special clamping shall not be required. These tie wires shall be made tight. If reinforcing steel is effectively insulated by an encapsulating nonconductive compound at the time of manufacture and installation, it shall not be required to be bonded. Where reinforcing steel is encapsulated with a nonconductive compound, provisions shall be made for an alternate means to eliminate voltage gradients that would otherwise be provided by unencapsulated, bonded reinforcing steel. (4-2-08)

(2) Underwater Lighting. All forming shells and mounting brackets of no-niche luminaries (fixtures) shall be bonded unless a listed low-voltage lighting system with nonmetallic forming shells not requiring bonding is used. (4-2-08)

(3) Metal Fittings. All metal fittings within or attached to the pool structure shall be bonded. Isolated parts that are not over one hundred (100) mm (four (4) inches) in any dimension and do not penetrate into the pool structure more than twenty-five (25) mm (one (1) inch) shall not require bonding. (4-2-08)

(4) Electrical Equipment. Metal parts of electrical equipment associated with the pool water circulating system, including pump motors and metal parts of equipment associated with pool covers, including electric motors, shall be bonded. Metal parts of listed equipment incorporating an approved system of double insulation and providing a means for grounding internal nonaccessible, non-current-carrying metal parts shall not be bonded. Where a double-insulated water-pump motor is installed under the provisions of this rule, a solid eight (8) AWG copper conductor that is of sufficient length to make a bonding connection to a replacement motor shall be extended from the bonding grid to an accessible point in the motor vicinity. Where there is no connection between the swimming pool bonding grid and the equipment grounding system for the premises, this bonding conductor shall be connected to the equipment grounding conductor of the motor circuit. (4-2-08)

(5) Metal Wiring Methods and Equipment. Metal-sheathed cables and raceways, metal piping, and all fixed metal parts except those separated from the pool by a permanent barrier shall be bonded that are within the following distances of the pool: (4-2-08)

(a) Within one and five tenths (1.5) meters (five (5) feet) horizontally of the inside walls of the pool. (4-2-08)

(b) Within three and seven tenths (3.7) meters (twelve (12) feet) measured vertically above the maximum water level of the pool, or any observation stands, towers, or platforms, or any diving structures. (4-2-08)

iii. Common Bonding Grid. The parts specified in 680.26B shall be connected to a common bonding grid with a solid copper conductor, insulated, covered, or bare, not smaller than eight (8) AWG. Connection shall be made by exothermic welding or by pressure connectors or clamps that are labeled as being suitable for the purpose and are of stainless steel, brass, copper, or copper alloy. The common bonding grid shall be permitted to be any of the following: (4-2-08)

(1) The structural reinforcing steel of a concrete pool where the reinforcing rods are bonded together by the usual steel tie wires or the equivalent. (4-2-08)

(2) The wall of a bolted or welded metal pool. (4-2-08)

(3) A solid copper conductor, insulated, covered, or bare, not smaller than eight (8) AWG. (4-2-08)

(4) Rigid metal conduit or intermediate metal conduit of brass or other identified corrosion-resistant metal conduit. (4-2-08)

iv. Connections. Where structural reinforcing steel or the walls of bolted or welded metal pool structures are used as a common bonding grid for nonelectrical parts, the connections shall be made in accordance with 250.8. (4-2-08)

v. Pool Water Heaters. For pool water heaters rated at more than fifty (50) amperes that have specific instructions regarding bonding and grounding, only those parts designated to be bonded shall be bonded, and only those parts designated to be grounded shall be grounded. (4-2-08)

**02. Availability**. This document is available at the office of the Division of Building Safety at 1090 E. Watertower St., Meridian, Idaho 83642. (4-2-08)

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING

## DOCKET NO. 07-0205-0901

## 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 54-2605, 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 words "a job in progress" are being replaced in Subsection 012.02 to remove any mandatory requirement that the practical portion of the plumbing journeyman exam be performed on an actual job in progress. The elimination of these words allows plumbing apprentices more flexibility to take the practical portion of the exam either on an actual job site or in a lab setting. With the downturn in the economy, and the identification of specific fixtures which journeyman exam-takers are required to install, the availability of such on-the-job opportunities is greatly diminished. The elimination of these words is consistent with the substance of the original amendment to the rule -- to test the installation of specific fixtures; it merely provides more flexibility to the exam-taker and the Division of Building Safety inspector administering the practical portion of the exam with regard to where it may be performed.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 145 and 146.**

**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 proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 5th day of November, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 54-2605, 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 rule relating to the plumbing journeyman exam does not provide specific requirements that will fulfill the practical portion of the exam. The rule only states the exam grade is based on "practical work on a job in progress." This current standard makes it difficult to determine what type of work satisfies the exam requirement. It also makes it difficult to apply a uniform standard of grading across all examinants to determine if the examinant possesses the minimum skill and competencies necessary for entry level plumbers. The proposed rule will outline the specific skills that shall be tested as part of the journeyman plumbing practical exam.**

**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 of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 18th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**012. JOURNEYMAN.**

**01. Qualifications for Journeyman Plumber**. An applicant for a journeyman plumber's license must have at least four (4) years experience as an apprentice making plumbing installations under the constant on-the-job supervision of a qualified journeyman plumber, as provided by Section 54-2611, Idaho Code. Pipe fitting will not be accepted as qualifications for a journeyman plumber's license. The first step in obtaining a journeyman certificate of competency is to submit an application for examination and license. The application must be accompanied by proof the applicant has completed the minimum of four (4) years experience in the trade as provided in Section 011 of these rules. Exhibition of a current license or photostatic copy of it from another jurisdiction may be accepted as proof of experience. The examination fee shall be as prescribed by Section 54-2614, Idaho Code, and must accompany the application. (8-25-88)

**02. Examination**. The journeyman examination grade is based on answers to written questions and practical work performed on ~~*a job in progress*~~ *fixtures in the applications as described below* after successful completion of the written work. Time allowed for the written examination is four (4) hours. A passing grade is required on the written examination. The practical ~~*work*~~ portion of the exam shall consist of work performed in both a public and private scope, and must pass with no violations. The criteria for each application are as follows:
~~*(8-25-88)*~~*(  )*

**a.** Public Application: Rough-in six (6) different fixtures consisting of a water closet, urinal, lavatory with carriers, floor sink, floor drain with trap primer, water heater, multi-level installation, and silver soldering. Pipe the DWV system using copper pipe and fittings. (  )

**b.** Private Application: Rough-in five (5) different fixtures consisting of a water closet, tub or shower, lavatory, kitchen sink/garbage disposal/dishwasher combination, and a clothes washer standpipe. Piping DWV system using ABS or PVC pipe and fittings. Pipe the water distribution system using plastic pipe and brass fittings. (  )

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING

## DOCKET NO. 07-0205-0902

## 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 54-2605(1) and 54-2617, 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 Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, 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 the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 54-2605(1) and 54-2617, 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:

**In 2009, Section 54-2606, Idaho Code, was amended to provide the Idaho Plumbing Board with the authority to establish continuing education requirements for journeyman and contractor plumbers. Currently, no rules provide for specific requirements regarding continuing education. Advancements in technology and changing job responsibilities may require a plumber to update their knowledge and skills consistent with any new developments in the plumbing profession. Continuing education helps to assure the plumbing community and the public that an individual is qualified by knowledge and skills to work in the trade. This rule change would establish the specific continuing education requirements that journeyman and contractor plumbers must fulfill within specified timeframes in order to renew their certificate of competency in accordance with Section 54-2617, Idaho Code. It also requires the approval of courses of instruction and instructors by the Division of Building Safety.**

**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 of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 18th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**016. CERTIFICATES OF COMPETENCY -- ISSUANCE, RENEWAL, EXPIRATION, REVIVAL -- FEES.**

**01. Issuance**. Certificates of competency shall be issued in such a manner as to create a renewal date that coincides with the birthdate of the individual to whom the certificate is issued and allows for renewals every three (3) years. (4-6-05)

**a.** Certificates of competency shall be issued for a period of no less than one (1) year and no more than three (3) years. For example: a qualified applicant who applies for a certificate of competency in August of year one (1) but whose birthday will not occur until March of year two (2) shall be issued a certificate of competency renewable on the anniversary of the applicant's birthdate. (4-6-05)

**b.** The fee for issuance of certificates of competency shall be prorated based on the number of months for which it is issued. (4-6-05)

**02. Renewal**. Certificates of competency shall be renewed in such a manner as will achieve a staggered system of certificate renewal using the birthdate of the individual to whom the certificate is issued as the expiration date. (4-6-05)

**a.** Certificates of competency shall be renewed for a period of no less than one (1) year and no more than three (3) years. (4-6-05)

**b.** The fee for renewal of certificates of competency shall be prorated based on the number of months for which it is issued. (4-6-05)

**c.** Continuing Education. The Idaho Plumbing Board will establish criteria for approval of instruction and instructors and courses and instructors will be approved by the Plumbing Bureau. Proof of completion of the following continuing education requirements must be submitted to the Plumbing Bureau prior to, or with the application for, licensure renewal by any licensee in order to renew a journeyman or contractors plumbing license. ( )

i. Journeymen must complete eight (8) hours of continuing education for every three-year license cycle, or complete an exam administered by the Division. Of the required eight (8) hours, four (4) hours must be plumbing code update related and the other four (4) hours may be industry related training. ( )

ii. Contractors must complete sixteen (16) hours of continuing education for every

three-year license cycle. Hours accrued obtaining journeyman education may be applied toward this requirement whenever applicable. ( )

**03. Expiration - Revival**. (4-6-05)

**a.** Certificates that are not timely renewed will expire. (4-6-05)

**b.** A certificate that has expired may be revived within twelve (12) months of its expiration by submitting a completed application and paying the same fee as for an initial certificate and meeting all other certification requirements. (4-6-05)

**c.** Revived certificates shall be issued in such a manner as to create a renewal date that coincides with the birthdate of the applicant to achieve a staggered system of renewal. (4-6-05)

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING

## DOCKET NO. 07-0205-0903

## 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 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 54-2605(1) and 54-2614A, 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 Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, 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 the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

**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 54-2605(1) and 54-2614A, 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:

**In the 2009 legislative session, amendment was made to Section 54-2614A, Idaho Code, whereby the validity of a plumbing apprentice registration was extended from one (1) year to five (5) years and a plumbing specialty apprentice registration was extended from one (1) year to three (3) years. The current rule requires amendment in order to come into alignment with these statutory changes. Additionally, this rule will clarify that verification by the Division of employment and participation in an instructional program is not required to maintain an apprentice registration; but rather, proof of completion of the required number of employment and instructional hours will be necessary to be eligible to sit for the journeyman examination. The proposed rule will require each apprentice and specialty apprentice to register for a period of five (5) and three (3) years respectively, and eliminate the requirement that an apprentice be employed and enrolled in an instructional program in order for the registration to be valid. Instead, the rule will provide that evidence of completion of the required number of employment and instructional hours must be provided to the Division in order for an apprentice to be eligible to sit for the journeyman exam.**

**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 of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve

Keys, Deputy Administrator - Operations, (208) 332-8986.

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 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**011. APPRENTICE REGISTRATION.**
The minimum age for any apprentice shall be sixteen (16) years. All apprentices shall be registered with the Division~~.~~ and shall pay ~~T~~the registration fee ~~*shall be*~~ as prescribed by Section 54-2614, Idaho Code. No examination is required. ~~*In order to maintain registration properly, a*~~An individual must be working at the trade under the constant on-the-job supervision of a journeyman and in the employ of a contractor. ~~*The*~~ Any apprentice who desires to sit for the journeyman exam must ~~*also be enrolled and active in*~~ complete an Idaho Plumbing Board-approved related ~~*training class*~~ course of instruction for four (4) years, and work for a total of four (4) years, defined as a minimum of eight thousand (8,000) hours work experience prior to the date of the exam. Unless prior approval has been granted by the Plumbing Bureau, the apprentice must complete the required course work sequentially: year one (1) must be completed prior to beginning year two (2); year two (2) must be completed prior to beginning year three (3); and year three (3) must be completed prior to beginning year four (4). A minimum of one hundred forty-four (144) hours of classroom or other Idaho Plumbing Board-approved instruction time per school year is required. A grade average of seventy percent (70%) must be maintained in these courses. Upon completion of apprenticeship training, the apprentice must obtain a certificate of completion, or a letter signed by the chairman of his apprenticeship committee, and attach the certificate or letter to his application for a journeyman license. In order to maintain registration, the apprentice shall renew his registration ~~*annually*~~ in ~~*the month of his initial registration. The renewal fee shall be as prescribed by*~~ accordance with Sections 54-2614 and 54-2614A, Idaho Code. ~~*(4-6-05)*~~(  )

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.03.01 - RULES OF BUILDING SAFETY

## DOCKET NO. 07-0301-0901

## 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 39-4109, 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 Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 151 through 153.**

**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 proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 39-4109, 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:

**Section 39-4109, Idaho Code, provides the Building Code Board with the authority to adopt specified building codes via administrative rule. Amendments to Section 39-4109 during the 2009 legislative session provide the Board with the authority to amend the adopted codes pursuant to a negotiated rulemaking process. The rules currently adopt the 2006 editions of the building codes and need to be updated to reflect the most recent 2009 editions of the codes. Additionally, the Board's renewed amending authority is allowing it to make amendments to the building codes that since 2002 it has been unable to make. The rule would adopt the 2009 editions of the International Building Code, International Residential Code, the International Energy Conservation Code, and the International Existing Building Code, with specified amendments thereto as adopted by the Board through the negotiated rulemaking process.**

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**004. ADOPTION AND INCORPORATION BY REFERENCE.**
Under the provisions of Section 39-4109, Idaho Code, the ~~*following*~~ codes enumerated in this Section are hereby adopted and incorporated by reference into IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety. The effective date of a 2009 edition of any of the codes adopted in this Section with any amendments identified thereto shall be January 1, 2011. Until such time, the 2006 edition of any such code enumerated in this Section without amendment will remain effective pursuant to Section 39-4109, Idaho Code. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or http://www.iccsafe.org. ~~*(5-8-09)*~~(____)

**01. International Building Code**. 200~~6~~9 Edition. ~~*(5-8-09)*~~(____)

**02. International Residential Code**. 200~~6~~9 Edition. ~~*(5-8-09)*~~(____)

**a.** Delete IRC section R109.1.3 and replace with the following: Floodplain inspections. For construction in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, the building official is authorized to require submission of documentation of the elevation of the lowest floor, including basement, required in section R322. (____)

**b.** IRC Table R302.1 Exterior Walls -- delete the figures contained in the last column of the table under the heading Minimum Fire Separation Distance, and replace with the following:

| ***Minimum Fire Separation Distance*** | | |
|---|---|---|
| Walls (fire-resistance rated): | ≤ | Three (3) Feet |
| Walls (not fire-resistance rated): | ≥ | Three (3) Feet |
| Projections (fire-resistance rated): | ≤ | Three (3) Feet |
| Projections (not fire-resistance rated): | ≥ | Three (3) Feet |

(____)

**c.** Delete the exception contained under IRC section R302.2 -- Townhouses, and replace with the following: Exception: A common one-hour or two-hour fire resistance rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be

tight against the exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with section R302.4. ( )

**d.** Delete the exception contained under IRC section R313.1 -- Townhouse automatic fire sprinkler systems, and replace with the following: Exception: Automatic residential fire sprinkler systems shall not be required in townhouses where a two-hour fire-resistance rated wall is installed between dwelling units or when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed. ( )

**e.** Delete IRC section R313.2. ( )

**f.** Delete IRC section R322.1.10. ( )

**g.** Delete IRC section R322.2.2 paragraph 2.2, and replace with the following: The total net area of all openings shall be at least one (1) square inch (645 mm2) for each square foot (0.093 m2) of enclosed area, or the opening shall be designed and the construction documents shall include a statement that the design and installation of the openings will provide for equalization of hydrostatic flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. ( )

**03. International Existing Building Code**. 200~~6~~9 Edition. ~~*(5-8-09)*~~( )

**04. International Energy Conservation Code**. 2009 Edition. ( )

**05. References to Other Codes**. Where any provisions of the codes that are adopted in this Section make reference to other construction and safety-related model codes or standards which have not been adopted by the involved authority having jurisdiction, to the extent possible, such reference should be construed as pertaining to the equivalent code or standard that has been duly adopted by such jurisdiction. ( )

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.03.01 - RULES OF BUILDING SAFETY

## DOCKET NO. 07-0301-0902

## 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 39-4109, 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 Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 154 and 155.**

**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 proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 39-4109, 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:

**Section 39-4109, Idaho Code, provides the Building Code Board with the authority to adopt specified building codes via administrative rule. The rules currently adopt the 2006 editions of the building codes and need to be updated to reflect the most recent 2009 editions of the codes. Additionally, the American Recovery and Reinvestment Act (federal stimulus legislation) includes funding for states to build energy efficient buildings. To receive that funding, Idaho has provided assurances to the federal government that it will adopt the 2009 International Energy Conservation Code. The rule would adopt the 2009 edition of the International Energy Conservation Code with any amendments thereto as adopted by the Board through the negotiated rulemaking process.**

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**004. ADOPTION AND INCORPORATION BY REFERENCE.**
Under the provisions of Section 39-4109, Idaho Code, the ~~*following*~~ codes enumerated in this Section are hereby adopted and incorporated by reference into IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety. The effective date of a 2009 edition of any of the codes adopted in this Section with any amendments identified thereto shall be January 1, 2011. Until such time, the 2006 edition of any such code enumerated in this Section without amendment will remain effective pursuant to Section 39-4109, Idaho Code. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or http://www.iccsafe.org. ~~*(5-8-09)*~~(____)

**01.** **International Building Code**. 2006 Edition. (5-8-09)

**02.** **International Residential Code**. 2006 Edition. (5-8-09)

**03.** **International Existing Building Code**. 200~~6~~9 Edition. ~~*(5-8-09)*~~(____)

**04.** **International Energy Conservation Code**. 2009 Edition. (____)

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.03.01 - RULES OF BUILDING SAFETY

## DOCKET NO. 07-0301-0903

## 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 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 33-356 and 67-2601A, 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 Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 156 through 158.**

**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 proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 33-356 and 67-2601A, 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:

**A new section of the Idaho Code codified at Section 33-356 was passed by the legislature in 2009, which provides financial incentives for school districts to use integrated design and fundamental commissioning building practices in the construction of school building facilities. Pursuant to that statute, the administrator of the Division of Building Safety is required to promulgate rules which provide guidance and technical information for school districts, as well as rules governing an annual optimization review to ensure optimal energy performance of building systems. The rule would provide notice of the availability of guidance, educational, and technical support to school districts to implement the processes of integrated design and fundamental commissioning, as well as the availability of a list of all third party commissioning agents in the state; provide for a process of performing and certifying the annual optimization review to ensure energy efficiency; and provide for certifications regarding qualification of schools for the building replacement value calculation.**

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**038. INTEGRATED DESIGN AND FUNDAMENTAL COMMISSIONING.**

**01. Definitions**. The following definitions are intended to supplement, and should be read in conjunction with the definitions contained in Section 33-356, Idaho Code. ( )

**a.** Fundamental Commissioning. A quality-focused process for enhancing the delivery of a project. It makes use of a qualified third party employed directly by the building owner. ( )

**b.** Integrated Design. Integrated design refers to a collaborative design effort in which each of the individual architectural or engineering professionals focuses on the whole building approach, with an emphasis on optimizing the building's performance, environmental sustainability, and cost-savings, to include climate, use, loads and systems resulting in a more comfortable and productive environment, and a building that is more energy-efficient than would be realized using current best practices. ( )

**02. Technical and Educational Information**. Technical and educational information related to integrated design and fundamental commissioning in the form of the American Institute of Architects Integrated Project Delivery Guide; Portland Energy Conservation, Inc. (PECI) Commissioning Guides; ASHRAE Guideline 0-2005-The Commissioning Process; and the Northwest Energy Efficiency Alliance Integrated Design Special Focus on Energy Performance Guide is available at the Division office locations including 1090 E. Watertower St., Meridian, Idaho 83642, and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. A building commissioned under the prescriptive approaches defined by any of the above-named national organizations is deemed to have completed the Fundamental Commissioning process. ( )

**03. Commissioning Agents**. The Division has compiled and made available for public examination a list of all known third party building commissioning agents in Idaho and its contiguous states. The Division has ensured that all such commissioning agents appearing on this list have been certified by the Building Commissioning Association (BCA) or other similar certifying entity. ( )

**04. Annual Optimization Review**. ( )

**a.** A public school building which qualifies for the school building replacement value calculation pursuant to Section 33-356(5)(a), Idaho Code, shall undergo an annual optimization review each year following the first year of operations that the involved school district seeks to

qualify such building for the building replacement value calculation. ( )

**b.** The systems within a building required to undergo annual optimization review, as well as any relevant measuring criteria for such systems, shall be formulated by the third party commissioning agent that performs the initial fundamental commissioning. The school district shall be provided with a written report from the commissioning agent identifying the systems which will be subject to the annual optimization review along with any other requirements.( )

**c.** The report required above in Paragraph 038.03.b. of these rules shall include, but is not limited to, at least the following: ( )

i. Verification that the heating, ventilation, and air conditioning (HVAC) controls, dampers, valves, sensors and other equipment used to control the system are functioning as they were at the commissioning of the building. ( )

ii. Verification that the lighting controls are functioning as they were at the commissioning of the building. ( )

iii. The requirement that any changes made to any of the controls contained on the agent's list after the initial commissioning be re-set back to the commissioned settings unless it can be demonstrated that the new settings result in greater energy efficiency. ( )

**d.** The annual optimization review shall be performed by persons qualified to make the required determinations and adjustments. ( )

**e.** The school district shall submit to the Division written verification indicating that the systems identified by the commissioning agent, including those identified in this Section are functioning as they were at the initial commissioning. Such written verification shall also identify the persons performing the optimization and their qualifications. ( )

**05. Commissioning Anniversary Date**. The date upon which the commissioning agent provides the school district with the required written report described in Paragraph 038.03.b. of these rules shall be the commissioning anniversary date for purposes of this Section. If a school district seeks to qualify a building for the building replacement value calculation, the annual optimization review shall be performed within thirty (30) days of the annual commissioning anniversary date following the first year the building is in operation. The written verification required by Paragraph 038.03.e. of these rules shall be received by the Division not later than sixty (60) days after the annual commissioning anniversary date. ( )

**06. Fundamental Building Commissioning Requirements**. ( )

**a.** School districts seeking to qualify a building for the building replacement value calculation shall engage a building commissioning agent. ( )

**b.** The commissioning agent must document the owner's requirements for each commissioned system in the facility. All HVAC and controls systems, duct work and piping, renewable and alternative technologies, lighting controls and day lighting, waste heat recovery, and any other advanced technologies incorporated in the building must be commissioned.

Building envelope systems must also be verified. The owner's requirements for these systems may include efficiency targets and other performance criteria such as temperature and lighting levels that will define the performance criteria for the functional performance testing that occurs prior to acceptance. ( )

**c.** The commissioning agent shall include commissioning requirements in the project construction documents. This includes the scope of commissioning for the project, the systems to be commissioned, and the various requirements related to schedule, submittal reviews, testing, training, O & M manuals, and warranty reviews. ( )

**d.** The commissioning agent shall develop and utilize a commissioning plan. This plan must include an overview of the commissioning process for the project, a list of commissioned systems, primary commissioning participants and their roles, a communication and management plan, an outline of the scope of commissioning tasks, a list of work products, a schedule, and a description of any commissioning testing activities. ( )

**e.** The commissioning agent must submit a report to the owner once the commissioning plan has been executed. ( )

**03~~8~~9. -- 999. (RESERVED).**

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.03.03 - RULES FOR MODULAR BUILDINGS

## DOCKET NO. 07-0303-0901

## 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 39-4302, 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 Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 159 through 161.**

**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:

**The use of multi-hat inspectors in the factory setting will result in significant savings to the Division. Once fully implemented, predicated on FY2008 volume, DBS projects a net savings of forty thousand dollars ($40,000) or approximately ten percent (10%) of personnel costs involved in the inspection effort.**

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 39-4302, 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:

**Section 39-4304A, Idaho Code, was approved by the legislature in 2009 and added to the modular building statutory scheme. Section 39-4304A provides authority for the administrator to appoint qualified modular building inspectors to assist in the enforcement of Title 39, Chapter 43, Idaho Code. One of the enumerated requirements for each inspector is that they be certified as an inspector by an organization designated in administrative rule by the Modular Building Advisory Board. Currently, no such administrative rule exists which designates approved certifying organizations. The proposed rule would identify the organizations designated by the Board from which inspectors may obtain certification as a qualified inspector. Those organizations would include the National Certification Program Construction Code Inspector program (NCPCCI), the National Inspection Testing Certification program (NITC), the International Association of Electrical Inspectors (IAEI), and the International Code Council (ICC).**

**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:

**The use of multi-hat inspectors in the factory setting will result in significant savings to the Division. Once fully implemented, predicated on FY2008 volume, DBS projects a net savings of forty thousand dollars ($40,000) or approximately ten percent (10%) of personnel costs involved in the inspection effort.**

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN**

**COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**032. MODULAR BUILDINGS.**

**01. Enforcement and Administration**. The Administrator shall administer and enforce all the provisions of these rules. Any officer, agent, or employee of the Division is authorized to enter any premises during any normal or operational hours where Modular Buildings are manufactured for the purpose of examining any records pertaining to quality control and inspection and may inspect any such units, equipment, or installations to insure compliance with the provisions of these rules and codes enumerated in Title 39, Chapters 41 and 43, Idaho Code. When it becomes necessary, he may require that a portion or portions of such Modular Building units be removed in order that an inspection may be made to determine compliance. Every manufacturer of Modular Buildings shall obtain prior approval and an Insignia for each Modular Building unit to be installed in the state of Idaho. (3-26-08)

**02. Inspections**. (3-26-08)

**a.** Inspections at Manufacturing Plants. The Division shall conduct inspections at the manufacturing plant to determine compliance with the provisions of these rules and with codes adopted by Title 39, Chapter 41, Idaho Code, and Title 54, Chapters 10, 26, and 50, Idaho Code. (3-26-08)

**b.** In-Plant Inspections. Due to the repetitive nature of the manufacturing process, the required inspections outlined in the International Building Code or International Residential Code may not be required if, in the opinion of the Division, compliance can be obtained by periodic inspections. The Division shall conduct periodic unannounced inspections at any manufacturing site to review any or all aspects of a manufacturer's production and inspectional control procedures. Each unit, however, shall be inspected at least once during the course of production for compliance with the adopted standards. No unit manufactured to be installed in the state of Idaho will be shipped from the point of manufacture without inspection and attached Insignia. (3-26-08)

**c.** Field Inspections. All existing Modular Buildings to be installed in the state of Idaho not bearing the Division's Insignia shall not be used or occupied until required Idaho Insignia has been issued by the Division and properly affixed in accordance with these rules.

Applicants for Insignia shall obtain permits, plan approvals, and inspections as required by these rules. (3-26-08)

**d.** Qualifications of Inspectors. All inspectors performing inspections of modular buildings must be properly certified for the type of inspection being conducted. The Modular Board recognizes certifications granted through the National Certification Program Construction Code Inspector program (NCPCCI), the National Inspection Testing Certification program (NITC), the International Association of Electrical Inspectors (IAEI), and the International Code Council (ICC). Certifications shall be current and of the proper classification for the structure or subsystem being inspected. ( )

**03. Installation Inspection**. In order to complete the installation of the Modular Building, approval and inspection of said installation by the enforcement agency having jurisdiction over the site location shall be required. (3-26-08)

**04. Field Technical Service**. Any person may request field Technical Service and requests for such service shall be submitted to the Division in writing. (3-26-08)

**05. Local Enforcement Agencies**. (3-26-08)

**a.** Rights of Local Enforcement Agency. A local enforcement agency shall have the right to require a complete set of plans and specifications approved by the Division for each Modular Building to be installed within its jurisdiction, to require that all permits be obtained before delivery of any unit to a Building Site. After leaving the manufacturing facility, future alterations or conversions of Division approved Modular Buildings shall be field inspected by the local unit of government having jurisdiction. (3-26-08)

**b.** Limitations of Rights of Local Enforcement Agency. A local enforcement agency shall not have the right to: open for inspection any Modular Building or component bearing an Insignia to determine compliance with any codes or ordinances; require by ordinance or otherwise that Modular Buildings meet any requirements not equally applicable to on-site construction; or to charge permit or plan review fees for any portion of the structure prefabricated or assembled at a place other than the Building Site. (3-26-08)

**06. Insignia**. (3-26-08)

**a.** Required Insignia. Each Modular Building section shall bear a Division Insignia prior to leaving the manufacturing facility. Assigned Insignia are not transferable and are void when not affixed as assigned. All such voided Insignia shall be returned to, or may be confiscated by, the Division. Insignia remain the property of the Division and may be confiscated in the event of violation of conditions of approval. Assigned Insignia affixed in the field shall be under the direction of the Division's authorized agent. (3-26-08)

**b.** Insignia Location. Insignias shall be placed on the front, left-hand side of the building. (3-26-08)

**c.** Serial Number. Each Modular Building shall bear a legible identifying serial number, which shall include the state of manufacture. Each section of a multiple Modular

Building shall have the same identifying serial number followed by a numerical sequence identifier or a letter suffix, or both. Characters for serial numbers shall be three-eighths (3/8) inch minimum height. Numbers shall not be stamped into a hitch assembly or draw bar. (3-26-08)

**d.** Data on Insignia. The date of manufacture, showing month, week, and year will be shown on the Insignia. Such data will be provided by the manufacturer on the application for Insignia. (3-26-08)

**07. Reciprocal Agreements**. The provisions for Insignia of compliance as specified in a written and signed reciprocal agreement between the Division and any other state shall take precedence over the provisions of these rules. Where there is evidence that the in-plant inspection controls in out-of-state plants within states having reciprocal agreements with the state of Idaho are not being maintained for units to be placed in Idaho, the Division reserves the right to make out-of-state inspections, and fees for such inspection as set forth in these rules shall be paid by the manufacturer. (3-26-08)

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.03.11 - RULES GOVERNING MANUFACTURED/MOBILE HOME INDUSTRY LICENSING

## DOCKET NO. 07-0311-0901

## 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 44-2104 and 44-2107, 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 Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 162 through 171.**

**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 proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 44-2104 and 44-2107, 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:

**Section 44-2107, Idaho Code, provides the Administrator authority to impose civil penalties on those who violate provisions of Title 21, Chapter 44, Idaho Code, or IDAPA 07.03.11, Rules Governing Manufactured/Mobile Home Industry Licensing; however, the current rules do not contain any provisions regarding such civil penalties. Additionally, the term manufactured home "dealer" has been replaced with the term "retailer" in Title 21, Chapter 44, Idaho Code, to reflect a more accurate designation within the industry. The proposed rules will maintain consistent application of that term. The proposed rule will provide for civil penalties to address individuals who are in violation of Idaho's manufactured housing industry licensing laws and rules. The proposed rules will also more accurately identify those who sell manufactured homes as "retailers" instead of "dealers."**

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**000. LEGAL AUTHORITY.**
~~*In accordance with Section 44-2102, Idaho Code, t*~~The administrator of the Idaho Division of Building Safety ~~*is*~~ and the Idaho Manufactured Housing Board are authorized to promulgate rules necessary to implement the provisions of Title 44, Chapters 21 and 22, Idaho Code, including the establishment of a mandatory statewide manufactured home setup code, as well as to define and prohibit deceptive practices, and to establish administrative penalties. ~~*(3-24-05)*~~(  )

***(BREAK IN CONTINUITY OF SECTIONS)***

**004. -- 009. (RESERVED).**

**01~~0~~4. DEFINITIONS.**
For the purposes of these rules, the following terms will be used, as defined below: (5-25-94)

**01.** **Administrator**. The administrator of the Division of Building Safety of the state of Idaho. (3-24-05)

**02.** **Board**. The Manufactured ~~*Home Advisory*~~ Housing Board. The composition and duties of the Board are set forth at Section 44-2104, Idaho Code. ~~*(5-25-94)*~~(  )

**03.** **Bond**. The performance bond required by Section 44-2103, Idaho Code. (5-25-94)

**04.** **Branch Office**. An enclosed structure accessible and open to the public, at which the business of the manufactured/mobile home ~~*dealer*~~ retailer is conducted simultaneously with and physically separated from his principal place of business. There shall be displayed on the exterior a sign permanently affixed to the land or building with letters clearly visible to the major avenue of traffic. The sign shall provide the business name of the ~~*dealer*~~ retailer. ~~*(3-24-05)*~~(  )

**05.** **Business**. Occupation, profession, or trade. (5-25-94)

**06.** **Deceptive Practice**. Intentionally publishing or circulating any advertising concerning mobile or manufactured homes which: (5-25-94)

**a.** Is misleading or inaccurate in any material ~~*particular*~~ respect; ~~*(5-25-94)*~~(  )

**b.** Misrepresents any of the products or services sold or provided by a manufacturer, manufactured/mobile home ~~*dealer*~~ retailer, salesman, or service~~/~~ or installation company. ~~*(3-24-05)*~~(  )

**07.** **Division**. The Division of Building Safety for the state of Idaho. (5-25-94)

**08.** **Installer**. A person who owns a business which installs ~~*a*~~ manufactured/mobile

homes at the sites where ~~*it is*~~ they are to be ~~*used for occupancy*~~ occupied by the consumer. The term does not include the purchaser of a manufactured/mobile home or a manufactured/mobile home ~~*dealer*~~ retailer who does not install manufactured/mobile homes. A ~~*dealer*~~ retailer who does install manufactured/mobile homes is an installer. The term also does not include concrete contractors or their employees. ~~*(3-24-05)*~~(____)

**09. Installation**. The term includes "setup" and is the complete operation of fixing in place a manufactured/mobile home for occupancy. (5-25-94)

**10. Manufactured Home**. A structure constructed according to HUD manufactured home construction and safety standards, transportable in one (1) or more sections, which: (3-24-05)

**a.** In the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length; or (5-25-94)

**b.** When erected on site, is three hundred twenty (320) or more square feet in size; and (5-25-94)

**c.** Is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities; and (5-25-94)

**d.** Includes the plumbing, heating, air conditioning, and electrical systems contained therein; (5-25-94)

**e.** Except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. Section 5401. (5-25-94)

**11. Manufactured Home ~~*Dealer*~~ Retailer**. Except as otherwise provided in these rules: ~~*(3-24-05)*~~(____)

**a.** Any person engaged in the business of selling or exchanging new and used units; or (5-25-94)

**b.** Any person or who buys, sells, lists, or exchanges three (3) or more new and used units in any one (1) calendar year. (5-25-94)

**12. Manufactured/Mobile Home Salesman**. Except as otherwise provided in these rules: Any person employed by a manufactured/mobile home dealer for a salary, commission, or compensation of any kind to sell, list, purchase, or exchange or to negotiate for the sale, listing, purchase, or exchange of units. (3-24-05)

**13. Manufactured/Mobile Home Service Company**. Any person who owns or is the responsible managing employee of a business that has grossed more than two thousand five hundred dollars ($2,500) in any one (1) year from the service of manufactured or mobile homes. The term does not include a manufactured/mobile home ~~*dealer*~~ retailer or owner. The term also

does not include licensed electrical or plumbing contractors, carpet and vinyl installers, painting or concrete contractors, tape and texture installers, cabinet installers, public utilities, or the employees of any of the occupations listed in this sentence. Finally, the term does not include manufactured/mobile home installers. ~~*(5-25-94)*~~(____)

**14.** **Manufacturer**. A manufacturing facility which has been certified by the U.S. Department of Housing and Urban Development (HUD) to construct prefabricated manufactured homes in accordance with the Manufactured Housing Construction Safety Standards Act of 1974. (5-25-94)

**15.** **Mobile Home**. A structure similar to a manufactured home, but built to a mobile home code prior to June 15, 1976, the date of enactment of the Federal Manufactured Housing and Safety Standards Act (HUD Code). (5-25-94)

**16.** **Person**. A natural person, corporation, partnership, trust, society, club, association, or other organization. (5-25-94)

**17.** **Principal Place of Business**. An enclosed structure accessible and open to the public at which each of the following requirements are met: (5-25-94)

**a.** The business of the manufactured/mobile home ~~*dealer*~~ retailer is lawfully conducted here; ~~*(3-24-05)*~~(____)

**b.** The office or offices of the ~~*dealer*~~ retailer is or are located here; ~~*(3-24-05)*~~(____)

**c.** The public may contact the ~~*dealer*~~ retailer or salesman here; ~~*(3-24-05)*~~(____)

~~***d.*** The books and other records of the business of the dealer shall be kept and maintained; and~~ ~~(3-24-05)~~

~~**e**~~**d.** The greatest portion of the ~~*dealer's*~~ retailer's business is conducted here. The books and other records of a ~~*dealer*~~ retailer must be kept and maintained at the ~~*dealer's*~~ retailer's principal place of business and be open to inspection during normal business hours by any authorized agent of the Division. Moreover, there shall be displayed on the exterior a sign permanently affixed to the land or building with letters clearly visible to the major avenue of traffic. The sign shall provide the business name of the ~~*dealer*~~ retailer. ~~*(3-24-05)*~~(____)

**18.** **Responsible Managing Employee (RME)**. The person designated by the employer to supervise other employees, either personally or through others. (5-25-94)

**19.** **Service**. Service includes, but is not limited to, the installation or repair of awnings, roofing, skirting, siding, remodeling, material alterations, attached carports or decks, on or in manufactured/mobile homes. (5-25-94)

**20.** **Unit**. A mobile or manufactured home. (5-25-94)

**21.** **Used Manufactured Home or Mobile Home**. A manufactured home or mobile home, respectively, which has been: (5-25-94)

**a.** Sold, rented, or leased and occupied prior to or after the sale, rental, or lease; or (5-25-94)

**b.** Registered with or been the subject of a certificate of title issued by the Idaho Department of Transportation or the appropriate authority of any state, the District of Columbia, or foreign state or country. (5-25-94)

***~~005.~~*** **011. (RESERVED).**

**012. LICENSE REQUIRED.**
It shall be unlawful to engage in business as a manufacturer, manufactured/mobile home ~~*dealer*~~ retailer, resale broker, manufactured/mobile home salesman, responsible managing employee, or manufactured/mobile home service company~~/~~ or installer without being duly licensed by the Division pursuant to Title 44, Chapter 21, Idaho Code, and these rules. No issued licenses are transferable. ~~*(3-24-05)*~~(  )

**01. Minimum Age Requirement**. No license will be issued to a person under eighteen (18) years of age at the time of license application. (5-25-94)

**02. Designated License Holder**. Any applicant for a license under these rules who is not a natural person must designate a natural person to be license holder and represent the corporation, partnership, trust, society, club, association, or other organization for all licensing purposes under these rules including, but not limited to, testing and education. (3-24-05)

**a.** The authorization to act as designated license holder must be in writing, signed by the applicant and the person designated, and filed with the Division along with the application. (5-25-94)

**b.** Any person designated under Subsection 012.02 of these rules shall represent one (1) applicant only, and shall immediately notify the Division in writing if his working relationship with the applicant has been terminated. The license will be issued in the name of the designated license holder with the name of the organization he represents also noted on the license. The license holder shall be considered by the Division to be the licensee, even if the license holder is the designated representative of an organization. (5-25-94)

**c.** The applicant and the person designated under Subsection 012.02 of these rules agree by acceptance of the designation that the designated person shall act as agent of the applicant for all purposes under Title 44, Chapters 21 and 22, Idaho Code, and all rules promulgated thereunder. (5-25-94)

**03. Proof of License**. Proof of the existence of any license issued pursuant to these rules shall be carried upon the person of the responsible managing employee or supervisor of any installation or any person who is personally involved with the service of any manufactured/ mobile home at all times during the performance of the service or installation work. Such proof shall be furnished upon demand of any person. Moreover, any license issued to a manufactured/ mobile home ~~*dealer*~~ retailer, resale broker, responsible managing employee, or salesman must be posted in a conspicuous place on the business premises of the employer for whom the holder of

the license is licensed. The license of a manufacturing facility or branch office shall also be posted in a conspicuous place at the location licensed. ~~*(3-24-05)*~~(____)

**04. Real Estate Brokers**. Licensed real estate brokers or real estate salesmen representing licensed real estate brokers shall not be required to obtain a license under these rules in order to sell or lease a used unit that is currently carried on the tax rolls as personal property and that otherwise falls within the exemption contained in Section 44-2102(2), Idaho Code. (3-24-05)

**05. License for Manufacturers**. In order to engage in business in the state of Idaho or to be entitled to any other license or permit required by these rules each manufacturer must be licensed by the Division. (3-24-05)

**06. License for Branch Office of Manufactured/Mobile Home ~~*Dealer*~~ Retailer or Resale Broker**. ~~*(3-24-05)*~~(____)

**a.** The Division shall require as a condition of licensing and bonding any information it deems necessary for each location where a manufactured/mobile home ~~*dealer*~~ retailer or resale broker maintains a branch office. The mere listing of manufactured/mobile homes for sale does not constitute a branch office, but the use of a mobile home park or a state sales office by a licensee for the sale or offering for sale of manufactured/mobile homes does constitute the maintenance of a branch office. A branch office manager may not manage more than one (1) branch office. ~~*(3-24-05)*~~(____)

**b.** To open a branch office, a ~~*dealer*~~ retailer or resale broker must: obtain a license from the Division to operate the branch office; and provide for direct supervision of the branch office, either by himself or by employing a branch office manager. ~~*(3-24-05)*~~(____)

**c.** If the branch office is closed, the ~~*dealer*~~ retailer or resale broker shall immediately deliver the license to the Division. ~~*(3-24-05)*~~(____)

**07. License to Engage in Business as Manufactured/Mobile Home ~~*Dealer*~~ Retailer, Resale Broker, Manufacturer, Service Company, or Installer; Application; Bond; Issuance, Expiration, and Renewal**. ~~*(3-24-05)*~~(____)

**a.** Applications for a manufacturer's, ~~*dealer's*~~ retailers, resale brokers, service company or installer's license must be filed upon forms supplied by the Division, and the applicant shall furnish: ~~*(3-24-05)*~~(____)

i. Any proof the Division may deem necessary that the applicant is a manufacturer, ~~*dealer*~~ retailer, resale broker, service company or installer; ~~*(3-24-05)*~~(____)

ii. Any proof the Division may require that the applicant has a principal place of business; (5-25-94)

iii. Any proof the Division may require of the applicant's good character and reputation and of his fitness to engage in the activities for which the license is sought; (5-25-94)

iv. In the case of a ~~*dealer*~~ retailer in new manufactured homes, an instrument in the form prescribed by the Division executed by or on behalf of the manufacturer certifying that the applicant is an authorized franchise dealer for the make concerned; ~~*(5-25-94)*~~(____)

v. A reasonable fee and proof of bond fixed by rule; and (5-25-94)

vi. In the case of a ~~*dealer*~~ retailer, resale broker, service company, or installer, proof of passing the examination required by these rules. ~~*(3-24-05)*~~(____)

**b.** Within thirty (30) days after receipt of a completed application, the Division shall issue or deny the license. (5-25-94)

**c.** Each license is valid for a period of one (1) year from the date of issuance and may be renewed for like consecutive period upon application to and approval by the Division. (5-25-94)

**d.** If any installer or service company's working relationship with his employer is terminated, the employer shall immediately deliver the license of the terminated installer or service company to the Division. (5-25-94)

**08. License for Manufactured/Mobile Home Salesman**. (5-25-94)

**a.** A person shall not act as a salesman in this state for a person who sells or leases any manufactured/mobile home subject to the provisions of Title 44, Chapters 21 or 22, Idaho Code, without having first received a license from the Division. Before issuing such a license, the Division shall require: (1) an application, signed by the applicant and verified by his employer, stating that he desires to act as a salesman and providing his residential address and the name and address of his employer; (2) a statement as to whether any previous application of the applicant has been denied or license revoked; (3) payment of the license fee established by rule; and (4) any other relevant information the Division deems necessary. (5-25-94)

**b.** Within thirty (30) days after receipt of a completed application, the Division shall issue or deny the license. (5-25-94)

**c.** Each license is valid for a period of one (1) year from the date of issuance and may be renewed for like consecutive period upon application to and approval by the Division. (5-25-94)

**d.** A person licensed pursuant to Subsection 012.08 of these rules shall not engage in sales activity other than for the account of, or for and on behalf of, a single employer who is a licensed ~~*dealer*~~ retailer or resale broker. ~~*(3-24-05)*~~(____)

**e.** If a salesman ceases to be employed by a licensed ~~*dealer*~~ retailer or resale broker, his license to act as a salesman is automatically suspended and his right to act in that capacity immediately ceases. He shall not engage in such activity until reemployed by a licensed ~~*dealer*~~ retailer or resale broker. If the salesman's working relationship with his employer is terminated, the employer shall immediately deliver his license to the Division. ~~*(3-24-05)*~~(____)

**09. License for Responsible Managing Employee**. (5-25-94)

**a.** A person shall not act as a responsible managing employee for an installer or service company without first having been issued a license by the Division. Before issuing such a license the Division shall require: ~~(5-25-94)~~(  )

i. An application, signed by the applicant and verified by his employer, stating that he desires to act as a responsible managing employee and providing his residential address and the name and address of his employer; (5-25-94)

ii. A statement as to whether any previous application of the applicant has been denied or license revoked; (5-25-94)

iii. Payment of the license fee established by rule; and (5-25-94)

iv. Any other relevant information the Division deems necessary. (5-25-94)

**b.** Within thirty (30) days after receipt of a completed application, the Division shall issue or deny the license. (5-25-94)

**c.** Each license is valid for a period of one (1) year from the date of issuance and may be renewed for like consecutive period upon application to and approval by the Division. (5-25-94)

**d.** A person licensed pursuant to Subsection 012.09 of these rules shall not engage in such activity other than for the account of, or for and on behalf of, a single employer who is a licensed service company or installer. (5-25-94)

**e.** If a responsible managing employee ceases to be employed by an installer or service company, his license to act as a responsible managing employee is automatically suspended and his right to act in that capacity immediately ceases. He shall not engage in such activity until reemployed by a licensed installer or service company. ~~(5-25-94)~~(  )

**f.** If the responsible managing employee's working relationship with his employer is terminated, the employer shall immediately deliver his license to the Division. (5-25-94)

***(BREAK IN CONTINUITY OF SECTIONS)***

**015. EXAMINATION OF APPLICANT FOR LICENSE.**

**01. Required Examinations**. Effective January 1, 1995, the Division shall require a written examination of each applicant for a license, other than a license being renewed, as a manufactured/mobile home ~~*dealer*~~ retailer, resale broker, service company or installer. The examination shall include, but may not be limited to, the following subjects: Title 44, Chapters 21 and 22, Idaho Code; these rules and IDAPA 07.03.12, “Rules Governing Manufactured or Mobile

Home Installations"; and the Manufactured Housing Construction Safety Standards Act of 1974. To avoid the requirement of an examination and be considered a renewal, any licensee must renew his license within ~~*sixty (60) days*~~ six (6) months of its expiration date. ~~*(3-24-05)*~~(  )

**02. Approval of Examination and Grade**. Examinations for all classifications under these rules shall be approved by the Division and the Board. No license shall be issued unless the applicant receives a final grade of seventy percent (70%) or higher. (5-25-94)

**03. Retesting**. If an applicant for a license fails the written examination offered by the Division twice, he must wait at least thirty (30) days before retesting. (5-25-94)

**016. DISCIPLINARY ACTION AGAINST LICENSEES.**
The Division may deny, suspend, refuse to renew, or revoke any license issued under Title 44, Chapter 21, Idaho Code, or these rules or reissue the license subject to reasonable conditions upon any of the following grounds: (3-24-05)

**01. Violation of Rules and Statutes**. For any willful or repeated violation of these rules, IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," or Title 44, Chapters 21 or 22, Idaho Code. ~~*(3-24-05)*~~(  )

**02. Failure to Have Principal Place of Business**. With regards only to a manufactured/mobile home ~~*dealer*~~ retailer or resale broker, failure of the applicant or licensee to have a principal place of business. ~~*(3-24-05)*~~(  )

**03. Revocation of License**. The revocation of the license of the employer of ~~*an installer,*~~ a responsible managing employee~~,~~ or salesman~~*, or service company*~~ is grounds for the revocation of the license of the installer, responsible managing employee~~,~~ or salesman~~*, or service company employee*~~. ~~*(5-25-94)*~~(  )

**04. False Information**. Material misstatement in the application or otherwise furnishing false information to the Division. (5-25-94)

**05. Proof of Employment**. Failure of a salesman or applicant for licensing as a salesman to establish by proof satisfactory to the Division that he is employed by a licensed ~~*dealer*~~ retailer or resale broker. ~~*(3-24-05)*~~(  )

**06. Disclosing Contents of Examination**. Obtaining or disclosing the contents of an examination given by the Division. (5-25-94)

**07. Deceptive Practice**. The intentional publication, circulation, or display of any advertising which constitutes a deceptive practice as that term is defined in Subsection 0104.06 of these rules. (3-24-05)

**08. Failure to Provide Business Name**. Failure to include in any advertising the name of the licensed ~~*dealer*~~ retailer, resale broker, service company, or installer, or the name under which he is doing business. ~~*(5-25-94)*~~(  )

**09. Encouraging Falsification**. Intentionally inducing an applicant or licensee to

falsify his credit application. (5-25-94)

**10. Poor Workmanship**. Performing workmanship which is grossly incompetent or repeatedly below the standards adopted by Title 44, Chapters 21 and 22, these rules, IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," the Federal Manufactured Housing and Safety Standards Act of 1974, or the latest Idaho adopted editions of the International Building Code, the National Electrical Code, the Uniform Plumbing Code, and the International Mechanical Code, then in effect. ~~*(3-24-05)*~~(____)

**11. Installation Supervisor Required**. Failure to have a licensed responsible managing employee personally supervise any installation or service of a manufactured/mobile home. ~~*(5-25-94)*~~(____)

**12. Failure of Organizations to License its Employees**. Failure of an organization to have its employees maintain any license as required by these rules. (3-24-05)

**13. Failure to Honor Warranties**. Failure to honor any warranty or other guarantee given by ~~*an applicant or*~~ a licensee for construction, workmanship, or material as a condition of securing a contract, or of selling, leasing, reconstructing, improving, repairing, or installing any manufactured/mobile home, or accessory structure. ~~*(5-25-94)*~~(____)

**14. Revocation or Denial of License**. Revocation or denial of a license issued pursuant to these rules or an equivalent license by any other state or ~~*country*~~ U.S. territory. ~~*(3-24-05)*~~(____)

**15. Failure to Maintain Any Required License**. Failure of the licensee to maintain any other license required by any city or county of this state. (5-25-94)

**16. Failure to Respond to Notice**. Failure to respond to a notice served by the Division as provided by law within the time specified in the notice. (5-25-94)

**17. Failure to Permit Access to Documentary Materials**. Failure or refusing to permit access by the Division to relevant documentary materials after being requested to do so by the Division. (5-25-94)

**18. Conviction of Misdemeanor**. Conviction of a misdemeanor for violation of any of the provisions of Title 44, Chapters 21 or 22, Idaho Code. (5-25-94)

**19. Conviction of Felony**. Conviction or withheld judgment for a felony ~~*or a crime of moral turpitude*~~ in this state, any U.S. territory, or ~~*any other state or*~~ country. ~~*(5-25-94)*~~(____)

**20. Dealing with Stolen Manufactured or Mobile Homes**. To knowingly purchase, sell, or otherwise acquire or dispose of a stolen manufactured or mobile home. (5-25-94)

**21. Violation of Permit or Inspection Requirements**. To knowingly violate any permit or inspection requirements of any city or county of this state. (5-25-94)

***(BREAK IN CONTINUITY OF SECTIONS)***

**019. FEES.**

**01. Fees for Issuance and Renewal of License**. The following fees for the issuance and renewal of a license will be charged, and no application for licensing pursuant to these rules will be accepted by the Division unless it is accompanied by the appropriate fee: (5-25-94)

**a.** Manufactured/mobile home ~~*dealer's*~~ retailer or resale broker's license: four hundred forty dollars ($440). ~~*Dealers*~~ Retailers who are also installers will not have to pay an installer's license fee in order to hold both licenses. ~~*(3-24-05)*~~(____)

**b.** Manufacturer license: four hundred forty dollars ($440); (3-24-05)

**c.** Manufactured/mobile home service company~~/~~ or installer license: two hundred twenty dollars ($220); ~~*(3-24-05)*~~(____)

**d.** Manufactured/mobile home salesman's license: forty-five dollars ($45). (3-24-05)

**e.** ~~*Branch office/r*~~Responsible managing employee license: forty-five dollars ($45). ~~*(3-24-05)*~~(____)

**02. Performance Bonding Requirements**. No application for licensing pursuant to these rules shall be accepted unless it is accompanied by evidence of the following performance bond: (3-24-05)

**a.** Manufacturer: twenty thousand dollar ($20,000) bond; (5-25-94)

**b.** Manufactured/mobile home ~~*dealer*~~ retailer: twenty thousand dollar ($20,000) bond; ~~*(5-25-94)*~~(____)

**c.** Manufactured/mobile home resale broker: thirty thousand dollar ($30,000) bond; (____)

~~**c**~~**d.** Manufactured/mobile home service company~~/~~ or installer: five thousand dollar ($5,000) bond. ~~*Dealers*~~ Retailers who are also installers will not be required to post an installer's bond in order to hold both licenses. ~~*(5-25-94)*~~(____)

~~**d**~~**e.** ~~*Branch office/r*~~Responsible managing employee. No bond. ~~*(5-25-94)*~~(____)

**03. Money or Securities Deposit in Lieu of Performance Bond**. A money or securities deposit shall be accepted by the Division in lieu of the performance bonding requirement as set forth at Title 44, Chapter 21, Idaho Code, and Subsection 019.02 of these rules, under the following circumstances: ~~*(7-1-96)*~~(____)

**a.** Any such money or securities deposit shall be in a principal sum equal to the face amount of the performance bond required for the applicable licensing category; ~~*(7-1-96)*~~(____)

**b.** Any such money deposit shall be deposited in a time certificate of deposit which provides on its face that the principal amount of such certificate of deposit shall be payable to the Division upon presentment and surrender of the instrument; (7-1-96)

**c.** Any such time certificate of deposit shall have a maturity date of one (1) year from the effective date of licensure and shall have an automatic renewal provision for subsequent years; (7-1-96)

**d.** Any such time certificate of deposit shall be provided to the Division at the time of application for licensure and shall be retained by the Division during the effective period of licensure unless otherwise expended by the Division to insure completion of the licensee's performance; (7-1-96)

**e.** Any such time certificate of deposit shall be returned to an unsuccessful applicant for licensure; (7-1-96)

**f.** The principal amount of any such time certificate of deposit, to the extent not otherwise expended to insure completion of the licensee's performance, shall be returned to the depositor by the Division on or before ninety (90) days subsequent to the occurrence of any of the following events: voluntary surrender or return of a license; expiration of a license; lapse of a license; or revocation or suspension of a license; and (7-1-96)

**g.** Any interest income earned by reason of the principal amount of the time certificate of deposit shall be the property of the licensee. (7-1-96)

***(BREAK IN CONTINUITY OF SECTIONS)***

**022. CIVIL PENALTIES.**
The following acts shall subject the violator to penalties based on the following schedule: (____)

**01. Industry Licensing**. Except as provided for by Section 44-2106, Idaho Code, any person who engages in the business of a manufacturer, retailer, resale broker, salesman, installer, service company, or responsible managing employee (RME) as defined in Section 44-2101A, Idaho Code, without being duly licensed by the Division shall be subject to a civil penalty of not more than five hundred dollars ($500) for the first offense and a civil penalty of not more than one thousand dollars ($1,000) for each offense thereafter. (____)

**02. Deceptive Practice**. In accordance with Section 44-2106(2), Idaho Code, any retailer, resale broker, installer, salesman, service company, or RME who intentionally publishes or circulates any advertising that is misleading or inaccurate in any material respect or that misrepresents any of the products or service sold or provided by a manufacturer, retailer, resale broker, installer, service company, or RME, shall be subject to a civil penalty of not more than five hundred dollars ($500) for the first offense and a civil penalty of not more than one thousand dollars ($1,000) for each offense thereafter. (____)

**03. Dealing with Stolen Manufactured or Mobile Homes**. In accordance with Section 44-2106(2), Idaho Code, any person who knowingly purchases, sells, or otherwise acquires or disposes of a stolen manufactured or mobile home shall be subject to a civil penalty of not more than one thousand dollars ($1,000). ( )

**04. Failure to Maintain a Principal Place of Business**. In accordance with Section 44-2106(2), Idaho Code, any person who is a retailer or resale broker duly licensed by the Division and who fails to maintain a principal place of business within Idaho, shall be subject to a civil penalty of not more than five hundred dollars ($500) for the first offense and a civil penalty of not more than one thousand dollars ($1,000) for each offense thereafter. ( )

**05. Violation of Rules and Statutes**. Any person who knowingly violates any of the provisions of these rules, IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," or the provisions of Title 44, Chapters 21 or 22, Idaho Code, shall be subject to a civil penalty of five hundred dollars ($500) for the first offense and one thousand dollars ($1,000) for each offense thereafter. ( )

**06. Gross Violation**. In case of continued, repeated, or gross violations of these rules or IDAPA 07.03.12, "Rules Governing Manufactured or Mobile Home Installations," a license revocation may be initiated for licensed individuals under Title 44, Chapter 21, Idaho Code. Non-licensed individuals shall be subject to prosecution by the appropriate jurisdiction under Idaho law. ( )

**07. Judicial Review**. Any party aggrieved by the final action of the Administrator shall be entitled to a judicial review thereof in accordance with the provisions of Title 67, Chapter 52, Idaho Code. ( )

**02~~2~~3. -- 029. (RESERVED).**

**030. MANUFACTURED HOME BUYER'S INFORMATION AND DISCLOSURE FORM.**

The Manufactured Home Buyer's Information and Disclosure Form shall be presented by manufactured home ~~*dealers*~~ retailers to each purchaser of a new manufactured home, and shall be executed by the ~~*dealer*~~ retailer and purchaser at the time the initial purchase order is signed for the sale of a new manufactured home. The form is available at the Division office. ~~*(3-30-01)*~~( )

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.03.11 - RULES GOVERNING MANUFACTURED/MOBILE HOME INDUSTRY LICENSING

## DOCKET NO. 07-0311-0902

## 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 44-2104 and 44-2107, 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 Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 172 and 173.**

**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, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 Sections 44-2104 and 44-2107, 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:

**Currently, manufactured home retailers (dealers) and installers must provide proof of completion of industry-related education as a pre-condition to initial licensure. Current licensees must then provide proof of having completed continuing education in order to renew their licenses. These requirements have proven to be unnecessarily burdensome given the shortage of education providers and the impact of the current economy on the industry. Given that there have been no significant changes requiring training in the past year, and that there is no feasible means of providing access to training for all industry participants this year; the Manufactured Housing Board, the Division of Building Safety, and the manufactured housing industry would take this opportunity to formulate new, more workable education requirements and means for delivering same prior to promulgating new rule provisions. The proposed rule would eliminate the requirement that original and renewal applications for manufactured home retailers (dealers) and installers show proof that the applicant has completed a specified number of hours of initial and continuing education.**

**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 rule changes confer a benefit on individuals licensed as manufactured housing retailers and/or installers.**

**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 Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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***

**014. ~~*PROOF OF CONTINUING EDUCATION REQUIRED*~~ (RESERVED).**
~~*Effective January 1, 1995, and except as otherwise provided in Section 015 of these rules, the Division:* (5-25-94)~~

~~***01. Satisfactory Proof for Application Submission****. Shall not allow an applicant for a license as a manufactured/mobile home dealer, or service company or installer to submit an application for the license until he submits proof satisfactory to the Division that he has completed the following number of hours of initial education:* (3-24-05)~~

~~***a.*** *Installers and dealers (who are also installers): eight (8) hours.* (5-25-94)~~

~~***b.*** *Dealers (who are not installers) and service company employees: four (4) hours.* (3-24-05)~~

~~***c.*** *The course of initial education will include information relating to the provisions of these rules, Title 44, Chapters 21 and 22, Idaho Code, and the Manufactured Housing Construction Safety Standards Act of 1974.* (3-24-05)~~

~~***02. Satisfactory Proof for License Renewal****. Shall not renew any license issued pursuant to Title 44, Chapters 21 or 22, Idaho Code, or these rules until the licensee has submitted proof satisfactory to the Division that he has, during the one (1) year immediately preceding the renewal of the license, completed at least the following number of hours of continuing education:* (3-24-05)~~

~~***a.*** *Installers, dealers who are also installers, and responsible managing employees: four (4) hours.* *(5-25-94)*~~

~~***b.*** *Dealers who are not installers and service company employees: two (2) hours.* *(3-24-05)*~~

~~***03.*** ***Continuing Education Course****. The course of continuing education shall include information relating to the following:* *(5-25-94)*~~

~~***a.*** *Manufactured housing or mobile home parks which will enable a person to give better service to the members of the general public and tenants of manufactured/mobile home parks;* *(5-25-94)*~~

~~***b.*** *The construction, including components and accessories, rebuilding, servicing, installation, or sale of manufactured/mobile homes;* *(5-25-94)*~~

~~***c.*** *Legislative issues concerning manufactured/mobile home housing and manufactured/mobile home parks, including pending and recently enacted state or federal legislation; and* *(5-25-94)*~~

~~***d.*** *These rules, Title 44, Chapters 21 or 22, Idaho Code, and the Manufactured Housing Construction Safety Standards Act of 1974.* *(3-24-05)*~~

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.03.12 - RULES GOVERNING MANUFACTURED OR MOBILE HOME INSTALLATIONS

## DOCKET NO. 07-0312-0901

## 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 44-2201, 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 in 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 26 and 27.**

**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 Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 30th day of July, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE: The effective date of the temporary rule is May 8, 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 44-2201, 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 U.S. Department of Housing and Urban Development (HUD) recently promulgated federal installation standards for all new manufactured homes. HUD also approves Idaho's enforcement program as it relates to the installation of new manufactured homes. In order for Idaho to obtain HUD's continued approval of its installation enforcement program, HUD is requiring that all new manufactured homes be installed in accordance with its federal standards. HUD is also requiring the Idaho rules mandate that all new installations be in accordance with the manufacturer's HUD approved installation instructions. The rule changes provide that all new manufactured homes shall be installed in accordance with the manufacturer's approved instructions, as opposed to the current language which indicates they may be installed in accordance with manufacturer's instructions only when specifically required by the Idaho Manufactured Home Installation Standards.**

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

**The rule change is necessary to comply with deadlines in amendments to federal 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: N/A

**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 Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 27th day of May 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**004. ADOPTION AND INCORPORATION BY REFERENCE.**
The Idaho Manufactured Home Installation Standard (January 1, 2004 edition), as adopted by the administrator, is hereby adopted and incorporated by reference into these rules. A current copy is available for review or copying at the office of the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642. ~~*(3-20-04)*~~(____)

***(BREAK IN CONTINUITY OF SECTIONS)***

**012. USE OF MANUFACTURERS' INSTALLATION INSTRUCTIONS.**
~~*Manufacturer's installation instructions may be used only where specifically permitted within Subsections 301.04 and 304.03 of the standards referenced in Section 004 of these rules.*~~ All new HUD manufactured homes shall be installed in accordance with the manufacturer's Design Approval Primary Inspection Agency (DAPIA) approved installation instructions. In any instance in which there is a conflict between the DAPIA installation instructions and the Idaho Manufactured Home Installation Standards, the DAPIA installation instructions shall supersede and serve as the controlling authority. All manufactured or mobile homes must be installed in accordance with all other applicable state laws pertaining to utility connection requirements.
~~*(5-3-03)*~~(____)

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.04.02 - SAFETY RULES FOR ELEVATORS, ESCALATORS, AND MOVING WALKS

## DOCKET NO. 07-0402-0901

## 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 39-8605, 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 Book 2 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 174 and 175.**

**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 proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 39-8605, 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:

**Current rule adopts the American National Standards Institute (ANSI) and American Society of Mechanical Engineers (ASME) codes relating to design, installation, operation, maintenance, and inspection standards for elevators, escalators, lifts, and all such moving conveyances in the state of Idaho. Newer editions of these adopted codes have been promulgated by ANSI/ASME and need to be incorporated into administrative rule to stay current with safety standards within the industry. The proposed rule would continue to adopt the ANSI/ASME codes that are already identified in the current rule; however, it would adopt the most recent editions of such codes with amendments.**

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**004. ADOPTION AND INCORPORATION BY REFERENCE.**

**01. Documents.** The following codes, amendments, and updates are hereby adopted and incorporated by reference into these rules for all conveyances subject to this chapter. (4-2-08)

**a.** ANSI/ASME A17.1 200~~4~~7, Safety Code for Elevators and Escalators with 200~~5~~8 Addenda ~~*and 2005 Supplement*~~ with the following exceptions: ~~*(4-2-08)*~~(  )

i. Compliance with section 2.8.3.2 shall require that the means for disconnecting the main power as required by this section to be within sight of controller. (  )

ii. Compliance with section 8.11.2.3.3, Category 5 Periodic Testing of oil buffers shall be conducted at slow speed in accordance with Item 5.9.2.1(a) in ANSI/ASME A17.2 2007. (  )

**b.** ANSI/ASME A17.2 200~~4~~7 Guide for Inspection of Elevators, Escalators, and Moving Walks. ~~*(4-2-08)*~~(  )

**c.** ANSI/ASME A17.3 200~~5~~8 Safety Code for Existing Elevators and Escalators. ~~*(4-2-08)*~~(  )

**d.** ANSI/ASME A17.4 1999 Guide for Emergency Personnel. (4-2-08)

**e.** ANSI/ASME A17.5 2004 Elevator and Escalator Electrical Equipment. (5-8-09)

**f.** ICC/ANSI A117.1 2003 Accessible and Usable Buildings and Facilities. (4-2-08)

**g.** ANSI/ASME A18.1 200~~5~~8 Safety Standards for Platform Lifts and Chairlifts. ~~*(4-2-08)*~~(  )

**h.** ASME QE-1 200~~4~~7 Standard for the Qualification of Elevator Inspectors. ~~*(4-2-08)*~~(  )

**02. Copies**. Copies of the codes, amendments, and updates listed in Subsection 004.01 of these rules are available for review at the Division of Building Safety offices located at 1090 E. Watertower St., Meridian, Idaho 83642 and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. (4-2-08)

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.05.01 - RULES OF THE PUBLIC CONTRACTORS LICENSE BOARD

## DOCKET NO. 07-0501-0901

## 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 54-1907, 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 Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 176 and 177.**

**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, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 54-1907, 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:

**Public Works Contractor License statutes require that all contractors who work on public works projects possess a public works contractors license issued by the Division of Building Safety. Exemptions exist to this general licensure requirement and are contained in Section 54-1903, Idaho Code; and allow unlicensed contractors to perform work on public works projects in certain situations. One of the exemptions is subject to some misinterpretation and is being applied incorrectly by local governments who sponsor public works projects and the contractors who work on them. Defining a key term contained within that statutory exemption would clarify the meaning and intent of it. The proposed rule would provide a definition for the term "estimated cost" as that term is used in Section 54-1903(i), 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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**010. DEFINITIONS.**
As used in these rules. (7-1-93)

**01. Administrator**. Refers to the administrator of the Division of Building Safety. (3-20-04)

**02. Applicant**. Shall mean any person who has filed an application with the administrator. (3-20-04)

**03. Board**. Refers to the Public Works Contractors License Board which is created within the Idaho Division of Building Safety as set forth in Title 54, Chapter 19, Idaho Code. (3-20-04)

**04. Compiled**. Refers to a type of financial statement in which the information presented is based solely upon representations by an organization's management. (3-20-04)

**05. Estimated Cost**. For the purposes of the application of Section 54-1903(i), Idaho Code, the term "estimated cost" shall refer to the total aggregate amount of the value of all the separate or individual jobs, parts, components, or undertakings involved in the construction of a single project when combined and considered as a whole, regardless of the types of trades, sub-contracts, work, or other individual aspects involved, and without regard to the number of trades or crafts that are involved. (____)

**0~~5~~6. Financial Statement**. A balance sheet and income statement prepared in accordance with generally accepted accounting principles. (3-20-04)

**0~~6~~7. Incidental Work**. Shall mean work, the nature of which does not require any additional trade licenses and which may be carried out in conjunction with an activity for which the licensee is licensed, but is not intended to produce an amount of income over ten percent (10%) of the total bid amount. (3-20-04)

**0~~7~~8. Independent Audit Report**. A report prepared by an independent certified public accountant presenting such auditor's opinion on the fairness of the organization's financial statements and prepared in accordance with generally accepted auditing standards. (3-20-04)

**0~~8~~9. Licensee**. Includes any individual proprietor, partnership, limited liability partnership, limited liability company, corporation, joint venture, or other business organization holding a current, unrevoked public works contractor license. (3-20-04)

**~~09~~10. Petitioner**. Shall mean: (7-1-93)

**a.** Any licensee who has filed with the Board a written request for the change or addition to the types of construction for which he is licensed; (7-1-93)

**b.** Any applicant or licensee requesting a rehearing in any proceeding or appealing from the final decision or order of the administrator or the Board; (3-20-04)

**c.** Any interested person requesting the promulgation, amendment or repeal of a rule; or (7-1-93)

**d.** Any interested person requesting a declaratory ruling on the applicability of the License Act or of any rule or order of the Board. (7-1-93)

**1~~0~~1.** **Reviewed**. Refers to a financial statement that is accompanied by the opinion of a certified public accountant stating that, based upon representations by the organization's management, the reviewer has a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial statements in order for the statements to be in accordance with generally accepted accounting principles. (3-20-04)

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.06.01 - RULES GOVERNING UNIFORM SCHOOL BUILDING SAFETY

## DOCKET NO. 07-0601-0901

## 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 39-8006 and 39-8007, 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 Book 1 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 178 and 179.**

**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, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 39-8006 and 39-8007, 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 Uniform School Building Safety Code required by Section 39-8006, Idaho Code, includes model codes adopted by the various state boards and agencies with the statutory authority to adopt such construction and safety standards within a particular industry. Upon review and approval, these governing authorities typically adopt updated editions of these model codes as they are published every few years by nationally recognized organizations. By eliminating a specifically identified edition of the model codes from this rule it would eliminate the need to amend this rule each time (potentially on an annual basis) a new edition is adopted by one or more of the different governing authorities. The applicable statutes are listed in the text of the rule so that the currently adopted edition may be easily ascertained. The proposed rule would eliminate any reference to the specific edition of the various codes that are adopted. The rule also updates the statutory authority in which the codes are required to be adopted.**

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**004. INCORPORATION BY REFERENCE.**

**01. Uniform Codes**. The following uniform codes are hereby incorporated by reference into these rules as, and insofar as, ~~*they*~~ the most recent editions have been adopted by the appropriate governing authority for the state of Idaho pursuant to Sections 39-4109, 41-253, 39-8614, 54-1001, 54-2601, 54-5001, and 72-508, Idaho Code: ~~*(3-15-02)*~~(____)

**a.** ~~*2000*~~ International Building Code; ~~*(4-6-05)*~~(____)

**b.** ~~*2000*~~ International Mechanical Code; ~~*(4-6-05)*~~(____)

**c.** ~~*2000*~~ International Fuel Gas Code; ~~*(4-6-05)*~~(____)

**d.** ~~*2002*~~ Safety Code for Elevators and Escalators (ASME/ANSI A17.1); ~~*(4-6-05)*~~(____)

**e.** ~~*2000*~~ International Energy Conservation Code; ~~*(4-6-05)*~~(____)

**f.** ~~*1998*~~ Accessible and Usable Buildings and Facilities (ICC/ANSI A117.1); ~~*(4-6-05)*~~(____)

~~***g.***~~ ~~*1997 Uniform Code for Building Conservation (UCBC);*~~ ~~*(3-15-02)*~~

~~***h***~~**g.** ~~*2000*~~ International Fire Code (IFC); ~~*(4-6-05)*~~(____)

~~***i***~~**h.** ~~*2002*~~ National Electrical Code (NEC); ~~*(4-6-05)*~~(____)

~~***j***~~**i.** ~~*2003*~~ Uniform Plumbing Code (UPC); ~~*(4-6-05)*~~(____)

~~***k***~~**j.** ~~*1995*~~ Pacific NW AWWA Manual for Backflow Prevention and Cross Connection Control; and ~~*(3-15-02)*~~(____)

~~***l***~~**k.** ~~*2003*~~ Idaho General Safety and Health Standards. ~~*(4-6-05)*~~(____)

**02. Idaho Uniform School Building Safety Code**. The codes set forth in ~~Paragaraphs~~ Subsection 004.01~~.a. through 004.01.l.,~~ of this rule, together with the definitions contained therein and the written interpretations thereof, insofar as they are applicable to school facilities, shall constitute the Idaho Uniform School Building Safety Code. A copy of each of the identified codes is available for review at the main office of the Division of Building Safety. ~~*(4-6-05)*~~(____)

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS

## DOCKET NO. 07-0701-0901

## 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 54-5005(2), Idaho Code.

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

**The pending rule 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, pages 180 and 181.**

**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, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 54-5005(2), 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 HVAC rules regarding civil penalties indicate that, among other acts, failure to post a permit or pay the applicable permit fee may subject a violator to civil penalties; however, there is no provision which specifically provides for a civil penalty for failure to request an inspection. Adding such a rule would provide some leverage to help ensure that HVAC installations are properly inspected after they are installed. The proposed rule would provide authority for the Division of Building Safety to impose a civil penalty against any person who fails to request an inspection of an HVAC installation.**

**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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**070. CIVIL PENALTIES.**
The following acts shall subject the violator to penalties based on the following schedule. (3-30-07)

**01. Heating, Ventilation, and Air Conditioning Contractor or Specialty Contractor**. Except as provided by Section 54-5001, Idaho Code, any person who acts, or purports to act, as an HVAC contractor or specialty contractor as defined by Section 54-5003(3) and 54-5003(6), Idaho Code, without a valid Idaho state HVAC contractor or specialty contractor certification shall be subject to a civil penalty of not more than five hundred dollars ($500) for the first offense and a civil penalty of not more than one thousand dollars ($1,000) for each offense thereafter. (3-30-07)

**02. Employees**. Any person, who knowingly employs a person who does not hold a valid Idaho state HVAC certification or apprentice registration, as required by Section 54-5008, Idaho Code, to perform HVAC installations, shall be subject to a civil penalty of not more than two hundred dollars ($200) for the first offense and a civil penalty of not more than one thousand dollars ($1,000) for each offense thereafter. (3-30-07)

**03. Certification or Registration**. Except as provided by Section 54-5001, Idaho Code, any person performing HVAC work as an HVAC journeyman as defined by Section 54-5003(4), Idaho Code, specialty journeyman as defined by Section 54-5003(7), Idaho Code, apprentice as defined by Section 54-5003(2), Idaho Code, or a specialty apprentice as defined by Section 54-5003(5), Idaho Code, without a valid certification or registration shall be subject to a civil penalty of not more than two hundred dollars ($200) for the first offense and a civil penalty of not more than one thousand dollars ($1,000) for each offense thereafter. (3-30-07)

**04. Supervision**. Any HVAC apprentice or specialty apprentice working without the required journeyman supervision or any HVAC contractor or industrial account employing apprentices without providing the required HVAC journeyman supervision shall be subject to a civil penalty of not more than two hundred dollars ($200) for the first offense and a civil penalty of not more than one thousand dollars ($1,000) for each offense thereafter. (3-30-07)

**05. Performance Outside Scope of License**. Any HVAC specialty contractor or specialty journeyman performing HVAC installations, alterations, or maintenance outside the scope of the specialty certification shall be subject to a civil penalty of not more than two hundred dollars ($200) for the first offense and a civil penalty of not more than one thousand dollars ($1,000) for each offense thereafter. (3-30-07)

**06. Fees and Permits**. Any person failing to pay applicable fees or properly post an HVAC permit <u>for, or to request an inspection of, any installation, alteration, improvement, or extension of any piping, venting, ductwork, appliances and appurtenances in connection with any heating, ventilation, or air conditioning system or subsystems of such</u> shall be subject to a civil penalty of not more than two hundred dollars ($200) for the first offense and a civil penalty of not

more than one thousand dollars ($1,000) for each offense thereafter. ~~*(3-30-07)*~~(____)

**07. Corrections**. Any person who fails to make corrections in the time allotted in the notice on any HVAC installation as set forth in Section 54-5019, Idaho Code, shall be subject to a civil penalty of not more than two hundred dollars ($200) for the first offense and a civil penalty of not more than one thousand dollars ($1,000) for each offense thereafter. (3-30-07)

**08. Gross Violation**. In the case of continued, repeated, or gross violation of Title 54, Chapter 50, Idaho Code, or IDAPA 07.07.01, "Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems, Division of Building Safety," a certification revocation shall be initiated for certificated individuals under this chapter and non-certificated individuals shall be subject to prosecution by the appropriate jurisdiction under Idaho law. (3-30-07)

**09. Judicial Review**. Any party aggrieved by the final action of the board shall be entitled to a judicial review thereof in accordance with the provisions of Title 67, Chapter 52, Idaho Code. (3-30-07)

# IDAPA 07 - DIVISION OF BUILDING SAFETY

## 07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS

## DOCKET NO. 07-0701-0902

## 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 on July 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 Section 54-5005(2), Idaho Code.

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

**The pending rule 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, pages 182 through 185.**

**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, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

DATED this 29th day of October, 2009.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

***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 54-5005(2), 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:

**Concerns in the industry have been raised about the placement of the secondary regulator gas pipe that is stubbed out of buildings. The pipe vents out of the side of the building and it is subject to being placed in a location that may be covered or damaged by heavy snowfall. This may prevent proper venting and pose a potential health and/or safety hazard to the occupants. Currently, the International Fuel Gas Code provides no guidance or requirements regarding the proper placement of such pipes. The proposed rule would amend the Fuel Gas Code and provide guidance regarding the proper placement of such gas pipes. The proposed rule would require piping, regulators, meters, and other equipment to be installed in a manner that protects it from any physical damage, including heavy snowfall. It also provides specific requirements regarding the location and minimum spacing of certain gas piping stubbed out for meter or regulator connection.**

**The HVAC industry has expressed concern about whether the state's HVAC and mechanical installation regulatory and enforcement program extends to solid fuel burning and hearth-related installations. Because of the potential ambiguity about the breadth of the regulatory scheme there is concern that some solid fuel and hearth related installations are installed without inspection, and without assurances that the individuals performing the work possess the requisite skill and experience. To eliminate these concerns, the HVAC Board has determined to make it clearer that the scope of the HVAC regulatory program does extend to solid fuel burning and hearth-related installations by adopting the applicable codes that address such installation standards. The proposed rule would continue to adopt the International Fuel Gas Code and the International Mechanical Code as the minimum standards for HVAC and mechanical installations in the state. Currently, these codes are only used as the minimum standard in commercial buildings. The proposed rule would make such codes applicable to installations performed in residential buildings as well. Using such codes would capture solid fuel burning and hearth-related HVAC and mechanical installations and eliminate the need to use the International Residential 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: None.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**004. ADOPTION AND INCORPORATION BY REFERENCE OF THE INTERNATIONAL MECHANICAL CODE, 2003 EDITION.**

**01. The International Mechanical Code**, 2003 Edition, including appendix "A," (herein IMC) is adopted and incorporated by reference with the following amendments: (4-11-06)

**a.** Where differences occur between the IMC and Title 54, Chapter 50, Idaho Code and IDAPA 07, Title 07, the provisions in Idaho Code and IDAPA rules shall apply. (4-11-06)

**b.** All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Plumbing Code (UPC) as adopted and amended by the Idaho State Plumbing Board. (4-11-06)

**c.** All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-11-06)

**d.** Section 101.2. Delete the Exception. The International Mechanical Code shall apply to detached one- and two-family dwellings and multiple single family dwellings (townhouses). ( )

**e.** Section 109. Delete. ( )

**~~d~~f.** Section 312. Sizing requirements shall be as established by the authority having

jurisdiction. (4-11-06)

**02. The International Mechanical Code.** The 2003 Edition is available at the Division of Building Safety offices located at 1090 E. Watertower St., Meridian, Idaho 83642 and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. (4-11-06)

**005. ADOPTION AND INCORPORATION BY REFERENCE OF THE INTERNATIONAL FUEL GAS CODE, 2003 EDITION.**

**01. The International Fuel Gas Code**, 2003 Edition, including appendixes "A, B, C, and D," (herein IFGC) is adopted and incorporated by reference with the following amendments: (4-11-06)

**a.** Where differences occur between the IFGC and Title 54, Chapter 50, Idaho Code and IDAPA 07, Title 07, the provisions in Idaho Code and IDAPA rules shall apply. (4-11-06)

**b.** All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Plumbing Code (UPC) as adopted and amended by the Idaho State Plumbing Board. (4-11-06)

**c.** All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-11-06)

**d**. Section 101.2. Delete the Exception. The International Fuel Gas Code shall apply to detached one- and two-family dwellings and multiple single family dwellings (townhouses). ( )

**e**. Section 109. Delete. ( )

**f.** 405.1. Installation in Areas of Heavy Snowfall. In areas where heavy snowfall is anticipated, piping, regulators, meters, and other equipment installed in the piping system shall be protected from physical damage, including falling, moving, or migrating snow and ice. If an added structure is used for protection, it must provide access for service and comply with local building codes. ( )

**g.** 405.2. Point of Termination. Gas piping stubbed out for a meter or regulator connection shall be a minimum of three (3) feet horizontally from any building opening, and not less than five (5) feet horizontally from any source of ignition, opening to direct-vent (sealed combustion system) appliance, or mechanical ventilation air intakes. ( )

**~~d~~h.** Section 406.4. Change the last sentence to: Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than two (2) times the test pressure nor lower than one and one-half (1.5) times the test pressure. (4-11-06)

**~~e~~i.** Section 406.4.1. Test Pressure. Not less than twenty (20) psig (140kPa gauge) test pressure shall be required for systems with a maximum working pressure up to ten (10) inches water column. For systems with a maximum working pressure between ten (10) inches water

column and ten (10) psig (70kPa gauge); not less than sixty (60) psig (420kPa gauge) test pressure shall be required. For systems over ten (10) psig (70kPa gauge) working pressure, minimum test pressure shall be no less than six (6) times working pressure. (4-11-06)

***f*j.** Section 406.4.2. The test duration shall not be less than twenty (20) minutes. (4-11-06)

***g*k.** Section 505.1.1. Addition. An interlock between the cooking appliance and the exhaust hood system shall not be required for appliances that are of the manually operated type and are factory equipped with standing pilot burner ignition systems. (4-11-06)

**02. The International Fuel Gas Code. The** 2003 Edition, is available at the Division of Building Safety offices located at 1090 E. Watertower St., Meridian, Idaho 83642 and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. (4-11-06)

**006. ~~*ADOPTION AND INCORPORATION BY REFERENCE OF PARTS V (MECHANICAL) AND PARTS VI (FUEL GAS) OF THE INTERNATIONAL RESIDENTIAL CODE FOR ONE AND TWO FAMILY DWELLINGS, 2003 EDITION*~~ (RESERVED).**

~~***01. Parts V (Mechanical) and Parts VI (Fuel Gas) of the International Residential Code for One and Two Family Dwellings, 2003 Edition***, including appendixes "A, B, C, and D," (herein IRC) are adopted and incorporated by reference with the following amendments. (4-11-06)~~

~~***a.*** Where differences occur between the IRC and Title 54, Chapter 50, Idaho Code and IDAPA 07, Title 07, the provisions in Idaho Code and IDAPA rules shall apply. (4-11-06)~~

~~***b.*** All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Plumbing Code (UPC) as adopted and amended by the Idaho State Plumbing Board. (4-11-06)~~

~~***c.*** All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-11-06)~~

~~***d.*** Section M1401.3. Sizing requirements shall be as established by the authority having jurisdiction. (4-11-06)~~

~~***e.*** Section G2417.4 (406.4). Change the last sentence to: Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than two (2) times the test pressure nor lower than one and one-half (1.5) times the test pressure. (4-11-06)~~

~~***f.*** Section G2417.4.1 (406.4.1). Test Pressure. Not less than twenty (20) psig (140kPa gauge) test pressure shall be required for systems with a maximum working pressure up to ten (10) inches water column. For systems with a maximum working pressure between ten (10) inches water column and ten (10) psig (70kPa gauge); not less than sixty (60) psig (420kPa~~

~~gauge) test pressure shall be required. For systems over ten (10) psig (70kPa gauge) working pressure, minimum test pressure shall be no less than six (6) times working pressure. (4-11-06)~~

~~***g.*** Section G2417.4.2 (406.4.2). The test duration shall not be less than twenty (20) minutes. (4-11-06)~~

~~***02. The International Residential Code for One- and Two-Family Dwellings, 2003 Edition***, is available at the Division of Building Safety offices located at 1090 E. Watertower St., Meridian, Idaho 83642 and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. (4-11-06)~~

# 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 10 - IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

## 10.01.01 - RULES OF PROCEDURE

## DOCKET NO. 10-0101-0901

## 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 54-1208, 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 46 through 53.**

**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 not be any negative fiscal impact on the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact David L. Curtis at (208) 373-7210.

DATED this 11th day of September, 2009.

David L. Curtis, P.E., Executive Director
Board of Professional Engineers and Professional Land Surveyors
5535 W. Overland Road, Boise, Idaho 83705
Voice (208) 373-7210, Fax (208) 373-7213
Email: dave.curtis@ipels.idaho.gov

***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 54-1208, Idaho Code.

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

**TUESDAY - AUGUST 18, 2009 - 9:00 a.m.**

**J.R. WILLIAMS EAST CONFERENCE ROOM**
**700 W. State St., Boise, ID 83702**

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

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

**In anticipation of the likelihood of the conversion of the licensing and certification examinations to a computer-based format rather than the current paper-and-pencil format, the proposed changes provide the Board flexibility in accepting examinations offered at different frequencies, of different duration, and different organization than the current examinations. The proposed changes make technical corrections and remove some obsolete language; clarify that an individual must first be licensed as a professional engineer in Idaho especially qualified in a "base" discipline before taking the exam in structural engineering; reflect the fact that the examinations are no longer administered directly by the Board; and clarify the Board's right to publish disciplinary actions.**

**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 as a result of this rulemaking: N/A

**NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, page 45.**

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact David L. Curtis, P.E., Executive Director at dave.curtis@ipels.idaho.gov or at (208) 373-7210.

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 19th day of June, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**010. OFFICERS AND COMMITTEES.**

**01. Duties of Chairman**. The Chairman shall be the executive head of the Board and shall: preside at meetings; appoint committees; perform all duties pertaining to the office of the Chairman. (7-1-93)

**02. Duties of Vice Chairman**. The Vice Chairman shall, in the absence or incapacity of the Chairman, exercise the duties and possess all the powers of the Chairman. (7-1-93)

**03. Duties of Secretary**. The Secretary shall, with the assistance of the Executive Director and staff, and under the direction of the Board, perform the following functions and duties: (4-5-00)

**a.** Keep correct minutes of the Board; (7-1-93)

**b.** Furnish a copy of all minutes to each member of the Board; (7-1-93)

**c.** Send written notice of regular and special meetings of the Board to each Board member not less than ten (10) days in advance thereof, as well as provide appropriate public notice; (7-1-93)

**d.** Review each application for licensure or certification for essential data prior to consideration thereof by the Board; (5-8-09)

**e.** Verify qualifications, experience and character of the applicants; (7-1-93)

**f.** Make arrangements for examinations, interviews and hearings; (7-1-93)

**g.** Report to the Board members the results of every examination and other evidence of qualifications, with recommendations to the Board; (7-1-93)

**h.** Assist in the investigations of complaints and charges and arrange for hearings by the Board; (7-1-93)

**i.** Prepare and present the required annual report and roster as the Board may direct; (7-1-93)

**j.** Keep all records, including minutes, register of applicants for licensure and the roster of licensees and certificate holders; (5-8-09)

**k.** Attend to all official correspondence of the Board; (7-1-93)

**l.** Perform all other duties ~~*prescribed by the Act*~~ as directed by the Board; and ~~*(7-1-93)*~~(____)

**m.** Otherwise perform all the duties normally pertaining to the Office of Secretary. (7-1-93)

**04. Duties and Qualifications of Executive Director**. The Executive Director of the Board of Licensure of Professional Engineers and Professional Land Surveyors shall: (5-8-09)

**a.** Not be a member of the Board. (7-1-93)

**b.** Be a licensed professional engineer or professional land surveyor in the state of Idaho and possess other qualifications required for members of the Board. (5-8-09)

**c.** Hold office at the pleasure of the Board. (7-1-93)

**d.** Receive such compensation as the Board may determine. (7-1-93)

**e.** Perform such other duties as may from time to time be assigned by the Board. (7-1-93)

**05. Surety Bond**. To comply with the requirements of Section 41-3502, Idaho Code, state officials and state employees are covered by blanket bond with the premium prorated to the several departments and agencies. The portion of cost prorated to the Board of Licensure of Professional Engineers and Professional Land Surveyors shall be paid from the "Professional Engineers and Land Surveyors" Fund. (5-8-09)

**06. Committees**. Regular and special committees of the Board shall perform the duties assigned to them and shall present reports to the Board at the time specified or at the earliest regular or special meeting of the Board. A special voluntary committee from the public, which may include members of the Board, may be formed to render special services as the Board may assign to them. (7-1-93)

**011. FEES.**

**01. Applications and Renewals**. All fees shall be set by the Board in the following categories and shall in no event be more than the amount specified in Sections 54-1213, 54-1214, 54-1216, 54-1219 and 54-1223, Idaho Code. Fees are not refundable. (4-5-00)

**a.** Licensure as a professional engineer or professional land surveyor by examination. (5-8-09)

**b.** Certification as an engineer intern or land surveyor intern by examination. (5-8-09)

**c.** Certification for a business entity applying for a certificate of authorization to practice or offer to practice engineering or land surveying. (3-15-02)

**d.** Applications for reexamination in professional engineering, professional land surveying, engineer intern or land surveyor intern. (5-8-09)

**e.** Renewals for professional engineers, professional land surveyors, engineer interns, land surveyor interns and business entities. (5-8-09)

**f.** Licensure for professional engineers or professional land surveyors by comity. (5-8-09)

**02. Late or Denied Renewals**. Failure on the part of any licensee or business entity to renew their ~~*fees*~~ license or certificate of authorization prior to their expiration shall not deprive such persons or business entity of the right of renewal, but the fees to be paid for renewal after their expiration shall be increased as prescribed in Section 54-1216, Idaho Code. ~~*(5-8-09)*~~(____)

**03. Reexaminations**. Separate fees will be assessed for each examination and such fees shall accompany all applications for examination for professional engineers, professional land surveyors, engineer interns, and land surveyor interns. (5-8-09)

**04. Schedule of Fees**. The schedule of fees as determined by the Board shall be furnished to applicants with application forms. (7-1-93)

***(BREAK IN CONTINUITY OF SECTIONS)***

**017. EXAMINATIONS.**

**01. Semiannually or Annually; Special or Oral Examination**. Examinations for licensure as a professional engineer or professional land surveyor, or certification as an engineer intern or land surveyor intern will be held ~~*annually or semi-annually, the exact time and place*~~ on dates and at times and places to be determined by the Board. Special oral or written examinations ~~*during the year*~~ may be given by the Board as necessary. ~~*(5-8-09)*~~(____)

**02. Eligibility for Examinations, Educational Requirements**. The application for licensure as a professional engineer, professional land surveyor or certification as an engineer intern or land surveyor intern, together with the written examination, shall be considered in the determination of the applicant's eligibility. Each applicant must meet the minimum requirements as set forth in Section 54-1212, Idaho Code, before ~~*admittance*~~ being assigned to any examination. ~~*(5-8-09)*~~(____)

**a.** In regard to educational requirements, the Board will consider as unconditionally

approved only those engineering programs which are accredited by the Engineering Accreditation Commission (EAC) of ~~*the Accreditation Board for Engineering and Technology (*~~ABET~~)~~, Inc. Non-EAC/ABET accredited engineering programs, related science programs, and engineering technology programs will be considered by the Board on their specific merits, but are not considered equal to engineering programs accredited by EAC/ABET. The Board may continue consideration of an application for valid reasons for a period of one (1) year, without forfeiture of the application fee. ~~*(3-20-04)*~~(  )

**b.** An applicant who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed a minimum of fifteen (15) semester credits of Engineering Science at a Sophomore and Junior level, six (6) semester credits of Engineering Design related courses at a Senior level, twelve (12) semester credits of Advanced Mathematics including Calculus and Differential Equations, and twelve (12) semester credits of basic science courses including Chemistry, calculus-based Physics and other appropriate basic science courses before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(3)(b), Idaho Code, for assignment to the examination for certification as an Engineer Intern or as required by Section 54-1212(1)(b), Idaho Code, for assignment to the examination for licensure as a professional engineer. (5-8-09)

i. Standard, regularly scheduled courses from accredited university programs, (on campus, correspondence, video, etc.) are normally acceptable without further justification other than transcript listing. The Board may require detailed course descriptions for seminar, directed study, special problem and similar courses to insure that the above requirements are met. (7-1-93)

ii. Graduate level engineering courses, i.e. courses which are available only to graduate students, are normally not acceptable since the Board believes graduate engineering courses may not provide the proper fundamental foundation to meet the broad requirements of professional engineering. (7-1-93)

**c.** Beginning July 1, 2010, an applicant who has completed a four (4) year bachelor degree program in a related science must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(4)(b), Idaho Code, for assignment to the examination for certification as a Land Surveyor Intern or as required by Section 54-1212(2)(b), Idaho Code, for assignment to the examination for licensure as a professional land surveyor: (5-8-09)

i. Three (3) credits in Surveying Law and Boundary Descriptions; (3-30-07)

ii. Three (3) credits in Route Surveying; (3-30-07)

iii. Three (3) credits in Public Land Surveying; (3-30-07)

iv. Three (3) credits in Surveying Software Applications; (3-30-07)

v. Three (3) credits in Research and Evidence in Surveying; (3-30-07)

vi. Three (3) credits in Surveying Adjustments and Coordinate Systems; (3-30-07)

vii. Three (3) credits in Subdivision Planning and Platting; (3-30-07)

viii. Three (3) credits in Geodesy; and (3-30-07)

ix. Three (3) credits in Survey Office Practice and Business Law in Surveying. (3-30-07)

**d.** In addition to the minimum requirements set forth in Section 54-1212, Idaho Code, a person who desires to be qualified by examination in the field of structural engineering shall meet the following requirements: (4-22-94)

i. Be ~~a~~ licensed as a professional engineer in Idaho especially qualified in a discipline other than structural engineering. ~~(5-8-09)~~(  )

ii. Have two (2) years of work experience in the field of structural engineering after being licensed as a professional engineer. The Principles and Practice of Engineering examination for Structural Engineering will cover the practice of structural engineering to test the applicant's fitness to assume responsibility for engineering work affecting the public health, safety and welfare. The duration of the examination shall be ~~*sixteen (16) hours*~~ as determined by the Board. ~~(5-8-09)~~(  )

**e.** The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has received a master's degree or Doctor of Philosophy degree from an U.S. institution which has a bachelor degree program accredited by the Engineering Accreditation Commission of ~~*the Accreditation Board for Engineering and Technology*~~ ABET, Inc. in the discipline of the applicant's master's degree or Doctor of Philosophy degree, and, in addition, has completed the coursework requirements of Subsection 017.02.b. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. ~~(5-8-09)~~(  )

~~***03. Notification to Applicant by Board****. Notification of assignment or non-assignment to the examination will be furnished to the applicant at least thirty (30) days prior to the date of the examination.*~~ ~~(4-5-00)~~

~~***04. Notification to Board by Applicant****. The applicant shall, at least fifteen (15) days before an examination, notify the Executive Director of the Board whether or not he will appear for the examination. Examinations will be given only to those who have so notified the Board.*~~ ~~(4-5-00)~~

**0~~5~~3. Excused Non-Attendance at Exam**. In the event that an applicant cannot attend

an examination, he shall immediately notify the Board to that effect and shall state the reason for non-attendance. Normally, no more than one (1) valid excuse and reassignment shall be granted to an applicant. If an applicant fails to appear for two (2) administrations of an examination their application may be terminated and they may be required to submit a new application and pay a new application fee in order to be reconsidered. (3-30-01)

**0~~6~~4. Two Examinations for Engineering Licensure**. The complete examining procedure for licensure as a professional engineer normally consists of two (2) separate written examinations. The first is the Fundamentals of Engineering examination for engineer intern certification, and the second is the Principles and Practice of Engineering for professional engineer licensure. ~~*Each*~~ The examination shall be ~~*eight (8) hours in length*~~ a duration as determined by the Board. Normally, applicants are eligible to take the Fundamentals of Engineering examination during the last or second-to-last semester of or after graduation from an accredited bachelor of science engineering program. A certificate as an Engineer Intern will be issued only to those student applicants who earn a passing grade on the examination and who receive a degree. Having passed the Fundamentals of Engineering examination, applicants will be required to take the Principles and Practice of Engineering examination at a later date when qualified by experience. ~~*(5-8-09)*~~(____)

**0~~7~~5. Fundamentals of Engineering**. The Fundamentals of Engineering examination will cover such subjects as are ordinarily given in engineering college curricula and which are common to all fields of practice. The examination may also cover subject matters that are specific to the engineering discipline of the applicants' education. (5-8-09)

**0~~8~~6. Principles and Practice of Engineering -- Disciplines**. The Principles and Practice of Engineering examination will cover the practice of engineering to test the applicant's fitness to assume responsibility for engineering works affecting the public health, safety and welfare. Separate examinations will be given to test the applicant's fitness in any discipline for which there is an examination which, in the opinion of the Board, meets the requirements of duration and difficulty necessary to adequately test the applicant's fitness to practice in that particular discipline. The Board may use examinations prepared by the National Council of Examiners for Engineering and Surveying (NCEES) or it may prepare or commission the preparation of examinations in disciplines other than those for which examinations may be available from NCEES. (4-22-94)

**0~~9~~7. Two Examinations for Land Surveying Licensure**. The complete examining procedure for licensure as a professional land surveyor consists of two (2) separate written examinations. The first is the Fundamentals of Surveying examination for land surveyor intern certification, and the second is the Principles and Practice of Surveying for professional land surveyor licensure. ~~*Each*~~ The examination ~~*will*~~ shall be a ~~*total of eight (8) hours in length*~~ duration as determined by the Board. Having passed the Fundamentals of Surveying examination, applicants will be required to take the Principles and Practice of Surveying examination at a later date when qualified by experience. The examination shall cover the theory and principles of surveying, the practice of land surveying and the requirements of legal enactments. The Principles and Practice of Surveying examination may consist of separate modules, each of which must be passed. ~~*(5-8-09)*~~(____)

**~~1~~08. Oral or Unassembled Examinations**. An oral examination or unassembled

written examination, in addition to the prescribed written examination, may be required for professional engineer and professional land surveyor applicants. (7-1-93)

***11*09. Special Examinations**. A special examination, written or oral or both, may be required in certain instances where the applicant is seeking licensure through comity or reciprocity with another state or political entity having required written examinations that are not wholly comparable in length, nature or scope. This examination supplements the certified qualifying record of the applicant and establishes a more common basis for judging the application and awarding a certificate of qualification or licensure in this state. The length of these special examinations shall be determined by the Board, but shall in no case exceed the lengths specified for the regular examination. Special examinations may be given at any date and need not conform with regular examination dates. (5-8-09)

**1*2*0. Grading**. Each land surveyor intern, engineer intern and professional engineer applicant must normally attain a scaled score of seventy (70) or above on the entire *eight (8) hour* examination or modules as determined by the Board, before being awarded certification or licensure. Examinees on the Principles and Practice of Land Surveying examination must normally attain a scaled score of seventy (70) or above on each *section* module of the examination. *(5-8-09)*(____)

**1*3*1. Use of NCEES Examinations**. Examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES) for professional engineer, engineer intern, professional land surveyors, and land surveyor intern may be used by the Board. The examination for the field of structural engineering shall be the *sixteen (16) hour* examination as determined by the Board. *(5-8-09)*(____)

**1*4*2. Review of Examination by Examinee**. Due to security concerns about the examinations, examinees shall not be allowed to review their examination. Examinees who fail an examination will be provided a diagnostic analysis of their performance on the examination if such an analysis is available to the Board. (3-20-04)

***15. Disposal of Used Examination Pamphlets and Answer Sheets**. The Executive Director of the Board is authorized by the Board to dispose of used examination solution pamphlets and answer sheets after the first anniversary date after the examination was given.* *(3-30-01)*

**1*6*3. Proctoring of Examinations**. Unless otherwise approved, the Board will not proctor an examination for another jurisdiction except State-Specific examinations nor will they request another jurisdiction to proctor an examination for an Idaho applicant. (5-8-09)

## 018. REEXAMINATIONS.

**01. Allowing Reexamination upon Failure**. An applicant failing any portion of *the Principles and Practice of Surveying* an examination, and having applied for reexamination as permitted by law, may at the discretion of the Board, be required to take only the portion of the examination for which a failing grade was received. *(5-8-09)*(____)

**02. Application for Reexamination**. An applicant who has failed any examination*, as*

~~*previously described*,~~ may be assigned by the Board to reexamination upon written request and payment of fees~~ *at least sixty (60) days prior to any scheduled examination date*~~. ~~*(7-1-93)*~~(____)

**03. Failure of Reexamination**. An applicant who fails on reexamination, must present evidence of having met the requirements set forth in Section 54-1214, Idaho Code in order to be reassigned to an examination. (5-8-09)

**019. LICENSEES OR CERTIFICATE HOLDERS OF OTHER STATES AND BOARDS.**

**01. Interstate Licensure Evaluation**. Each application for Idaho professional engineer license or professional land surveyor license submitted by an applicant who is licensed as a professional engineer, or licensed as a professional land surveyor, respectively, in one (1) or more states, territories or foreign countries, shall be considered by the Board on its merits, and the application evaluated for substantial compliance with respect to the requirements of the Idaho law. Graduates of programs accredited by organizations signatory to the "Washington Accord" and graduates from programs evaluated by ABET as being substantially equivalent to EAC/ ABET programs shall be considered to have satisfied the educational requirement for issuance of a license as a professional engineer. Individuals who have passed examinations considered by the Board to be of comparable difficulty and duration as those utilized by the Board shall be considered to have satisfied the examination requirement for issuance of a license as a professional engineer or professional land surveyor. (5-8-09)

**a.** The Board may require an independent evaluation of the engineering education of an applicant who was educated outside the United States. Such evaluation shall be done through an organization approved by the Board and shall be done at the expense of the applicant. Such evaluation shall not be required if the applicant has been licensed in another jurisdiction of the United States for an minimum of ten (10) years and has not had any disciplinary action against them and there is none pending, and possesses the education, experience and examination credentials that were specified in the applicable registration chapter in effect in this state at the time such certification was issued. The Board may table action on the application pending receipt of the evaluation, and, in the event the applicant does not provide the evaluation within one (1) year, the Board may terminate the application, in which case the application fee shall be forfeited. (5-8-09)

**b.** An applicant who was originally licensed in another jurisdiction after June 30, 1996 and who has completed a four (4) year bachelor degree program in engineering not accredited by EAC/ABET or a four (4) year bachelor degree program in engineering technology, or in a related science degree program other than engineering must have completed a minimum of fifteen (15) semester credits of Engineering Science at a Sophomore and Junior level, six (6) semester credits of Engineering Design related courses at a Senior level, twelve (12) semester credits of Advanced Mathematics including Calculus and Differential Equations, and twelve (12) semester credits of basic science courses including Chemistry, calculus-based Physics and other appropriate basic science courses before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year engineering curriculum as required by Section 54-1212(1)(b), Idaho Code. (3-30-07)

**c.** An applicant who was originally licensed in another jurisdiction after June 30,

2010 who has completed a four (4) year bachelor degree program in a related science must have completed a minimum of the following college level academic courses, or their equivalents as determined by the Board, before the Board will consider them to possess knowledge and skill approximating that attained through graduation from an approved four (4) year surveying curriculum as required by Section 54-1212(2)(b), Idaho Code, for licensure as a professional land surveyor: (3-30-07)

i. Three (3) credits in Surveying Law and Boundary Descriptions; (3-30-07)

ii. Three (3) credits in Route Surveying; (3-30-07)

iii. Three (3) credits in Public Land Surveying; (3-30-07)

iv. Three (3) credits in Surveying Software Applications; (3-30-07)

v. Three (3) credits in Research and Evidence in Surveying; (3-30-07)

vi. Three (3) credits in Surveying Adjustments and Coordinate Systems; (3-30-07)

vii. Three (3) credits in Subdivision Planning and Platting; (3-30-07)

viii. Three (3) credits in Geodesy; and (3-30-07)

ix. Three (3) credits in Survey Office Practice and Business Law in Surveying. (3-30-07)

**02. Denials or Special Examinations**. An application from a licensee of another state, territory or foreign country may be denied by the Board for any just cause and the application fee retained; or the Board may approve the applicant for a special written and/or oral examination. ~~*If the applicant is assigned to examination no additional fee shall be required.* *(5-8-09)*~~(____)

**03. Business Entity Requirements**. No application for a certificate of authorization to practice or offer to practice professional engineering or professional land surveying, or both, in Idaho by a business entity authorized to practice professional engineering or professional land surveying or both in one (1) or more states, territories or foreign countries shall be considered by the Board unless such application includes the name and address of the individual or individuals, duly licensed to practice professional engineering or professional land surveying or both in this state, who will be in responsible charge of the engineering or land surveying services, or both, as applicable, to be rendered by the business entity in Idaho. The said individual or individuals must certify or indicate to the Board their willingness to assume responsible charge. (5-8-09)

***(BREAK IN CONTINUITY OF SECTIONS)***

**021. RIGHT TO PUBLISH DISCIPLINARY ACTIONS.**
The Board office may disclose the filing and the nature of a complaint, but may not disclose the details of an investigation. Final, formal enforcement~~*, including, but not limited to actions such as*~~

~~*fines, assessment of expenses, revocations or suspensions*~~ shall be public information. ~~*Probations and conditions may be subject to public disclosure whenever the Board believes it is in the public interest.*~~ Following a hearing or the entry of a consent agreement, the Board may publish a summary of any order issued by it, in a newsletter or newspaper of general circulation or, for a period of up to ten (10) years, may post it on the Internet. ~~*The Board may also advise anyone requesting such information of the contents of any order issued by it.*~~ ~~*(5-3-03)*~~(____)

# IDAPA 10 - IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

## 10.01.02 - RULES OF PROFESSIONAL RESPONSIBILITY

## DOCKET NO. 10-0102-0901

## 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 54-1208, 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 54 through 56.**

**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 not be any negative fiscal impact on the state general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact David L. Curtis at (208) 373-7210.

DATED this 11th day of September, 2009.

David L. Curtis, P.E., Executive Director
Board of Professional Engineers and Professional Land Surveyors
5535 W. Overland Road, Boise, Idaho 83705
Voice (208) 373-7210, Fax (208) 373-7213
Email: dave.curtis@ipels.idaho.gov

***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 54-1208, Idaho Code.

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

**TUESDAY - AUGUST 18, 2009 - 9:00 a.m.**

**J.R. WILLIAMS EAST CONFERENCE ROOM**
**700 W. State St., Boise, ID 83702**

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

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

**The proposed rules amendments define "deceit" and "incompetence" and clarify the definition of "misconduct." They clarify the standard of care and the obligations of engineers and land surveyors in reports, statements or testimony and communication with clients. They make technical corrections in spelling and grammar.**

**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 as a result of this rulemaking: N/A

**NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, page 46.**

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact David L. Curtis, P.E., Executive Director at dave.curtis@ipels.idaho.gov or at (208) 373-7210.

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 19th day of June, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**004. DEFINITIONS.**
For the purposes of these rules, the following terms are used as defined below: (7-1-93)

**01. Board**. The Board of Licensure of Professional Engineers and Professional Land Surveyors. (5-8-09)

**02. Certificate Holder**. Any person holding a current certificate as an Engineer Intern or a Land Surveyor Intern or a business entity (which is also herein referred to as a "person") holding a current certificate of authorization, which has been duly issued by the Board. (5-8-09)

**03. Deceit**. To intentionally misrepresent a material matter, or intentionally omit to disclose a known material matter. (____)

**04. Incompetence**. Failure to meet the standard of care. (____)

**0~~3~~5. Licensee**. Any person holding a current license as a Professional Engineer, a Professional Land Surveyor, or a combination thereof, which has been duly issued by the Board. (5-8-09)

**0~~4~~6. Misconduct**. A violation or attempt to violate these rules of professional responsibility or to knowingly assist or induce another to do so, or do so through the acts of another; ~~*commission of a criminal act that reflects adversely on the licensee's or certificate holder's honesty, trustworthiness or fitness as a licensee or certificate holder in other respects; engage in conduct involving dishonesty, fraud, deceit or misrepresentation*~~ a finding of guilt of commitment of a felony or a plea of guilty to a felony; commit fraud or deceit; state or imply an ability to influence improperly a government agency or official. ~~*(5-8-09)*~~(____)

**005. RESPONSIBILITY TO THE PUBLIC.**

**01. Primary Obligation**. All Licensees and Certificate Holders shall at all times recognize their primary obligation is to protect the safety, health and welfare of the public in the performance of their professional duties. (5-8-09)

**02. Standard of Care**. Each Licensee and Certificate Holder shall ~~*perform in accordance with the standard of care for the profession and is under duty to the party for whom the service is to be performed to*~~ exercise such care, skill and diligence as others in that profession ordinarily exercise under like circumstances. ~~*(5-8-09)*~~(____)

**03. Professional Judgment**. If any Licensee's or Certificate Holder's professional judgment is overruled under circumstances where the safety, health and welfare of the public are endangered, the Licensee or Certificate Holder shall inform the employer or client of the possible

consequences and, where appropriate, notify the Board or such other authority of the situation. (5-8-09)

**04. Obligation to Communicate Discovery of Discrepancy**. If a Licensee or Certificate Holder, during the course of his work, discovers a material discrepancy, error, or omission in the work of another Licensee or Certificate Holder, which may impact the health, property and welfare of the public, the discoverer shall make a reasonable effort to inform, in writing, the Licensee or Certificate Holder whose work is believed to contain the discrepancy, error or omission. Such communication shall reference specific codes, standards or physical laws which are believed to be violated and identification of documents which are believed to contain the discrepancies. The Licensee or Certificate Holder whose work is believed to contain the discrepancy shall respond in writing within sixty (60) calendar days to any question about his work raised by another Licensee or Certificate Holder. Failure to respond on the part of the Licensee or Certificate Holder whose work is believed to contain the discrepancy shall be considered a violation of these rules and may subject the Licensee or Certificate Holder to disciplinary action by the Board. The discoverer shall notify the Board in the event a response satisfactory to the discoverer is not obtained within sixty (60) days. (5-8-09)

**05. Obligation to Comply with Rules of Continuing Professional Development**. All Licensees shall comply with the requirements contained in IDAPA 10.01.04, "Rules of Continuing Professional Development." (5-8-09)

~~***06. Obligation to Communicate with Clients****. A Licensee shall be complete, objective and truthful in all communications with clients.* *(5-8-09)***~~

***(BREAK IN CONTINUITY OF SECTIONS)***

**007. PUBLIC STATEMENTS.**

**01. ~~*Complete, Objective and Truthful*~~ Reports, Statements or Testimony**. A Licensee shall ~~*be complete, objective and truthful*~~ not commit fraud, violate the standard of care, or engage in deceit or misconduct in ~~*all*~~ professional reports, statements or testimony. He shall, to the best of his knowledge, include all relevant and pertinent information in such reports, statements or testimony. ~~*(5-8-09)*~~(  )

**02. Opinions Based on Adequate Knowledge**. A Licensee or Certificate Holder, when serving as an expert or technical witness before any court, commission or other tribunal, shall express an opinion only when it is founded upon adequate knowledge of the facts in issue, upon a background of technical competence in the subject matter, and upon honest conviction of the accuracy and propriety of his testimony. (5-8-09)

**03. Statements Regarding Public Policy**. On matters connected with establishing public policy a Licensee or Certificate Holder shall issue no statements, criticisms or arguments which are paid for by an interested party, or parties, unless he has prefaced his comment by explicitly identifying himself, by disclosing the identities of the party, or parties, on whose behalf

he is speaking, and by revealing the existence of any pecuniary interest he may have in the matters. (5-8-09)

**04. Actions in Regard to Other Registrants or Certificate Holders**. A Licensee or Certificate Holder shall not attempt to injure, maliciously or falsely, directly or indirectly, the professional reputation, prospects, practice or employment of another Licensee or Certificate Holder, nor shall he indiscriminately criticize another Licensee's or Certificate Holder's work in public. If he believes that another Licensee or Certificate Holder is guilty of fraud, deceit, negligence, incompetence, misconduct or violation of these rules he should present such information to the Board for action. (5-8-09)

***(BREAK IN CONTINUITY OF SECTIONS)***

**011. RULE AND STATUTE VIOLATIONS.**

**01. Affidavits for Rule and Statute Violations**. Any person who believes that a Licensee or Certificate Holder by his actions, or failure to properly act, is guilty of fraud, deceit, negligence, incompetenc~~y~~e, misconduct, or violation of these rules, or any applicable statute, may file a written affidavit with the Executive Director of the Board which shall be sworn to or affirmed under penalty of perjury, signed and in which the alleged rule and statute violations shall be clearly set forth and that the applicable Licensee or Certificate Holder, or both, should be considered for the appropriate disciplinary action by the Board. Following the receipt of such affidavit, the Board may investigate, hold hearings and adjudicate the charges. Proceedings shall be exempt from all statutes of limitations. ~~*(5-8-09)*~~(____)

**02. Investigation of Statute or Rule Violations**. The Board may, at its own discretion, initiate investigation of alleged or possible statute or rule violations that have come to its attention. (5-3-03)

# IDAPA 12 - DEPARTMENT OF FINANCE

## 12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

## DOCKET NO. 12-0110-0901

## 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 Sections 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 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), Idaho Code.

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

**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 September 2, 2009 Idaho Administrative Bulletin, Vol. 09-9, pages 38 through 49.**

**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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Michael Larsen, Consumer Finance Bureau Chief, Idaho Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031; Telephone: (208) 332-8000; Facsimile: (208) 332-8096.

DATED this 2nd day of November, 2009.

Gavin M. Gee
Director, Idaho Department of Finance
800 Park Blvd., Suite 200
Boise, Idaho 83712
(208) 332-8000
Fax: (208) 332-8097

***THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE: The effective date of the temporary rules is July 29, 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 Sections 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), 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, by no 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:

**The 2009 Idaho Legislature repealed the former Idaho Residential Mortgage Practices Act, Section 26-3101, Idaho Code, and replaced it with a new version of the Idaho Residential Mortgage Practices Act, Section 26-31-101, Idaho Code, (the new Act). The new Act incorporates the standards of the federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the S.A.F.E. Act), as required by federal law, and includes changes to prior law. Among the changes to Idaho law included in the new Act are:**

1. **New requirements for providers of residential mortgage loan and for loan modification services;**
2. **Specific requirements concerning continuing education for licensees under the new Act; and**
3. **Authorization for the Director of the Idaho Department of Finance to limit fees and charges imposed by providers of residential mortgage loan modification services.**

**The Director found it necessary to adopt temporary rules to establish consistency with the requirements of the new Act, and to interpret some of such requirements, to include:**

1. **Corrections to citation references to the Act;**
2. **Deletion of all continuing education definitions and provisions to reflect statutory changes and the role of the Nationwide Mortgage Licensing System and Registry in testing and education;**
3. **A definition of "application" for a residential mortgage loan and a loan modification;**
4. **A requirement that an "application fee" must be based on actual costs incurred by a licensee, or person required to be licensed under the new Act, in taking the application; and**

5. **A requirement that a "cancellation fee" may only be charged at the time of, or subsequent to, a request by a borrower to cancel services authorized under the Act and must bear a reasonable relationship to the actual costs incurred for services provided to a borrower up to the point of cancellation.**

**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 reason:

**The Department of Finance was required to update the Rules Pursuant to the Idaho Residential Mortgage Practices Act to establish consistency with the new version of the Idaho Residential Mortgage Practices Act that was adopted by the 2009 Idaho Legislature (the new Act). A portion of the new Act was mandated by the federal government to be in place by July 1, 2009. These changes will ensure that the Department maintains consistency with the requirements of the new Act, which became effective on July 1, 2009.**

**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 timing of the effective date of the new Idaho Residential Mortgage Practices Act, July 1, 2009, did not provide adequate time to conduct negotiated rulemaking by the effective date of the new Act or within a reasonably short time thereafter, requiring that temporary rules be adopted to establish consistency between the rules and the new Act and interpret some of the new requirements included in the new Act.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact: Michael Larsen, Consumer Finance Bureau Chief, (208) 332-8000.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned at the address set forth above, and must be delivered on or before September 23, 2009.

DATED this 29th day of July, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**000. LEGAL AUTHORITY (RULE 0).**
This chapter is promulgated pursuant to Sections ~~*26-3105(5)*~~ 26-31-103, 26-31-204(5), 26-31-302(1)(a), and 26-31-302(2), Idaho Code. ~~*(11-1-98)*~~(  )

**001. TITLE AND SCOPE (RULE 1).**
The title of this chapter is "Rules Pursuant to the Idaho Residential Mortgage Practices Act," ~~*of*~~ which rules are administered by the Idaho Department of Finance, and may be cited as IDAPA 12.01.10. These rules ~~*implement*~~ interpret the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. ~~*(11-1-98)*~~(  )

**002. WRITTEN INTERPRETATIONS -- AGENCY ACCESS -- FILINGS (RULE 2).**
Written interpretations of these rules are available by mail from the Idaho Department of Finance, P.O. Box 83720, Boise, Idaho 83720-0031. The street address of the agency is Idaho Department of Finance, 800 Park Boulevard, Suite 200, Boise, Idaho 83712. The telephone numbers of the ~~*agency include*~~ Idaho Department of Finance are: (208) 332-8000 - Administration; and (208) 332-8002 - Consumer Finance Bureau. The ~~*telephone*~~ number ~~*of*~~ for the facsimile machine in the Consumer Finance Bureau is (208) 332-8096. All filings with the ~~*agency*~~ Idaho Department of Finance in connection with rulemaking or contested cases shall be made with the Director of the Idaho Department of Finance, and shall include an original and one (1) copy. ~~*(3-30-07)*~~(  )

***(BREAK IN CONTINUITY OF SECTIONS)***

**005. INCORPORATION BY REFERENCE (RULE 5).**
~~*IDAPA 12.01.10,*~~ The "Rules Pursuant to the Idaho Residential Mortgage Practices Act," incorporate~~s~~ by reference the full text of the following federal laws and regulations as defined in these rules: the Real Estate Settlement Procedures Act, ~~*12 USCA 2601, et seq., as amended to and including January 1, 2007;*~~ Regulation X, ~~*24 CFR 3500, et seq., as amended to and including January 1, 2007;*~~ the Truth in Lending Act, ~~*15 USCA 1601, et seq., as amended to and including January 1, 2007;*~~ and Regulation Z~~, 12 CFR 226, et seq., as amended to and including January 1, 2007~~. Documents incorporated by reference may be viewed at the central office of the Idaho Department of Finance, as noted in Section 002 of these rules. ~~*(3-30-07)*~~(  )

**006. DEFINITIONS (RULE 6).**
~~*Except where otherwise stated, terms used in these rules which are defined in the Idaho Residential Mortgage Practices Act shall have the same meaning as set forth in that Act.*~~ As used in the Idaho Residential Mortgage Practices Act and these rules, the following definitions apply: ~~*(3-30-06)*~~(  )

~~***01. Accredited Instruction****. Means a course, video, motion picture, sound recording, or dissemination through electronic means of instructional material, which has been approved by the director for continuing professional education credit.*~~ ~~*(3-30-06)*~~

**0~~2~~1.** **Act**. Means the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (3-30-06)

**02.** **Application**. In relation to a "residential mortgage loan" or "loan modification" as defined in the Act, an "application" means a request for a residential mortgage loan or loan modification and any form or document representing such request. The term "application" does not include the processing of such request. (  )

~~***03. Certificate of Completion**. Means written documentation issued by an education provider to a participant, in a manner approved by the director, evidencing the completion of a specific amount of credit hours of accredited instruction. (3-30-06)***~~

**0~~4~~3. Closing**. Means the process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan and includes the day agreed upon by a borrower and a licensee or person required to be licensed under the Act to complete such process. ~~(3-30-06)~~(____)

~~***05. Credit Hour**. Means fifty (50) minutes of accredited instruction attained through actual course attendance or an allotted increment of time of accredited instruction through independent study, as predetermined by the director. (5-8-09)***~~

**0~~6~~4. Director**. Means the director of the Idaho Department of Finance. (3-30-06)

~~***07. Education Provider**. Means a provider of accredited instruction. (3-30-06)***~~

~~***08. Participant**. Means a person who attends accredited instruction for the purpose of accruing credit hours. (3-30-06)***~~

**0~~9~~5. Real Estate Settlement Procedures Act**. Means the act set forth in 12 USCA 2601, et seq., as amended to and including January 1, 2009. (5-8-09)

**~~10~~06. Regulation X**. Means Regulation X as promulgated by the Department of Housing and Urban Development and codified in 24 CFR 3500 et seq., as amended to and including January 1, 2009. (5-8-09)

**~~11~~07. Regulation Z**. Means Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified in 12 CFR 226 et seq., as amended to and including January 1, 2009. (5-8-09)

~~***12. Reporting Period**. Means a two (2) year period of time commencing on November 1st and ending on October 31st unless otherwise specified by order of the director. (3-30-06)***~~

**~~13~~08. Truth in Lending Act**. Means the act set forth in 15 USCA 1601 et seq., as amended to and including January 1, 2009. (5-8-09)

**007. -- 0~~0~~39. (RESERVED).**

~~***010. REQUIREMENTS FOR CONTINUING PROFESSIONAL EDUCATION (RULE 10).***~~

~~***01. Licensee**. For purposes of the "Requirements for Continuing Professional Education" provisions of this rule, the term "licensee" means a person: (3-30-06)***~~

~~***a.** Who is a loan originator licensed under the Act; or (3-30-06)***~~

~~***b.** Who is designated pursuant to Section 26-3108, Idaho Code, as being in charge of***~~

~~*a licensed location of a mortgage broker or mortgage lender licensed under the Act.* *(3-30-06)*~~

~~***02. Minimum Requirements.*** *(3-30-06)*~~

~~***a.*** *A loan originator licensed under the Act shall attain sixteen (16) credit hours within each reporting period.* *(3-30-06)*~~

~~***b.*** *Persons designated in the director's files, as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act shall attain sixteen (16) credit hours within each reporting period.* *(3-30-06)*~~

~~***c.*** *Credit hours accrued in excess of the required sixteen (16) credit hours in any reporting period shall not carry over nor be credited to any subsequent reporting period.* *(3-30-06)*~~

~~***03. Accrual of Credit Hours.*** *(3-30-06)*~~

~~***a.*** *For the purpose of accruing credit hours within any reporting period, a licensee shall attain no less than two (2) credit hours directly related to the Act and these rules.* *(3-30-06)*~~

~~***b.*** *For the purpose of accruing credit hours within any reporting period, a licensee shall attain no less than two (2) credit hours directly related to ethics.* *(5-8-09)*~~

~~***c.*** *For the purpose of accruing credit hours within any reporting period, a licensee shall attain no less than twelve (12) credit hours related to the following:* *(5-8-09)*~~

~~*i. Basics of home purchase and ownership;* *(3-30-06)*~~

~~*ii. The mortgage industry generally;* *(3-30-06)*~~

~~*iii. Loan evaluation and documentation;* *(3-30-06)*~~

~~*iv. Features of various loan products;* *(3-30-06)*~~

~~*v. State and federally required disclosures;* *(3-30-06)*~~

~~*vi. Ethical considerations;* *(3-30-06)*~~

~~*vii. The Idaho Credit Code;* *(3-30-06)*~~

~~*viii. The Idaho Mortgage Company Act;* *(3-30-06)*~~

~~*ix. The Idaho Escrow Act;* *(3-30-06)*~~

~~*x. The Idaho Residential Mortgage Practices Act;* *(5-8-09)*~~

~~*xi. Law related to mortgages, deeds of trust, liens, and pledges;* *(3-30-06)*~~

~~*xii. Real estate and appraisal law;* (3-30-06)~~

~~*xiii. Principal and agency law;* (3-30-06)~~

~~*xiv. Contract law;* (3-30-06)~~

~~*xv. The Real Estate Settlement Procedures Act; or* (3-30-06)~~

~~*xvi. Truth in Lending and the federal Consumer Credit Protection Act.* (3-30-06)~~

~~***c.*** *Accredited instruction shall be of a minimum duration of one (1) credit hour and shall contribute to the goal of maintaining or increasing the knowledge, skill and competence of licensees. The principal focus of accredited instruction shall not be sales, marketing, commercial lending or commercial loan brokering, motivational, or skills pertaining to running a business.* (3-30-06)~~

~~***d.*** *A participant who successfully completes a course of accredited instruction may not repeat that course for credit hours with the same education provider within the same reporting period.* (3-30-06)~~

~~***e.*** *A participant may accrue credit hours within ninety (90) days prior to initial submission of an application for a loan originator license under the Act. Such credit hours shall not accrue to the participant unless the initial license application is subsequently approved by the director and a license is issued. Credit hours shall not be granted to a participant under this provision unless the participant provides the director with a copy of the certificate of completion for such accredited instruction within sixty (60) days of initial licensure.* (3-30-06)~~

~~***f.*** *Persons designated in the director's files as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act may accrue credit hours for accredited instruction attended within ninety (90) days prior to the date of approval by the director of such designation.* (3-30-06)~~

~~***g.*** *Persons who, as of January 1, 2006, are designated in the director's files as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act may accrue credit hours for accredited instruction completed on or after October 1, 2005.* (3-30-06)~~

~~***04. Recordkeeping and Reporting of Accrued Credit Hours.*** (3-30-06)~~

~~***a.*** *Every licensee shall maintain copies of certificates of completion for a period of no less than three (3) years following completion of the accredited instruction.* (3-30-06)~~

~~***b.*** *The initial reporting period for a loan originator licensed under the Act shall commence on November 1st immediately succeeding his initial licensure.* (3-30-06)~~

~~***c.*** *The initial reporting period for persons who are not loan originators, but who have been designated in the director's files as being in charge of a licensed location of a mortgage broker or mortgage lender licensed under the Act shall commence:* (3-30-06)~~

~~*i. On November 1, 2006, if the person has been so designated prior to November 1, 2006; or* (3-30-06)~~

~~*ii. On November 1st immediately following the director's approval of the person's designation, if the person is so designated on or after November 1, 2006.* (3-30-06)~~

~~***d.*** *Within thirty (30) days following the expiration of each reporting period a licensee shall deliver copies of certificates of completion to the director demonstrating the licensee's completion of the credit hours required under these rules.* (3-30-06)~~

~~***e.*** *A licensee who fails to attain the credit hours required by these rules, or fails to maintain records as required in Section 010 of these rules, or fails to timely report compliance with the credit hour requirements of these rules shall be subject to license revocation or suspension as prescribed in Section 26-3109, Idaho Code.* (3-30-06)~~

~~***f.*** *Upon revocation or suspension of a license issued under the Act for failure to complete or report credit hour requirements, no person shall obtain a new license or a reinstated license in the case of a license suspension, as a loan originator, mortgage broker or mortgage lender without first satisfying the credit hour requirements, which, having been previously incomplete or not reported, were the cause of the license revocation or suspension.* (3-30-06)~~

~~***011. EDUCATION PROVIDERS AND CONTENT OF CONTINUING PROFESSIONAL EDUCATION (RULE 11).***~~

~~***01. Submission of Continuing Professional Education Courses for Accreditation by the Director****. Education provider applicants shall submit an application, in a form provided by the director, for accreditation of continuing professional education for each instructional course proposed to be offered by the education provider applicant. The application shall be accompanied by a non-refundable application fee of two hundred fifty dollars ($250) and shall include, but not be limited to, the following information:* (3-30-06)~~

~~***a.*** *The name and address of the education provider and date(s) on and locations at which the program is to be offered;* (3-30-06)~~

~~***b.*** *The qualifications and experience of the education provider's principal officers, staff, and instructor(s);* (3-30-06)~~

~~***c.*** *The costs of all programs for which approval is sought;* (3-30-06)~~

~~***d.*** *A copy of the proposed course materials together with a description of each course for which approval is sought; and* (3-30-06)~~

~~***e.*** *A sample of what is provided to participants to verify course completion.* (3-30-06)~~

~~***02. Granting of Accreditation of Professional Education Courses****. The director shall grant accreditation to continuing professional education courses if he finds:* (3-30-06)~~

~~***a.*** *That the course constitutes an organized program of learning which provides instruction on subject matter as described in Subsection 010.03 of these rules;* *(3-30-06)*~~

~~***b.*** *That course materials are prepared, and instruction conducted, by an individual or group qualified by practical or academic experience in the subject or subjects to be presented;* *(3-30-06)*~~

~~***c.*** *That the course shall be presented in a setting physically suited to the educational activity or in a manner which allows for participant interaction and comprehension of course materials. Training facilities for live class settings shall be easily accessible and comply with all applicable state and federal laws, including, but not limited to, the Americans With Disabilities Act of 1990;* *(3-30-06)*~~

~~***d.*** *That course outlines, syllabi, workbooks, examinations, study guides, or other instructional material are of a high quality, readable, and carefully prepared and relevant to the course of study offered; and* *(3-30-06)*~~

~~***e.*** *That the prospective education provider's application is complete and truthful.* *(3-30-06)*~~

~~***03.*** ***Review of Accredited Instruction****.* *(3-30-06)*~~

~~***a.*** *An education provider shall designate one (1) person as its contact person who shall be available to the director, or to his designated representative, during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the education provider.* *(3-30-06)*~~

~~***b.*** *The director may periodically review the content and facilitation of accredited instruction for the purposes of verifying that such accredited instruction continues to meet the requirements of these rules.* *(3-30-06)*~~

~~***c.*** *The education provider shall be required to permit the director, or the director's representative, to audit the accredited instruction and course material at no cost to the director or to the director's representative. The audit shall evaluate whether the accredited instruction meets the requirements of these rules. The education provider shall permit the director or the director's representative to review records appropriate to selected course offerings. Upon a finding that accredited instruction no longer meets the requirements of these rules, the director may suspend or revoke the approval of the accredited instruction. The education provider shall be responsible for payment of audits conducted under Section 011 of these rules.* *(3-30-06)*~~

~~***d.*** *Education providers shall notify the director of any material changes which have been made to accredited instruction within thirty (30) days of such changes. Material changes include changes materially affecting the content or facilitation of accredited instruction as it applies to the requirements of Subsection 011.02 of these rules.* *(3-30-06)*~~

~~***e.*** *Within thirty (30) days of conclusion of a course of accredited instruction, an education provider shall submit to the director an attendance roster in a form prescribed by the*~~

~~*director. Education providers shall maintain records related to participant attendance and completion of accredited instruction for a period of no less than three (3) years.* *(3-30-06)*~~

~~***04. Suspension of Accreditation**. The accreditation of a continued professional education course may be suspended if the director determines that:* *(3-30-06)*~~

~~***a.** The accredited instruction teaching method or program content no longer meets the standards of these rules, or have been materially changed without notice to the director as required; or* *(3-30-06)*~~

~~***b.** The education provider granted a certificate of completion when in fact the participant had not satisfactorily completed the accredited instruction; or* *(3-30-06)*~~

~~***c.** The education provider failed to grant a certificate of completion to a participant when in fact the participant had satisfactorily completed the accredited instruction; or* *(3-30-06)*~~

~~***d.** The education provider or any of its instructors have had a mortgage license revoked or suspended in any jurisdiction; or* *(3-30-06)*~~

~~***e.** There is other good cause why accreditation should be suspended.* *(3-30-06)*~~

~~***05. Reinstatement of Accreditation**. Reinstatement of a suspended accreditation will be made upon the furnishing of proof satisfactory to the director that the conditions responsible for the suspension have been corrected.* *(3-30-06)*~~

~~***06. Renewal of Approval of Accredited Instruction**. The director's accreditation of a continuing professional education course shall expire two (2) years from the date of issuance and thereafter on each subsequent two (2) year anniversary of the renewal date. Application for renewal of accreditation shall be filed by not later than sixty (60) days prior to each such expiration date and shall be accompanied by a non-refundable renewal fee of one hundred fifty dollars ($150). Applications for renewal of accreditation shall be in a form prescribed by the director and shall include documentation demonstrating that the accredited instruction continues to meet the requirements of Subsection 011.02 of these rules.* *(3-30-06)*~~

~~***07. Prohibited Practices**.* *(3-30-06)*~~

~~***a.** No person shall represent, in any manner that an instructional course has received approval or accreditation from the director or, that participants will receive credit hours for attendance and completion of an instructional course, unless such course has been approved by the director.* *(3-30-06)*~~

~~***b.** No person shall misrepresent, circumvent or conceal, through whatever subterfuge or device, any of the material particulars of the status, content, or facilitation of an instructional course offered to participants for the purposes of meeting the continuing professional education requirements of these rules.* *(3-30-06)*~~

~~***012. PRESUMPTIVE ACCREDITATION (RULE 12).***~~

~~***01. Instructional Courses Presumptively Accredited**. Instructional courses that cover subject matter set forth in Subsection 010.03 of these rules, that are provided by the following listed organizations, or by such other organizations as may be determined by the director, are presumptively accredited and no request for accreditation of an instructional course offered by these organizations is required, unless the director determines otherwise. (3-30-06)*~~

~~***a.** The Idaho Department of Finance. (3-30-06)*~~

~~***b.** The National Association of Mortgage Brokers. (3-30-06)*~~

~~***c.** The Mortgage Bankers Association. (3-30-06)*~~

~~***d.** The National Association of Professional Mortgage Women. (3-30-06)*~~

~~***e.** The Idaho Housing and Finance Association. (3-30-06)*~~

~~***f.** Federal National Mortgage Association. (3-30-06)*~~

~~***g.** Federal Home Loan Mortgage Corporation. (3-30-06)*~~

~~***h.** The American Bankers Association. (3-30-06)*~~

~~***i.** Regulatory agencies of any state or of the United States that have regulatory authority over mortgage related activity. (3-30-06)*~~

~~***j.** Institutions of higher education accredited by the Idaho State Board of Education or by similar accrediting agencies of any other state. (3-30-06)*~~

~~***k.** The Conference of State Bank Supervisors. (3-30-06)*~~

~~***l.** The American Association of Residential Mortgage Regulators. (3-30-06)*~~

~~***02. Acceptance of Credit Hours for Presumptively Accredited Instruction**. Credit hours for presumptively accredited instruction may be credited to participants in the following manner: (3-30-06)*~~

~~***a.** Upon timely submission of a copy of a certificate of completion as set forth in Subsection 010.04 of these rules; or (3-30-06)*~~

~~***b.** By written application by the participant, in a form prescribed by the director, within ninety (90) days of successful course completion. The application shall be accompanied by a non-refundable fee of twenty-five dollars ($25). (5-8-09)*~~

~~***013. 039. (RESERVED).***~~

## 040. DECEPTIVE ADVERTISING (RULE 40).

**01. Advertising**. Advertising means making or permitting to be made any oral,

written, graphic or pictorial statements, in any manner, in the course of the solicitation of business authorized under the Act. Deceptive advertising is defined to include the following practices by a licensee, or a person required to be licensed under the Act: ~~*(3-30-06)*~~(  )

**a.** Making a representation or statement of fact in an advertisement if the representation or statement is false or misleading, or if the licensee or person required to be licensed under the Act does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. ~~*(11-1-98)*~~(  )

**b.** Advertising without clearly and conspicuously disclosing the ~~*licensee's*~~ business name and unique identifier assigned by the Nationwide Mortgage Licensing System and Registry (NMLSR) to the licensee or person required to be licensed under the Act. ~~*(11-1-98)*~~(  )

**c.** Engaging in bait and switch advertising or misrepresenting, directly or indirectly, the terms, conditions or charges incident to ~~*the mortgage loan being advertised*~~ services authorized under the Act. Bait and switch advertising, for the~~*se*~~ purposes of these rules, means ~~*an alluring, but insincere offer to procure, arrange, or otherwise assist a borrower in obtaining a mortgage loan on terms which the licensee cannot, does not intend, or want to provide, or which the licensee knows cannot be reasonably provided. Its purpose is to switch borrowers from obtaining the advertised mortgage loan product to obtaining a different mortgage loan product, usually at a higher rate or on a basis more advantageous to the licensee*~~ advertising services without the intent to provide them but, rather, to lure a person into making an application for services and then switch the person from obtaining the advertised services to other or different services on a basis more advantageous to the licensee or person required to be licensed under the Act. ~~*(3-30-06)*~~(  )

**d.** ~~*Advertising*~~ Using an address in advertising at which the licensee or person required to be licensed under the Act conducts no mortgage brokering, ~~*or*~~ mortgage lending, or mortgage loan origination activities or for which the licensee or person required to be licensed does not hold a license. ~~*(3-30-06)*~~(  )

**e.** Advertising or soliciting in a manner that has the effect of misleading a person to believe that the advertisement or solicitation is from a person's current mortgage holder, a government agency, or that an offer is a limited opportunity, when such is not the case. ~~*(3-30-06)*~~(  )

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

**050. WRITTEN DISCLOSURES (RULE 50).**

**01. ~~*Upon*~~ Receipt of an ~~*Residential Mortgage Loan*~~ Application**. Upon receipt of an ~~*residential mortgage loan*~~ application as defined in Subsection 006.02 of these rules, and before receipt of any moneys from a borrower, a licensee or person required to be licensed under the Act shall disclose to each borrower information about the licensee or person required to be licensed under the Act, ~~*in a form acceptable to the Director, information about the licensee, the services that a licensee may provide and the services that the licensee will provide*~~ including the services that may be provided and the services that will be provided, in a form acceptable to the Director. ~~*(3-30-06)*~~(  )

**02. Information Provided Within Three Days**. Within three (3) business days after receipt of a residential mortgage loan application, a licensee or person required to be licensed under the Act shall provide to the borrower the following disclosures specific to the residential mortgage loan application: ~~(3-30-06)~~(____)

**a.** Disclosures in compliance with the requirements of the ~~*federal*~~ Truth-in-Lending Act and Regulation Z. These include the annual percentage rate, finance charge, amount to be financed, total of all payments, number of payments, amount of each payment, and amount of points or prepaid interest~~;~~. ~~*and if*~~ If the loan is a variable rate loan, such disclosures shall include the circumstances under which the rate may increase, any limitation on the increase, the effect of an increase on the monthly payment amount, ~~*and*~~ the total interest to be paid, and an example of the payment terms resulting from an increase ~~*for a loan in the approximate amount of the loan that is being requested*~~ in the amount of the loan and fees associated with the loan. ~~(11-1-98)~~(____)

**b.** Disclosures through good faith estimates of settlement services in compliance with the requirements of the ~~*federal*~~ Real Estate Settlement Procedures Act and Regulation X. ~~*These*~~ Such disclosures include the itemized costs of any credit report, appraisal, title report, title insurance policy, mortgage insurance, premium pricing, escrow fee, loan closing fee, property tax, insurance premium, structural or pest inspection, and any mortgage broker or mortgage ~~*banker*~~ lender fees associated with the residential mortgage loan. ~~(11-1-98)~~(____)

**03. Interest Rate Lock-In Agreement Not Entered**. If, at the time of a residential mortgage loan application, an interest rate lock-in agreement has not been entered, disclosure shall be made to the borrower, in a form approved by the director, that the disclosed interest rate and terms are subject to change. A licensee or person required to be licensed under the Act shall provide such disclosure to the borrower within three (3) business days of ~~*the licensee's*~~ receipt by the licensee or person required to be licensed under the Act of an application for a residential mortgage loan. ~~(3-30-06)~~(____)

**04. ~~*Licensee Enters into a*~~ Lock-In Agreement Entered**. If a licensee or person required to be licensed under the Act enters into an interest rate lock-in agreement with a lender or represents to the borrower that ~~*the licensee has entered into*~~ a lock-in agreement has been entered into, then within no more than three (3) business days thereafter, including Saturdays, the licensee or person required to be licensed under the Act shall deliver or send by first-class mail to the borrower a written confirmation of the term of the lock-in agreement. ~~(3-30-06)~~(____)

**05. Loan Modification Confirmation**. Within three (3) business days, including Saturdays, of receipt of a notice from a creditor or its agent of a loan modification offer, a licensee or person required to be licensed under the Act shall deliver or send by first-class mail to the borrower a written confirmation of the terms of the loan modification offer. Such confirmation shall include information regarding proposed rates, payments, and loan balance. (____)

**0~~5~~6. ~~*In*~~ Additional ~~*to*~~ Disclosures Required**. In addition to the disclosures required under Subsection 050.02 of these rules, if a prepayment penalty ~~*may be*~~ is a condition of a residential mortgage loan offered by a licensee or person required to be licensed under the Act, that fact shall be separately disclosed in writing to the borrower by the licensee or person required

to be licensed under the Act. ~~*The*~~ Such disclosure shall state that a prepayment penalty provision imposes a charge if the borrower refinances or pays off the residential mortgage loan before the date for repayment stated in the loan agreement. This written disclosure shall be in a form approved by the ~~*d*~~Director, and shall be delivered to the borrower within three (3) business days of ~~*the licensee's*~~ receipt by the licensee or person required to be licensed under the Act of an application for a residential mortgage loan. ~~*(3-30-06)*~~(  )

**051. RESTRICTIONS ON FEES (RULE 51).**
If a licensee or person required to be licensed under the Act imposes fees authorized by Section 26-31-210 of the Act, the following restrictions apply, subject to the Director's authority to set limits on fees and charges pursuant to Section 26-31-204(6) of the Act: (  )

**01. Application Fee**. An application fee shall include only the actual costs incurred by a licensee or person required to be licensed under the Act in connection with the taking of an application and transcribing application information. (  )

**02. Cancellation Fee**. A cancellation fee may only be charged at the time of, or subsequent to, a request or instruction by a borrower to a licensee or person required to be licensed under the Act to cancel a request for services authorized under the Act. Such fee must bear a reasonable relationship to the actual costs incurred by the licensee or person required to be licensed under the Act for services provided to a borrower up to the borrower's request or instruction to cancel the request for services. A cancellation fee must comply with the requirements of Regulation Z, when applicable. (  )

**05~~*1*~~2. -- 059. (RESERVED).**

**060. PROHIBITED PRACTICES (RULE 60).**

~~***01. Prohibited Practices.***~~ It shall be a prohibited practice for any licensee, or person required to be licensed under the Act, in connection with offering or providing services authorized under the Act, to: ~~*(3-30-06)*~~(  )

~~***a***~~**01. Make False or Misleading Statements**. Make any representation or statement of fact, or omit to state a material fact, if the representation, statement or omission is false or misleading or has the tendency or capacity to be misleading, or if the licensee or ~~*lender*~~ person required to be licensed under the Act does not have sufficient information upon which a reasonable belief in the truth of the representation or statement could be based. Such claims or omissions include, but are not limited to, the availability of funds, terms, conditions, ~~*or*~~ changes incident to the mortgage transaction, prepayment penalties, ~~*and*~~ the possibility of refinancing, and the likelihood of successfully obtaining specific mortgage loan modification terms. ~~*(11-1-98)*~~(  )

~~***b***~~**02. Fail to Disburse Funds Timely**. Fail to disburse funds in a timely manner, in accordance with any commitment or agreement with the borrower, either directly or through a mortgage broker: ~~*(11-1-98)*~~(  )

~~*i*~~**a.** Either immediately upon closing of the loan in the case of a purchase/sale transaction; or (11-1-98)

~~ii~~**b.** Immediately upon expiration of the three (3) day rescission period in the case of a refinancing, or taking of a junior mortgage on the existing residence of the borrower. (3-30-06)

~~iii~~**c.** For the purposes of this ~~*paragraph*~~ Subsection, the term "immediately" represents a period of time no greater than seventy-two (72) hours. ~~*(3-30-06)*~~(____)

~~*e*~~**03. Fail to Provide Reasonable Opportunity for Document Review**. Fail to give the borrower, upon the borrower's verbal or written request, a reasonable opportunity of at least twenty-four (24) hours prior to closing to review every document to be signed or acknowledged by the borrower for the purpose of obtaining a residential mortgage loan, and every document ~~*which*~~ that is required pursuant to these rules, and other applicable laws, rules or regulations. ~~*(3-30-06)*~~(____)

~~*d*~~**04. Require Excessive Insurance**. Require a borrower to obtain or maintain fire insurance or other hazard insurance in an amount that exceeds the replacement value of the improvements to the real estate. ~~*(3-30-06)*~~(____)

~~*e*~~**05. Engage in Deceptive Advertising**. Engage in any deceptive advertising as set forth in Section 040 of these rules. ~~*(11-1-98)*~~(____)

~~*f*~~**06. Provide or Offer Services Without a License or Approval**. Provide or offer to provide any services, for compensation or gain, or in the expectation of compensation or gain, incident to services authorized under the Act, such as ~~*credit repair, credit or debt counseling,*~~ investment advising, real estate brokerage services, tax or legal advice, unless the person offering such services has first obtained a license or the approval required by the appropriate licensing authority to engage in the offering of such services. ~~*(3-30-06)*~~(____)

**061. -- 089. (RESERVED).**

**090. BORROWERS UNABLE TO OBTAIN LOANS (RULE 90).**
If, for any reason, a licensee ~~*does not*~~ or person required to be licensed under the Act fails to obtain a residential mortgage loan for a borrower that is satisfactory to the borrower, and the borrower has paid for an appraisal, the licensee or person required to be licensed under the Act shall ~~*give*~~ provide a copy of the appraisal to the borrower and transmit and assign original appraisal reports, along with any other documents provided by the borrower, to any other ~~*licensee or person exempt from licensure*~~ person to whom the borrower directs that the documents be transmitted. The licensee or person required to be licensed under the Act shall provide ~~*the*~~ such copies or transmit ~~*the*~~ such documents within three (3) business days after the borrower makes the request in writing. ~~*(3-30-06)*~~(____)

**091. -- 099. (RESERVED).**

**100. ~~*LEGAL AUTHORITY*~~ IDAHO LEGISLATURE'S DETERMINATION AND THE DIRECTOR'S AUTHORITY (RULE 100).**
In Section ~~*26-3105(2), Idaho Code*~~ 26-31-103(1) of the Act, the Idaho Legislature determined that a uniform multistate administration of an automated license system for mortgage brokers, mortgage lenders and mortgage loan originators is consistent with both the public interest and the

purposes of the Idaho Residential Mortgage Practices Act~~, *Chapter 31, Title 26, Idaho Code (the Act)*~~. In Section ~~*26-3105(2)(b), Idaho Code*~~ 26-31-103(2)(b) of the Act, the Idaho Legislature authorized the Director of the Idaho Department of Finance to establish by rule such new requirements as are necessary for the state of Idaho to participate in a uniform multistate automated licensing system upon the Director's finding that such new requirements are consistent with both the public interest and the purposes of the Act. The Director finds that the requirements set forth in Sections 100 and 101 of these rules are consistent with the public interest and the purposes of the Act, and therefore promulgates such rules pursuant to Section ~~*26-3105(2)(b), Idaho Code*~~ 26-31-103(2)(b) of the Act. ~~*(5-8-09)*~~(  )

**101. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY (RULE 101).**

**01. The Nationwide Mortgage Licensing System and Registry (NMLSR)**. The NMLSR is an ~~*i*~~Internet-based filing depository operated by the State Regulatory Registry, LLC (SRR), a wholly-owned operating subsidiary of the Conference of State Bank Supervisors (CSBS). The NMLSR is designed to accept license applications and license renewal applications electronically from mortgage brokers, mortgage lenders, and mortgage loan originators; collect associated statutory filing fees on behalf of participating jurisdictions, as well as the expenses associated with an applicant's or licensee's participation in the NMLSR; and provide the public with Internet-based access to information concerning ~~*state-regulated*~~ mortgage brokers, mortgage lenders, and mortgage loan originators. The NMLSR began accepting electronic filings of applications from ~~*state-regulated*~~ mortgage brokers, mortgage lenders, and mortgage loan originators from Idaho on January ~~*2*~~1, 2008. ~~*(5-8-09)*~~(  )

**02. Reasonable Access to the NMLSR**. All mortgage brokers, mortgage lenders, and mortgage loan originators with reasonable access to the NMLSR via the Internet who seek a license under the Act, or who wish to retain a license previously issued under the Act, must do so through the NMLSR. Applicants for a license or licensees who wish to retain a license under the Act who lack reasonable access to the NMLSR via the Internet may, upon prior approval of the Director and good cause shown, be excused from participation in the NMLSR and may apply for a license or for license renewal through an alternative method designated by the Director. ~~*(5-8-09)*~~(  )

**03. Licensing**. Mortgage brokers, mortgage lenders, and mortgage loan originators who seek to obtain or retain a license under the Act through the NMLSR must pay the charge imposed and retained by the NMLSR to fund the costs of the NMLSR associated with an applicant's or licensee's participation in the system. ~~*(5-8-09)*~~(  )

**04. Statutory Fees**. The NMLSR shall collect any statutory fees on ~~*the Department's*~~ behalf ~~*any statutory fees*~~ of the Idaho Department of Finance that are required to be paid to the Idaho Department of Finance by license applicants and licensees pursuant to the Idaho Residential Mortgage Practices Act. The NMLSR is required to forward to the Idaho Department of Finance all statutory fees it collects on ~~*the Department's*~~ behalf of the Idaho Department of Finance, pursuant to the terms of a written agreement between the Idaho Department of Finance and the SRR. ~~*(5-8-09)*~~(  )

# 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<br>23000 - 24999<br>25000 - 27299<br>27300 - 27999<br>29800 - 29999<br>61000 - 61999<br>62000 - 62259<br>63000 - 63999 | Spine<br>Shoulder, Upper Arm, & Elbow<br>Forearm, Wrist, Hand, Pelvis & Hip<br>Leg, Knee, & Ankle<br>Endoscopy & Arthroscopy<br>Skull, Meninges & Brain<br>Repair, Neuroendoscopy & Shunts<br>Spine & Spinal Cord | $~~*140*~~ 144.48 |

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

~~**e.** *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)

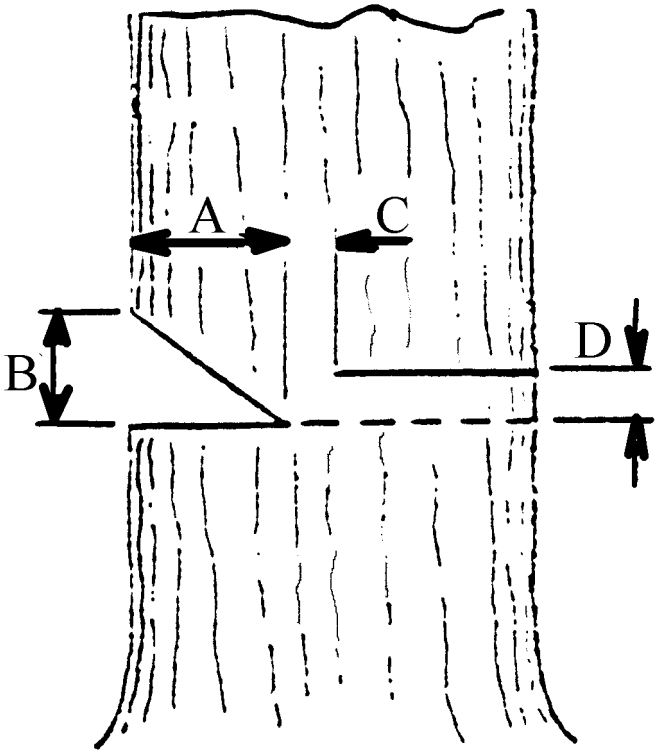
**x.** All personnel shall wear approved head protection, proper clothing and footwear. (7-1-97)

**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.**

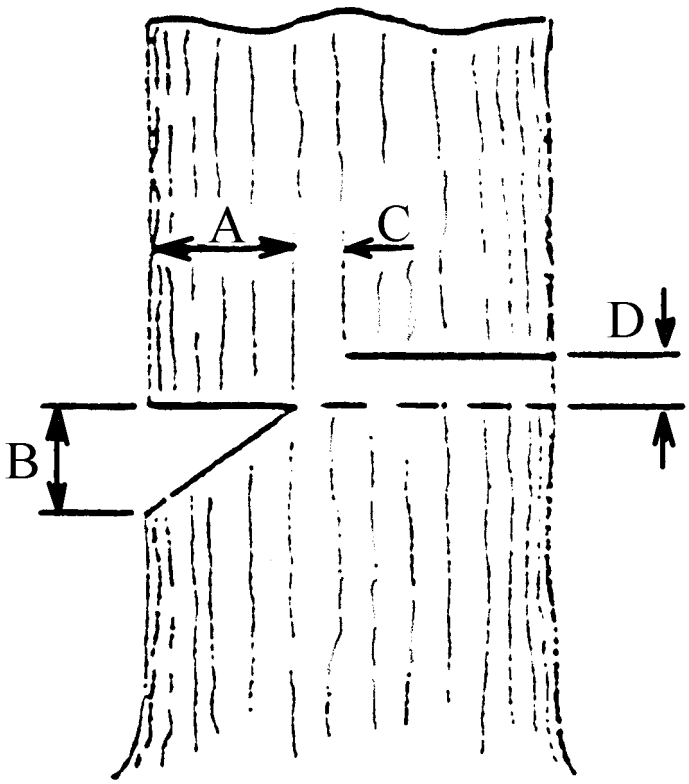
**01. Illustration of Undercuts**. (7-1-97)

***FIGURE 011.01-A*** **- CONVENTIONAL UNDERCUT**



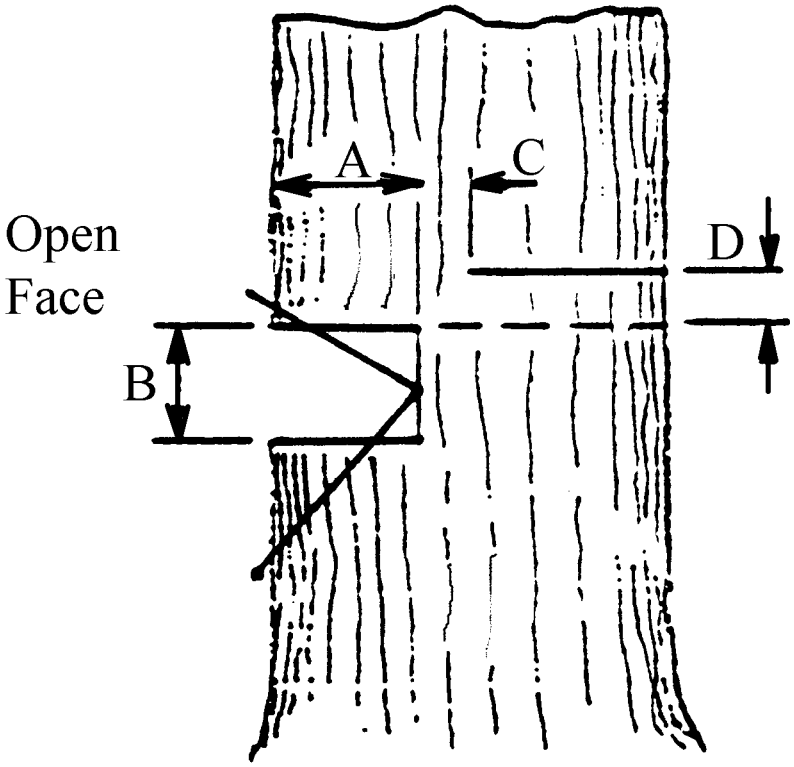
**a.** Conventional Undercut (Figure 011.01-A) - Can be made with parallel saw cut and a diagonal cut. ~~*(7-1-97)*~~(____)

**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 18 - DEPARTMENT OF INSURANCE

## 18.01.13 - LIFE SETTLEMENTS

## DOCKET NO. 18-0113-0901 (NEW CHAPTER)

## NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** The effective date of the amendments to the temporary rule is January 1, 2010. 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 Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and is also amending a temporary rule. The action is authorized pursuant to Sections 41-211 and 41-1965, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting 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:

**The pending rule pertaining to Life Settlements incorporates changes that were made as a result of written comments received during the promulgation process. The following changes were made:**

**Section 010.03 of the rule has been changed to correct a reference to the Idaho Code.**

**Section 012.02.e of the rule has been changed to clarify the prohibition on advertising designed to encourage the purchase of life insurance for the purpose of transferring the insurance to investors.**

**Section 016.03 has been changed to require insurers to provide notice in writing when a request for verification is determined by the insurer to be incomplete.**

**The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. 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 that have been made to the pending rule. Only the sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the August 5, 2009, Idaho Administrative Bulletin, Vol. 09-8, pages 83 to 97.**

**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 negative impact to the general fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Shad Priest, at 208/334-4250.

DATED this 10th day of November, 2009.

William W. Deal
Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise ID 83720-0043
Phone: 208/334-4250
Fax: 208/334-4398

***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 Sections 41-211 and 41-1965, 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 the required finding and concise statement of the supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**This rulemaking implements House Bill 75, the Idaho Life Settlements Act, which became effective July 1, 2009. It sets forth procedures for registering as a life settlement broker or provider, requirements for filing with the Department of Insurance life settlement contracts, disclosure forms and advertising materials, sets forth disclosure requirements, and clarifies the process for rescinding a life settlement contract and requirements for life settlements that occur within two years of the policy effective date.**

**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 reason: The rule is necessary to implement a change to the governing law that took effect July 1, 2009.**

**FEE SUMMARY:** The following is a descriptive summary of the fee or charge being imposed or increased: The rule does not impose or increase a fee.

**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 the change is required by a change to the governing law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Shad Priest at 208-334-4214 or Shad.Priest@doi.idaho.gov.

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 August 26, 2009.

DATED this 1st day of July, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**IDAPA 18**
**TITLE 01**
**CHAPTER 13**

**18.01.13 - LIFE SETTLEMENTS**

**000. LEGAL AUTHORITY.**
This rule is promulgated and adopted pursuant to the authority vested in the director under Sections 41-211and 41-1965, Idaho Code. ( )

**001. TITLE AND SCOPE.**

**01. Title**. This Rule shall be cited in full as Idaho Department of Insurance Rule IDAPA 18.01.13, "Life Settlements." ( )

**02. Scope**. This rule sets forth requirements regarding the sale and settlement of life insurance contracts where the owner of the contract is an Idaho resident. ( )

**002. WRITTEN INTERPRETATIONS.**
In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of the chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. ( )

**003. ADMINISTRATIVE APPEALS.**
All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, Idaho Rules of Administrative Procedure of the Attorney General - General Provisions. ( )

**004. INCORPORATION BY REFERENCE.**
No documents are incorporated by reference. ( )

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.**

**01. Office Hours**. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. ( )

**02. Mailing Address**. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ( )

**03. Street Address**. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. ( )

**04. Web Site Address**. The department's web address is http://www.doi.idaho.gov. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**
Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Chapter 3, Title 9, Idaho Code. ( )

**007. -- 009. (RESERVED).**

**010. DEFINITIONS.**

**01. Advertising Materials**. ( )

**a.** Printed and published material, audio visual material, and descriptive literature of a broker or provider used in direct mail, newspapers, magazines, radio scripts, TV scripts, web sites and other internet displays or communications, other forms of electronic communications, billboards and similar displays; ( )

**b.** Descriptive literature and sales aids of all kinds issued by a provider or broker for presentation to members of the insurance buying public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; and ( )

**c.** Prepared sales talks, presentations and material for use by providers and brokers. ( )

**02. Affiliation**. For purposes of this rule and the Life Settlements Act, an affiliation shall include any contractual relationship outside of the proposed life settlement contract, any ownership interest or relation, any familial relation, an employment relation, any relationship creating financial dependency, any arrangement that provides one party the ability to control or influence the actions of another party, or any other arrangement or relationship that might reasonably result in parties treating one another in a less than arm's length manner. ( )

**03. Broker**. A life settlement broker as defined at section 41-1951(~~7~~6), Idaho Code. ~~*(8-1-09)T*~~( )

**04. Operating as a Broker**. A person is operating as a broker if the person, for a fee, commission or other valuable consideration, offers or attempts to negotiate a life settlement contract between an owner who is a resident of Idaho and one or more providers. A person working on behalf of a broker by offering or attempting to negotiate a life settlement contract for a fee, commission or other valuable consideration is operating as a broker regardless of whether the person has a direct contractual relationship with the owner. ( )

**05. Operating as a Provider**. A person is operating as a provider if the person offers to enter into or attempts to effectuate a life settlement contract with an owner who is a resident of Idaho. A person attempting to effectuate a life settlement contract on behalf of a provider is also operating as a provider regardless of whether the person will be a party to the life settlement contract. ( )

**06. Owner**. A life insurance owner or certificate holder as defined at section 41-1951(9), Idaho Code. ( )

**07. Provider**. A life settlement provider as defined at section 41-1951(8), Idaho Code. ( )

**011. REGISTRATION REQUIRED TO OPERATE AS LIFE SETTLEMENT PROVIDER OR LIFE SETTLEMENT BROKER.**

**01. Producer License Required**. No person shall operate as a broker or provider unless the person is first licensed with the Department of Insurance as a producer authorized to transact the business of life insurance in Idaho. ( )

**02. Registration Required**. Not later than ten (10) days after first operating as a provider or broker a person shall notify the Director that he is acting as a provider or broker by registering with the Department and paying applicable fees as set forth at IDAPA 18.01.44, "Schedule of Fees, Licenses and Miscellaneous Charges". Registration shall be in writing and shall be in the form and include information as required by the Director along with a certification from the applicant that he has read and familiarized himself with the requirements of Sections 41-1950 through 41-1965, Idaho Code, and these rules. ( )

**03. Renewal of Registration**. Registration as a broker or provider shall continue until the next renewal date of the person's producer license. If the initial registration takes place within ninety (90) calendar days from the producer license expiration date, registration shall continue until the following producer license renewal date. Registration may be renewed by payment of the applicable renewal fee as set forth at IDAPA 18.01.44, "Schedule of Fees, Licenses and Miscellaneous Charges". An insurance producer who allows his registration as a broker or provider to lapse may, within twelve (12) months from the renewal due date, reinstate the registration by paying a penalty in the amount of double the unpaid renewal fee. If a registration is allowed to lapse for more than twelve (12) months without reinstatement, a producer wishing to act a broker or provider shall re-register with the Department and pay the applicable registration fee prior to operating as a broker or provider. ( )

**012. FILING OF FORMS.**

**01. Filing of Life Settlement Contracts and Disclosure Forms**. No person shall use a life settlement contract or disclosure form in Idaho unless the form is first filed with the Department along with a certification that the form meets the requirements of Sections 41-1950 through 41-1965, Idaho Code. The certification shall be in the form as prescribed by the Director and signed by a person registered as a provider or broker. ( )

**02. Filing of Advertising Materials**. No person shall use advertising materials promoting or advertising the availability of life settlements or life settlement services in Idaho unless the materials are first filed with the Department. If the advertising is not in written form, a written script shall be filed. All advertising relating to the business of life settlements shall have a unique identifying form number in the lower left hand corner of the advertising piece and shall comply the following standards: ( )

**a.** Be truthful and not misleading in fact and implication. All information shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading. ( )

**b.** Reference the complete form number of any life settlement contract being advertised and clearly identify the full and complete name of the provider or broker using the promotional material. Advertising materials shall not use a trade name, any insurance group designation, name of the parent company of the provider or broker, name of a particular division of the provider or broker, service mark, slogan, symbol or other device which would have the capacity and tendency to mislead or deceive as to the true identity of the provider or broker without disclosing the name of the actual provider or broker using the advertising material.( )

**c.** No advertisement shall omit information or use words, phrases, statements, references or illustrations if the omission of such information or use of such words, phrases, statements, references or illustrations has the capacity, tendency or effect of misleading or deceiving sellers or prospective sellers as to the nature or extent of any policy benefit payable. The fact that the contract offered is made available to a prospective seller for inspection prior to consummation of the sale or an offer is made to rescind the life settlement contract if the seller is not satisfied, does not remedy misleading statements. ( )

**d.** Advertising materials shall not use words or phrases in a manner which exaggerates any benefits beyond the terms of the life settlement contract and shall fairly and accurately describe the negative features as well as the positive features of the life settlement contract and life settlement program. An advertisement shall not represent or imply that life settlements by the provider are "liberal" or "generous," or use words of similar import, or that benefits of a life settlement are or will be beyond the actual terms of the life settlement contract. ( )

**e.** Advertising materials shall not be designed to encourage or promote the purchase of life insurance for the purpose of transferring ownership ~~*through a life settlement contract*~~ *to third party investors who lack an insurable interest in the in the life of the insured*.
~~*(8-1-09)T*~~*( )*

**f.** An advertisement shall not create the impression directly or indirectly that a provider, a broker, its financial condition or status, a life settlement contract or program, or the payment of life settlement benefits is approved, endorsed, or accredited by any division or agency of this state or the United States Government. ( )

**g.** Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the life settlement contract advertised and be accurately reproduced. A provider or broker using a testimonial makes as its own all of the statements contained therein, and the advertisement, including such statement, is subject to all the provisions of these rules. If the person making a testimonial, an endorsement or an appraisal has a financial interest in the provider or broker, or a related entity as a stockholder, director, officer, employee, or otherwise, such fact shall be disclosed in the advertisement. If a person is compensated for making a testimonial, endorsement or appraisal, such fact shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement." ( )

**h.** The source of any statistics used in an advertisement shall be identified in the advertisement. ( )

**03. Font Size for Printed Materials**. Pertinent text of all printed materials required to be filed with the director under the Life Settlement Act, including, but not limited to, notices, disclosure forms, contract forms, and advertising material, is required to be formatted using at least a twelve (12) point font. Signature blocks, footnotes or text not relevant to the understanding of the printed material may be printed in a smaller font, but in no case smaller than a ten (10) point font. ( )

**04. Disapproval of Noncompliant Forms**. The Director may disapprove for use in Idaho any form required to be filed pursuant to this Section if, in the opinion of the Director, the form does not comply with any part of Title 41, Idaho Code, or these rules, or the form is unreasonable in its terms, contrary to the interests of the public, misleading to the public, unfair to the owner, or is printed or provided in a manner making any part of the form substantially illegible. ( )

**013. ANNUAL REPORTING REQUIREMENTS.**
All persons registered with the Director as a provider shall file with the Director, on or before

March 1st of each year, an annual statement in the form and containing information as set forth at Appendix A. The forms are available from the Department of Insurance. An annual report is required regardless of whether any life settlement contracts with Idaho owners were executed during the year. ( )

**014. EXAMINATION AND RECORDS.**

Brokers and providers are subject to examination by the Director in accordance with Chapter 2, Title 41, Idaho Code, and shall pay, at the direction of the Director, the actual travel expenses, reasonable living expense allowance, and reasonable compensation incurred on account of the examination upon presentation of a detailed account of the charges and expenses. ( )

**015. REQUIRED DISCLOSURES TO OWNER.**

**01. Disclosure to Owner Upon Application**. A broker or provider shall not provide an owner with an application for a life settlement contract unless the owner has also been provided a disclosure form containing all the information required by Idaho Code, 41-1956 and in substantially the same form as set forth at Appendix B. The disclosures shall be provided in a separate document in at least twelve (12) point font. Each page of the disclosure document shall be initialed by the owner indicating that it has been received and read by the owner, and the final page shall be dated and signed by the owner and the broker or provider that delivered the disclosure document to the owner. ( )

**02. Disclosures to Owner by Provider Upon Settlement**. Prior to the time an owner signs a life settlement contract, the provider shall provide the owner a disclosure form containing all the information required by Idaho Code 41-1957 and in substantially the same form as set forth at Appendix C. The disclosures may be made by a separate document or included as a part of the life settlement contract. If the disclosures are included in the life settlement contract, they shall be conspicuously displayed in the contract by segregating the disclosures from the rest of the contract on a separate page or as a separate section using at least twelve (12) point font and with a heading in bold font stating: "Important Disclosures Required by Law." Each disclosure page of the life settlement contract shall be initialed by the owner indicating that the owner has read the page. If the disclosures are provided in a separate document, each page of the document must be initialed by the owner and the final page shall be dated and signed by the owner and the provider. ( )

**03. Disclosure to Owner by Broker Upon Settlement**. Prior to the time an owner signs a life settlement contract, the broker shall provide the owner a disclosure form containing all the information required by Idaho Code 41-1958 and in substantially the same form as set forth at Appendix D. The disclosures may be made by a separate document or included as a part of the life settlement contract. If the disclosures are included in the life settlement contract, they shall be conspicuously displayed in the contract by segregating the disclosures from the rest of the contract on a separate page or as a separate section using at least twelve (12) point font, and a heading in bold font stating: "Important Disclosures Required by Law." Each disclosure page of the life settlement contract shall be initialed by the owner indicating that the owner has read the page. If the disclosures are provided in a separate document, each page of the document must be initialed by the owner and the final page shall be dated and signed by the owner and the broker. ( )

**04. Affiliations to be Disclosed**. As a part of the disclosures required under this Section, a provider shall disclose in writing to the owner any affiliation between the provider and the issuer of the insurance policy to be settled, and a broker shall disclose in writing any affiliation or contractual arrangement between the broker and any person making an offer in connection with a proposed life settlement contract. ( )

**016. ADDITIONAL REQUIREMENTS.**

**01. Owner's Statement**. ( )

**a.** Prior to entering into a life settlement contract, the provider shall obtain from each owner a written statement in substantially the following form: "I, [owners name], have freely and voluntarily consented to the life settlement contract that accompanies this statement. I have carefully read my insurance policy that is the subject of the life settlement contract and I understand the benefits that are available under the policy. I further understand that by entering into the life settlement contract, the right to benefits under the insurance policy will be sold to another party and I, my heirs or former beneficiaries will no longer have any right to receive those policy benefits." ( )

**b.** If the owner has a terminal or chronic illness, the following wording shall also be included in the owner's statement: "I am currently suffering from a terminal or chronic illness that was not diagnosed until after the policy that is the subject of the life settlement contract was issued." ( )

**c.** The statement of the owner must also be acknowledged by a notary public. ( )

**02. Owner's Right to Rescind Life Settlement Contract**. ( )

**a.** The life settlement contract shall conspicuously inform the owner in bold type of at least twelve (12) point font that the owner has an absolute right to rescind a life settlement contract within twenty (20) calendar days of the date the contract is executed and shall set forth the manner in which notice is to be given. ( )

**b.** Upon being informed of the owner's intention or desire to rescind a life settlement contract, the provider shall immediately provide the owner with a full accounting of the amount that must be repaid by the owner in order to rescind the policy. The amount due shall include only amounts actually paid to and received by the owner pursuant to the terms of the life settlement contract along with any premiums, loans and loan interest paid by or on behalf of the provider in connection with or as a direct consequence of the life settlement contract. An owner shall not be required to pay any financial penalties, liquidated damages or other punitive fees or charges in connection with rescission of a life settlement contract. ( )

**c.** Until the owner receives from the provider an accounting of the full and correct repayment amount needed to rescind the life settlement contract, a tender of payment by the owner of amounts actually received and reasonably believed to be due upon rescission shall be deemed substantial compliance with the requirement of notice and repayment of proceeds within the twenty (20) day rescission period. ( )

**03. Life Settlements Occurring Within Two (2) Years of Policy Origination.**( )

**a.** No broker or provider shall solicit, arrange for or enter into a life settlement contract within two (2) years of the date of issuance of the life insurance policy or certificate being settled unless one (1) or more of the conditions identified in Section 41-1961, Idaho Code, applies. If one (1) or more of the conditions is present, the provider shall obtain from the owner a written statement sworn before a notary public setting forth in detail the circumstances permitting the early settlement of the contract. The sworn statement shall also include the following or substantially similar wording: "I hereby affirm that there was no plan or arrangement in place or under discussion, or any promises made, regarding the settlement of this life insurance policy at the time the policy was purchased." ( )

**b.** In addition to the sworn statement, the provider shall obtain and retain as a part of its records independent documentation of the circumstances permitting early settlement of the life insurance policy along with all documentation relating to any premium financing arrangements made in connection with the policy being settled. ( )

**c.** The sworn statement and copies of all supporting documentation shall be provided to the insurer at the time a request for verification of coverage is submitted to the insurer. A request for verification of coverage relating to a policy or certificate that has been in effect for two (2) years or less will be considered incomplete if it is not accompanied by the owner's sworn statement and supporting documentation~~*, and the insurer shall promptly inform the provider or broker submitting the request for verification form that the form will not be considered complete until the sworn statement or other necessary supporting documentation is received*~~. *An insurer that determines a request for verification of coverage is incomplete shall, without undue delay, inform the broker or provider in writing that the verification is incomplete and identify all items needed to complete the request.* ~~*(8-1-09)T*~~*( )*

**017. -- 999. (RESERVED).**

***Appendix A-1***

**Life Settlement Provider Report - Idaho Transactions Only**

**Report year:_____**

**Life Settlement provider's name:_____**

**Name, address and telephone number of contact person for this report:_____**

**Email address:_____**

**Applications (#'s):** **Settled_____** **Rejected_____**

**Pending _____** **Pending_____** **Total applications:_____**

| SEE INSTRUCTIONS | Contract #1 | Contract #2 | Contract #3 | Contract #4 | Contract #5 |
|---|---|---|---|---|---|

| | | | | | | |
|---|---|---|---|---|---|---|
| 1 | Life settlement provider settlement number | | | | | |
| 2 | Life settlement contract purchased date | | | | | |
| 3 | Date policy initially purchased by owner | | | | | |
| 4 | Was policy premium financed prior to purchase? Y or N ? | | | | | |
| 5 | List the ownership type of the policy | | | | | |
| 6 | Owner's or insured's reason for selling if less than 2 years | | | | | |
| 7 | Age of insured at time of contract | | | | | |
| 8 | Each life expectancy (in months) at time of contract | | | | | |
| 9 | Insurance company name and NAIC number | | | | | |
| 10 | Total net death benefit ($) | | | | | |
| 11 | Net amount paid to the seller of the policy ($) | | | | | |
| 12 | Policy type: individual or group | | | | | |
| 13 | Type of funding for transaction F, P, I, T or RPT (see instructions) | | | | | |
| 14 | What is the product type? | | | | | |
| 15 | Date proceeds transferred to escrow/trust account | | | | | |
| 16 | List escrow agent or trust institution along with account number | | | | | |
| 17 | Purchase source of policy: B, D, SM, P or O (see instructions) | | | | | |
| 18 | Name of the source of the transaction | | | | | |
| 19 | Commission amount paid to source ($) | | | | | |
| 20 | Date disclosures per Sections 41-1956 & 41-1957, Idaho Code made to owner | | | | | |
| 21 | Date ownership transferred by provider and name of new owner | | | | | |

| | | | | | | |
|---|---|---|---|---|---|---|
| **22** | Total premiums paid in report year to maintain policy | | | | | |
| **23** | Date of authorization for release of medical information | | | | | |

I_____, the undersigned_____of the reporting entity, first being duly sworn, state and affirm that I am the described officer, manager or employee of the reporting entity and that the information contained in this report is complete, true and accurate.

_____ _____
By (printed name) Signature

_____
(title)

State of_____ County of _____

Subscribed and sworn to (or affirmed) before me this_____day of_____ , 20____.

Notary Public _____ My commission expires on:_____

## *Appendix A-2*

| **Life Settlement Provider Report Idaho Insureds Only Instructions** |
|---|
| NOTE: This form must be accompanied by the Life Settlement Provider Certification Form. See Chapter 19 on Idaho Department of Insurance Web site: http://www.legislature.idaho.gov/idstat/Title41/T41.htm<br>ATTACH A SEPARATE SHEET IF NECESSARY |
| **Question 1.** List the settlement number, case number or unique identifying number used to identify this specific life settlement transaction. |
| **Question 2.** List the date the life settlement contract was purchased by the provider during the current calendar year, whether or not the insured is still alive at the end of the calendar year. |
| **Question 3.** List the date the owner of the policy originally initiated coverage. |
| **Question 4.** Was the policy being purchased previously financed? Yes or No. |
| **Question 5.** List the ownership type of the policy, such as trust, corporate or individually owned. |
| **Question 6.** If the difference between the date shown in question 3 and the date shown in question 2 is less than 2 years, provide the reason the contract was sold. In accordance with Section 41-1961, Idaho Code, use “a” if exercise of conversion rights, “bi” if terminally/chronically ill, “bii” if owner’s spouse dies, “biii” if owner divorces spouse, “biv” if owner retires, “bv” if owner becomes disabled and cannot work fulltime, “bvi” if owner decreed bankrupt or insolvent, or “O” for other and provide an explanation. |
| **Question 7.** List the age (in years) of the person insured by the policy being sold at the time of the life settlement contract. |
| **Question 8.** List the life expectancy (LE) in months of the person insured at the time of the life settlement contract. If more than one LE was ordered, provide individual information on each LE. |
| **Question 9.** List the name of the insurance company along with its NAIC company code number. |

| |
|---|
| **Question 10.** List the net amount (in dollars) for the policy being sold. |
| **Question 11.** List the net amount (in dollars) paid to the seller of the policy. |
| **Question 12.** Identify whether the policy was an individual policy (I) or a group policy (G). |
| **Question 13.** List the type of funding for the transaction: "F" for a licensed financial institution (policies collateralized), "P" for private (purchaser) funding, "I" for internal funding, "T" for trust, and "RPT" for related provider trust. |
| **Question 14.** What is the product type? Term, UL, SUL, VUL, SVUL, WL, SWL, etc. |
| **Question 15.** List the date the proceeds of the agreement are paid or transferred to an escrow or trust account |
| **Question 16.** List the name of the escrow agent and the account number, or provide the trust institution and account number. |
| **Question 17.** Indicate the purchase source of the policy. Use "B" for life settlement broker, **"**D**"** for direct from the insured or owner, "I" for insurance agent/producer, "SM" for a secondary market or life settlement provider, "P" for private (purchaser) funding or "O" for other and provide an explanation. |
| **Question 18.** List the name of the source of the life settlement transaction. If it is a broker, producer or other licensee, name that person; if it is direct, from a relative, from the corporation of the insured or any other entity that could possibly reveal the insured, designate by writing "Direct," "Relative," "Corporation" or other non-designating word. |
| **Question 19.** List the amount of commissions (in dollars) paid to the source involved in the transaction whether that is a life settlement broker, an insurance producer or other licensed entity authorized to be a life settlement source. |
| **Question 20.** List the date the disclosures required by Idaho Code §§41-1956 and 1957 were made to the owner/seller of the policy. This includes but is not limited to alternatives to life settlement contracts, tax consequences and rights of owners. |
| **Question 21.** If the provider transferred ownership of life settlement contract, list the date the transfer occurred and provide the name of the new owner. If not applicable show "N/A". |
| **Question 22.** List the total amount of premiums (in dollars) paid to the insurer to maintain the policy during the report period. |
| **Question 23.** Date the authorization for release of medical information was signed by the insured. |

## *Appendix A-3*

| **Life Settlement Provider Report- Idaho Transactions Only**<br>**SUPPLEMENTAL REPORT** | | | | | |
|---|---|---|---|---|---|
| Complete this section ONLY if death benefit proceeds were paid | | | | | |
| Report year:_____ | | | | | |
| Life Settlement provider's name: _____ | | | | | |
| Name, address and telephone number of contact person for this report: | | | | | |
| Email address: | | | | | |
| SEE INSTRUCTIONS | Contract #1 | Contract #2 | Contract #3 | Contract #4 | Contract #5 |

| | | | | | | |
|---|---|---|---|---|---|---|
| **1** | Life settlement provider settlement number | | | | | |
| **2** | Life settlement contract purchased date | | | | | |
| **3** | Age of insured at time of contract | | | | | |
| **4** | Life expectancy at time of contract | | | | | |
| **5** | Net amount paid to owner/ seller ($) | | | | | |
| **6** | Insured's date of death | | | | | |
| **7** | Number of months between contract date and date of death. | | | | | |
| **8** | Number of months between life expectancy at time of contract and date of death (+/-) | | | | | |
| **9** | Death benefit collected | | | | | |
| **10** | Total premiums paid to maintain policy ($) | | | | | |

I_____, the undersigned_____of the reporting entity, first being duly sworn, state and affirm that I am the described officer, manager or employee of the reporting entity and that the information contained in this report is complete, true and accurate.

Signature _____ By (printed name)_____

(title)

State of_____ County of_____

Subscribed and sworn to (or affirmed) before me this_____day of_____ , 20____.

Notary Public My Commission expires on:

## *Appendix A- 4*

## SUPPLEMENTAL REPORT INSTRUCTIONS

Complete this section ONLY if death benefit proceeds were paid

**Question S1.** List the settlement number, case number or unique identifying number used to identify this specific life settlement transaction.

**Question S2.** List the date the life settlement contract was purchased by the provider.

**Question S3.** List the age (in years) of the person insured by the policy being sold at the time of the life settlement contract.

**Question S4.** List the life expectancy (in months) of the person insured by the policy being sold at the time of the life settlement contract.

**Question S5.** List the net amount (in dollars) paid to the policy owner/seller.

**Question S6.** Date of death of the person insured by the policy.

**Question S7.** List the difference (in months) between the date shown in question S2 and the date shown in **question S6.**

**Question S8.** List the number of months between the life expentancy of the Insured at the time of contract and the insured's date of death. This should be noted as a plus (+) figure if the insured died after the estimated life expectancy or a minus (-) if the insured died prior to the estimated life expectancy.

**Question S9.** Total amount of death benefit collected.

**Question S10.** List the total amount of premiums (in dollars) paid to the insurer to maintain the policy, from the Life Settlement contract date to the date of death.

## *Appendix B*

## DISCLOSURE TO OWNER

(To be provided no later than at time of application for any life settlement agreement)

(With acknowledgement of life settlement provider or broker)

**IMPORTANT – READ THIS DISCLOSURE FORM AND THE ENCLOSED LIFE SETTLEMENT INFORMATION BROCHURE BEFORE SIGNING ANY LIFE SETTLEMENT AGREEMENT**.

You should carefully read all of the following points and seek financial, insurance, tax and other advice where appropriate.

**1.** Possible alternatives to life settlement contracts include any accelerated death benefits or policy loans offered under your life insurance policy.

**2.** A life settlement broker exclusively represents you, the owner, and not the insurer or the life settlement provider, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner.

**3.** Some or all of the proceeds of the life settlement may be taxable under federal and state law, and assistance should be sought from a professional tax advisor.

**4.** Proceeds of the life settlement could be subject to the claims of your creditors.

**5.** Receipt of the proceeds of a life settlement may adversely affect your eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

**6.** You have the right to rescind (cancel) a life settlement contract within twenty (20) days of the date it is signed by all parties. If you want to rescind the contract, you must provide notice to the life settlement provider and repay all proceeds and any premiums, loans and loan interest paid on account of the life settlement contract within the twenty (20) day rescission period. If the insured dies during the twenty (20) day rescission period, the life settlement contract will be deemed to have been rescinded, subject to repayment by the owner or the owner's estate of all life settlement proceeds and any premiums, loans and loan interest.

**7.** Funds will be sent to you within three (3) business days after the life settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

**8.** Entering into a life settlement contract may cause you to forfeit other rights or benefits including conversion rights and waiver of premium benefits that may exist under the policy or certificate. Assistance should be sought from a financial adviser.

Policy Owner's Initials: _____

**9.** You will be provided a brochure approved for use by the Department of Insurance that describes the process of life settlements. You should review this brochure carefully.

**10.** All medical, financial or personal information solicited or obtained by a life settlement provider or life settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement between the owner and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two (2) years.

**11.** Following execution of a life settlement contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in sections 41-1950 through 41-1965, Idaho Code. This contact shall be limited to once every three (3) months if the insured has a life expectancy of more than one (1) year, and no more than once per month if the insured has a life expectancy of one (1) year or less. All such contacts shall be made only by a life settlement provider licensed in the state of Idaho.

**12.** If you have any questions, you may call the Idaho Department of Insurance at 800-721-3272 or 208-334-4250.

LIFE INSURANCE POLICY OWNER'S ACKNOWLEDGMENT: I have read and fully understand this disclosure form. I have received copies of this disclosure form and the life settlement information brochure to keep for my records.

LIFE INSURANCE POLICY OWNER

By: _____

Printed Name

Date: _____

LIFE SETTLEMENT PROVIDER OR BROKER

By: _____

Printed Name/Title

Date: _____

JOINT LIFE INSURANCE POLICY OWNER

By: _____

Printed Name

Date: _____

## *Appendix C*

## LIFE SETTLEMENT PROVIDER'S DISCLOSURE TO OWNER UPON SETTLEMENT

IMPORTANT – READ THIS DISCLOSURE FORM BEFORE
**SIGNING ANY LIFE SETTLEMENT CONTRACT**.

The life settlement provider must provide you with at least the following disclosures prior to signing of the life settlement contract. You should carefully read all of the following points and seek financial, insurance, tax and other advice where appropriate.

**1.** The person or entity identified on this form is acting as a life settlement provider and does not represent you.

**2.** The affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be settled is:

[ ] None

[ ] _____

**3.** The name, business address and telephone number of the life settlement provider are as follows:

**4.** If an insurance policy to be settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be settled, the possibility of loss of coverage on the other lives under the policy exists. If this is the case, the insurance producer or the insurer issuing the policy should be consulted for advice on the proposed life settlement.

[ ] The insurance policy DOES NOT provide coverage to any person other than the insured.

[ ] The insurance policy DOES provide coverage to other persons as follow:

_____
_____

Policy Owner's Initials: _____

**5.** The current death benefit payable under insurance policy or certificate number_____ issued by _____ is: $_____

The availability of additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which your interest in these benefits will be transferred as a result of the life settlement contact are:

[ ] Unknown

[ ] _____
_____

**6.** You may inspect or receive copies of the relevant escrow, trust agreements or other documents by contacting the independent third party escrow agent. You may contact that agent at (name, business address, telephone number):

_____
_____

INSURANCE POLICY OWNER'S ACKNOWLEDGMENT: I have read and fully understand this Disclosure form, and I have received a copy of this form to keep for my records.

LIFE INSURANCE POLICY OWNER

By: _____

Printed Name _____

Date: _____

JOINT LIFE INSURANCE POLICY OWNER

By: _____

Printed Name _____

Date: _____

LIFE SETTLEMENT PROVIDER

This form was prepared by: _____

Printed Name/Title

Date: _____

## *Appendix D*
## LIFE SETTLEMENT BROKER'S DISCLOSURE FORM

**IMPORTANT – READ THIS DISCLOSURE FORM BEFORE SIGNING ANY LIFE SETTLEMENT CONTRACT**.

The life settlement broker is representing you in this transaction and has a duty to act in your best interest. The life settlement broker must provide you with at least the following disclosures prior to the time you sign the life settlement contract. You should carefully read all the following points and seek financial, insurance, tax and other advice where appropriate.

**1.** The name, business address and telephone number of the life settlement broker are as follows:

_____

**2.** A full, complete and accurate description of all offers, counteroffers, acceptances and rejections relating to the proposed life settlement contract (including name of party, date made, price and any other material terms) is:

[ ] Attached

[ ] As follows:

_____

**3.** The affiliation or contractual arrangements between the life settlement broker and any person making an offer in connection with a proposed life settlement contract are as follows:

[ ] None
[ ] Attached
[ ]_____

Policy Owner's Initials: _____

**4.** The amount, method of calculation and the party who is responsible for paying the broker's compensation are listed below. The term "compensation" includes anything of value to be paid or given to a life settlement broker for the placement of a policy.

**5.** Where any portion of the life settlement broker's compensation is taken from a proposed life settlement offer, the total amount of the life settlement offer and the percentage of the life settlement offer comprised by the life settlement broker's compensation are:

_____

[ ] N/A

[ ] _____

LIFE INSURANCE POLICY OWNER'S ACKNOWLEDGMENT: I have read and fully understand this disclosure form and have received a copy to keep for my records.

| LIFE INSURANCE POLICY OWNER | JOINT LIFE INSURANCE POLICY OWNER |
|---|---|
| By:_____ | By:_____ |
| Printed Name_____ | Printed Name_____ |
| Date: _____ | Date: _____ |

LIFE SETTLEMENT BROKER

This form was prepared by:_____

Printed Name/Title _____

Date:_____

# IDAPA 18 - DEPARTMENT OF INSURANCE

## 18.01.53 - CONTINUING EDUCATION

## DOCKET NO. 18-0153-0901

## 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 41-211 and 41-1013, Idaho Code.

**DESCRIPTIVE SUMMARY: The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 2 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 80 through 85.**

**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 Jim Genetti, 208-334-4250.

DATED this 30th day of October, 2009.

Jim Genetti
Bureau Chief
Idaho Department of Insurance
700 W. State Street 3rd Floor
P.O. Box 83720, Boise ID 83720-0043
Phone: 208/334-4250
Fax: 208/334-4398
E-mail: jim.genetti@doi.idaho.gov

***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 41-211 and 41-1013, 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:

**IDAPA 18.01.53.012.01.b. states that three hours of law or ethics must be earned in each licensing period. This Subsection is being amended to delete the law requirement, since this is not required under the NAIC Producer Licensing Model Act and is not uniform with the model act provisions.**

**IDAPA 18.01.53.016 adds general subjects acceptable for public adjusters.**

**IDAPA 18.01.53.019 is being amended to add additional language to outline the qualification and standards that must be met to give credit to courses taught on-line.**

**IDAPA 18.01.53.021.01 is being amended to require reporting of course completion within one-hundred and eighty (180) days or at least thirty (30) days prior to the producer's license expiration date. This is to accommodate the processing of renewal applications and the verification of completion of Continuing Education Requirements.**

**IDAPA 18.01.53.024 addresses requirements for pursuing independent study courses.**

**IDAPA 18.01.53.025.02 gives additional credit when an individual teaches a course for credit. The Continuing Education requirements were decreased from forty (40) to twenty four (24) hours several years ago. The present standard of twenty four (24) hours is considered to be a minimal standard and the additional credit given for teaching is no longer necessary.**

**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: N/A

**NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes were discussed and decided upon by a committee made up of representatives of the affected industry.**

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Jim Genetti, 208-334-4250.

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

DATED this 28th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**011. APPLICABILITY.**

**01. Applicability to Certain Insurance Professionals**. This rule applies to all resident producers licensed by the Department of Insurance except for producers licensed to sell only "limited lines (other than crop) insurance" as defined by Title 41, Chapter 10.~~*(5-3-03)*~~(  )

**02. High Standards for Programs**. The Department of Insurance anticipates and expects that licensees will maintain high standards of professionalism in selecting quality education programs to fulfill the continuing education requirements set forth herein. (7-1-93)

**012. BASIC REQUIREMENTS.**

**01. Proof of Completion**. As a condition for the continuation of a license, a licensee must furnish the Director of the Department of Insurance ("Director"), on or before the licensing renewal date, proof of satisfactory completion of approved subjects or courses meeting the following requirements: (4-5-00)

**a.** Twenty-four (24) hours of continuing education credit during each licensing period, which licensing period is for two (2) years. (3-20-04)

**b.** At least three (3) hours of continuing education credit in ~~*insurance law and/or*~~ ethics must be earned each licensing period. The ethics courses must be stand-alone courses and not part of other courses. ~~*(3-20-04)*~~(  )

**c.** No more than four (4) hours of continuing education credit from courses approved for public adjusters shall apply toward the continuation of a producer license. (  )

**02. Relicensing Procedures After Voluntary Termination of License**. An insurance agent who voluntarily terminates his/her license can apply to be relicensed without testing if the application is received by the Department within twelve (12) months after the termination and if the continuing education requirements were completed during the licensing period prior to voluntary termination. Non-resident insurance agents who were former resident agents and who

wish to obtain a resident license once again will be subject to the continuing education requirements on a pro-rata basis. (4-5-00)

**03. Completion Within Two Years**. Each course to be applied toward satisfaction of the continuing education requirement must have been completed within the two (2) year period immediately preceding renewal of the license. Courses may not have been duplicated in the same renewal period. The date of completion for a self-study course is the date of successful completion of exam. (3-20-04)

***(BREAK IN CONTINUITY OF SECTIONS)***

**016. PROGRAMS WHICH QUALIFY.**

**01. Requirements of Acceptable Program**. A specific program will qualify as an acceptable continuing education program if it is a formal program of learning which contributes directly to the professional competence of a licensee. It will be left to each individual licensee to determine the course of study to be pursued. All programs must meet the standards outlined in Section 018. (7-1-93)

**02. Subjects Which Qualify**. (7-1-93)

**a.** The following general subjects are acceptable as long as they contribute to the knowledge and professional competence of an individual licensee as a producer and demonstrate a direct and specific application to insurance. (3-20-04)

i. Insurance, annuities, and risk management. (7-1-93)

ii. Insurance laws and rules. (7-1-93)

iii. Mathematics, statistics, and probability. (7-1-93)

iv. Economics. (7-1-93)

v. Business law. (7-1-93)

vi. Finance. (7-1-93)

vii. Taxes, Trusts, Estate Planning. (4-5-00)

viii. Business environment, management, or organization. (7-1-93)

ix. Securities. (7-1-98)

**b.** The following general subjects are acceptable for public adjusters as long as they contribute to the knowledge and professional competence of an individual licensee and

demonstrate a direct and specific application to adjusting. ( )

i. Insurance. ( )

ii. Insurance laws and rules. ( )

iii. Mathematics, statistics, and probability. ( )

iv. Economics. ( )

v. Business law. ( )

vi. Restoration. ( )

vii. Communications. ( )

viii. Arbitration. ( )

ix. Mitigation. ( )

x. Glass replacement and/or repair. ( )

**~~b~~c.** Areas other than those listed above may be acceptable if the licensee can demonstrate that they contribute to professional competence and otherwise meet the standards set forth in this rule. The responsibility for substantiating that a particular program meets the requirements of this rule rests solely upon the licensee. (7-1-93)

***(BREAK IN CONTINUITY OF SECTIONS)***

**019. MEASUREMENT OF CREDIT.**

**01. Credits Measured in Full Hours**. Professional education courses shall be credited for continuing education purposes in full hours only. The number of hours shall be equivalent to the actual number of contact hours which must include at least fifty (50) minutes of instruction or participation. As an example, a program will be granted eight (8) hours of credit if the total lapsed time is approximately eight (8) hours and the contact time is at least four hundred (400) minutes. The approved credit hours assigned a course determines the number of hours participants are required to complete. No credit will be given for partial attendance. (7-1-93)

**02. College Courses**. University or college upper division credit or noncredit courses shall be evaluated as follows: (7-1-93)

**a.** Credit courses -- each semester system credit hour shall not exceed fifteen (l5) hours toward the requirement; each quarter system credit hour shall not exceed ten (l0) hours. The final number of credits shall be determined by the Continuing Education Advisory Committee. (7-1-93)

**b.** Non-credit courses -- number of credits to be determined by the Continuing Education Advisory Committee. (7-1-93)

**03.** **Internet Courses**. Internet self-study courses will be credited one (1) hour of continuing education for every fifty (50) minutes of study material, excluding exams. Credit will be given based on the information received in accordance with Section 021 of these rules. (____)

**04.** **Webinar Courses**. Webinars will be credited as classroom instruction or participation. In the event one course encompasses multiple webinars and self-study is required between webinars, the self-study material must be submitted to the Continuing Education Advisory Committee to be evaluated for additional credit in accordance with Section 021of these rules. (____)

**05.** **Power Point Courses**. Power point course presentations will be evaluated as follows: (____)

**a.** Each power point slide must be accompanied by a timed outline of the subject matter to be presented. (____)

**b.** Credit will be given based on the information received in accordance with Section 021 of these rules. (____)

***(BREAK IN CONTINUITY OF SECTIONS)***

**021. APPROVED PROGRAMS OF STUDY - CERTIFICATION BY DIRECTOR.**

**01. Requirements of Course Approval**. All courses must be approved by the Continuing Education Advisory Committee and certified by the Director, except as noted under program requirements pursuant to Section 015. If a course is not approved in advance of presentation, an application for credit must be submitted to the Continuing Education Advisory Committee within sixty (60) days of completion of the course on forms promulgated by the Director, with the exception of an individual licensee who may submit an application for courses completed within ~~*the license renewal period if the licensee does so prior to his/her renewal date*~~ one hundred eighty (180) days of the course completion date and at least thirty (30) days prior to the license expiration date. All correspondence courses or individual study programs must be approved and certified in accordance with Section 024 prior to being offered to licensees for continuing education credit. ~~*(5-3-03)*~~(____)

**02. Nonrefundable Application Fee**. Each course application shall be accompanied by a nonrefundable application fee (as set forth in IDAPA 18.01.44, "Schedule of Fees, Licenses and Miscellaneous Charges"). (7-1-93)

**03. Course Approval Procedures**. Any individual, school, insurer, industry association, or other organization intending to provide classes, seminars, or other forms of instruction as approved subjects shall apply for such approval to the Director on forms approved

by the Director or on other forms which provide information including but not limited to the following: (5-3-03)

**a.** A specific outline and/or course material; (7-1-93)

**b.** Time schedule; (7-1-93)

**c.** Method of presentation; (7-1-93)

**d.** Qualifications of instructor; and (7-1-93)

**e.** Other information supporting the request for approval. (7-1-93)

**04. Method to Determine Completion Required**. The submission shall include a statement of the method used to determine the satisfactory completion of an approved subject. Such method may be a written examination, a written report by the agent, certification by the providing organization of the agent's program attendance or completion, or other methods approved by the Director as appropriate for the subject. (7-1-93)

**05. Final Acceptance/Rejection of Program**. Except as noted under Section 015, all continuing education course material received will be submitted to the Continuing Education Advisory Committee who will approve or deny the course or program as qualifying for credit, indicate the number of hours that will be awarded for approved subjects, and refer the class, seminar, or program to the Director for his certification. In cases of denial, the Continuing Education Advisory Committee will furnish a written explanation of the reason for such action. (5-3-03)

**06. List of Programs Certified Acceptable**. The Director will provide, upon request, a list of all programs currently available which the Department of Insurance has certified. (7-1-93)

**07. Certification of Program**. Certification of a program may be effective for a period of time not to exceed two (2) years or until such time as any material changes are made in the program, after which it must be resubmitted to the Continuing Education Advisory Committee for its review and approval. (7-1-93)

**08. Advertising Programs Prior to Certification**. If any course has not been approved and certified by the Director before the date on which it is to be presented, the course may be advertised or presented as "continuing education credits have been applied for" but shall not be represented or advertised in any manner as "approved" for continuing education credit. (5-3-03)

**022. PROOF OF COMPLETION.**
Upon completion of a class, program, or course of study, the authorized representative of the sponsoring organization shall, within ~~*sixty*~~ thirty (~~6~~30) days of completion of the course: ~~*(7-1-93)*~~(  )

**01. Certificate of Completion**. Provide a certificate of completion to each individual

who satisfactorily completes the class, program, or course of study; and (7-1-93)

**02. Certification of Attendees Completion**. Certify to the Director electronically a list of all such individuals~~*, specifying whether the determination of satisfactory completion was based upon attendance, written report, or examination*~~. ~~*(7-1-93)*~~(____)

***(BREAK IN CONTINUITY OF SECTIONS)***

**024. CREDIT FOR INDIVIDUAL STUDY PROGRAMS.**

**01. Requirements for Credit of Independent Study Programs**. All approved correspondence courses or independent study programs must include an examination which requires a score of seventy percent (70%) or better to earn a certificate of completion. For each approved course, the sponsoring organization shall maintain multiple tests (two (2) or more) sufficient to maintain the integrity of the testing process. A written explanation of test security and administration methods shall accompany the course examination materials. Producers must enroll and pay for courses before receiving access to course materials. Exams may not be accessed prior to course review. Exams must not be available for downloading. Each unit and/or chapter of a course must contain review questions that must be answered before access to the following unit/chapter is allowed. Final exam questions must not duplicate unit/chapter questions. Course materials must not be accessible once the exam has been opened. Online course submissions must include access codes for review by the Continuing Education Advisory Committee. The examinations shall be administered, graded, and the results recorded by the organization to which approval was originally granted. Completed tests shall be retained by the sponsoring organization and shall not be returned to any licensee. ~~*(7-1-93)*~~(____)

**02. Prior Approval Required for Independent Study Programs**. All correspondence courses or individual study programs must be submitted for approval and must be approved prior to being offered to licensees for continuing education credit. (7-1-93)

**03. Time Period for Credit**. Credit will be allowed only in the renewal period in which the course is completed. (7-1-93)

**025. CREDIT FOR SERVICE AS LECTURER, DISCUSSION LEADER, OR SPEAKER.**

~~***01.***~~ **Credit for Instructor**. One (l) hour of continuing education credit will be awarded for each hour completed as an instructor or discussion leader, provided the class or program is certified by the Director and meets the continuing education requirements of those attending. ~~*(7-1-93)*~~(____)

~~***02. Additional Credit for Instructor****. In addition, an instructor or discussion leader may claim an additional one (1) hour of credit for advance preparation for each one (1) hour of teaching, provided the time is actually devoted to preparation. For example, an instructor may claim up to twelve (l2) hours of credit for teaching a six (6) hour course. Credit for either preparation or presentation will only be granted once for each course or program, not for successive preparation or presentations.*~~ ~~*(7-1-93)*~~

# IDAPA 18 - DEPARTMENT OF INSURANCE

## 18.01.54 - RULE TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT

## DOCKET NO. 18-0154-0901

## NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

**EFFECTIVE DATE:** The effective date of the amendment to the temporary rule is July 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 41-211, Idaho Code and Chapter 44, Title 41, 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:

**Three modifications are being made to the rule to maintain uniformity with the National Association of Insurance Commissioners' Medicare Supplement Minimum Standards Model Act, and to further maintain compliance with the federal requirements contained in the Genetic Information Nondiscrimination Act, the Medicare Prescription Drug, Improvement and Modernization Act of 2003 and the Medicare Improvements for Patients and Provider Act of 2008.**

**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 those sections that have changes different from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the June 3, 2009 Idaho Administrative Bulletin, Vol. 09-6, pages 58 through 100.**

**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 fiscal impact.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the pending rule, contact Joan Krosch at 208-334-4300.

DATED this 1st day of July, 2009

Shad Priest, Deputy Director
Idaho Department of Insurance
700 West State Street, 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

***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 41-211, Idaho Code and Chapter 44, Title 41, 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 June 17, 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 proposed changes will amend Idaho's administrative rule Implementing the National Association of Insurance Commissioners' Medicare Supplement Minimum Standards Model Act to comply with federal requirements contained in the Genetic Information Nondiscrimination Act, the Medicare Prescription Drug, Improvement and Modernization Act of 2003, and the Medicare Improvements for Patients and Provider Act of 2008 (MIPPA).**

**The revised NAIC Model Rule conforms to federal laws and regulations that make major changes to Medicare Supplement plans and benefits, including the elimination of some types of plans and the addition of several new categories of plans. States are required to adopt these revisions in order to continue to regulate the Medicare Supplement market.**

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

**following reasons: The rule is necessary to comply with deadlines in amendments to federal programs and confers a public benefit.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: The rule does not impose a fee.

**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: No fiscal impact.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the changes made by this rulemaking were needed to conform the existing rule to changes in federal law.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Joan Krosch at 208-334-4300.

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 June 24, 2009.

DATED this 1st day of May, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**001. TITLE AND SCOPE.**

**01. Title**. This rule shall be cited in full as Idaho Department of Insurance Rules, IDAPA 18.01.54, ~~*Title 01, Chapter 54,*~~ "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act." ~~*(4-5-00)*~~(____)

**02. Scope**. (4-5-00)

**a.** Except as otherwise specifically provided in Sections 0~~*09*~~20, 0~~*14*~~28, 0~~*15*~~29, 0~~*18*~~32, and 0~~*2*~~37, this rule shall apply to: ~~*(4-5-00)*~~(____)

i. All Medicare supplement policies delivered or issued for delivery in this state on or after the effective date of this rule; and (4-5-00)

ii. All certificates issued under group Medicare supplement policies, which certificates have been delivered or issued for delivery in this state. (4-5-00)

**b.** This rule shall not apply to a policy or contract of one (1) or more employers or

labor organizations, or of the trustees of a fund established by one (1) or more employers or labor organizations, or combination thereof, for employees or former employees, or a combination thereof, or for members or former members, or a combination thereof, of the labor organization.
(4-5-00)

***(BREAK IN CONTINUITY OF SECTIONS)***

**003. ADMINISTRATIVE APPEALS.**
All ~~*contested cases*~~ administrative appeals shall be governed by ~~*the provisions of*~~ Chapter 2, Title 41, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General."
~~*(4-5-00)*~~(____)

**004. INCORPORATION BY REFERENCE.**
This rule incorporates by reference Appendixes A, B, and C and all other outlines of coverage and specific plan designs of the National Association of Insurance Commissioners (NAIC) Model Act implementing the Medicare supplement insurance minimum standards, July 1, 2009. The Model Act is available from the National Association of Insurance Commissioners, 2301 McGee Street, Suite 800, Kansas City, MO 64108-2662 and from the Idaho Department of Insurance. (____)

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.**

**01. Office Hours**. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (____)

**02. Mailing Address**. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (____)

**03. Street Address**. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. (____)

**04. Web Site Address**. The department's web address is http://www.doi.idaho.gov.
(____)

**006. PUBLIC RECORDS ACT COMPLIANCE.**
Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (____)

**007. -- 009. (RESERVED).**

**0~~04~~10. DEFINITIONS.**
For the purposes of ~~*IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act,"*~~ this rule, the following terms will be used as defined below: ~~*(4-5-00)*~~(____)

**01. Applicant**. (4-5-00)

**a.** In the case of an individual Medicare supplement policy, the person who seeks to contract for insurance benefits; and (4-5-00)

**b.** In the case of a group Medicare supplement policy, the proposed certificateholder. (4-5-00)

**02. Bankruptcy**. A Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state. (4-11-06)

**03. Certificate**. Any certificate delivered or issued for delivery in this state under a group Medicare supplement policy. (4-5-00)

**04. Certificate Form**. The form on which the certificate is delivered or issued for delivery by the issuer. (4-5-00)

**05. Continuous Period of Creditable Coverage**. The period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than sixty-three (63) days. (4-5-00)

**06. Creditable Coverage**. (4-5-00)

**a.** With respect to an individual, coverage of the individual provided under any of the following: (4-5-00)

i. A group health plan; (4-5-00)

ii. Health insurance coverage; (4-5-00)

iii. Part A or Part B of Title XVIII of the Social Security Act (Medicare); (4-5-00)

iv. Title XIX of the Social Security Act (Medicaid), other than coverage consisting solely of benefits under Section 1928; (4-5-00)

v. Chapter 55 of Title 10 United States Code (CHAMPUS); (4-5-00)

vi. A medical care program of the Indian Health Service or of a tribal organization; (4-5-00)

vii. A state health benefits risk pool; (4-5-00)

viii. A health plan offered under chapter 89 of Title 5 United States Code (Federal Employees Health Benefits Program); (4-5-00)

ix. A public health plan as defined in federal regulation; and (4-5-00)

x. A health benefit plan under Section 5(e) of the Peace Corps Act (22 United States Code 2504(e)). (4-5-00)

**b.** Creditable coverage shall not include one (1) or more, or any combination of, the following: (4-5-00)

i. Coverage only for accident or disability income insurance, or any combination thereof; (4-5-00)

ii. Coverage issued as a supplement to liability insurance; (4-5-00)

iii. Liability insurance, including general liability insurance and automobile liability insurance; (4-5-00)

iv. Workers' compensation or similar insurance; (4-5-00)

v. Automobile medical payment insurance; (4-5-00)

vi. Credit-only insurance; (4-5-00)

vii. Coverage for on-site medical clinics; and (4-5-00)

viii. Other similar insurance coverage, specified in federal regulations, under which benefits for medical care are secondary or incidental to other insurance benefits. ~~*(3-15-02)*~~(  )

**c.** Creditable coverage shall not include the following benefits if they are provided under a separate policy, certificate or contract of insurance or are otherwise not an integral part of the plan: (4-5-00)

i. Limited scope dental or vision benefits; (4-5-00)

ii. Benefits for long-term care, nursing home care, home health care, community-based care, or any combination thereof; and (4-5-00)

iii. Such other similar, limited benefits as are specified in federal regulations. (4-5-00)

**d.** Creditable coverage shall not include the following benefits if offered as independent, non-coordinated benefits: (4-5-00)

i. Coverage only for a specified disease or illness; and (4-5-00)

ii. Hospital indemnity or other fixed indemnity insurance. (4-5-00)

**e.** Creditable coverage shall not include the following if it is offered as a separate policy, certificate, or contract of insurance: (4-5-00)

i. Medicare supplemental health insurance as defined under ~~s~~Section 1882(g)(1) of

the Social Security Act; ~~*(4-5-00)*~~(____)

ii. Coverage supplemental to the coverage provided under chapter 55 of title 10, United States Code; and (4-5-00)

iii. Similar supplemental coverage provided to coverage under a group health plan. (4-5-00)

**f.** The Health Insurance Portability and Accountability Act of 1996 (HIPAA) specifically addressed separate, noncoordinated benefits in the group market at PHSA Section 2721(d)(2) and the individual market at Section 2791(c)(3). HIPAA also references excepted benefits at PHSA Sections 2701(c)(1), 2721(d), 2763(b) and 2791(c). In addition, credible coverage has been addressed in an interim final rule (62 Fed. Reg. At 16960-16962 (April 8, 1997)) issued by the Secretary of Health and Human Services, pursuant to HIPAA, and may be addressed in subsequent regulations. (4-1-06)

**07. Employee Welfare Benefit Plan**. A plan, fund, or program of employee benefits as defined in 29 U.S.C. Section 1002 (Employee Retirement Income Security Act). (4-5-00)

**08. Insolvency**. When an issuer, licensed to transact the business of insurance in this state, has had a final order of liquidation entered against it with a finding of insolvency by a court of competent jurisdiction in the issuer's state of domicile. (4-5-00)

**09. Issuer**. Includes insurance companies, fraternal benefit societies, managed care organizations, and any other entity delivering or issuing for delivery in this state Medicare supplement policies or certificates. (4-5-00)

**10. Medicare**. The "Health Insurance for the Aged Act," Title XVIII of the Social Security Amendments of 1965, as then constituted or later amended. (4-5-00)

**11. Medicare Advantage Plan**. A plan of coverage for health benefits under Medicare Part C as defined in 42 U.S.C. 1395w-28 (b)(1), and includes: (4-11-06)

**a.** Coordinated care plans which provide health care services, including but not limited to managed care organization (with or without a point-of-service option), plans offered by provider-sponsored organizations, and preferred provider organization plans; (4-5-00)

**b.** Medical savings account plans coupled with a contribution into a Medicare Advantage medical savings account; and (4-11-06)

**c.** Medicare Advantage private fee-for-service plans. (4-11-06)

**12. Medicare Supplement Policy**. A group or individual policy of accident and sickness insurance or an enrollee contract under a managed care organization, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. Section 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. Section 1395ss(g)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical, or surgical expenses of persons eligible

for Medicare. "Medicare Supplement Policy" does not include Medicare Advantage plans established under Medicare Part C. Outpatient Prescription Drug plans established under Medicare Part D, or any Health Care Prepayment Plan (HCPP) that provides benefits pursuant to an agreement under Section 1833(a)(1)(A) of the Social Security Act; provided, however, that under Section 104(c) of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA), policies that are advertised, marketed or designed primarily to cover out-of-pocket costs under Medicare Advantage Plans (established under Medicare Part C) must comply with the Medicare supplement requirements of Section 1882(o) of the Social Security Act.~~*(4-11-06)*~~(  )

**13.** **Pre-Standardized Medicare Supplement Benefit Plan**. A group or individual policy of Medicare supplement insurance issued prior to July 1, 1992 ~~*on which the state made its revisions to conform to the Omnibus Budget Reconciliation Act of 1990*~~. ~~*(7-1-09)T*~~(  )

**14.** **1990 Standardized Medicare Supplement Benefit Plan**. A group or individual policy of Medicare supplement insurance issued on or after July 1, 1992 and with an effective date for coverage prior to June 1, 2010 and includes Medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the issuer at the request of the insured. (  )

**15.** **2010 Standardized Medicare Supplement Benefit Plan**. A group or individual policy of Medicare supplement insurance with an effective date for coverage issued on or after June 1, 2010. (  )

**1~~3~~6.** **Policy Form**. The form on which the policy is delivered or issued for delivery by the issuer. (4-5-00)

**1~~4~~7.** **Secretary**. The Secretary of the United States Department of Health and Human Services. (4-5-00)

**0~~05~~11. POLICY DEFINITIONS AND TERMS.**
No policy or certificate may be advertised, solicited or issued for delivery in this state as a Medicare supplement policy or certificate unless the policy or certificate contains definitions or terms which conform to the requirements of this section. (4-5-00)

**01.** **Accident, Accidental Injury, or Accidental Means**. To employ "result" language and shall not include words ~~*which*~~ that establish an accidental means test or use words such as "external, violent, visible wounds" or similar words of description or characterization. ~~*(4-5-00)*~~(  )

**a.** The definition shall not be more restrictive than the following: "Injury or injuries for which benefits are provided means accidental bodily injury sustained by the insured person which is the direct result of an accident, independent of disease or bodily infirmity or any other cause, and occurs while insurance coverage is in force." (4-5-00)

**b.** The definition may provide that injuries shall not include injuries for which benefits are provided or available under any workers' compensation, employer's liability or similar law, or motor vehicle no-fault plan, unless prohibited by law. (4-5-00)

**02. Benefit Period or Medicare Benefit Period**. Shall not be defined more restrictively than as defined in the Medicare program. (4-5-00)

**03. Convalescent Nursing Home, Extended Care Facility, or Skilled Nursing Facility**. Shall not be defined more restrictively than as defined in the Medicare program. (4-5-00)

**04. Health Care Expenses**. For purposes of Section 0~~16~~29, expenses of managed care organizations associated with the delivery of health care services, which expenses are analogous to incurred losses of insurers. ~~*Expenses shall not include:*~~ ~~*(4-11-06)*~~(____)

~~**a.** *Home office and overhead costs;* *(4-5-00)*~~

~~**b.** *Advertising costs;* *(4-5-00)*~~

~~**c.** *Commissions and other acquisition costs;* *(4-5-00)*~~

~~**d.** *Taxes;* *(4-5-00)*~~

~~**e.** *Capital costs;* *(4-5-00)*~~

~~**f.** *Administrative costs; and* *(4-5-00)*~~

~~**g.** *Claims processing costs.* *(4-5-00)*~~

**05. Hospital**. May be defined in relation to its status, facilities, and available services or to reflect its accreditation by the Joint Commission on Accreditation of Hospitals, but not more restrictively than as defined in the Medicare program. (4-5-00)

**06. Medicare**. Shall be defined in the policy and certificate. Medicare may be substantially defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965~~"~~ as then constituted or later amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import. ~~*(4-5-00)*~~(____)

**07. Medicare Eligible Expenses**. Expenses of the kinds covered by Medicare Parts A and B, to the extent recognized as reasonable and medically necessary by Medicare. (4-11-06)

**08. Physician**. Shall not be defined more restrictively than as defined in the Medicare program. (4-5-00)

**09. Sickness**. Shall not be defined to be more restrictive than the following: "Sickness means illness or disease of an insured person which first manifests itself after the effective date of insurance and while the insurance is in force." The definition may be further modified to exclude sicknesses or diseases for which benefits are provided under any workers' compensation, occupational disease, employer's liability, or similar law. (4-5-00)

***006. -- 007. (RESERVED).***

**0~~08~~12. POLICY PROVISIONS.**

**01. Medicare Supplement Policy**. Except for permitted preexisting condition clauses as described in ~~*Subsections*~~ Paragraphs 0~~09~~20.01.a., ~~*and*~~ 0~~10~~21.01.a. and 022.01.a., no policy or certificate may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy if the policy or certificate contains limitations or exclusions on coverage that are more restrictive than those of Medicare. ~~*(4-5-00)*~~(____)

**02. Waivers**. No Medicare supplement policy or certificate may use waivers to exclude, limit or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions. (4-5-00)

**03. Duplicate Benefits**. No Medicare supplement policy or certificate in force in the state shall contain benefits which duplicate benefits provided by Medicare. (4-5-00)

**04. Outpatient Prescription Drugs**. (4-11-06)

**a.** Subject to ~~*Subsections*~~ Paragraphs 0~~09~~20.01.d., 0~~09~~20.01.e., 0~~09~~20.01.j., and 0~~10~~21.01.d., and 0~~10~~21.01.e. of this rule, a Medicare Supplement Policy with benefits for outpatient prescription drugs in existence prior to January 1, 2006 shall be renewed for current policyholders who do not enroll in Part D at the option of the policyholder. ~~*(4-11-06)*~~(____)

**b.** A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005. (4-11-06)

**c.** After December 31, 2005, a Medicare supplement policy with benefits for outpatient prescription drugs may not be renewed after the policyholder enrolls in Medicare Part D unless: (4-11-06)

i. The policy is modified to eliminate outpatient prescription coverage for expenses of outpatient prescription drugs incurred after the effective date of the individual's coverage under a Part D plan; and (4-11-06)

ii. Premiums are adjusted to reflect the elimination of outpatient prescription drug coverage at the time of Medicare Part D enrollment, accounting for any claims paid, if applicable. (4-11-06)

**013. -- 019. (RESERVED).**

**0~~09~~20. MINIMUM BENEFIT STANDARDS FOR PRE-STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY PRIOR TO JULY 1, 1992.**
No policy or certificate may be advertised, solicited, or issued for delivery in this state as a Medicare supplement policy or certificate unless it meets or exceeds the following minimum standards. These are minimum standards and do not preclude the inclusion of other provisions or benefits which are not inconsistent with these standards. ~~*(4-5-00)*~~(____)

**01. General Standards**. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of ~~*IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act."*~~ this rule. ~~*(4-5-00)*~~(____)

**a.** A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage. (4-5-00)

**b.** A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents. (4-5-00)

**c.** A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible~~ *amount and copayment percentage factors*~~, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes. ~~*(4-5-00)*~~(____)

**d.** A "non-cancelable," "guaranteed renewable," or "non-cancelable and guaranteed renewable" Medicare supplement policy shall not: (4-5-00)

i. Provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium; or (4-5-00)

ii. Be canceled or non-renewed by the issuer solely on the grounds of deterioration of health. (4-5-00)

**e.** Except as authorized by the director of this state, an issuer shall neither cancel nor non-renew a Medicare supplement policy or certificate for any reason other than nonpayment of premium or material misrepresentation. (4-5-00)

**f.** If a group Medicare supplement insurance policy is terminated by the group policyholder and not replaced as provided in ~~*Subsection*~~ Paragraph 0~~*09*~~20.01.h., the issuer shall offer certificate–holders an individual Medicare supplement policy. The issuer shall offer the certificate-holder at least the following choices: ~~*(4-5-00)*~~(____)

i. An individual Medicare supplement policy currently offered by the issuer having comparable benefits to those contained in the terminated group Medicare supplement policy; and~~/ *or*~~ ~~*(4-5-00)*~~(____)

ii. An individual Medicare supplement policy which provides only such benefits as are required to meet the minimum standards as defined in Subsection 0~~*10*~~21.02. ~~*(4-5-00)*~~(____)

**g.** If membership in a group is terminated, the issuer shall: (4-5-00)

i. Offer the certificate-holder the conversion opportunities described in ~~*Subsection*~~ Paragraph 0~~*09*~~20.01.f.; or ~~*(4-5-00)*~~(____)

ii. At the option of the group policyholder, offer the certificate-holder continuation of coverage under the group policy. ~~*(4-5-00)*~~(____)

**h.** If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new group policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced. (4-5-00)

**i.** Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be predicated upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or to payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss. (4-11-06)

**j.** If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of Subsection 0~~*09*~~20.01. ~~*(4-11-06)*~~(____)

**02. Minimum Benefit Standards**. (4-5-00)

**a.** Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period; (4-5-00)

**b.** Coverage for either all or none of the Medicare Part A inpatient hospital deductible amount; (4-5-00)

**c.** Coverage of Part A Medicare eligible expenses incurred as daily hospital charges during use of Medicare's lifetime hospital inpatient reserve days; (4-5-00)

**d.** Upon exhaustion of all Medicare hospital inpatient coverage including the lifetime reserve days, coverage of ninety percent (90%) of all Medicare Part A eligible expenses for hospitalization not covered by Medicare subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days; (4-5-00)

**e.** Coverage under Medicare Part A for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations or already paid for under Part B; (4-5-00)

**f.** Coverage for the coinsurance amount or in the case of hospital outpatient

department services paid under a prospective payments system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to a maximum calendar year out-of-pocket amount equal to the Medicare Part B deductible; (5-3-03)

**g.** Effective January 1, 1990, coverage under Medicare Part B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations), unless replaced in accordance with federal regulations or already paid for under Part A, subject to the Medicare deductible amount. (4-5-00)

**0~~10~~21. BENEFIT STANDARDS FOR 1990 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVER~~ED~~Y ON OR AFTER JULY 1, 1992 AND WITH AN EFFECTIVE DATE FOR COVERAGE PRIOR TO JUNE 1, 2010.**
The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state on or after July 1, 1992, and with an effective date for coverage prior to June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. ~~*(4-5-00)*~~(____)

**01. General Standards**. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of ~~*IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act."*~~ this rule. ~~*(4-5-00)*~~(____)

**a.** A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage. (4-5-00)

**b.** A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents. (4-5-00)

**c.** A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, ~~*amount and*~~ copayment ~~*percentage factors*~~, or coinsurance amounts. Premiums may be modified to correspond with such changes. ~~*(4-5-00)*~~(____)

**d.** No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium. (4-5-00)

**e.** Each Medicare supplement policy shall be guaranteed renewable. (4-5-00)

i. The issuer shall not cancel or non-renew the policy solely on the ground of health status of the individual. (4-5-00)

ii. The issuer shall not cancel or non-renew the policy for any reason other than nonpayment of premium or material misrepresentation. (4-5-00)

iii. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Sub~~*section*~~paragraph 0~~*10*~~21.01.e.v., the issuer shall offer certificate–holders an individual Medicare supplement policy which (at the option of the certificate-holder): ~~*(4-5-00)*~~(____)

(1) Provides for continuation of the benefits contained in the group policy; or (4-5-00)

(2) Provides for benefits that otherwise meet the requirements of ~~*this s*~~Subsection 021.01 through 021.01.h.iv. ~~*(4-5-00)*~~(____)

iv. If an individual is a certificate-holder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall (a) offer the certificate-holder the conversion opportunity described in Sub~~*section*~~paragraph 0~~*10*~~21.01.e.iii.; or, (b) at the option of the group policyholder, offer the certificate-holder continuation of coverage under the group policy. ~~*(4-5-00)*~~(____)

v. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced. (4-5-00)

vi. If a Medicare supplement policy eliminates an outpatient prescription drug benefit as a result of requirements imposed by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, the modified policy shall be deemed to satisfy the guaranteed renewal requirements of ~~*Section*~~ Paragraph 0~~*10*~~21.01.e. ~~*(4-11-06)*~~(____)

**f.** Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss. (4-11-06)

~~*i*~~**g.** A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificate-holder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificate-holder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificate-holder notifies the issuer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance. ~~*(4-5-00)*~~(____)

i~~*i*~~. If suspension occurs and if the policyholder or certificate-holder loses entitlement to medical assistance, the policy or certificate shall be automatically re-instituted (effective as of

the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificate-holder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement. ~~*(4-5-00)*~~(____)

ii~~*i*~~. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226(b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862(b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within ninety (90) days after the date of the loss and pays the premium attributable to the period, effective as of the date of termination of enrollment in the group health plan. (5-3-03)

~~*g*~~iii. Reinstitution of coverages as defined in Sub~~*sections*~~paragraphs 0~~*10*~~21.01.~~*f*~~g.i~~*i*~~. and 0~~*10*~~21.01.~~*f*~~g.ii~~*i*~~.: ~~*(5-3-03)*~~(____)

~~*i.*~~(1) Shall not provide for any waiting period with respect to treatment of preexisting conditions; (4-5-00)

~~*ii.*~~(2) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension. If the suspended Medicare supplement policy provided coverage for outpatient prescription drugs, reinstitution of the policy for Medicare Part D enrollees shall be without coverage for outpatient prescription drugs and shall otherwise provide substantially equivalent coverage to the coverage in effect before the date of suspension; and (4-11-06)

~~*iii.*~~(3) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificate-holder as the premium classification terms that would have applied to the policyholder or certificate-holder had the coverage not been suspended. ~~*(4-5-00)*~~(____)

**h.** If an issuer makes a written offer to the Medicare Supplement policyholders or certificateholders of one (1) or more of its plans, to exchange during a specified period from his or her 1990 Standardized plan (as described in Section 023 of this rule) to a 2010 Standardized plan (as described in Section 024 of this rule), the offer and subsequent exchange shall comply with the following requirements: (____)

i. An issuer need not provide justification to the director if the insured replaces a 1990 Standardized policy or certificate with an issue age rated 2010 Standardized policy or certificate at the insured's original issue age. If an insured's policy or certificate to be replaced is priced on an issue age rate schedule at the time of such offer, the rate charged to the insured for the new exchange policy shall recognize the policy reserve buildup, due to the pre-funding inherent in the use of an issue age rate basis, for the benefit of the insured. The method proposed to be used by an issuer must be filed with the director. (____)

ii. The rating class of the new policy or certificate shall be the class closest to the insured's class of the replaced coverage. (____)

iii. An issuer may not apply new preexisting condition limitations or a new incontestability period to the new policy for those benefits contained in the exchanged 1990 Standardized policy or certificate of the insured, but may apply preexisting condition limitations of no more than six (6) months to any added benefits contained in the new 2010 Standardized policy or certificate not contained in the exchanged policy. ( )

iv. The new policy or certificate shall be offered to all policyholders or certificateholders within a given plan, except where the offer or issue would be in violation of state or federal law. ( )

**02. Standards for Basic (Core) Benefits Common to Benefit Plans A - J**. Every issuer shall make available a policy or certificate including only the following basic "core" package of benefits to each perspective insured. An issuer may make available to prospective insureds any of the other Medicare supplement insurance benefit plans in addition to the basic core package, but not in lieu of it. (4-11-06)

**a.** Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period; (4-5-00)

**b.** Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used; (4-5-00)

**c.** Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of one hundred percent (100%) of Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balances. (4-11-06)

**d.** Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations; (4-5-00)

**e.** Coverage for the coinsurance amount, or in the case of hospital outpatient department services under a prospective payment system, the copayment amount of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible. In all cases involving hospital outpatient department services paid under a prospective payment system, the issuer is required to pay the copayment amount established by federal requirements, which will be either the amount established for the Ambulatory Payment Classification (APC) group, or a provider-elected reduced copayment amount. (4-11-06)

**03. Standards for Additional Benefits**. The following additional benefits shall be included in Medicare Supplement Benefit Plans "B" through "J" only as provided by Section 0~~11~~23 of ~~*IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act."*~~ this rule. ~~*(4-5-00)*~~( )

**a.** Medicare Part A deductible: Coverage for all of the Medicare Part A inpatient hospital deductible amount per benefit period. (4-5-00)

**b.** Skilled nursing facility care: Coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one hundredth day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A. (4-5-00)

**c.** Medicare Part B deductible: Coverage for all of the Medicare Part B deductible amount per calendar year regardless of hospital confinement. (4-5-00)

**d.** Eighty percent (80%) of the Medicare Part B excess charges: Coverage for eighty percent (80%) of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge. (4-5-00)

**e.** One hundred percent (100%) of the Medicare Part B excess charges: Coverage for all of the difference between the actual Medicare Part B charge as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge. (4-5-00)

**f.** Basic outpatient prescription drug benefit: Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollars ($250) calendar year deductible, to a maximum of one thousand two hundred fifty dollars ($1,250) in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006. (4-11-06)

**g.** Extended outpatient prescription drug benefit. Coverage for fifty percent (50%) of outpatient prescription drug charges, after a two hundred fifty dollars ($250) calendar year deductible, to a maximum of three thousand dollars ($3,000) in benefits received by the insured per calendar year, to the extent not covered by Medicare. The outpatient prescription drug benefit may be included for sale or issuance in a Medicare supplement policy until January 1, 2006. (4-11-06)

**h.** Medically necessary emergency care in a foreign country: Coverage to the extent not covered by Medicare for eighty-percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician, and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars ($250), and a lifetime maximum benefit of fifty thousand dollars ($50,000). For purposes of this benefit, “emergency care” shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset. (4-5-00)

**04. Preventive Medical Care Benefit**. Coverage for the following preventive health services not covered by Medicare: (4-11-06)

**a.** An annual clinical preventive medical history and physical examination that may include tests and services from ~~*Subsection*~~ Paragraph 0~~*10*~~21.04.~~*b*~~c., and patient education to address preventive health care measures. ~~*(4-5-00)*~~(____)

**b.** Preventive screening tests or preventive services, the selection and frequency of which is determined to be medically appropriate by the attending physician. (4-11-06)

**c.** Reimbursement shall be for the actual charges up to one hundred percent (100%) of the Medicare-approved amount for each service, as if Medicare were to cover the service as identified in American Medical Association Current Procedural Terminology (AMA CPT) codes, to a maximum of one hundred twenty dollars ($120) annually under this benefit. This benefit shall not include payment for any procedure covered by Medicare. (4-11-06)

**05. At-Home Recovery Benefit**. Coverage for services to provide short-term, at-home assistance with activities of daily living for those recovering from an illness, injury, or surgery. For purposes of this benefit, the following definitions shall apply: (4-5-00)

**a.** Activities of daily living include, but are not limited to, bathing, dressing, personal hygiene, transferring, eating, ambulating, assistance with drugs that are normally self-administered, and changing bandages or other dressings. (4-5-00)

**b.** Care provider. A duly qualified or licensed home health aide or homemaker, personal care aide or nurse provided through a licensed home health care agency or referred by a licensed referral agency or licensed nurses' registry. (4-5-00)

**c.** Home. Any place used by the insured as a place of residence, provided that the place would qualify as a residence for home health care services covered by Medicare. A hospital or skilled nursing facility shall not be considered the insured's place of residence. (4-5-00)

**d.** At-home recovery visit. The period of a visit required to provide at-home recovery care, without limit on the duration of the visit, except each consecutive four (4) hours in a twenty-four (24) hour period of services provided by a care provider is one (1) visit. (4-5-00)

**06. Coverage Requirements and Limitations**. (4-5-00)

**a.** At-home recovery services provided must be primarily services which assist in activities of daily living. (4-5-00)

**b.** The insured's attending physician must certify that the specific type and frequency of at-home recovery services are necessary because of a condition for which a home care plan of treatment was approved by Medicare. (4-5-00)

**c.** Coverage is limited to: (4-5-00)

i. No more than the number and type of at-home recovery visits certified as necessary by the insured's attending physician. The total number of at-home recovery visits shall not exceed the number of Medicare approved home health care visits under a Medicare approved home care plan of treatment; (4-5-00)

ii. The actual charges for each visit up to a maximum reimbursement of forty dollars ($40) per visit; (4-5-00)

iii. One thousand six hundred dollars ($1,600) per calendar year; (4-5-00)

iv. Seven (7) visits in any one week; (4-5-00)

v. Care furnished on a visiting basis in the insured's home; (4-5-00)

vi. Services provided by a care provider as defined in this ~~s~~Section; ~~*(4-5-00)*~~(____)

vii. At-home recovery visits while the insured is covered under the policy or certificate and not otherwise excluded; (4-5-00)

viii. At-home recovery visits received during the period the insured is receiving Medicare approved home care services or no more than eight (8) weeks after the service date of the last Medicare approved home health care visit. (4-5-00)

**d.** Coverage is excluded for: (4-5-00)

i. Home care visits paid for by Medicare or other government programs; and (4-5-00)

ii. Care provided by family members, unpaid volunteers or providers who are not care providers. (4-5-00)

**07. Standards for Plan K and L.** (____)

**a.** Standardized Medicare supplement benefit plan "K" shall consist of the following: ~~*(4-11-06)*~~(____)

~~**a**~~i. Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the sixty-first through the ninetieth day in any Medicare benefit period; (4-11-06)

~~**b**~~ii. Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the ninety-first through the one hundred fiftieth day in any Medicare benefit period; (4-11-06)

~~**c**~~iii. Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance; (4-11-06)

~~**d**~~iv. Medicare Part A Deductible: Coverage for fifty percent (50%) of the Medicare

Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Sub*section*paragraph 0*10*21.07.*j*a.x.; *(4-11-06)*(____)

***e***v. Skilled Nursing Facility Care: Coverage for fifty percent (50%) of the coinsurance amount for each day used from the twenty-first day through the one hundredth day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Sub*section*paragraph 0*10*21.07.*j*a.x.; *(4-11-06)*(____)

***f***vi. Hospice Care: Coverage for fifty percent (50%) of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Sub*section*paragraph 0*10*21.07.*j*a.x.; *(4-11-06)*(____)

***g***vii. Coverage for fifty percent (50%) under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Sub*section*paragraph 0*10*21.07.*j*a.x.; *(4-11-06)*(____)

***h***viii. Except for coverage provided in Sub*section*paragraph 0*10*21.07.a.ix., coverage for fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of -pocket limitation is met as described in Sub*section*paragraph 0*10*21.07.*j*a.x. *(4-11-06)*(____)

***i***ix. Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and (4-11-06)

***j*x**. Coverage of one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of four thousand dollars ($4,000) in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services. (4-11-06)

***08*b. *Standards for Plan L.*** Standardized Medicare supplement benefit plan "L" shall consist of the following: *(4-11-06)*(____)

***a***i. The benefits described in Sub*sections*paragraphs 0*10*21.07.a.i. through 0*10*21.07.*c*a.iii., and 0*10*21.07.a.ix.; *(4-11-06)*(____)

***b***ii. The benefit described in Sub*sections*paragraphs 0*10*21.07.*d*a.v. through 0*10*21.07.*h*a.viii. but substituting seventy-five percent (75%) for fifty percent (50%); and *(4-11-06)*(____)

***c***iii. The benefit described in Sub*section*paragraph 0*10*21.07.*j*a.x. but substituting two thousand dollars ($2,000) for four thousand dollars ($4,000). *(4-11-06)*(____)

**022. BENEFIT STANDARDS FOR 2010 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY WITH AN EFFECTIVE DATE FOR COVERAGE ON OR AFTER JUNE 1, 2010.**

The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any 1990 Standardized Medicare supplement benefit plan for sale on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued with an effective date for coverage prior to June 1, 2010 remain subject to the requirements of Section 021. ( )

**01. General Standards**. The following standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this regulation. ( )

**a.** A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six (6) months from the effective date of coverage because it involved a preexisting condition. The policy or certificate may not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six (6) months before the effective date of coverage. ( )

**b.** A Medicare supplement policy or certificate shall not indemnify against losses resulting from sickness on a different basis than losses resulting from accidents. ( )

**c.** A Medicare supplement policy or certificate shall provide that benefits designed to cover cost sharing amounts under Medicare will be changed automatically to coincide with any changes in the applicable Medicare deductible, copayment, or coinsurance amounts. Premiums may be modified to correspond with such changes. ( )

**d.** No Medicare supplement policy or certificate shall provide for termination of coverage of a spouse solely because of the occurrence of an event specified for termination of coverage of the insured, other than the nonpayment of premium. ( )

**e.** Each Medicare supplement policy shall be guaranteed renewable. ( )

i. The issuer shall not cancel or nonrenew the policy solely on the ground of health status of the individual. ( )

ii. The issuer shall not cancel or nonrenew the policy for any reasons other than nonpayment of premium or material representation. ( )

iii. If the Medicare supplement policy is terminated by the group policyholder and is not replaced as provided under Subparagraph 022.01.e.v. of this rule, the issuer shall offer certificateholders an individual Medicare supplement policy which (at the option of the certificateholder): ( )

(1) Provides for continuation of the benefits contained in the group policy; or ( )

(2) Provides for benefits that otherwise meet the requirements of this Subsection. ( )

iv. If an individual is a certificateholder in a group Medicare supplement policy and the individual terminates membership in the group, the issuer shall: ( )

(1) Offer the certificateholder the conversion opportunity described in Subparagraph 022.01.e.iii. of this rule; or ( )

(2) At the option of the group policyholder, offer the certificateholder continuation of coverage under the group policy. ( )

v. If a group Medicare supplement policy is replaced by another group Medicare supplement policy purchased by the same policyholder, the issuer of the replacement policy shall offer coverage to all persons covered under the old group policy on its date of termination. Coverage under the new policy shall not result in any exclusion for preexisting conditions that would have been covered under the group policy being replaced. ( )

**f.** Termination of a Medicare supplement policy or certificate shall be without prejudice to any continuous loss which commenced while the policy was in force, but the extension of benefits beyond the period during which the policy was in force may be conditioned upon the continuous total disability of the insured, limited to the duration of the policy benefit period, if any, or payment of the maximum benefits. Receipt of Medicare Part D benefits will not be considered in determining a continuous loss. ( )

**g.** A Medicare supplement policy or certificate shall provide that benefits and premiums under the policy or certificate shall be suspended at the request of the policyholder or certificateholder for the period (not to exceed twenty-four (24) months) in which the policyholder or certificateholder has applied for and is determined to be entitled to medical assistance under Title XIX of the Social Security Act, but only if the policyholder or certificateholder notifies the issuer of the policy or certificate within ninety (90) days after the date the individual becomes entitled to assistance. ( )

i. If suspension occurs and if the policyholder or certificateholder loses entitlement to medical assistance, the policy or certificate shall be automatically reinstituted (effective as of the date of termination of entitlement) as of the termination of entitlement if the policyholder or certificateholder provides notice of loss of entitlement within ninety (90) days after the date of loss and pays the premium attributable to the period, effective as of the date of termination of entitlement. ( )

ii. Each Medicare supplement policy shall provide that benefits and premiums under the policy shall be suspended (for any period that may be provided by federal regulation) at the request of the policyholder if the policyholder is entitled to benefits under Section 226 (b) of the Social Security Act and is covered under a group health plan (as defined in Section 1862 (b)(1)(A)(v) of the Social Security Act). If suspension occurs and if the policyholder or certificateholder loses coverage under the group health plan, the policy shall be automatically

reinstituted (effective as of the date of loss of coverage) if the policyholder provides notice of loss of coverage within (90) days after the date of the loss and pays the premium attributed to the period, effective as of the date of termination of enrollment in the group health plan. ( )

iii. Reinstitution of coverages as described in Subparagraphs 022.01.g.i. and 022.01.g.ii.; ( )

(1) Shall not provide for any waiting period with respect to treatment of preexisting conditions; ( )

(2) Shall provide for resumption of coverage that is substantially equivalent to coverage in effect before the date of suspension; and ( )

(3) Shall provide for classification of premiums on terms at least as favorable to the policyholder or certificateholder as the premium classification terms that would have applied to the policyholder or certificateholder had the coverage not been suspended. ( )

**02. Standards for Basic (Core) Benefits Common to Medicare Supplement Insurance Benefit Plans A, B, C, D, F, F with High Deductible, G, M, and N**. Every issuer of Medicare supplement insurance benefit plans shall make available a policy or certificate including only the following basic "core" package of benefits to each prospective insured. An issuer may make available to prospective insureds any of the other Medicare Supplement Insurance Benefit Plans in addition to the basic core package, but not in lieu of it. ( )

**a.** Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first day through the ninetieth day in any Medicare benefit period; ( )

**b.** Coverage of Part A Medicare eligible expenses incurred for hospitalization to the extent not covered by Medicare for each Medicare lifetime inpatient reserve day used; ( )

**c.** Upon exhaustion of the Medicare hospital inpatient coverage including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance; ( )

**d.** Coverage under Medicare Parts A and B for the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations; ( )

**e.** Coverage for the coinsurance amount, or in the case of hospital outpatient department services paid under a prospective payment system, the copayment amount, of Medicare eligible expenses under Part B regardless of hospital confinement, subject to the Medicare Part B deductible; ( )

**f.** Hospice Care. Coverage of cost sharing for all Part A Medicare eligible hospice

care and respite care expenses. (____)

**03.** **Standards for Additional Benefits**. The following additional benefits shall be included in Medicare supplement benefit Plans B, C, D, F, F with High Deductible, G, M, and N as provided by Section 024 of this rule. (____)

**a.** Medicare Part A Deductible. Coverage for one hundred percent (100%) of the Medicare Part A inpatient hospital deductible amount per benefit period. (____)

**b.** Medicare Part A Deductible. Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period. (____)

**c.** Skilled Nursing Facility Care. Coverage for the actual billed charges up to the coinsurance amount from the twenty-first day through the one hundredth day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A.(____)

**d.** Medicare Part B Deductible. Coverage for one hundred percent (100%) of the Medicare Part B deductible amount per calendar year regardless of hospital confinement. (____)

**e.** One Hundred Percent (100%) of the Medicare Part B Excess Charges. Coverage for all the difference between the actual Medicare Part B charges as billed, not to exceed any charge limitation established by the Medicare program or state law, and the Medicare-approved Part B charge. (____)

**f.** Medically Necessary Emergency Care in a Foreign Country. Coverage to the extent not covered by Medicare for eighty percent (80%) of the billed charges for Medicare-eligible expenses for medically necessary emergency hospital, physician and medical care received in a foreign country, which care would have been covered by Medicare if provided in the United States and which care began during the first sixty (60) consecutive days of each trip outside the United States, subject to a calendar year deductible of two hundred fifty dollars ($250), and a lifetime maximum benefit of fifty thousand dollars ($50,000). For purposes of this benefit, "emergency care" shall mean care needed immediately because of an injury or an illness of sudden and unexpected onset. (____)

**0~~11~~23. STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 1990 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES ISSUED FOR DELIVERY ON OR AFTER JULY 1, 1992 AND WITH AN EFFECTIVE DATE FOR COVERAGE PRIOR TO JUNE 1, 2010.**

**01.** **Policy Form or Certificate Form**. An issuer shall make available to each prospective policyholder and certificate-holder a policy form or certificate form containing only the basic core benefits, as defined in Subsection 0~~10~~21.02. ~~(4-5-00)~~(____)

**02.** **Medicare Supplement Benefits**. No groups, packages, or combinations of Medicare supplement benefits other than those listed in this ~~s~~Section shall be offered for sale in this state, except as may be permitted in Subsection 0~~11~~23.07 and in Section 0~~12~~25 of this rule. ~~(4-11-06)~~(____)

**03. Benefit Plans**. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "L" listed in this ~~s~~Subsection and conform to the definitions in Section 0~~04~~10 of this rule. Each benefit shall be structured in accordance with the format provided in Subsections 0~~10~~21.02, and 0~~10~~21.03~~,~~ or 0~~10~~21.07, ~~and 010.08~~ and list the benefits in the order shown in this Subsection ~~011~~. For purposes of Section 0~~11~~23, "structure, language, and format" means style, arrangement and overall content of a benefit.
~~(4-11-06)~~(____)

**04. Other Designations**. An issuer may use, in addition to the benefit plan designations required in Subsection 0~~11~~23.03, other designations to the extent permitted by law.
~~(4-5-00)~~(____)

**05. Make-Up of Benefit Plans~~:~~.** ~~(4-5-00)~~(____)

**a.** Standardized Medicare supplement benefit plan "A" shall be limited to the basic (core) benefits common to all benefit plans, as defined in Subsection 0~~10~~21.02. ~~(4-5-00)~~(____)

**b.** Standardized Medicare supplement benefit plan "B" shall include only the following: The core benefit as defined in Subsection 0~~10~~21.02, plus the Medicare Part A deductible as defined in ~~Subsection~~ Paragraph 0~~10~~21.03.a. ~~(4-5-00)~~(____)

**c.** Standardized Medicare supplement benefit plan "C" shall include only the following: The core benefit as defined in Subsection 0~~10~~21.02, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible and medically necessary emergency care in a foreign country as defined in ~~Subsections~~ Paragraphs 0~~10~~21.03.a. through 0~~10~~21.03.c., and 0~~10~~21.03.h., respectively. ~~(4-5-00)~~(____)

**d.** Standardized Medicare supplement benefit plan "D" shall include only the following: The core benefit (as defined in Subsection 0~~10~~21.02), plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in ~~Subsections~~ Paragraphs 0~~10~~21.03.a., 0~~10~~21.03.b., 0~~10~~21.03.h., and Subsection 0~~10~~21.05, respectively. ~~(4-5-00)~~(____)

**e.** Standardized Medicare supplement benefit plan "E" shall include only the following: The core benefit as defined in Subsection 0~~10~~21.02, plus the Medicare Part A deductible, skilled nursing facility care, medically necessary emergency care in a foreign country, and preventive medical care as defined in ~~Subsections~~ Paragraphs 0~~10~~21.03.a., 0~~10~~21.03.b., 0~~10~~21.03.h., and Subsection 0~~10~~21.04, respectively. ~~(4-5-00)~~(____)

**f.** Standardized Medicare supplement benefit plan "F" shall include only the following: The core benefit as defined in Subsection 0~~10~~21.02, plus the Medicare Part A deductible, the skilled nursing facility care, the Part B deductible, one hundred percent (100%) of the Medicare part B excess charges, and medically necessary emergency care in a foreign country as defined in ~~Subsections~~ Paragraphs 0~~10~~21.03.a. through 0~~10~~21.03.c., 0~~10~~21.03.e., and 0~~10~~21.03.h., respectively. ~~(4-5-00)~~(____)

**g.** Standardized Medicare supplement benefit high deductible plan "F" shall include only the following: one hundred percent (100%) of covered expenses following the payment of

the annual high deductible plan "F" deductible. The covered expenses include the core benefit as defined in Subsection 0~~*10*~~21.02, plus the Medicare Part A deductible, skilled nursing facility care, the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in ~~*Subsections*~~ Paragraphs 0~~*10*~~21.03.a. through 0~~*10*~~21.03.c., 0~~*10*~~21.03.e., and 0~~*10*~~21.03.h., respectively. The annual high deductible plan "F" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "F" policy, and shall be in addition to any other specific benefit deductibles. The annual high deductible Plan "F" deductible shall be one thousand five hundred dollars ($1,500) for 1998 and 1999, and shall be based on the calendar year. It shall be adjusted annually thereafter by the Secretary of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars ($10). ~~*(4-11-06)*~~(____)

**h.** Standardized Medicare supplement benefit plan "G" shall include only the following: The core benefit as defined in Subsection 0~~*10*~~21.02, plus the Medicare Part A deductible, skilled nursing facility care, eighty percent (80%) of the Medicare Part B excess charges, medically necessary emergency care in a foreign country, and the at-home recovery benefit as defined in ~~*Subsections*~~ Paragraphs 0~~*10*~~21.03.a., 0~~*10*~~21.03.b., 0~~*10*~~21.03.d., 0~~*10*~~21.03.h., and Subsection 0~~*10*~~21.05, respectively. ~~*(4-5-00)*~~(____)

**i.** Standardized Medicare supplement benefit plan "H" shall consist of only the following: The core benefit as defined in Subsection 0~~*10*~~21.02, plus the Medicare Part A deductible, skilled nursing facility care, basic prescription drug benefit, and medically necessary emergency care in a foreign country as defined in ~~*Subsections*~~ Paragraphs 0~~*10*~~21.03.a., 0~~*10*~~21.03.b., 0~~*10*~~21.03.f., and 0~~*10*~~21.03.h., respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.
~~*(4-11-06)*~~(____)

**j.** Standardized Medicare supplement benefit plan "I" shall consist of only the following: The core benefit as defined in Subsection 0~~*10*~~21.02, plus the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, basic prescription drug benefit, medically necessary emergency care in a foreign country, and at-home recovery benefit as defined in ~~*Subsections*~~ Paragraphs 0~~*10*~~21.03.a., 0~~*10*~~21.03.b., 0~~*10*~~21.03.e., 0~~*10*~~21.03.f., 0~~*10*~~21.03.h., and Subsection 0~~*10*~~21.05, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. ~~*(4-11-06)*~~(____)

**k.** Standardized Medicare supplement benefit plan "J" shall consist of only the following: The core benefit as defined in Subsection 0~~*10*~~21.02, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care, and at-home recovery benefit as defined in ~~*Subsections*~~ Paragraphs 0~~*10*~~21.03.a. through 0~~*10*~~21.03.c., 0~~*10*~~21.03.e., 0~~*10*~~21.03.g., 0~~*10*~~21.03.h., and Subsections 0~~*10*~~21.04 and 0~~*10*~~21.05, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005.
~~*(4-11-06)*~~(____)

**l.** Standardized Medicare supplement benefit high deductible plan "J" shall consist of only the following: one hundred percent (100%) of covered expenses following the payment of the annual high deductible plan "J" deductible. The covered expenses include the core benefit as defined in Subsection 0~~*10*~~21.02, plus the Medicare Part A deductible, skilled nursing facility care, Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, extended outpatient prescription drug benefit, medically necessary emergency care in a foreign country, preventive medical care benefit and at-home recovery benefit as defined in ~~*Subsections*~~ Paragraphs 0~~*10*~~21.03.a. through 0~~*10*~~21.03.c., 0~~*10*~~21.03.e., 0~~*10*~~21.03.g., 0~~*10*~~21.03.h., and Subsections 0~~*10*~~21.04 and 0~~*10*~~21.05, respectively. The annual high deductible plan "J" deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by the Medicare supplement plan "J" policy, and shall be in addition to any other specific benefit deductibles. The annual deductible shall be one thousand five hundred dollars ($1,500) for 1998 and 1999, and shall be based on a calendar year. It shall be adjusted annually thereafter by the Secretary of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve (12) month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars ($10). The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. ~~*(4-11-06)*~~(____)

**06. Make-Up of Two Medicare Supplement Plans Mandated by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA)**~~:~~. ~~*(4-11-06)*~~(____)

**a.** Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in ~~*Subsection*~~ Paragraph 0~~*10*~~21.07.~~*01*~~a. ~~*(4-11-06)*~~(____)

**b.** Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in ~~*Subsection*~~ Paragraph 0~~*10*~~21.0~~*8*~~7.~~*02*~~b. ~~*(4-11-06)*~~(____)

**07. New or Innovative Benefits**. An issuer may, with the prior approval of the director, offer policies or certificates with new or innovative benefits in addition to the benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits may include benefits that are appropriate to Medicare supplement insurance, new or innovative, not otherwise available, cost-effective, and offered in a manner which is consistent with the goals of simplification of Medicare supplement policies. After December 31, 2005 the innovative benefit shall not include an outpatient prescription drug benefit. (4-11-06)

**024. STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS FOR 2010 STANDARDIZED MEDICARE SUPPLEMENT BENEFIT PLAN POLICIES OR CERTIFICATES WITH AN EFFECTIVE DATE FOR COVERAGE ON OR AFTER JUNE 1, 2010.**

**01. General Standards**. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date for coverage on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit plan standards. Benefit plan standards applicable to Medicare supplement policies and certificates with an effective date for coverage before June 1, 2010 remain subject to the requirements of Section 021 of this rule. (____)

**a.** An issuer shall make available to each prospective policyholder and certificateholder a policy form or certificate form containing only the basic (core) benefits, as defined in Subsection 022.02 of this rule. ( )

**b.** If an issuer makes available any of the additional benefits described in Subsection 022.03, or offers standardized benefit Plans K or L (as described in Paragraphs 024.02.h. and 024.02.i. of this rule), then the issuer shall make available to each prospective policyholder and certificateholder, in addition to a policy form or certificate form with only the basic (core) benefits as described in Paragraph 024.01.a., a policy form or certificate form containing either standardized benefit Plan C (as described in Paragraph 024.02.c. of this rule) or standardized benefit Plan F (as described in Paragraph 024.02.e. of this rule). ( )

**c.** No groups, packages or combinations of Medicare supplement benefits other than those listed in this Section shall be offered for sale in this state, except as may be permitted in Subsection 024.03 and in Section 025 of this rule. ( )

**d.** Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans listed in this Subsection and conform to the definitions in Section 010 of this rule. Each benefit shall be structured in accordance with the format provided in Subsections 022.02 and 022.03 of this rule; or, in the case of plans K or L, in Paragraphs 024.02.h. and 024.02.i. of this rule and list the benefits in the order shown. For purposes of this Section, "structure, language, and format" means style, arrangement and overall content of benefit. ( )

**e.** In addition to the benefit plan designations required in Paragraph 024.01.d., an issuer may use other designations to the extent permitted by law. ( )

**02. Make-up of 2010 Standardized Benefit Plans**. ( )

**a.** Standardized Medicare supplement benefit Plan A shall include only the following: The basic (core) benefits as defined in Subsection 022.02 of this rule. ( )

**b.** Standardized Medicare supplement benefit Plan B shall include only the following: The basic (core) benefit as defined in Subsection 022.02 of this rule, plus one hundred percent (100%) of the Medicare Part A deductible as defined in Paragraph 022.03.a. of this rule. ( )

**c.** Standardized Medicare supplement benefit Plan C shall include only the following: The basic (core) benefit as defined in Subsection 022.02 of this rule, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, and medically necessary emergency care in a foreign country as defined in Paragraphs 022.03. a., 022.03.c., 022.03.d., and 022.03.f of this rule, respectively. ( )

**d.** Standardized Medicare supplement benefit Plan D shall include only the following: The basic (core) benefit (as defined in Subsection 022.02 of this rule), plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Paragraphs 022.03.a.,

022.03.c., and 022.03.f. of this rule, respectively. (____)

**e.** Standardized Medicare supplement [regular] Plan F shall include only the following: The basic (core) benefit as defined in Subsection 022.02 of this rule, plus one hundred percent (100%) of the Medicare Part A deductible, the skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs 022.03.a., and 022.03.c., through 022.03.f. of this rule, respectively. (____)

**f.** Standardized Medicare supplement Plan F With High Deductible shall include only the following: One hundred percent (100%) of covered expenses following the payment of the annual deductible set forth in Subparagraph 024.02.f.ii. (____)

i. The basic (core) benefit as defined in Subsection 022.02 of this rule, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B deductible, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs 022.03.a., and 022.03.c., through 022.03.f. of this rule, respectively. (____)

ii. The annual deductible in Plan F With High Deductible shall consist of out-of-pocket expenses, other than premiums, for services covered by [regular] Plan F, and shall be in addition to any other specific benefit deductibles. The basis for the deductible shall be fifteen hundred dollars ($1,500) and shall be adjusted annually from 1999 by the Secretary of the U.S. Department of Health and Human Services to reflect the change in the Consumer Price Index for all urban consumers for the twelve-month period ending with August of the preceding year, and rounded to the nearest multiple of ten dollars ($10). (____)

**g.** Standardized Medicare supplement benefit Plan G shall include only the following: The basic (core) benefit as defined in Subsection 022.02 of this rule, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, one hundred percent (100%) of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country as defined in Paragraphs 022.03.a., 022.03.c., 022.03.e., and 022.03.f. of this rule, respectively. (____)

**h.** Standardized Medicare supplement Plan K is mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following: (____)

i. Part A Hospital Coinsurance sixty-first through ninetieth days: Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the sixty-first through the ninetieth day in any Medicare benefit period. (____)

ii. Part A Hospital Coinsurance ~~*ninetieth*~~ *ninety-first* through one hundred fiftieth day: Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the ~~*ninetieth*~~ *ninety-first* through the one hundred fiftieth day in any Medicare benefit period; ~~*(7-1-09)T*~~*(____)*

iii. Part A Hospitalization After One Hundred Fiftieth Day: Upon exhaustion of the

Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of one hundred percent (100%) of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional three hundred sixty-five (365) days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance; ( )

iv. Medicare Part A Deductible: Coverage for fifty percent (50%) of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in Subparagraph 024.02.h.x. ( )

v. Skilled Nursing Facility Care: Coverage for fifty percent (50%) of the coinsurance amount for each day used from the twenty-first day through the one hundredth day in a Medicare benefit period for post-hospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in Subparagraph 024.02.h.x. ( )

vi. Hospice Care: Coverage for fifty percent (50%) of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in Subparagraph 024.02.h.x. ( )

vii. Blood: Coverage for fifty percent (50%), under Medicare Part A or B, of the reasonable cost of the first three (3) pints of blood (or equivalent quantities of packed red blood cells, as defined under federal regulations) unless replaced in accordance with federal regulations until the out-of-pocket limitation is met as described in Subparagraph 024.02.h.x. ( )

viii. Part B Cost Sharing: Except for coverage provided in Subparagraph 024.02.h.ix., coverage for fifty percent (50%) of the cost sharing otherwise applicable under Medicare Part B after the policyholder pays the Part B deductible until the out-of-pocket limitation is met as described in Subparagraph 024.02.h.x. ( )

ix. Part B Preventive Services: Coverage of one hundred percent (100%) of the cost sharing for Medicare Part B preventive services after the policyholder pays the Part B deductible; and ( )

x. Cost Sharing After Out-of-Pocket Limits: Coverage of one hundred percent (100%) of all cost sharing under Medicare Parts A and B for the balance of the calendar year after the individual has reached the out-of-pocket limitation on annual expenditures under Medicare Parts A and B of four thousand dollars ($4,000) in 2006, indexed each year by the appropriate inflation adjustment specified by the Secretary of the U.S. Department of Health and Human Services. ( )

**i.** Standardized Medicare supplement Plan L is mandated by the Medicare Prescription Drug, Improvement and Modernization Act of 2003, and shall include only the following: ( )

i. The benefits described in Subparagraphs 024.02.h.i. through 024.02.h.iii., and 024.02.h.ix. ( )

ii. The benefits described in Subparagraphs 024.02.h.iv. through 024.02.h.viii. but substituting seventy-five percent (75%) for fifty percent (50%); and ( )

iii. The benefit described in Subparagraph 024.02.h.x. but substituting two thousand dollars ($2,000) for four thousand dollars ($4,000). ( )

**j.** Standardized Medicare supplement Plan M shall include only the following: The basic (core) benefit as defined in Subsection 022.02 of this rule, plus fifty percent (50%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in a foreign country as defined in Paragraphs 022.03.b., 022.03.c., and 022.03.f. of this rule, respectively. ( )

**k.** Standardized Medicare supplement Plan N shall include only the following: The basic (core) benefit as defined in Subsection 022.02 of this rule, plus one hundred percent (100%) of the Medicare Part A deductible, skilled nursing facility care, and medically necessary emergency care in foreign country as defined in Paragraphs 022.03.a., 022.03.c., and 022.03.f. of this rule, respectively, with copayments in the following amounts: ( )

i. The lesser of twenty dollars ($20) or the Medicare Part B coinsurance or copayment for each covered health care provider office visit (including visits to medical specialists); and ( )

ii. The lesser of fifty dollars ($50) or the Medicare Part B coinsurance or copayment for each covered emergency room visit, however, this copayment shall be waived if the insured is admitted to any hospital and the emergency visit is subsequently covered as a Medicare Part A expense. ( )

**03. New or Innovative Benefits**. An issuer may, with the prior approval of the director, offer policies or certificates with new or innovative benefits, in addition to the standardized benefits provided in a policy or certificate that otherwise complies with the applicable standards. The new or innovative benefits shall include only benefits that are appropriate to Medicare supplement insurance, are new or innovative, are not otherwise available, and are cost-effective. Approval of new or innovative benefits must not adversely impact the goal of Medicare supplement simplification. New or innovative benefits shall not include an outpatient prescription drug benefit. New or innovative benefits shall not be used to change or reduce benefits, including a change of any cost-sharing provision, in any standardized plan. ( )

**0~~1~~25. MEDICARE SELECT POLICIES AND CERTIFICATES.**
This ~~s~~Section shall apply to Medicare Select policies and certificates, as defined in this ~~s~~Section. No policy or certificate may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this ~~s~~Section. ~~(4-5-00)~~( )

**01. Definitions**. For the purposes of Section 0~~1~~25: ~~(4-5-00)~~( )

**a.** Complaint. Any dissatisfaction expressed by an individual concerning a Medicare Select issuer or its network providers. (4-5-00)

**b.** Grievance. Dissatisfaction expressed in writing by an individual insured under a

Medicare Select policy or certificate with the administration, claims practices, or provision of services concerning a Medicare Select issuer or its network providers. (4-5-00)

**c.** Medicare Select issuer. An issuer offering, or seeking to offer, a Medicare Select policy or certificate. (4-5-00)

**d.** Medicare Select policy or Medicare Select certificate. Respectively a Medicare supplement policy or certificate that contains restricted network provisions. (4-5-00)

**e.** Network provider. A provider of health care, or a group of providers of health care, which has entered into a written agreement with the issuer to provide benefits insured under a Medicare Select policy. (4-5-00)

**f.** Restricted network provision. Any provision which conditions the payment of benefits, in whole or in part, on the use of network providers. (4-5-00)

**g.** Service area. The geographic area approved by the director within which an issuer is authorized to offer a Medicare Select policy. (4-5-00)

**02. Authorization to Issue Medicare Select Policy or Certificate**. The director may authorize an issuer to offer a Medicare Select policy or certificate, pursuant to Section 0~~1~~25 of ~~*these*~~ this rule~~s~~ and Section 4358 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 if the director finds that the issuer has satisfied all of the requirements of ~~*IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act."*~~ this rule. ~~*(4-5-00)*~~(_____)

**03. Filing Requirements**. A Medicare Select issuer shall not issue a Medicare Select policy or certificate in this state until its plan of operation has been approved by the director. (4-5-00)

**04. Proposed Plan of Operation**. A Medicare Select issuer shall file a proposed plan of operation with the director in a format prescribed by the director. The plan of operation shall contain at least the following information: (4-5-00)

**a.** Evidence that all covered services that are subject to restricted network provisions are available and accessible through network providers, including a demonstration that: (4-5-00)

i. Services can be provided by network providers with reasonable promptness with respect to geographic location, hours of operation, and after-hour care. The hours of operation and availability of after-hour care shall reflect usual practice in the local area. Geographic availability shall reflect the usual travel times within the community. (4-5-00)

ii. The number of network providers in the service area is sufficient, with respect to current and expected policyholders, either to deliver adequately all services that are subject to a restricted network provision or to make appropriate referrals. (4-5-00)

iii. There are written agreements with network providers describing specific responsibilities. (4-5-00)

iv. Emergency care is available twenty-four (24) hours per day and seven (7) days per week. (4-5-00)

v. In the case of covered services that are subject to a restricted network provision and are provided on a prepaid basis, there are written agreements with network providers prohibiting the providers from billing or otherwise seeking reimbursement from or recourse against any individual insured under a Medicare Select policy or certificate. This Sub~~*section*~~paragraph ~~*012.04.a.v.*~~ shall not apply to supplemental charges or coinsurance amounts as stated in the Medicare Select policy or certificate. ~~*(4-11-06)*~~(____)

**b.** A statement or map providing a clear description of the service area. (4-5-00)

**c.** A description of the grievance procedure to be utilized. (4-5-00)

**d.** A description of the quality assurance program, including: (4-5-00)

i. The formal organizational structure; (4-5-00)

ii. The written criteria for selection, retention, and removal of network providers; and (4-5-00)

iii. The procedures for evaluating quality of care provided by network providers, and the process to initiate corrective action when warranted. (4-5-00)

**e.** A list and description, by specialty, of the network providers. (4-5-00)

**f.** Copies of the written information proposed to be used by the issuer to comply with Subsection 0~~*1*~~25.08. ~~*(4-5-00)*~~(____)

**g.** Any other information requested by the director. (4-5-00)

**05. Proposed Changes to the Plan of Operation**. A Medicare Select issuer shall file any proposed changes to the plan of operation, except for changes to the list of network providers, with the director prior to implementing the changes. Changes shall be considered approved by the director after thirty (30) days unless specifically disapproved. An updated list of network providers shall be filed with the director at least quarterly. (4-5-00)

**06. Restrictions**. A Medicare Select policy or certificate shall not restrict payment for covered services provided by non-network providers if: (4-5-00)

**a.** The services are for symptoms requiring emergency care or are immediately required for an unforeseen illness, injury or a condition; and (4-5-00)

**b.** It is not reasonable to obtain services through a network provider. (4-5-00)

**07. Payment for Full Coverage**. A Medicare Select policy or certificate shall provide payment for full coverage under the policy for covered services that are not available through

network providers. (4-5-00)

**08. Full and Fair Disclosure**. A Medicare Select issuer shall make full and fair disclosure in writing of the provisions, restrictions and limitations of the Medicare Select policy or certificate to each applicant. This disclosure shall include at least the following: (4-5-00)

**a.** An outline of coverage sufficient to permit the applicant to compare the coverage and premiums of the Medicare Select policy or certificate with: (4-5-00)

i. Other Medicare supplement policies or certificates offered by the issuer; and (4-5-00)

ii. Other Medicare Select policies or certificates. (4-5-00)

**b.** A description (including address, phone number and hours of operation) of the network providers, including primary care physicians, specialty physicians, hospitals and other providers. (4-5-00)

**c.** A description of the restricted network provisions, including payments for coinsurance and deductibles when providers other than network providers are utilized. Except to the extent specified in the policy or certificate, expenses incurred when using out-of-network providers do not count toward the out-of-pocket annual limit contained in plans K and L. (4-11-06)

**d.** A description of coverage for emergency and urgently needed care and other out-of-service area coverage. (4-5-00)

**e.** A description of limitations on referrals to restricted network providers and to other providers. (4-5-00)

**f.** A description of the policyholder's rights to purchase any other Medicare supplement policy or certificate otherwise offered by the issuer. (4-5-00)

**g.** A description of the Medicare Select issuer's quality assurance program and grievance procedure. (4-5-00)

**09. Medicare Select Policy or Certificate**. Prior to the sale of a Medicare Select policy or certificate, a Medicare Select issuer shall obtain from the applicant a signed and dated form stating that the applicant has received the information provided pursuant to Subsection 0~~1~~25.08 ~~*of this section*~~ and that the applicant understands the restrictions of the Medicare Select policy or certificate. ~~*(4-5-00)*~~(____)

**10. Complaints and Grievances**. A Medicare Select issuer shall have and use procedures for hearing complaints and resolving written grievances from the subscribers. The procedures shall be aimed at mutual agreement for settlement and may include arbitration procedures. (4-5-00)

**a.** The grievance procedure shall be described in the policy and certificates and in the

outline of coverage. (4-5-00)

**b.** At the time the policy or certificate is issued, the issuer shall provide detailed information to the policyholder describing how a grievance may be registered with the issuer. (4-5-00)

**c.** Grievances shall be considered in a timely manner and shall be transmitted to appropriate decision-makers who have authority to fully investigate the issue and take corrective action. (4-5-00)

**d.** If a grievance is found to be valid, corrective action shall be taken promptly. (4-5-00)

**e.** All concerned parties shall be notified about the results of a grievance. (4-5-00)

**f.** The issuer shall report no later than each March 31 to the director regarding its grievance procedure. The report shall be in a format prescribed by the director and shall contain the number of grievances filed in the past year and a summary of the subject, nature and resolution of such grievances. (4-5-00)

**11. Initial Purchase**. At the time of initial purchase, a Medicare Select issuer shall make available to each applicant for a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement policy or certificate otherwise offered by the issuer. (4-5-00)

**12. Comparable or Lesser Benefits**. (4-5-00)

**a.** At the request of an individual insured under a Medicare Select policy or certificate, a Medicare Select issuer shall make available to the individual insured the opportunity to purchase a Medicare supplement policy or certificate offered by the issuer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies or certificates available without requiring evidence of insurability after the Medicare Select policy or certificate has been in force for six (6) months. (4-5-00)

**b.** For the purposes of Subsection 0~~1~~25.12, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of ~~*Subsection 012.12.b.*~~ this Paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges. ~~*(4-11-06)*~~(____)

**13. Continuation of Coverage**. Medicare Select policies and certificates shall provide for continuation of coverage in the event the Secretary of Health and Human Services determines that Medicare Select policies and certificates issued pursuant to this ~~s~~Section should be discontinued due to either the failure of the Medicare Select program to be re-authorized under law or its substantial amendment. ~~*(4-5-00)*~~(____)

**a.** Each Medicare Select issuer shall make available to each individual insured under a Medicare Select policy or certificate the opportunity to purchase any Medicare supplement

policy or certificate offered by the insurer which has comparable or lesser benefits and which does not contain a restricted network provision. The issuer shall make the policies and certificates available without requiring evidence of insurability. (4-5-00)

**b.** For the purposes of Subsection 0~~1~~25.13, a Medicare supplement policy or certificate will be considered to have comparable or lesser benefits unless it contains one (1) or more significant benefits not included in the Medicare Select policy or certificate being replaced. For the purposes of ~~*Subsection 012.13.b.*~~ this Paragraph, a significant benefit means coverage for the Medicare Part A deductible, coverage for at-home recovery services or coverage for Part B excess charges. ~~*(4-11-06)*~~(____)

**14. Requests for Data**. A Medicare Select issuer shall comply with reasonable requests for data made by state or federal agencies, including the United States Department of Health and Human Services, for the purpose of evaluating the Medicare Select Program. (4-5-00)

**0~~13~~26. OPEN ENROLLMENT.**

**01. Offer of Coverage**. An issuer shall not deny or condition the issuance or effectiveness of any Medicare supplement policy or certificate available for sale in this state, nor discriminate in the pricing of a policy or certificate because of the health status, claims experience, receipt of health care, or medical condition of an applicant in the case of an application for a policy or certificate that is submitted prior to or during the six (6) month period beginning with the first day of the first month in which an individual is both sixty-five (65) years of age or older and is enrolled for benefits under Medicare Part B. Each Medicare supplement policy and certificate currently available from an issuer shall be made available to all applicants who qualify under this Subsection ~~*013.01*~~ without regard to age. ~~*(4-5-00)*~~(____)

**a.** If an applicant qualifies under Subsection 0~~13~~26.01 and submits an application during the time period referenced in Subsection 0~~13~~26.01 and, as of the date of application, has had a continuous period of creditable coverage of at least six (6) months, the issuer shall not exclude benefits based on a preexisting condition. ~~*(4-5-00)*~~(____)

**b.** If the applicant qualifies under Subsection 0~~13~~26.01 and submits an application during the time period referenced in Subsection 0~~13~~26.01 and, as of the date of application, has had a continuous period of creditable coverage that is less than six (6) months, the issuer shall reduce the period of any preexisting condition exclusion by the aggregate of the period of creditable coverage applicable to the applicant as of the enrollment date. The Secretary of Health and Human Services shall specify the manner of the reduction under this ~~s~~Subsection. ~~*(4-11-06)*~~(____)

**c.** Except as provided in Subsection 0~~13~~26.01~~*.a.*~~, and Sections 0~~14~~27 and 0~~25~~38, Subsection 0~~13~~26.01~~*.a.*~~ shall not be construed as preventing the exclusion of benefits under a policy, during the first six (6) months, based on a preexisting condition for which the policyholder or certificate~~-~~holder received treatment or was otherwise diagnosed during the six (6) months before the coverage became effective. ~~*(4-11-06)*~~(____)

**0~~14~~27. GUARANTEED ISSUE FOR ELIGIBLE PERSONS.**

**01. Guaranteed Issue**. (4-5-00)

**a.** Eligible persons are those individuals described in Subsection 0~~14~~27.02 who seek to enroll under the policy during the period specified in Subsection 0~~14~~27.0~~5~~3, and who submit evidence of the date of termination or disenrollment or Medicare Part D enrollment with the application for a Medicare supplement policy. ~~(4-11-06)~~(____)

**b.** With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in Subsection 0~~14~~27.05 that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care, or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy. ~~(4-11-06)~~(____)

**02. Eligible Persons**. An eligible person is an individual described here in any part of Subsection 0~~14~~27.02: ~~(4-11-06)~~(____)

**a.** The individual is enrolled under an employee welfare benefit plan that provides health benefits that supplement the benefits under Medicare; and the plan terminates, or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefits plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual because the individual leaves the plan; (4-5-00)

**b.** The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, and any of the following circumstances apply, or the individual is sixty-five (65) years of age or older and is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the Social Security Act, and there are circumstances similar to those described below that would permit discontinuance of the individual's enrollment with such provider if such individual were enrolled in a Medicare Advantage plan: (4-11-06)

i. The certification of the organization or plan under this part has been terminated; (4-11-06)

ii. The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides; (4-11-06)

iii. The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary of Health and Human Services, but not including termination of the individual's enrollment on the basis described in Section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under Section 1856), or the plan is terminated for all individuals within a residence area; (4-11-06)

iv. The individual demonstrates, in accordance with guidelines established by the Secretary of Health and Human Services~~,~~: (____)

(a) ~~t~~That the organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or (____)

(b) ~~t~~The organization, or agent, or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or (____)

(c) ~~t~~The individual meets such other exceptional conditions as the Secretary may provide. ~~(4-11-06)~~(____)

**c.** The individual is enrolled with: (4-5-00)

i. An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost); (5-3-03)

ii. A similar organization operating under demonstration project authority, effective for periods before April 1, 1999; (4-5-00)

iii. An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or (5-3-03)

iv. An organization under a Medicare Select policy; and (4-5-00)

**d.** The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.b. ~~(4-5-00)~~(____)

**e.** The individual is enrolled under a Medicare supplement policy and the enrollment ceases because: (4-5-00)

i. Of the insolvency of the issuer or bankruptcy of the non-issuer organization; or (4-5-00)

ii. Of other involuntary termination of coverage or enrollment under the policy; (4-5-00)

iii. The issuer of the policy substantially violated a material provision of the policy; or (4-5-00)

iv. The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual. (4-5-00)

**f.** The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under Part C of Medicare, any eligible organization under a

contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act, or a Medicare Select policy; and (4-11-06)

**g.** The subsequent enrollment under ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.f. is terminated by the enrollee during any period within the first twelve (12) months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under Section 1851(e) of the federal Social Security Act); or ~~*(4-5-00)*~~(____)

**h.** The individual, upon first becoming eligible for benefits under Part A of Medicare at age sixty-five (65), enrolls in a Medicare Advantage plan under Part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and disenrolls from the plan or program by not later than twelve (12) months after the effective date of enrollment. (4-11-06)

**i.** The individual enrolls in a Medicare Part D plan during the initial enrollment period and at the time of enrollment in Part D, was enrolled under Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in ~~*Subsection*~~ Paragraph 0~~*14*~~27.05.e. ~~*(4-11-06)*~~(____)

**03. Guaranteed Issue Time Periods**. (5-3-03)

**a.** In the case of an individual described in ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.a., the guaranteed issue period begins on the later of the date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); or the date that the applicable coverage terminates or ceases; and ends sixty-three (63) days thereafter; ~~*(4-11-06)*~~(____)

**b.** In the case of an individual described in ~~*Subsections*~~ Paragraphs 0~~*14*~~27.02.b., 0~~*14*~~27.02.c., 0~~*14*~~27.02.f., ~~*014.02.g.,*~~ or 0~~*14*~~27.02.h., whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends sixty-three (63) days after the date the applicable coverage is terminated; ~~*(4-11-06)*~~(____)

**c.** In the case of an individual described in ~~*Subsections*~~ Paragraph 0~~*14*~~27.02.e.~~*i. and 014.02.e.ii.*~~, the guaranteed issue period begins on the earlier of: ~~*(5-3-03)*~~(____)

i. The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and (5-3-03)

ii. The date that the applicable coverage is terminated, and ends on the date that is sixty-three (63) days after the date the coverage is terminated; (5-3-03)

**d.** In the case of an individual described in ~~*Subsections*~~ Paragraph 0~~*14*~~27.02.b. and Subparagraph 0~~*14*~~27.02.~~*c*~~e.iii., and Subparagraph 0~~*14*~~27.02.~~*f*~~e.iv., Paragraph 0~~*14*~~27.02.~~*g*~~f., or 0~~*14*~~27.02.h., who disenrolls voluntarily, the guaranteed issue period begins on the date that is sixty (60) days before the effective date of the disenrollment and ends on the date that is sixty-three (63) days after the effective date; and ~~*(4-11-06)*~~(____)

**e.** In the case of an individual described in ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.i., the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the sixty-day (60) period immediately preceding the initial Part D enrollment period and ends on the date that is sixty-three (63) days after the effective date of the individual's coverage under Medicare Part D; and ~~*(4-11-06)*~~(____)

**f.** In the case of an individual described in Subsection 0~~*14*~~27.02 but not described in the preceding provisions of Subsection 0~~*14*~~27.03, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is sixty-three (63) days after the effective date. ~~*(4-11-06)*~~(____)

**04. Extended Medigap Access for Interrupted Trial Periods**. (5-3-03)

**a.** In the case of an individual described in ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.f. (or deemed to be so described, pursuant to this ~~*Subsection 014.04.a.*~~ Paragraph) whose enrollment with an organization or provider described in ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.f. is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.f.; ~~*(4-11-06)*~~(____)

**b.** In the case of an individual described in ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.h. (or deemed to be so described, pursuant to this ~~*Subsection 014.04.b.*~~ Paragraph) whose enrollment with a plan or in a program described in ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.h. is involuntarily terminated within the first twelve (12) months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.h.; and ~~*(4-11-06)*~~(____)

**c.** For purposes of ~~*Subsection*~~ Paragraphs 0~~*14*~~27.02.f. and 0~~*14*~~27.02.h., no enrollment of an individual with an organization or provider described in ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.f. or with a plan or in a program described in ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.h. may be deemed to be an initial enrollment under ~~*Subsection 014.04.c.*~~ this Paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan or program. ~~*(5-3-03)*~~(____)

**05. Products to Which Eligible Persons are Entitled**. The Medicare supplement policy to which eligible persons are entitled under: (4-11-06)

**a.** ~~*Subsections*~~ Paragraphs 0~~*14*~~27.02.a. through 0~~*14*~~27.02.e. ~~*and 014.02.g.*~~ is a Medicare supplement policy which has a benefit package classified as Plan A, B, C, or F (including F with a high deductible), K or L offered by any issuer. ~~*(4-11-06)*~~(____)

**b.** Subject to Paragraph 027.05.c., ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.g. is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in ~~*Subsection*~~ Paragraph 0~~*14*~~27.05.a. ~~*(4-11-06)*~~(____)

**c.** After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in Subsection 0~~*14*~~27.05 is: ~~*(4-11-06)*~~(____)

i. The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or (4-11-06)

ii. At the election of the policyholder, an A, B, C, F (including F with a high deductible), K or L policy that is offered by any issuer; (4-11-06)

**d.** ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.h. shall include any Medicare supplement policy offered by any issuer. ~~*(4-11-06)*~~(____)

**e.** ~~*Subsection*~~ Paragraph 0~~*14*~~27.02.i. is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including F with a high deductible), K, or L and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage. ~~*(4-11-06)*~~(____)

**06. Notification Provisions**. (4-5-00)

**a.** At the time of an event described in Subsection 0~~*14*~~27.02 of this ~~*section*~~ rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this Section ~~*014*~~, and of the obligations of issuers of Medicare supplement policies under Subsection 0~~*14*~~27.01. Such notice shall be communicated contemporaneously with the notification of termination. ~~*(4-5-00)*~~(____)

**b.** At the time of an event described in Subsection 0~~*14*~~27.02 ~~*of this section*~~ because of which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this ~~*s*~~Section, and of the obligations of issuers of Medicare supplement policies under Subsection 0~~*14*~~27.01. Such notice shall be communicated within ten (10) working days of the issuer receiving notification of disenrollment. ~~*(4-5-00)*~~(____)

## 0~~*15*~~28. STANDARDS FOR CLAIMS PAYMENT.

**01. Compliance**. An issuer shall comply with Section 1882(c)(3) of the Social Security Act (as enacted by Section 4081(b)(2)(C) of the Omnibus Budget Reconciliation Act of 1987 (OBRA) 1987, Pub. L. No. 100-203) by: ~~*(4-5-00)*~~(____)

**a.** Accepting a notice from a Medicare carrier on dually assigned claims submitted by participating physicians and suppliers as a claim for benefits in place of any other claim form otherwise required and making a payment determination on the basis of the information contained in that notice; (4-5-00)

**b.** Notifying the participating physician or supplier and the beneficiary of the payment determination; (4-5-00)

**c.** Paying the participating physician or supplier directly; (4-5-00)

**d.** Furnishing, at the time of enrollment, each enrollee with a card listing the policy name, number and a central mailing address to which notices from a Medicare carrier may be sent; (4-5-00)

**e.** Paying user fees for claim notices that are transmitted electronically or otherwise; and (4-5-00)

**f.** Providing to the Secretary of Health and Human Services, at least annually, a central mailing address to which all claims may be sent by Medicare carriers. (4-5-00)

**02. Certification**. Compliance with the requirements set forth in Subsection 0~~*15*~~28.01 shall be certified on the Medicare supplement insurance experience reporting form. ~~*(4-5-00)*~~(____)

**0~~*16*~~29. LOSS RATIO STANDARDS AND REFUND OR CREDIT OF PREMIUM.**

**01. Loss Ratio Standards**. (4-5-00)

**a.** A Medicare supplement policy form or certificate form shall not be delivered or issued for delivery unless the policy form or certificate form can be expected, as estimated for the entire period for which rates are computed to provide coverage, to return to policyholders and certificateholders in the form of aggregate benefits (not including anticipated refunds or credits) provided under the policy form or certificate form. (4-5-00)

i. At least seventy-five percent (75%) of the aggregate amount of premiums earned in the case of group policies; or (4-5-00)

ii. At least sixty-five percent (65%) of the aggregate amount of premiums earned in the case of individual policies; (4-5-00)

**b.** Calculated on the basis of incurred claims experience or incurred health care expenses where coverage is provided by a managed care organization on a service rather than reimbursement basis and earned premiums for the period and in accordance with accepted actuarial principles and practices. Incurred health care expenses where coverage is provided by a managed care organization shall not include: (4-11-06)

i. Home office and overhead costs; (4-11-06)

ii. Advertising costs; (4-11-06)

iii. Commissions and other acquisition costs; (4-11-06)

iv. Taxes; (4-11-06)

v. Capital costs; (4-11-06)

vi. Administrative costs; and (4-11-06)

vii. Claims processing costs. (4-11-06)

**c.** All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this ~~s~~Section when combined with actual experience to date. Filings of rate revisions shall also demonstrate that the anticipated loss ratio over the entire future period for which the revised rates are computed to provide coverage can be expected to meet the appropriate loss radio standards. ~~*(4-5-00)*~~(____)

**d.** For purposes of applying ~~*Subsections*~~ Paragraphs 0~~*16*~~29.01.a. and 0~~*17*~~30.0~~*1*~~5.~~*c*~~b., only, policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies. ~~*(4-11-06)*~~(____)

**e.** For policies issued prior to July 1, 1992, expected claims in relation to premiums shall meet: (4-5-00)

i. The originally filed anticipated loss ratio when combined with the actual experience since inception; (4-5-00)

ii. The appropriate loss ratio requirement from Sub~~*section*~~paragraphs 0~~*16*~~29.01.a.i. and 0~~*16*~~29.01.a.ii. when combined with actual experience beginning with July 1, 1992 to date; and ~~*(4-5-00)*~~(____)

iii. The appropriate loss ratio requirement from Sub~~*section*~~paragraphs 0~~*16*~~29.01.a.i. and 0~~*16*~~29.01.a.ii. over the entire future period for which the rates are computed to provide coverage. ~~*(4-5-00)*~~(____)

**02. Refund or Credit Calculation**. (4-5-00)

**a.** An issuer shall collect and file with the director by May 31 of each year the data contained in the applicable reporting form as defined by NAIC Model Regulation (Attachments) and accessible by the Internet (www.doi.idaho.gov) for each type in a standard Medicare supplement benefit plan. (4-11-06)

**b.** If on the basis of the experience as reported the benchmark ratio since inception (ratio one (1)) exceeds the adjusted experience ratio since inception (ratio three (3)), then a refund or credit calculation is required. The refund calculation shall be done on a statewide basis for each type in a standard Medicare supplement benefit plan. For purposes of the refund or credit calculation, experience on policies issued within the reporting year shall be excluded. (4-5-00)

**c.** For the purpose of Section 0~~*16*~~29, policies or certificates issued prior to July 1, 1992, the issuer shall make the refund or credit calculation separately for all individual policies

(including all group policies subject to an individual loss ratio standard when issued) combined and all other group policies combined for experience after July 1, 1992. The first report shall be due by May 31, 1994. ~~*(4-5-00)*~~(____)

**d.** A refund or credit shall be made only when the benchmark loss ratio exceeds the adjusted experience loss ratio and the amount to be refunded or credit exceeds a de minimis level. The refund shall include interest from the end of the calendar year to the date of the refund or credit at a rate specified by the Secretary of Health and Human Services, but in no event shall it be less than the average rate of interest for thirteen (13) week Treasury notes. A refund or credit against premiums due shall be made by September 30 following the experience year upon which the refund or credit is based. (4-5-00)

**03. Annual Filing of Premium Rates**. An issuer of Medicare supplement policies and certificates issued before or after the effective date of July 1, 1992, in this state shall file annually its rates, rating schedule, and supporting documentation including ratios of incurred losses to earned premiums by policy duration for approval by the director in accordance with the filing requirements and procedures prescribed by the director. The supporting documentation shall also demonstrate in accordance with actuarial standards of practice using reasonable assumptions that the appropriate loss ratio standards can be expected to be met over the entire period for which rates are computed. The demonstration shall exclude active life reserves. An expected third-year loss ratio which is greater than or equal to the applicable percentage shall be demonstrated for policies or certificates in force less than three (3) years. As soon as practicable, but prior to the effective date of enhancements in Medicare benefits, every issuer of Medicare supplement policies or certificates in this state shall file with the director, in accordance with the applicable filing procedures of this state: (4-5-00)

**a.** Appropriate premium adjustments necessary to produce loss ratios as anticipated for the current premium for the applicable policies or certificates. The supporting documents necessary to justify the adjustment shall accompany the filing. (4-5-00)

**b.** An issuer shall make premium adjustments necessary to produce an expected loss ratio under the policy or certificate to conform to minimum loss ratio standards for Medicare supplement policies and which are expected to result in a loss ratio at least as great as that originally anticipated in the rates used to produce current premiums by the issuer for the Medicare supplement policies or certificates. No premium adjustment which would modify the loss ratio experience under the policy other than the adjustments described herein shall be made with respect to a policy at any time other than upon its renewal date or anniversary date. (4-5-00)

**c.** If an issuer fails to make premium adjustments acceptable to the director, the director may order premium adjustments, refunds, or premium credits deemed necessary to achieve the loss ratio required by Section 0~~*16*~~29. ~~*(4-5-00)*~~(____)

**d.** Any appropriate riders, endorsements, or policy forms needed to accomplish the Medicare supplement policy or certificate modifications necessary to eliminate benefit duplications with Medicare. The riders, endorsements, or policy forms shall provide a clear description of the Medicare supplement benefits provided by the policy or certificate. (4-5-00)

**04. Public Hearings**. The director may conduct a public hearing to gather information

concerning a request by an issuer for an increase in a rate for a policy form or certificate form issued before or after the effective date of July 1, 1992 if the experience of the form for the previous reporting period is not in compliance with the applicable loss ratio standard. The determination of compliance is made without consideration of any refund or credit for the reporting period. Public notice of the hearing shall be furnished in a manner deemed appropriate by the director. (4-5-00)

**0~~*17*~~30. FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES.**

**01. Filing ~~*and Premium Rates*~~ of Policy Forms.** (____)

**a.** An issuer shall not deliver or issue for delivery a policy or certificate to a resident of this state unless the policy form or certificate form has been filed with and approved by the director in accordance with filing requirements and procedures prescribed by the director. (____)

**b.** An issuer shall file any riders or amendments to policy or certificate forms to delete outpatient prescription drug benefits as required by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 only with the director in the state in which the policy or certificate was issued. (____)

**02. Filing of Premium Rates.** (____)

**a.** An issuer shall not use or change premium rates for a Medicare supplement policy or certificate unless the rates, rating schedule, and supporting documentation have been filed with and approved by the director in accordance with the filing requirements and procedures prescribed by the director. (____)

**b.** Except as provided in Subsection 0~~*16*~~29.03, the insured shall not receive more than one (1) rate increase in any twelve (12) month period~~,~~. ~~*(4-11-06)*~~(____)

**~~*a*~~03.** Except as provided in ~~*Subsection*~~ Paragraph 0~~*17*~~30.0~~*1*~~3.~~*b*~~a., an issuer shall not file for approval more than one (1) form of a policy or certificate of each type for each standard Medicare supplement benefit plan. ~~*(4-5-00)*~~(____)

**~~*b*~~a.** An issuer may offer, with the approval of the director, up to four (4) additional policy forms or certificate forms of the same type for the same standard Medicare supplement benefit plan, one (1) or each of the following cases: (4-5-00)

i. The inclusion of new or innovative benefits; (4-5-00)

ii. The addition of either direct response or agent marketing methods; (4-5-00)

iii. The addition of either guaranteed issue or underwritten coverage; (4-5-00)

iv. The offering of coverage to individuals for Medicare by reason of disability. (4-5-00)

**~~c~~b.** For the purposes of Subsection 0~~17~~30.0~~1~~3, "type" means an individual policy, a group policy, an individual Medicare Select policy, or a group Medicare Select policy.
~~*(4-11-06)*~~(____)

**0~~2~~4. Availability of Policy Form or Certificate**. Except as provided in ~~*Subsection*~~ Paragraph 0~~17~~30.0~~2~~4.a., an issuer shall continue to make available for purchase any policy form or certificate form issued after the effective date of ~~*IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act," that has been approved by the director*~~ this rule. A policy form or certificate form shall not be considered to be available for purchase unless the issuer has actively offered it for sale in the previous twelve (12) months.
~~*(4-5-00)*~~(____)

**a.** An issuer may discontinue the availability of a policy form or certificate form if the issuer provides to the director in writing its decision at least thirty (30) days prior to discontinuing the availability of the form of the policy or certificate. After receipt of this notice by the director, the issuer shall no longer offer for sale the policy form or certificate form in this state. (4-5-00)

**b.** An issuer that discontinues the availability of a policy form or certificate form pursuant to ~~*Subsection*~~ Paragraph 0~~17~~30.0~~2~~4.a. shall not file for approval a new policy form or certificate form of the same type for the same standard Medicare supplement benefit plan as the discontinued form for a period of five (5) years after the issuer provides notice to the director of the discontinuance. The period of discontinuance may be reduced if the director determines that a shorter period is appropriate. ~~*(4-5-00)*~~(____)

**c.** The sale or other transfer of Medicare supplement business to another issuer shall be considered a discontinuance for the purposes of Subsection 0~~17~~30.0~~2~~4. ~~*(4-11-06)*~~(____)

**d.** A change in the rating structure or methodology shall be considered a discontinuance under this Subsection 0~~17~~30.0~~2~~4 unless the issuer complies with the following requirements: ~~*(4-5-00)*~~(____)

i. The issuer provides an actuarial memorandum, in a form and manner prescribed by the director, describing the manner in which the revised rating methodology and resultant rates differ from the existing rating methodology and existing rates. (4-5-00)

ii. The issuer does not subsequently put into effect a change of rates or rating factors that would cause the percentage differential between the discontinued and subsequent rates as described in the actuarial memorandum to change. The director may approve a change to the differential which is in the public interest. (4-5-00)

**0~~3~~5. Experience of Policy Forms**. (4-5-00)

**a.** Except as provided in ~~*Subsection*~~ Paragraph 0~~17~~30.0~~3~~5.b., the experience of all policy forms or certificate forms of the same type in a standard Medicare supplement benefit plan shall be combined for purposes of the refund or credit calculation prescribed in Section 0~~16~~29.
~~*(4-5-00)*~~(____)

**b.** Forms assumed under an assumption reinsurance agreement shall not be combined with the experience of other forms for purposes of the refund or credit calculation. (4-5-00)

**0~~4~~6. Attained Age Rating Prohibited**. With respect to Medicare supplement policies that conform to the ~~*Ten*~~ Standard Benefit Plans developed by the National Association of Insurance Commissioners and adopted by the State of Idaho July 1, 1992, under IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act," sold to residents of this state and all those sold on or after January 1, 1995, it is an unfair practice and an unfair method of competition for any issuer, insurer, or licensee to use the increasing age of an insured, subscriber or participant as the basis for increasing premiums or prepayment charges for policyholders who initially purchase a policy after January 1, 1995. This rule explicitly authorizes both issue age ratings and community ratings consistent with the prohibition of attained age ratings and allows companies to resubmit for approval issue age ratings previously rejected. ~~*(4-5-00)*~~(____)

**0~~5~~7. Rating by Area and Gender Prohibited**. With respect to Medicare supplement policies that conform to the ~~*Ten*~~ Standard Benefit Plans developed by the National Association of Insurance Commissioners and adopted by the State of Idaho, July 1, 1992, under IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act," sold to residents of this State and all those sold on or after January 1, 1999, it is an unfair practice and an unfair method of competition for any issuee, issuer, or licensee to use area or gender for rating purpose. ~~*(4-5-00)*~~(____)

**0~~18~~31. PERMITTED COMPENSATION ARRANGEMENTS.**

**01. Commissions**. An issuer or other entity may provide commission or other compensation to an agent or other representative for the sale of a Medicare supplement policy or certificate only if the first-year commission or other first-year compensation is no more than two hundred percent (200%) of the commission or other compensation paid for selling or servicing the policy or certificate in the second year or period. (4-5-00)

**02. Compensation in Subsequent Years**. The commission or other compensation provided in subsequent renewal years must be the same as that provided in the second year or period and must be provided for no fewer than five (5) renewal years. (4-11-06)

**03. Renewal Compensation**. No issuer or other entity shall provide compensation to its agent or other producers and no agent or producer shall receive compensation greater than the renewal compensation payable by the replacing issuer on renewal policies or certificates if an existing policy or certificate is replaced. (4-5-00)

**04. Compensation**. For purposes of Section 0~~18~~31, compensation includes pecuniary or non-pecuniary remuneration of any kind relating to the sale or renewal of the policy or certificate, including but not limited to bonuses, gifts, prizes, awards, and finder's fees. ~~*(4-5-00)*~~(____)

**0~~19~~32. REQUIRED DISCLOSURE PROVISIONS.**

**01. General Rules**. (4-5-00)

**a.** Medicare supplement policies and certificates shall include a renewal or continuation provision. The language or specifications of the provision shall be consistent with the type of contract issued. The provision shall be appropriately captioned and shall appear on the first page of the policy, and shall include any reservation by the issuer of the right to change premiums ~~*and any automatic renewal premium increases based on the policyholder's age*~~.
~~*(4-5-00)*~~(____)

**b.** Except for riders or endorsements by which the issuer effectuates a request made in writing by the insured, exercises a specifically reserved right under a Medicare supplement policy, or is required to reduce or eliminate benefits to avoid duplication of Medicare benefits, all riders or endorsements added to a Medicare supplement policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require a signed acceptance by the insured. After the date of policy or certificate issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term shall be agreed to in writing and signed by the insured, unless the benefits are required by the minimum standards for Medicare supplement policies, or if the increased benefits or coverage is required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, the premium charge shall be set forth in the policy. (4-5-00)

**c.** Medicare supplement policies or certificates shall not provide for the payment of benefits based on standards described as "usual and customary," "reasonable and customary," or words of similar import. (4-5-00)

**d.** If a Medicare supplement policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy and be labeled as "Preexisting Condition Limitations." (4-5-00)

**e.** Medicare supplement policies and certificates shall have a notice prominently printed on the first page of the policy or certificate or attached thereto, stating in substance that the policyholder or certificate-holder shall have the right to return the policy or certificate within thirty (30) days of its delivery and to have the premium refunded if, after examination of the policy or certificate, the insured person is not satisfied for any reason. ~~*(4-5-00)*~~(____)

**f.** Issuers of accident and sickness policies or certificates which provide hospital or medical expense coverage on an expense incurred or indemnity basis to persons eligible for Medicare shall provide to those applicants a "Guide to Health Insurance for People with Medicare" in the form developed jointly by the National Association of Insurance Commissions and the Centers for Medicare & Medicaid Services and in a type size no smaller than twelve (12) point type. Delivery of the Guide shall be made whether or not the policies or certificates are advertised, solicited or issued as Medicare supplement policies or certificates as defined in this rule. Except in the case of direct response issuers, delivery of the Guide shall be made to the applicant at the time of application and acknowledgment of receipt of the Guide shall be obtained by the issuer. Direct response issuers shall deliver the Guide to the applicant upon request but not later than at the time the policy is delivered. (4-11-06)

**g.** For the purposes of Section 0~~*19*~~32, "form" means the language, format, type size,

type proportional spacing, bold character, and line spacing. ~~*(4-11-06)*~~(____)

**02. Notice Requirements**. (4-5-00)

**a.** As soon as practicable, but no later than thirty (30) days prior to the annual effective date of any Medicare benefit changes, an issuer shall notify its policyholders and certificateholders of modifications it has made to Medicare supplement insurance policies or certificates in a format acceptable to the director. The notice shall: (4-5-00)

i. Include a description of revisions to the Medicare program and a description of each modification made to the coverage provided under the Medicare supplement policy or certificate, and (4-5-00)

ii. Inform each policyholder or certificateholder as to when any premium adjustment is to be made due to changes in Medicare. (4-5-00)

**b.** The notice of benefit modifications and any premium adjustments shall be in outline form and in clear and simple terms so as to facilitate comprehension. (4-5-00)

**c.** The notices shall not contain or be accompanied by any solicitation. (4-5-00)

**03. Medicare Prescription Drug, Improvement, and Modernization Act of 2003 Notice Requirements**. Issuers shall comply with any notice requirements of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. (4-11-06)

**04. Outline of Coverage Requirements for Medicare Supplement Policies**. (4-5-00)

**a.** Issuers shall provide an outline of coverage to all applicants at the time application is presented to the prospective applicant and, except for direct response policies, shall obtain an acknowledgment of receipt of the outline from the applicant; and (4-5-00)

**b.** If an outline of coverage is provided at the time of application and the Medicare supplement policy or certificate is issued on a basis which would require revision of the outline, a substitute outline of coverage properly describing the policy or certificate shall accompany the policy or certificate when it is delivered and contain the following statement, in no less than twelve (12) point type, immediately above the company name:

**"NOTICE: Read this outline of coverage carefully. It is not identical to the outline of coverage provided upon application and the coverage originally applied for has not been issued."** (4-5-00)

**c.** The outline of coverage provided to applicants pursuant to this ~~s~~Section consists of four (4) parts: a cover page, premium information, disclosure pages, and charts displaying the features of each benefit plan offered by the issuer. The outline of coverage shall be in the language and format prescribed below in no less than twelve (12) point type. All plans ~~*A-L*~~ shall be shown on the cover page, and the plans that are offered by the issuer shall be prominently identified. Premium information for plans that are offered shall be shown on the cover page or immediately

following the cover page and shall be prominently displayed. The premium and mode shall be stated for all plans that are offered to the prospective applicant. All possible premiums for the prospective applicant shall be illustrated. ~~*(4-11-06)*~~(____)

**05. Notice Regarding Policies or Certificates Which ~~a~~Are Not Medicare Supplement Policies**. ~~*(4-5-00)*~~(____)

**a.** Any accident and sickness insurance policy or certificate other than Medicare supplement policy and policy issued pursuant to a contract under Section 1876 of the Federal Social Security Act (42 U.S.C. Section 1395 et seq.), disability income policy; or other policy identified in ~~*Subsection*~~ Paragraph 001.02.b. of this rule, issued for delivery in this state to persons eligible for Medicare shall notify insureds under the policy that the policy is not a Medicare supplement policy or certificate. The notice shall either be printed or attached to the first page of the outline of coverage delivered to insureds under the policy, or if no outline of coverage is delivered, to the first page of the policy, or certificate delivered to insureds. The notice shall be in no less than twelve (12) point type and shall contain the following language:

**"THIS [POLICY OR CERTIFICATE] IS NOT A MEDICARE SUPPLEMENT [POLICY OR CONTRACT]. If you are eligible for Medicare, review the Guide to Health Insurance for People with Medicare available from the company."** ~~*(4-11-06)*~~(____)

**b.** Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in ~~*Subsection*~~ Paragraph 0~~*19*~~32.04.a. shall disclose, using the applicable NAIC Model Regulation as incorporated by reference in Section 004 of this rule and referenced as Appendix C located ~~*on the Internet*~~ at ~~(~~www.doi.idaho.gov, - select Senior Services ~~*for People on Medicare under the Consumer Services link*~~, see ~~*Attachments*~~ incorporated documents to ~~*NAIC Model Act implementing the Medicare supplement insurance minimum standards*~~ IDAPA 18.01.54 - "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act"~~)~~, the extent to which the policy duplicates Medicare. The disclosure statement shall be provided as a part of, or together with, the application for the policy or certificate. ~~*(4-11-06)*~~(____)

**0~~*20*~~33. REQUIREMENTS FOR APPLICATION FORMS AND REPLACEMENT COVERAGE.**

**01. Application Forms**. Application forms shall include the following questions designed to elicit information as to whether, as of the date of the application, the applicant currently has another Medicare supplement, Medicare Advantage, Medicaid coverage, or another health insurance policy or certificate in force or whether a Medicare supplement policy or certificate is intended to replace any other accident and sickness policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and agent containing such questions and statements may be used. (4-11-06)

**02. Statements**. (4-5-00)

**a.** You do not need more than one (1) Medicare supplement policy. (4-5-00)

**b.** If you purchase this policy, you may want to evaluate your existing health

coverage and decide if you need multiple coverages. (4-5-00)

**c.** You may be eligible for benefits under Medicaid and may not need a Medicare supplement policy. (4-5-00)

**d.** If, after purchasing this policy, you become eligible for Medicaid, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, during your entitlement to benefits under Medicaid for twenty-four (24) months. You must request this suspension within ninety (90) days of becoming eligible for Medicaid. If you are no longer entitled to Medicaid, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within ninety (90) days of losing Medicaid eligibility. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension. (4-11-06)

**e.** If you are eligible for, and have enrolled in a Medicare supplement policy by reason of disability and you later become covered by an employer or union-based group health plan, the benefits and premiums under your Medicare supplement policy can be suspended, if requested, while you are covered under the employer or union-based group health plan. If you suspend your Medicare supplement policy under these circumstances, and later lose your employer or union-based group health plan, your suspended Medicare supplement policy (or, if that is no longer available, a substantially equivalent policy) will be reinstituted if requested within ninety (90) days of losing your employer or union-based health plan. If the Medicare supplement policy provided coverage for outpatient prescription drugs and you enrolled in Medicare Part D while your policy was suspended, the reinstituted policy will not have outpatient prescription drug coverage, but will otherwise be substantially equivalent to your coverage before the date of the suspension. (4-11-06)

**f.** Counseling services are available through the Senior Health Insurance Benefit Advisors program (SHIBA), to provide advice concerning your purchase of Medicare supplement insurance and concerning medical assistance through the state Medicaid program, including benefits as a Qualified Medicare Beneficiary (QMB) and a Specified Low-Income Medicare Beneficiary (SLMB). (4-11-06)

**03.** **Questions**. See Idaho Appendix A at the end of this ~~*chapter*~~ rule. ~~*(4-11-06)*~~(_____)

**04.** **Agents**. Agents shall list any other health insurance policies they have sold to the applicant. (4-5-00)

**a.** List policies sold which are still in force. (4-5-00)

**b.** List policies sold in the past five (5) years which are no longer in force. (4-5-00)

**05.** **Direct Response Issuer**. In the case of a direct response issuer, a copy of the application or supplemental form, signed by the applicant, and acknowledged by the insurer, shall be returned to the applicant by the insurer upon delivery of the policy. (4-5-00)

**06. Notice Regarding Replacement of Medicare Supplement Coverage**. Upon determining that a sale will involve replacement of Medicare supplement coverage, any issuer, other than a direct response issuer, or its agent, shall furnish the applicant, prior to issuance or delivery of the Medicare supplement policy or certificate, a notice regarding replacement of Medicare supplement coverage. One (1) copy of the notice signed by the applicant and the agent, except where the coverage is sold without an agent, shall be provided to the applicant and an additional signed copy shall be retained by the issuer. A direct response issuer shall deliver to the applicant at the time of the issuance of the policy the notice regarding replacement of Medicare supplement coverage. (4-5-00)

**07. SHIBA And Consumer Assistance Link**. The notice required in Subsection 0~~20~~33.06 for an issuer shall be provided in substantially the following form based on the NAIC Model Regulation as incorporated by reference in Section 004 of this rule, which includes NAIC Appendixes A, B, and C and all other outlines of coverage and specific plan designs. For the website, go to Idaho Department of Insurance ~~H~~home ~~P~~page~~,~~ at www.doi.idaho.gov, select Senior Services ~~for People on Medicare under Consumer Services link~~, see ~~Attachments~~ incorporated documents to ~~NAIC Model Act implementing the Medicare supplement insurance minimum standards~~ IDAPA 18.01.54 - "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act". To obtain a copy of the NAIC Model Regulation, contact SHIBA at the Idaho Department of Insurance (208) 334-4250. ~~(4-11-06)~~(____)

**0~~21~~34. FILING REQUIREMENTS FOR ADVERTISING.**
An issuer shall provide a copy of any Medicare supplement advertisement intended for use in this state whether through written, radio, or television medium to the director for review or approval by the director. (4-5-00)

**0~~22~~35. STANDARDS FOR MARKETING.**

**01. Issuer**. An issuer, directly or through its producers, shall: (4-5-00)

**a.** Establish marketing procedures to assure that any comparison of policies by its agents or other producers will be fair and accurate. (4-5-00)

**b.** Establish marketing procedures to assure excessive insurance is not sold or issued. (4-5-00)

**c.** Display prominently by type, stamp, or other appropriate means, on the first page of the policy the following:

**"Notice to buyer: This policy may not cover all of your medical expenses."** (4-5-00)

**d.** Inquire and otherwise make every reasonable effort to identify whether a prospective applicant or enrollee for Medicare supplement insurance already has accident and sickness insurance and the types and amounts of any such insurance. (4-5-00)

**e.** Establish auditable procedures for verifying compliance with this Subsection 0~~22~~35.01. ~~(4-5-00)~~(____)

**02. Prohibited Acts and Practices**. In addition to the practices prohibited in Chapter 13, Title 41, Idaho Code, the following acts and practices are prohibited: (4-5-00)

**a.** Twisting. Knowingly making any misleading representation or incomplete or fraudulent comparison of any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert an insurance policy or to take out a policy of insurance with another insurer. (4-5-00)

**b.** High pressure tactics. Employing any method of marketing having the effect of or tending to induce the purchase of insurance through force, fright, threat, whether explicit or implied, or undue pressure to purchase or recommend the purchase of insurance. (4-5-00)

**c.** Cold lead advertising. Making use directly or indirectly of any method of marketing which fails to disclose in a conspicuous manner that a purpose of the method of marketing is solicitation of insurance and that contact will be made by an insurance agent or insurance company. (4-5-00)

**03. Prohibited Terms**. The terms "Medicare supplement," "Medigap," "Medicare wrap-around," and words of similar import shall not be used unless the policy is issued in compliance with ~~*IDAPA 18.01.54, "Rule To Implement The NAIC Medicare Supplement Insurance Minimum Standards Model Act."*~~ this rule. ~~*(4-5-00)*~~(  )

**0~~2~~36. APPROPRIATENESS OF RECOMMENDED PURCHASE AND EXCESSIVE INSURANCE.**

In recommending the purchase or replacement of any Medicare supplement policy or certificate, an agent shall make reasonable efforts to determine the appropriateness of a recommended purchase or replacement. Any sale of Medicare supplement policy or certificate that will provide an individual more than one Medicare supplement policy or certificate is prohibited. An issuer shall not issue a Medicare supplement policy or certificate to an individual enrolled in Medicare Part C unless the effective date of the coverage is after the termination date of the individual's Part C coverage. (4-11-06)

**0~~24~~37. REPORTING OF MULTIPLE POLICIES.**

**01. Reporting**. On or before March 1 of each year, an issuer shall report the following information for every individual resident of this state for which the issuer has in force more than one (1) Medicare supplement policy or certificate: (4-5-00)

**a.** Policy and certificate number, and (4-5-00)

**b.** Date of issuance. (4-5-00)

**02. Grouping by Individual Policyholder**. The items set forth above must be grouped by individual policyholder. (4-5-00)

**0~~25~~38. PROHIBITION AGAINST PREEXISTING CONDITIONS, WAITING PERIODS, ELIMINATION PERIODS AND PROBATIONARY PERIODS IN REPLACEMENT POLICIES OR CERTIFICATES.**

**01. Waiving of Time Periods**. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate, the replacing issuer shall waive any time periods applicable to preexisting conditions, waiting periods, elimination periods and probationary periods in the new Medicare supplement policy or certificate for similar benefits to the extent such time was spent under the original policy. (4-5-00)

**02. Replacing Policy**. If a Medicare supplement policy or certificate replaces another Medicare supplement policy or certificate which has been in effect for at least six (6) months, the replacing policy shall not provide any time period applicable to preexisting conditions, waiting periods, elimination periods, and probationary periods for benefits similar to those contained in the original policy or certificate. (4-5-00)

**039. PROHIBITION AGAINST USE OF GENETIC INFORMATION AND REQUESTS FOR GENETIC TESTING. ~~*THIS SECTION APPLIES TO ALL POLICIES WITH POLICY YEARS BEGINNING ON OR AFTER MAY 21, 2009*~~.**
*This section applies to all policies with policy years beginning on or after May 21, 2009.*
*( )*

**01. Prohibited Provisions**. An issuer of a Medicare supplement policy or certificate: ( )

**a.** Shall not deny or condition the issuance of effectiveness of the policy or certificate (including the imposition of any exclusion of benefits under the policy based on a preexisting condition) on the basis of the genetic information with respect to such individual; and ( )

**b.** Shall not discriminate in the pricing of the policy or certificate (including the adjustment of premium rates) of an individual on the basis of the genetic information with respect to such individual. ( )

**02. Denial of Coverage**. Nothing in Subsection 039.01 shall be construed to limit the ability of an issuer, to the extent otherwise permitted by law, from: ( )

**a.** Denying or conditioning the issuance or effectiveness of the policy or certificate or increasing the premium for a group based on the manifestation of a disease or disorder of an insured or applicant; or ( )

**b.** Increasing the premium for any policy issued to an individual based on the manifestation of a disease or disorder of an individual who is covered under the policy (in such case, the manifestation of a disease or disorder in one individual cannot also be used as genetic information about other group members and to further increase the premium for the group). ( )

**03. Genetic Testing**. An issuer of a Medicare supplement policy or certificate shall not request or require an individual or a family member of such individual to undergo a genetic

test. ( )

**04.** **Payment**. Subsection 039.03 shall not be construed to preclude an issuer of a Medicare supplement policy or certificate from obtaining and using the results of a genetic test in making a determination regarding payment (as defined for the purposes of applying the regulations promulgated under part C of title XI and Section 264 of the Health Insurance Portability and Accountability Act of 1996, as may be revised from time to time) and consistent with Subsection 039.01. of this rule. ( )

**05.** **Information**. For purposes of carrying out Subsection 039.04, an issuer of a Medicare supplement policy or certificate may request only the minimum amount of information necessary to accomplish the intended purpose. ( )

**06.** **Allowed Genetic Testing**. Notwithstanding Subsection 039.03, an issuer of a Medicare supplement policy may request, but not require, that an individual or a family member of such individual undergo a genetic test if each of the following conditions is met: ( )

**a.** The request is made pursuant to research that complies with part 46 of title 45, Code of Federal Regulations, or equivalent Federal regulations, and any applicable State or local law or rules for the protection of human subjects in research. ( )

**b.** The issuer clearly indicates to each individual, or in the case of a minor child, to the legal guardian of such child, to whom the request is made that: ( )

i. Compliance with the request is voluntary; and ( )

ii. Non-compliance will have no effect on enrollment status or premium or contribution amounts. ( )

**c.** No genetic information collected or acquired under Subsection 039.06 shall be used for underwriting, determination of eligibility to enroll or maintain enrollment status, premium rates, or the issuance, renewal, or replacement of a policy or certificate. ( )

**d.** The issuer notifies the Secretary in writing that the issuer is conducting activities pursuant to the exception provided for under Subsection 039.06, including a description of the activities conducted. ( )

**e.** The issuer complies with such other conditions as the Secretary may by regulation require for activities conducted under Subsection 039.06. ( )

**f.** An issuer of a Medicare supplement policy or certificate shall not request, require, or purchase genetic information for underwriting purposes. ( )

**g.** An issuer of a Medicare supplement policy or certificate shall not request, require or purchase genetic information with respect to any individual prior to such individual's enrollment under the policy in connection with such enrollment. ( )

**h.** If an issuer of Medicare supplement policy or certificate obtains genetic

information incidental to the requesting, requiring, or purchasing of other information concerning an individual, such request, requirement, or purchase shall not be considered a violation of Paragraph 039.06.g. if such request, requirement, or purchase is not in violation of Paragraph 039.06.f. ( )

**07.** **Definitions**. For the purposes of this Section only; ( )

**a.** "Issuer of a Medicare supplement policy or certificate" includes third-party administrator, or other person acting for or on behalf of such issuer. ( )

**b.** "Family member" means, with respect to an individual, any other individual who is a first-degree, second-degree, third-degree, or fourth-degree relative of such individual. ( )

**c.** "Genetic information" means, with respect to any individual, information about such individual's genetic tests, the genetic tests of family members of such individual, and the manifestation of a disease or disorder in family members of such individual. Such term includes, with respect to any individual, any request for, or receipt of, genetic services, or participation in clinical research which includes genetic services, by such individual or any family member of such individual. Any reference to genetic information concerning an individual or family member of an individual who is a pregnant woman, includes genetic information of any fetus carried by such pregnant woman, or with respect to an individual or family member utilizing reproductive technology, includes genetic information of any embryo legally held by an individual or family member. The term "genetic information" does not include information about the sex or age of any individual. ( )

**d.** "Genetic services" means a genetic test, genetic counseling (including obtaining, interpreting, or assessing genetic information), or genetic education. ( )

**e.** "Genetic test" means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detect genotypes, mutations, or chromosomal changes. The term "genetic test" does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved. ( )

**f.** "Underwriting purposes" means: ( )

i. Rules for, or determination of, eligibility (including enrollment and continued eligibility) for benefits under the policy; ( )

ii. The computation of premium or contribution amounts under the policy; ( )

iii. The application of any preexisting condition exclusion under the policy; and( )

iv. Other activities related to the creation, renewal, or replacement of a contract of health insurance or health benefits. ( )

**0~~26~~40. -- 999. (RESERVED).**

## IDAHO APPENDI*X A*

***Sample Consumer Questionnaire***

If you lost or are losing other health insurance coverage and received a notice from your prior insurer saying you were eligible for guaranteed issue of a Medicare supplement insurance policy, or that you had certain rights to buy such a policy, you may be guaranteed acceptance in one or more of our Medicare supplement plans. Please include a copy of the notice from your prior insurer with your application.

**PLEASE ANSWER ALL QUESTIONS.**

**To the best of your knowledge:**

**1.** Did you turn 65 in the last six (6) months?

**2.** Did you enroll in Medicare Part B in the last six (6) months?

**a.** If so, what is the effective date?

**3.** Are you covered for medical assistance through the state Medicaid program? NOTE TO APPLICANT; If you are participating in a "Spend-Down Program and have not met your "Share of Cost," please answer NO to this question.

**4.** Will Medicaid pay your premiums for this Medicare supplement policy?

**5.** Do you receive any benefits from Medicaid OTHER THAN payments toward your Medicare Part B premium?

**6.** If you had coverage from any Medicare plan other than original Medicare within the past sixty-three (63) days (for example, a Medicare Advantage Plan, or a Medicare HMO or PPO), fill in your start and end dates below. If you are still covered under this plan, leave "END" blank.

**7.** If you are still covered under the Medicare plan, do you intend to replace your current coverage with this new Medicare supplement policy?

**8.** Was this your first time in this type of Medicare plan?

**9.** Did you drop a Medicare supplement policy to enroll in the Medicare plan?

**10.** Do you have another Medicare supplement policy in force?

**a.** If so, with what company and what plan do you have?

**b.** If so, so you intend to replace your current medicare supplement policy with this policy?

**11.** Have you had coverage under any other health insurance within the past sixty-three (63) days?

**a.** If so, with what company and what kind of policy?

**b.** What are your dates of coverage under the other policy?

# IDAPA 18 - DEPARTMENT OF INSURANCE

## 18.01.55 - FIRE SAFETY STANDARDS FOR DAY CARE

## DOCKET NO. 18-0155-0901 - (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 on January 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 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 41-211 and 41-254, 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 rule is being repealed in its entirety because the statutory authority for the rule was eliminated by Senate Bill 1112 as passed by the 2009 Legislature.**

**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, page 299.**

**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: None

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Mark Larson, State Fire Marshal at 208/334-4371.

DATED this 2nd day of October, 2009.

Mark Larson, State Fire Marshal
Idaho Department of Insurance
700 W. State Street, 3rd Floor
P.O. Box 83720, Boise, ID 83720-0043
Phone: 208/334-4371
Fax: 208/334-4398

***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 41-211, and 41-254.

**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 23, 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 is being repealed in its entirety because the statutory authority for the rule was eliminated by Senate Bill 1112 as passed by the 2009 Legislature.**

**TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The change is needed to conform 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: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the change was made necessary by action of the 2009 Idaho Legislature's enactment of SB 1112.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Mark Larson, State Fire Marshal at 208/334-4371.

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 31st day of July, 2009.

***IDAPA 18.01.55 IS BEING REPEALED IN ITS ENTIRETY.***

# IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

## 24.01.01 - RULES OF THE BOARD OF ARCHITECTURAL EXAMINERS

## DOCKET NO. 24-0101-0901

## 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 54-312, 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 Book 2 of the October 7, 2009, Idaho Administrative Bulletin, Vol. 09-10, pages 113 and 114.**

**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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at 208 334-3233.

DATED this 28th day of October, 2009.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945,fax

***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 54-312, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 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 rule updates the Board of Architectural Examiners' website address and the incorporation by reference section to include the 2009-2010 NCARB Handbook for Interns and Architects. These updates will help ensure the most up-to-date standards are being met by interns and provide current website information for the board.**

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

**This temporary rule is necessary to protect the public. It ensures interns and their supervisors are using current standards.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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 the change is due to update of current NCARB edition.

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

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

DATED this 17th day August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**004. INCORPORATION BY REFERENCE (RULE 4).**
The document titled 200~~4~~9-20~~05~~10 NCARB Handbook for Interns and Architects, dated ~~*August*~~ July 200~~4~~9, referenced in Subsection 250.01, is herein incorporated by reference. The document titled NCARB Rules of Conduct as published by the National Council of Architectural Registration Boards, Dated ~~*August*~~ July 200~~4~~9, referenced in Section 750, is hereby incorporated by reference. All documents incorporated by reference can be obtained at the office of the Bureau and on the Board web site. ~~*(4-11-06)*~~(____)

**005. ADDRESS OF THE IDAHO BOARD OF ARCHITECTURAL EXAMINERS (RULE 5).**
The office of the Board of Architectural Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is arc@ibol.idaho.gov. The Board's official web site ~~*is*~~ can be found at http://www.ibol.idaho.gov~~*/arc.htm*~~. ~~*(4-11-06)*~~(____)

# IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

## 24.04.01 - RULES OF THE IDAHO BOARD OF COSMETOLOGY

## DOCKET NO. 24-0401-0901

## 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 54-821, 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 306 and 307.**

**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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at 208 334-3233.

DATED this 28th day of October, 2009.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945,fax

***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 54-821, Idaho Code.

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

**The 2009 Legislature passed SB1073, which added "practice" to Section 54-827, Idaho Code. Rule 176 implements the law change by adding "practice" to the permit, adding a deadline for application submission, designating the Bureau as the agent allowed to issue permits when objective requirements are met, and establishing sanitation requirements.**

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

**The 2009 Legislature passed S1073, which added "practice" to Section 54-827, Idaho Code. This allows the Board of Cosmetology to issue permits to practice, demonstrate or teach cosmetology. It also allows the board to designate an agent and establish requirements for a permit.**

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

**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 change is due to revisions in Title 54, Chapter 8, Idaho Code.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 23, 2009.

DATED this 1st day July, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**176. APPLICATION AND FEE FOR PERMIT TO PRACTICE, DEMONSTRATE, OR TEACH COSMETOLOGY. (RULE 176).**
Application and fee for permit to practice, demonstrate, or teach cosmetology shall be made by the sponsoring agent on forms furnished by the Board and must be received in that office at least seven (7) business days prior to the date of practice, demonstration, or instruction. The applicant shall include the name, address, license number, and the state, territory, possession, or country of licensure, and a ten dollar ($10) fee for each person who shall practice, demonstrate, or instruct. The permit fee shall not be required for those persons holding a current personal Idaho license issued by the Board. Said practice, demonstration, or instruction shall not commence until the permit is received by the applicant. The permit shall be available for inspection by the Board or its agent at the location of said practice, demonstration, or instruction. The applicant shall be required to inform each person of the sanitary rules for shops and schools prior to said practice, demonstration, or instruction. If the application meets objective requirements established by the Board and the location where the permitted activities are to occur meets the sanitary requirements of Board Rule 800, the Bureau may issue the permit. ~~*(3-8-02)*~~(  )

# IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

## 24.07.01 - RULES OF THE IDAHO STATE BOARD OF LANDSCAPE ARCHITECTS

## DOCKET NO. 24-0701-0801

## 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 54-3003, 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 December 3, 2008 Idaho Administrative Bulletin, Vol. 08-12, pages 63 and 64.**

**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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at 208 334-3233.

DATED this 28th day of October, 2009.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945,fax

***THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE: The effective date of the temporary rule is October 10, 2008.**

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-3003, 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 December 17, 2008.

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 2008 Legislature approved a change to Section 004 for the CLARB model rules of professional conduct as amended February 2007. Subsection 425.01 was not updated at that time and has created a conflict of requirements. This change will protect public safety by removing the ambiguity and specifying the appropriate code of conduct.**

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

**The 2008 Legislature approved a change to subsection 004 for the CLARB model rules of professional conduct as amended February 2007. Subsection 425 was not updated at that time and has created a conflict of requirements. This change will protect public safety by removing the ambiguity and specifying the appropriate code of conduct.**

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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: None

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the change is necessary to remove ambiguity and specify appropriate code of conduct.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before December 24, 2008.

DATED this 31st day of October, 2008.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**425. RULES OF PROFESSIONAL RESPONSIBILITY (RULE 425).**

**01. Rules of Professional Responsibility**. Pursuant to Section 004 of these rules, t~~T~~he CLARB model rules of professional conduct, as ~~amended September 2002~~ incorporated, are ~~hereby adopted as~~ the Rules of Professional Responsibility for all Idaho licensed landscape architects. ~~*(3-20-04)*~~(____)

**02. Violation of the Rules of Professional Responsibility**. The Board will take action against a licensee under Section 54-3004(5), Idaho Code, who is found in violation of the Rules of Professional Responsibility. (3-20-04)

# IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

## 24.07.01 - RULES OF THE IDAHO STATE BOARD OF LANDSCAPE ARCHITECTS

## DOCKET NO. 24-0701-0901

## 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 54-3003, 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 Book 2 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 140 and 141.**

**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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at 208 334-3233.

DATED this 28th day of October, 2009.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945,fax

***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 54-3003, 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 rule updates the Board of Landscape Architect's website address as it has changed. Clarifies the references required for applicants.**

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

No fee or charges is being imposed 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 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 were discussed in noticed open meetings.

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

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

DATED this 17th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**005. ADDRESS OF IDAHO BOARD OF LANDSCAPE ARCHITECTS (RULE 5).**
The office of the Board of Landscape Architects is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is lar@ibol.idaho.gov. The Board's official web site ~~*is*~~ can be found at http://www.ibol.idaho.gov~~*/lar.htm*~~. ~~*(3-26-08)*~~(  )

***(BREAK IN CONTINUITY OF SECTIONS)***

**201. APPLICATION FORM (RULE 201).**

**01. Reference Requirements**. Applicants are required to furnish the Board with four (4) references. ~~*t*~~Two (2) of the references must be from currently licensed ~~*Idaho*~~ Landscape Architects. The remaining two (2) may be licensed landscape architects, licensed engineers, licensed architects, or any combination thereof. All references must be from competent individuals who are well acquainted with the applicant's character and professional ability. ~~*(3-20-04)*~~(  )

**02. Materials Submitted to Board**. All required applications, statements, fees and other documentation must be submitted to the Board in care of the Bureau of Occupational Licenses, and shall include: (3-20-04)

**a.** A passport photograph taken within thirty (30) days of the date of application; (3-20-04)

**b.** Documentation of being at least eighteen (18) years of age at the time of application; and (3-20-04)

**c.** Either certification of graduation from an approved college or school of landscape architecture; or (3-20-04)

**d.** Documentation of all actual landscape architectural or other applicable experience signed by the person under whose supervision the work was performed, giving kind and type of work done, together with dates of employment. (3-20-04)

**03. Deadlines**. To be considered by the Board, completed applications must be received by the Bureau at least thirty (30) days prior to the first day of the month in which the Board will meet. Applications for examination must be filed with the Bureau of Occupational Licenses by April 1 for the June examination, or October 1 for the December examination. (3-20-04)

# IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

## 24.08.01 - RULES OF THE STATE BOARD OF MORTICIANS

## DOCKET NO. 24-0801-0901

## 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 approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1107, 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 Book 2 of the October 7, 2009 Idaho Administrative Bulletin, Vol. 09-10, pages 142 through 144.**

**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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Cherie Simpson at 208 334-3233.

DATED this 28th day of October, 2009.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
1109 Main St. Ste. 220
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945,fax

***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 54-1107, 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 rule updates the Board of Mortician's website address as it has changed. The rule also adds a section on continuing education and outlines the requirements in an effort to maintain licensee competency.**

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

No fee or charges is being imposed 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 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 were discussed in noticed open meetings.

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

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

DATED this 17th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**005. ADDRESS OF IDAHO BOARD OF MORTICIANS (RULE 5).**
The office of the Board of Morticians is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is mor@ibol.idaho.gov. The Board's official web site ~~*is*~~ can be found at http://www.ibol.idaho.gov~~*/mor.htm*~~. ~~*(4-11-06)*~~(____)

***(BREAK IN CONTINUITY OF SECTIONS)***

**401. -- 4~~24~~09. (RESERVED).**

**410. CONTINUING EDUCATION (RULE 410).**
In order to protect the public health and safety and promote the public welfare, the Board has adopted the following rules for continuing education. (____)

**01. Continuing Education (CE) Requirement**. Each Idaho licensed mortician and funeral director must successfully complete a minimum of eight (8) hours of continuing education annually for license renewal. (____)

**a.** Beginning July 1, 2011, each licensee must certify on their renewal application form that compliance with the annual CE requirements has been met during the previous twelve (12) months. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. (____)

**b.** A licensee is considered to have satisfied the CE requirements for the first renewal of the initial license. (____)

**c.** After July 1, 2011, and prior to reinstatement of a license lapsed, canceled, or otherwise non-renewed for less than five (5) years, the applicant must provide proof of attendance of eight (8) hours of continuing education for the previous twelve (12) months. A license that has lapsed, been canceled, or otherwise not renewed for more than five (5) years may be reinstated in accordance with Section 67-2614, Idaho Code. (____)

**02. Credit**. Continuing education credit will only be given for actual time in attendance or for the time spent participating in the educational activity. One (1) hour of continuing education is equal to sixty (60) minutes. Courses taken by correspondence or by computer on-line may be approved for continuing education if the courses require an exam or other proof of successful completion. Only four (4) hours of the required continuing education may be from correspondence, computer on-line, or self-study in each renewal period. The remaining hours must be in an interactive setting that provides the opportunity for participants to communicate directly with the instructor. Each licensee must maintain proof of attendance or

successful completion documentation of all continuing education courses for a period of three (3) years. ( )

**a.** A licensee may carryover a maximum of eight (8) hours of continuing education to meet the next year's continuing education requirement. Only four (4) hours may be carried over from correspondence, computer on-line, or self-study. ( )

**03. Providers/Sponsors/Subjects of Continuing Education**. The continuing education must be provided by a college or university, a national or state association, trade group, or other person or entity approved by the Board and must be germane to the license held. Continuing education may include, but shall not be limited to, the following subject areas: ( )

**a.** Public Health and Technical. This includes, but is not limited to, embalming, restorative art, after care, organ procurement, sanitation, and infection control. ( )

**b.** Business Management. This includes, but is not limited to, computer application, marketing, personnel management, accounting, or comparable subjects. ( )

**c.** Social Science. This includes, but is not limited to, communication skills (both written and oral), sociological factors, counseling, grief psychology, funeral customs, or comparable subjects. ( )

**d.** Legal, Ethical, Regulatory. This includes, but is not limited to, OSHA (Occupational Safety and Health Association), FTC (Federal Trade Commission), ethical issues, legal interpretations, or comparable subjects. ( )

**04. Verification of Attendance**. Each licensee must maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the licensee. ( )

**05. Failure to Fulfill the Continuing Education Requirements**. The license will not be renewed for a licensee who fails to certify compliance with CE requirements. A licensee who makes a false attestation regarding compliance with the CE requirements is subject to disciplinary action by the Board. ( )

**06. Special Exemption**. The Board has authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or other good cause. Each licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. Request for special exemption must be made prior to licensure renewal. ( )

**411. -- 424. (RESERVED).**

# 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 33 - IDAHO REAL ESTATE COMMISSION

## 33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

## DOCKET NO. 33-0101-0901

## 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 54-2007 and 54-2018(3), 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 306 and 307.**

**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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jeanne Jackson-Heim, (208) 334-3285.

DATED this 2nd day of November, 2009.

Jeanne Jackson-Heim
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720
(208) 334-3285; (208) 334-2050 (fax)

***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 54-2007 and 54-2018(3), Idaho Code.

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

**THURSDAY, OCTOBER 29, 2009 -- 10:00 a.m.**

**IDAHO REAL ESTATE COMMISSION**
**633 N. Fourth Street, Boise, Idaho**

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

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

**Section 54-2018(3), Idaho Code, authorizes the Commission to establish the conditions for accepting a late license renewal application. The proposed rule provides that any licensee who applies to renew a license after it has expired must certify whether he or she had practiced real estate after the license expired, and, if he or she has practiced, either agree to pay the fine or request a hearing for that purpose.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: No fee is being imposed or increased.

**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 as a result of this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because interested groups participated in open meeting discussions prior to publication of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact: Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission, Phone: (208) 334-3285; toll free in Idaho: (866) 447-5411; Fax: (208) 334-2050.

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***

**105. CONDITIONS TO RENEW EXPIRED LICENSE.**
The Commission may accept a licensee's application to renew an expired license upon the following conditions: ( )

**01. Payment of Late Fee**. The applicant must pay the late license renewal fee established by this chapter; ( )

**02. Renewal After Expiration of Active License**. If the license expired on active license status, the licensee must complete and submit with the application, on the form approved by the Commission, one (1) of the following: ( )

**a.** A certificate attesting that during the period the license was expired, the licensee did not do or attempt to do any acts described in the definitions of real estate broker or salesperson in Section 54-2004, Idaho Code; or ( )

**b.** A certificate admitting that during the period the license was expired, the licensee did or attempted to do an act described in the definitions of real estate broker or salesperson in Section 54-2004, Idaho Code, and either: ( )

i. Agree to pay the proposed civil fine, which amount will be in accordance with the scheduled amount approved by the Commission by motion; or ( )

ii. Request a hearing to determine any fine under the procedures set forth in the Idaho Administrative Procedure Act, Chapter 52, Title 67, and the Commission's rules under IDAPA 33.01.02, "Rules of Practice and Procedure of the Idaho Real Estate Commission Governing Contested Cases." ( )

**03. Investigate or Discipline a Licensee**. Nothing in this Section limits the ability of the Commission to investigate or discipline a licensee for violating Subsection 54-2018(3), Idaho Code, or for violating any other provision of the Real Estate License Law or the rules promulgated by the Commission. ( )

**10~~5~~6. -- 116. (RESERVED).**

# IDAPA 33 - IDAHO REAL ESTATE COMMISSION

## 33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

## DOCKET NO. 33-0101-0902

## 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 54-2007 and 54-2013, 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 308 and 309.**

**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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jeanne Jackson-Heim, (208) 334-3285.

DATED this 2nd day of November, 2009.

Jeanne Jackson-Heim
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720
(208) 334-3285; (208) 334-2050 (fax)

***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 54-2007 and 54-2013, Idaho Code.

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

**THURSDAY, OCTOBER 29, 2009 -- 10:00 a.m.**

**IDAHO REAL ESTATE COMMISSION**
**633 N. Fourth Street, Boise Idaho**

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

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

**The proposed rule would clarify the current rule to state that a late renewal constitutes a lapse of the required errors and omissions coverage, even if coverage is later made retroactive by the carrier.**

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: No fee is being imposed or increased.

**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 as a result of this rulemaking: N/A

**NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because interested groups participated in open meeting discussions prior to publication of the rulemaking.**

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact: Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission, Phone: (208) 334-3285; toll free in Idaho: (866) 447-5411; Fax: (208) 334-2050.

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***

**121. FAILURE TO MAINTAIN INSURANCE.**
Failure of a licensee to obtain and maintain insurance coverage required by Subsection 117.02 shall result in inactivation of any active license issued pursuant to Idaho Real Estate License Law or denial of any application for issuance or renewal of an active license. Failure to maintain insurance as required herein shall be deemed insufficient application for licensure under Section 67-5254, Idaho Code. (4-2-03)

**01. Notice of Noncompliance**. Within five (5) working days of the date the Commission is notified that a licensee does not have required coverage, the Commission shall notify the affected licensee of noncompliance. Notice shall be sent by first class mail to the licensee's business or residence address, as reflected in the Commission's records, and a copy of the notice shall be sent to the licensee's broker, if any. The notice shall provide that the licensee has ten (10) days in which to comply with the law and these rules regarding errors and omissions insurance. Failure to comply at the end of ten (10) days shall result in the license being automatically inactivated. (4-2-08)

**02. Reactivation**. Any licensee whose license has been inactivated for failure to comply with these rules shall be entitled to activate said license, relating back to and including the date of inactivation, provided that, within thirty (30) days of the date of inactivation, the licensee or Group Plan Administrator files with the Commission a certificate of coverage showing that such coverage has been and is currently in effect on and from the date of inactivation, with no lapse in coverage. Further, the licensee must submit required documents and fees to activate said license. In the event the certificate of coverage shows an effective date later than the date of inactivation, said license shall be activated as of the effective date of said insurance, as reflected in the certificate of coverage, and upon submission of any required documents and fees.(3-15-02)

**03. Failure to Maintain Insurance**. Any ~~F~~failure of a licensee to maintain errors and omissions insurance ~~*or failure of a licensee to submit or cause to be submitted a certificate of coverage as required by Section 54-2013, Idaho Code, and in accordance with these rules and while engaging in the business of real estate broker or real estate salesperson, as defined in Sections 54-2002 and 54-2004, Idaho Code*~~ while on active license status, regardless whether coverage is later obtained and made retroactive by the carrier, shall constitute a violation of these rules, and shall be grounds for disciplinary action as provided in Sections 54-2059 and 54-2060, Idaho Code, including but not limited to the assessment of civil fines. A late renewal is considered failure to maintain insurance and constitutes a violation of the law. ~~*(3-15-02)*~~(  )

# IDAPA 33 - IDAHO REAL ESTATE COMMISSION

## 33.01.02 - RULES OF PRACTICE AND PROCEDURE OF THE IDAHO REAL ESTATE COMMISSION GOVERNING CONTESTED CASES

## DOCKET NO. 33-0102-0901

## 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 54-2007, 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 310 and 311.**

**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: None.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Jeanne Jackson-Heim, (208) 334-3285.

DATED this 2nd day of November, 2009.

Jeanne Jackson-Heim
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720
(208) 334-3285; (208) 334-2050 (fax)

***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPSOED RULE***

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-2007, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be held as follows:

**THURSDAY, OCTOBER 29, 2009 -- 10:00 a.m.**

**IDAHO REAL ESTATE COMMISSION**
**633 N. Fourth Street, Boise Idaho**

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

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

**The proposed rule would provide that a non-Idaho attorney may represent a party and appear before the Commission in a contested case under the procedures for limited admission set forth in Idaho Bar Commission Rule 222.**

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

No fee is being imposed or increased.

**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 as a result of this rulemaking:

There is no negative 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 interested groups participated in open meeting discussions prior to publication of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact: Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission, Phone: (208) 334-3285; toll free in Idaho (866) 447-5411; Fax: (208) 334-2050.

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 20th day of August, 2009.

***THE FOLLOWING IS THE TEXT OF THE PENDING RULE***

**208. REPRESENTATION OF PARTIES AT HEARING.**

**01. Appearances and Representation**. To the extent authorized or required by law, appearances and representation of parties or other persons at formal hearing or prehearing conference must be as follows: (7-1-93)

**a.** A natural person may represent himself or herself or be represented by a duly authorized employee or attorney. (7-1-93)

**b.** A partnership may be represented by a partner, duly authorized employee, or attorney. (7-1-93)

**c.** A corporation may be represented by an officer, duly authorized employee, or attorney. (7-1-93)

**d.** A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. (7-1-93)

**e.** A limited liability company may be represented by a member, a manager or a duly authorized employee or attorney. (7-1-96)

**02. Out-of-State Attorneys**. An attorney who is not an active member of the Idaho Bar may represent a party and appear before the agency if granted limited admission by the Idaho Bar in accordance with the procedure set forth in Rule 222 of the Idaho Bar Commission Rules, provided references in that rule to "the court" shall instead mean the agency. ( )

**0~~2~~3. Representatives**. The representatives of parties at hearing, and no other persons or parties appearing before the agency, are entitled to examine witnesses and make or argue motions. (7-1-93)

# 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)*~~(____)