SENATE COMMERCE & HUMAN RESOURCES
ADMINISTRATIVE RULES REVIEW

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COMMERCE & HUMAN RESOURCES

IDAPA 01 - IDAHO BOARD OF ACCOUNTANCY

01.01.01 - IDAHO ACCOUNTANCY RULES

DOCKET NO. 01-0101-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 5, 2005 Idaho Administrative Bulletin, Volume 05-10, pages 31 and 32.

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 28th day of October, 2005.

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: bporter@boa.state.id.us

The Following Notice Was 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 19, 2005.

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

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

Update the standards being incorporated by reference. Idaho Code requires agencies to cite the specific year when we incorporate standards by reference. We incorporate CPE, AICPA and PCAOB standards. The CPE Standards are still accurate, but the AICPA and PCAOB Standards need to be updated from 2005 to 2006.

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 IDAPA 04.11.01.811, 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 26, 2005.

DATED this 12th Day of August, 2005.

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. 200~~5~~6 AICPA Professional Standards, except as superceded by Section 54-206(8), Idaho Code. ~~*(4-6-05)*~~(____)

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

03. PCAOB Standards. 200~~5~~6 Standards issued by the Public Company Accountability Oversight Board. ~~*(4-6-05)*~~(____)

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING

DOCKET NO. 07-0104-0501

NOTICE OF RULEMAKING - PROPOSED RULE

The Following Notice Was 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 19, 2005.

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 will change the number of resident effluent pumps a specialty electrical licensee in the well driller/pump installer category may install from one- or two-family residential installations to one-, two-, or three-family residential installations under certain conditions.

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:

This rulemaking will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change was discussed at publicly held Idaho State Electrical Board meetings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Gary Malmen, Electrical Bureau Chief, 208-332-7147**.**

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 26, 2005.

DATED this 23rd day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

014. ELECTRICAL SPECIALTIES REQUIRING A SPECIAL LICENSE.
The following shall be considered as electrical specialties, the practice of which shall require a special license: (4-9-79)

01. Elevator, Dumbwaiter, Escalator, or Moving-Walk Electrical. Any person qualifying for and having in his possession a current elevator electrical license may install, maintain, repair, and replace equipment, controls, and wiring beyond the disconnect switch in the machine room of the elevator and pertaining directly to the operation and control thereof when located in the elevator shaft and machine room. He shall be employed by a licensed elevator electrical contractor and his installation shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty. (4-9-79)

02. Sign Electrical. Any person qualifying for and having in his possession a current sign electrical license may install, maintain, repair, and replace equipment, controls, and wiring on the secondary side of sign disconnecting means; providing the disconnecting means is located on the sign or within sight therefrom. He shall be employed by a licensed sign electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty. (3-15-02)

03. Manufacturing or Assembling Equipment. (4-5-00)

a. A licensed specialty manufacturing or assembling equipment electrician must be employed by a licensed specialty manufacturing or assembling equipment contractor in order to work in this category. The holder of a specialty license in this category may not countersign a contractor's license application as supervising journeyman except for work within this specialty. (4-5-00)

b. Any person licensed pursuant to Subsection 014.03.a. may install, maintain, repair, and replace equipment, controls, and accessory wiring, integral to the specific equipment, on the load side of the equipment disconnecting means. Electrical service and feeder are to be installed by others. The licensee may also install circuitry in modules or fabricated enclosures for the purpose of connecting the necessary components which individually bear a label from a nationally recognized testing laboratory when such equipment is designed and manufactured for a specific job installation. All wiring completed shall meet all requirements of Title 54, Chapter 10, Idaho Code, all rules promulgated pursuant thereto, and the most current edition of the National Electrical Code. (7-1-94)

04. Limited Energy Electrical License. (9-17-85)

a. Limited energy systems are defined as fire and security alarm systems, class 2 and class 3 signaling circuits, key card operators, nurse call systems, motor and electrical apparatus controls and other limited energy applications covered by the NEC. (7-1-99)

b. Limited energy systems do not include, and no license of any type is required for, the installation of landscape sprinkler controls or communication circuits, wires and apparatus that include telephone systems, telegraph facilities, outside wiring for fire and security alarm systems which are used for communication purposes, and central station systems of a similar nature, PBX systems, audio-visual and sound systems, public address and intercom systems, data communication systems, radio and television systems, antenna systems and other similar systems. (7-1-99)

c. Unless exempted by Section 54-1016, Idaho Code, any person who installs, maintains, replaces or repairs electrical wiring and equipment for limited energy systems in facilities other than one- or two-family dwellings shall be required to have a valid limited energy electrical license and must be employed by a licensed limited energy specialty electrical contractor or electrical contractor. The holder of a specialty license may only countersign a contractor's application as a supervising journeyman for work within his specialty. (7-1-98)

05. Irrigation Sprinkler Electrical. Any person qualifying for and having in his possession, an irrigation system electrical license may install, maintain, repair and replace equipment, controls and wiring beyond the disconnect switch supplying power to the electric irrigation machine. The irrigation machine is considered to include the hardware, motors and controls of the irrigation machine and underground conductors connecting the control centers on the irrigation machine to the load side of the disconnecting device. Disconnect device to be installed by others. All such installations performed by individuals under this section shall be done in accordance with the applicable provisions of the National Electrical Code. He shall be employed by a licensed electrical contractor whose license is contingent upon the granting of a specialty electrical license to an employee and whose installations shall be limited to this category. The holder of a specialty license may not countersign a contractor's license application as supervising specialty journeyman except for work in his specialty. (1-1-92)

06. Well Driller and Water Pump Installer Electrical Licenses. All such installations performed by individuals under this section shall be done in accordance with the applicable provisions of the approved National Electrical Code. He shall be employed by a licensed well driller and water pump installer electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising specialty journeyman except for work in his specialty. Any person currently licensed in this category may perform the following types of installations: (1-14-87)

a. Single- or three-phase water pumps: install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to the load side, including fuses, of the disconnecting device. Disconnecting device installed by others. (4-6-05)

b. Domestic water pumps, one hundred twenty/two hundred forty (120/240) volt, single phase, sixty (60) amps or less: Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device.

(7-1-98)

c. Temporarily connect into a power source to test the installations, provided that all test wiring is removed before the installer leaves the site. (1-14-87)

d. Individual residential wastewater pumping units. Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device for systems that serve one-, ~~or~~ two-, or three-family residential installations. ~~(4-6-05)~~( )

07. Refrigeration, Heating, and Air-Conditioning Electrical Installer. All such installation, maintenance, and repair performed by individuals under this section shall be done in accordance with applicable provisions of the National Electrical Code. He shall be employed by a licensed electrical contractor whose license shall be covered by this category. The holder of such specialty license may not countersign a contractor's license application as a supervising specialty journeyman except for work in his specialty. Any person currently licensed in this category may perform the following types of installations, which installations shall be limited to factory-assembled, packaged units: (9-17-85)

a. Heating Units (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

b. Refrigeration, Air-Conditioning Equipment and Heat Pumps (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

c. Refrigeration, Air-Conditioning and Heating Systems (three-phase): install, maintain, and repair all electrical equipment and accessories up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING

DOCKET NO. 07-0104-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 77 through 79.

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: This rulemaking will have no fiscal impact on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Stephen L. Keys, Bureau Chief, (208) 332-7147.

DATED this 8th day of November, 2005.

Stephen L. Keys
Bureau Chief
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

The Following Notice Was 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 19, 2005.

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

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

This rule change will clarify and carry out requirements for HB 139 effective July 1, 2005 by incorporating communications installations into Limited Energy Electrical License requirements.

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

The proposed rule does not impose or increase a fee or charge.

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 proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change was discussed at publicly held Idaho State Electrical Board meetings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Bureau Chief, 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 26, 2005.

DATED this 24th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

014. ELECTRICAL SPECIALTIES REQUIRING A SPECIAL LICENSE.
The following shall be considered as electrical specialties, the practice of which shall require a special license: (4-9-79)

01. Elevator, Dumbwaiter, Escalator, or Moving-Walk Electrical. Any person qualifying for and having in his possession a current elevator electrical license may install, maintain, repair, and replace equipment, controls, and wiring beyond the disconnect switch in the machine room of the elevator and pertaining directly to the operation and control thereof when located in the elevator shaft and machine room. He shall be employed by a licensed elevator electrical contractor and his installation shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty. (4-9-79)

02. Sign Electrical. Any person qualifying for and having in his possession a current sign electrical license may install, maintain, repair, and replace equipment, controls, and wiring on the secondary side of sign disconnecting means; providing the disconnecting means is located on the sign or within sight therefrom. He shall be employed by a licensed sign electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty. (3-15-02)

03. Manufacturing or Assembling Equipment. (4-5-00)

a. A licensed specialty manufacturing or assembling equipment electrician must be employed by a licensed specialty manufacturing or assembling equipment contractor in order to work in this category. The holder of a specialty license in this category may not countersign a contractor's license application as supervising journeyman except for work within this specialty. (4-5-00)

b. Any person licensed pursuant to Subsection 014.03.a. may install, maintain, repair, and replace equipment, controls, and accessory wiring, integral to the specific equipment, on the load side of the equipment disconnecting means. Electrical service and feeder are to be installed by others. The licensee may also install circuitry in modules or fabricated enclosures for the purpose of connecting the necessary components which individually bear a label from a nationally recognized testing laboratory when such equipment is designed and manufactured for a specific job installation. All wiring completed shall meet all requirements of Title 54, Chapter 10, Idaho Code, all rules promulgated pursuant thereto, and the most current edition of the National Electrical Code. (7-1-94)

04. Limited Energy Electrical License. (9-17-85)

a. Limited energy systems are defined as fire and security alarm systems, class 2 and class 3 signaling circuits, key card operators, nurse call systems, motor and electrical apparatus controls ~~*and other limited energy applications*~~, communication circuits, wires and apparatus that include telephone systems, outside wiring for fire and security alarm systems which are used for

communication purposes, and central station systems of a similar nature, PBX systems, audio-visual and sound systems, public address and intercom systems, data communication systems, radio and television systems, antenna systems and other similar systems covered by the NEC. ~~*(7-1-99)*~~(____)

b. Limited energy systems do not include, and no license of any type is required for, the installation of landscape sprinkler controls ~~*or communication circuits, wires and apparatus that include telephone systems, telegraph facilities, outside wiring for fire and security alarm systems which are used for communication purposes, and central station systems of a similar nature, PBX systems, audio-visual and sound systems, public address and intercom systems, data communication systems, radio and television systems, antenna systems and other similar systems*~~. ~~*(7-1-99)*~~(____)

c. Unless exempted by Section 54-1016, Idaho Code, any person who installs, maintains, replaces or repairs electrical wiring and equipment for limited energy systems ~~*in facilities other than one (1) or two (2) family dwellings*~~ shall be required to have a valid limited energy electrical license and must be employed by a licensed limited energy specialty electrical contractor or electrical contractor. The holder of a specialty license may only countersign a contractor's application as a supervising journeyman for work within his specialty. ~~*(7-1-98)*~~(____)

d. The term "telephone company" as used in Section 54-1016, Idaho Code, for the purpose of this rule shall mean "a public utility that provides telephone service". (____)

05. Irrigation Sprinkler Electrical. Any person qualifying for and having in his possession, an irrigation system electrical license may install, maintain, repair and replace equipment, controls and wiring beyond the disconnect switch supplying power to the electric irrigation machine. The irrigation machine is considered to include the hardware, motors and controls of the irrigation machine and underground conductors connecting the control centers on the irrigation machine to the load side of the disconnecting device. Disconnect device to be installed by others. All such installations performed by individuals under this section shall be done in accordance with the applicable provisions of the National Electrical Code. He shall be employed by a licensed electrical contractor whose license is contingent upon the granting of a specialty electrical license to an employee and whose installations shall be limited to this category. The holder of a specialty license may not countersign a contractor's license application as supervising specialty journeyman except for work in his specialty. (1-1-92)

06. Well Driller and Water Pump Installer Electrical Licenses. All such installations performed by individuals under this section shall be done in accordance with the applicable provisions of the approved National Electrical Code. He shall be employed by a licensed well driller and water pump installer electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising specialty journeyman except for work in his specialty. Any person currently licensed in this category may perform the following types of installations: (1-14-87)

a. Single or three (3) phase water pumps: install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to the load side, including fuses, of the disconnecting device. Disconnecting device installed by others. (4-6-05)

b. Domestic water pumps, one hundred twenty/two hundred forty (120/240) volt, single phase, sixty (60) amps or less: Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device. (7-1-98)

c. Temporarily connect into a power source to test the installations, provided that all test wiring is removed before the installer leaves the site. (1-14-87)

d. Individual residential wastewater pumping units. Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device for systems that serve one (1) or two (2) family residential installations. (4-6-05)

07. Refrigeration, Heating, and Air-Conditioning Electrical Installer. All such installation, maintenance, and repair performed by individuals under this section shall be done in accordance with applicable provisions of the National Electrical Code. He shall be employed by a licensed electrical contractor whose license shall be covered by this category. The holder of such specialty license may not countersign a contractor's license application as a supervising specialty journeyman except for work in his specialty. Any person currently licensed in this category may perform the following types of installations, which installations shall be limited to factory-assembled, packaged units: (9-17-85)

a. Heating Units (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

b. Refrigeration, Air-Conditioning Equipment and Heat Pumps (single phase): install, repair, and maintain all electrical equipment, wires, and accessories from the unit up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

c. Refrigeration, Air-Conditioning and Heating Systems (three-phase): install, maintain, and repair all electrical equipment and accessories up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.06 - RULES GOVERNING THE USE OF NATIONAL ELECTRICAL CODE DIVISION OF BUILDING SAFETY

DOCKET NO. 07-0106-0501

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 54-1001 and 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 the June 1, 2005 Idaho Administrative Bulletin, Volume 05-6, pages 17 and 18.

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: This rulemaking will have no effect on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Gary Malmen, Electrical Bureau Chief, at 208-332-7147.

DATED this 1st day of July, 2005.

The Following Notice Was 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 54-1001 and 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 June 15, 2005.

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.

DIVISION OF BUILDING SAFETY ***Docket No. 07-0106-0501***
Rules Governing the Use of National Electrical Code ***PENDING RULE***

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

The proposed rulemaking is necessary to adopt the 2005 edition of the National Electrical Code (NEC). The 2005 edition of the NEC was published by the National Fire Protection Association and represents the most current electrical installation standards.

As authorized by Section 54-1001, Idaho Code, the Idaho Electrical Board adopted the 2005 Edition of the National Electrical Code (NEC) with an effective date of July 1, 2005 in Temporary Rule Docket No. 07-0106-0501 published in the April 6, 2005 Idaho Administrative Bulletin, Volume 05-4, pages 13 and 14.

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

There is no fee associated with 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:

This rulemaking will have no effect on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the Idaho Electrical Board adopted the 2005 Edition of the National Electrical Code with an effective date of July 1, 2005.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Gary Malmen, Electrical Bureau Chief, at (208) 332-7147.

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 June 22, 2005.

DATED this 29th day of April, 2005.

The Following Notice Was Published With The Temporary Rule

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 54-1001 and 54-1006(5), Idaho Code.

DIVISION OF BUILDING SAFETY ***Docket No. 07-0106-0501***
Rules Governing the Use of National Electrical Code ***PENDING RULE***

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the supporting reasons for adopting the temporary rule:

As authorized by Section 54-1001, Idaho Code, the Idaho Electrical Board has adopted the 2005 Edition of the National Electrical Code (NEC). This edition of the NEC was recently published by the National Fire Protection Association and represents the most current electrical installation standards. By utilizing a July 1, 2005 effective date, the board is providing sufficient time for electrical contractors, journeymen and apprentices to become familiar with any changes that have occurred. In addition, the July 1, 2005 effective date coincides with the effective date being utilized for implementation of the NEC requirements by other Idaho cities and counties as well as reciprocal states. Finally, temporary adoption with a July 1 effective date provides electrical contractors who are in the renewal process sufficient time to obtain the required twenty-four (24) hours of continuing education with respect to the 2005 code changes.

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

Adoption of the temporary rule is necessary to protect the public health, safety and welfare by requiring all electrical installations in this state to be made substantially in accord with the most current version of the National Electrical Code (see Section 54-1001, Idaho Code).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Gary Malmen, Electrical Bureau Chief, at (208) 332-7147.

DATED this 2nd day of March, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100/Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF PENDING RULE

011. <u>ADOPTION AND INCORPORATION BY REFERENCE OF THE</u> NATIONAL ELECTRICAL CODE, 200~~2~~<u>5</u> EDITION.

01. ~~*Documents*~~ <u>The National Electrical Code, 2005 Edition</u>. Under the provisions of

Section 54-1001, Idaho Code, the National Electrical Code, 200~~2~~5 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, 200~~2~~5, with the exception of ~~*Article 80 and*~~ the following:
~~*(5-3-03)*~~(7-1-05)T

a. 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. 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. Compliance with Article 210.12(B) shall not apply to the fire/smoke alarm branch circuit outlet. (5-3-03)

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(s) (time-delay – minimum - 10K RMS Amps 600 VAC) in break-a-away fuse holder(s) 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. (8-11-04)T

02. ~~***Availability***~~ **The National Electrical Code, 2005 Edition.**~~. *This document*~~ is available at the ~~*office of the*~~ Division of Building Safety~~*, Electrical Bureau*~~ offices located at 1090 E. Watertower St., Meridian, Idaho 83642 and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814.
~~*(5-3-03)*~~(7-1-05)T

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.06 - RULES CONCERNING UNIFORM PLUMBING CODE DIVISION OF BUILDING SAFETY

DOCKET NO. 07-0206-0501

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 54-2601 and 54-2605(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 complete text of the proposed rule was published in the June 1, 2005 Idaho Administrative Bulletin, Volume 05-6, pages 19 through 21.

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: This rulemaking will have no effect on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ted Hogander, Plumbing Bureau Chief, at 208-332-7154.

DATED this 1st day of July, 2005.

The Following Notice Was 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 54-2601 and 54-2605(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 June 15, 2005.

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 will allow the jurisdictions having authority to regulate seismic strapping. Seismic categories throughout the state are varied and difficult to identify. Many jurisdictions already have in place, and are enforcing, seismic strapping requirements as needed.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted due to the simple nature of the proposed rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ted Hogander, Plumbing Bureau Chief, 208-332-7154.

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 June 22, 2005.

DATED this 29th day of April, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100/Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

011. ADOPTION AND INCORPORATION BY REFERENCE OF THE 2003 UNIFORM PLUMBING CODE.
The 2003 Uniform Plumbing Code, including Appendices “A, B, D, E, G, H, I, J, and L,” (herein U.P.C.) is adopted and incorporated by reference with the following amendments. The 2003 Uniform Plumbing Code is available at the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642; and at the Division of Building Safety, 1250 Ironwood Dr., Ste. 220,

Coeur d'Alene, Idaho 83814. (4-6-05)

01. Section 218. Delete definition of "Plumbing System." Incorporate definition of "Plumbing System" as set forth in Section 54-2604, Idaho Code. (3-15-02)

02. Section 316.1.6. PVC DWV may be joined by the use of one-step solvent cement listed or labeled per U.P.C. Section 301.1.1. (4-6-05)

03. Section 420.0. Pressure balance or thermostatic mixing valves are not required for high flow (over eight (8) g.p.m.) tub filler valves with hand shower sets attached. (3-15-02)

04. Section 421.0. Delete. (4-6-05)

05. Section 508.2. Delete. ( )

0~~5~~6. Section 604.1. Materials. Crosslinked Polyethylene (PEX) Tubing manufactured to ASTM – F876/F877 and tested, approved, and listed to ANSI/NSF 14 and 61, for potable water along with all applicable installation standards may be used for hot and cold water distribution systems within a building or cold water distribution systems outside of a building. Listed PE (polyethylene) water service and yard piping may be installed within a building (above ground and below ground) with one (1) joint, provided that only listed and approved metallic transition fittings shall be used. (4-6-05)

0~~6~~7. Section 609.4. Testing. Deleting the phrase "Except for plastic piping," at the beginning of the third sentence and add the following sentence at the end of the section: Plastic piping is to be tested in accordance with manufacturer's installation standards. (4-6-05)

0~~7~~8. Section 609.10. Water hammer. Does not apply to residential construction. (7-1-98)

0~~8~~9. Table 6-4 and Table A-2. Change fixture unit loading value for bathtub or combination bath/shower, and clotheswashers to two (2) fixture units. (3-15-02)

~~09~~10. Section 610.2. All new one (1) and two (2) family residences must have a pre-plumbed water softener loop. The kitchen sink must have one (1) hot soft line and one (1) cold soft line and one (1) cold hard line. Exterior cold hose bibbs intended for irrigation purposes must be piped with hard water. Provisions must be made for the discharge of the water softener to terminate in an approved location. (5-3-03)

1~~0~~1. Section 611.4. Sizing of Residential Softeners. Amend Footnote 3 to read: Over four (4) bathroom groups, softeners shall be sized according to the manufacturer's standards. (4-6-05)

1~~1~~2. Table 7-3. Maximum unit loading and maximum length of drainage and vent piping. (EXCEPTION) The building drain and building sewer is not less than four (4) inches extending from its connection with the city or private sewer system and shall run full size to inside the foundation or building lines (ref: Section 717.0). Change fixture unit loading value for clotheswashers, domestic to two (2) fixture units. (3-15-02)

1~~2~~3. Section 703.1 - Underground Drainage and Vent Piping. No portion of the drainage or vent system installed underground, underground under concrete or below a basement or cellar shall be less than two (2) inches in diameter. (3-15-02)

1~~3~~4. Section 703.2 and 710.5. Add Exception. In single family dwellings, one (1) fixture unit may be allowed for each gallon per minute of flow from a pump or a sump ejector. (3-15-02)

1~~4~~5. Section 704.2. Two inch (2") and smaller double sanitary tees may be used for back to back or side by side fixture trap arms without increasing the barrel size. (4-6-05)

1~~5~~6. Section 704.3. Delete. (5-3-03)

1~~6~~7. Table 7-5. Change fixture unit loading value for one and a half (1 1/2) inch horizontal drainage to two (2) fixture units. (7-1-98)

1~~7~~8. Section 707.4 Cleanouts. A full-sized accessible cleanout shall be installed in the vertical immediately above the floor or at the base of each waste or soil stack. A full-size cleanout extending to or above finished grade line shall be installed at the junction of the building drain and the building sewer (ref.: Section 719.1). Cleanouts shall be installed at fifty (50) foot intervals in horizontal drain lines two (2) inches or smaller. (3-15-02)

1~~8~~9. Section 712.1. In the first sentence, delete the phrase "except that plastic pipe shall not be tested with air". (4-6-05)

~~19~~20. Section 801.2.3. Add: Food preparation sinks, pot sinks, scullery sinks, dishwashing sinks, silverware sinks, commercial dishwashing machines, silverware-washing machines, steam kettles, potato peelers, ice cream dipper wells, and other similar equipment and fixtures must be indirectly connected to the drainage system by means of an air gap. The piping from the equipment to the receptor must not be smaller than the drain on the unit, but it must not be smaller than one (1) inch (twenty-five point four (25.4) mm). (5-3-03)

2~~0~~1. Section 807.4. A domestic dishwashing machine may be installed without the use of an airgap if the drain hose is looped to the bottom side of the counter top and secured properly. (3-15-02)

2~~1~~2. Section 908. Exception - Vertical Wet Venting. A horizontal wet vent may be created provided it is created in a vertical position and all other requirements of Section 908 are met. (7-1-98)

2~~2~~3. Section 1002.3. Trap arms may not exceed one hundred eighty (180) degrees of horizontal turn without the use of a cleanout. (3-15-02)

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.01 - RULES OF BUILDING SAFETY - GENERAL

DOCKET NO. 07-0301-0501 (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 2006 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 39-4107, 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 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, page 82.

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 on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jack Rayne, Building Bureau Chief, (208) 332-7151.

DATED this 2nd day of November, 2005.

Stephen L. Keys
Bureau Chief
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

The Following Notice Was 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 39-4107, 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 19, 2005**.**

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

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

This docket proposes the repeal of IDAPA 07.03.01, "Rules of Building Safety - General," effective July 1, 2006. This is one of six proposed dockets, which will consolidate six existing chapters into one chapter by repealing the existing chapters and eliminating redundant language. The resulting consolidated chapter will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars ($25) to one-hundred dollars ($100).

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

The proposed rule does not increase or 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:

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

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 26, 2005.

DATED this 24th day of August, 2005.

IDAPA 07.03.01 IS BEING REPEALED IN ITS ENTIRETY

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.02 - RULES OF THE IDAHO BUILDING CODE BOARD

DOCKET NO. 07-0302-0501 (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 2006 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 39-4107, 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 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, page 94.

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 on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jack Rayne, Building Bureau Chief, (208) 332-7151.

DATED this 2nd day of November, 2005.

Stephen L. Keys
Bureau Chief
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

The Following Notice Was 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 39-4107, 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 19, 2005.

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

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

This docket proposes the repeal of IDAPA 07.03.02 – Rules of the Idaho Building Code Board, effective July 1, 2006. This is one of six proposed dockets, which will consolidate six existing chapters into one chapter (IDAPA 07.03.01) by repealing the existing chapters and eliminating redundant language. The resulting consolidated chapter will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars ($25) to one-hundred dollars ($100).

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

The proposed rule does not increase or 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:

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

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 26, 2005.

DATED this 24th day of August, 2005.

IDAPA 07.03.02 IS BEING REPEALED IN ITS ENTIRETY

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.03 - RULES GOVERNING MODULAR BUILDINGS

DOCKET NO. 07-0303-0501 (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 2006 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 39-4107, 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 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, page 95.

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 on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jack Rayne, Building Bureau Chief, (208) 332-7151.

DATED this 2nd day of November, 2005.

Stephen L. Keys
Bureau Chief
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

The Following Notice Was Published With The Proposed Rule

DIVISION OF BUILDING SAFETY ***Docket No. 07-0303-0501 (Chapter Repeal)***
Rules Governing Modular Buildings ***PENDING 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 39-4107, 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 19, 2005.

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

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

This docket proposes the repeal of IDAPA 07.03.03 - Rules Governing Modular Buildings, effective July 1, 2006. This is one of six proposed dockets, which will consolidate six existing chapters into one chapter (IDAPA 07.03.01) by repealing the existing chapters and eliminating redundant language. The resulting consolidated chapter will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars ($25) to one-hundred dollars ($100).

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

The proposed rule does not increase or 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: The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

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 26, 2005.

DATED this 24th day of August, 2005.

IDAPA 07.03.03 IS BEING REPEALED IN ITS ENTIRETY

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.05 - RULES GOVERNING MANUFACTURED HOMES

DOCKET NO. 07-0305-0501 (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 2006 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 39-4107, 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 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, page 96.

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 on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jack Rayne, Building Bureau Chief, (208) 332-7151.

DATED this 2nd day of November, 2005.

Stephen L. Keys
Bureau Chief
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

The Following Notice Was 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 39-4107, 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 19, 2005.

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

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

This docket proposes the repeal of IDAPA 07.03.05 - Rules Governing Manufactured Homes, effective July 1, 2006. This is one of six proposed dockets, which will consolidate six existing chapters into one chapter (IDAPA 07.03.01) by repealing the existing chapters and eliminating redundant language. The resulting consolidated chapter will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars ($25) to one-hundred dollars ($100).

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

The proposed rule does not increase or 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:

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

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 26, 2005.

DATED this 24th day of August, 2005.

IDAPA 07.03.05 IS BEING REPEALED IN ITS ENTIRETY

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.06 - RULES GOVERNING THE USE OF THE INTERNATIONAL BUILDING CODE

DOCKET NO. 07-0306-0501 (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 2006 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 39-4107, 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 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, page 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 fiscal impact on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jack Rayne, Building Bureau Chief, (208) 332-7151.

DATED this 2nd day of November, 2005.

Stephen L. Keys
Bureau Chief
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

The Following Notice Was Published With The Proposed Rule

DIVISION OF BUILDING SAFETY ***Docket No. 07-0306-0501 (Chapter Repeal)***
Rules Governing the Use of the International Building Code ***PENDING 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 39-4107, 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 19, 2005.

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

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

This docket proposes the repeal of IDAPA 07.03.06 – Rules Governing the Use of the International Building Code, effective July 1, 2006. This is one of six proposed dockets, which will consolidate six existing chapters into one chapter (IDAPA 07.03.01) by repealing the existing chapters and eliminating redundant language. The resulting consolidated chapter will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars ($25) to one-hundred dollars ($100).

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

The proposed rule does not increase or 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: The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

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 26, 2005.

DATED this 24th day of August, 2005.

IDAPA 07.03.06 IS BEING REPEALED IN ITS ENTIRETY

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.08 - RULES GOVERNING COMMERCIAL COACHES

DOCKET NO. 07-0308-0501 (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 2006 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 39-4107, 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 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, page 98.

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 on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jack Rayne, Building Bureau Chief, (208) 332-7151.

DATED this 2nd day of November, 2005.

Stephen L. Keys
Bureau Chief
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

The Following Notice Was Published With The Proposed Rule

DIVISION OF BUILDING SAFETY ***Docket No. 07-0308-0501 (Chapter Repeal)***
Rules Governing Commercial Coaches ***PENDING 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 39-4107, 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 19, 2005.

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

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

This docket proposes the repeal of IDAPA 07.03.08 – Rules Governing Commercial Coaches, effective July 1, 2006. This is one of six proposed dockets, which will consolidate six existing chapters into one chapter (IDAPA 07.03.01) by repealing the existing chapters and eliminating redundant language. The resulting consolidated chapter will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars ($25) to one-hundred dollars ($100).

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The proposed rule does not increase or 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:

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

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 26, 2005.

DATED this 24th day of August, 2005.

IDAPA 07.03.08 IS BEING REPEALED IN ITS ENTIRETY

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.05.01 - RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD

DOCKET NO. 07-0501-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 99 through 101.

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: This rulemaking will have no fiscal impact on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Stephen L. Keys, Bureau Chief, (208) 332-8986.

DATED this 28th day of October, 2005.

Stephen L. Keys
Bureau Chief
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

The Following Notice Was 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 19, 2005.

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 order to accommodate the demands of contractors, the proposed rule will permit public works contractors seeking licensing class upgrades to qualify by demonstrating (satisfactory) recent work experience in the upper range of their current license bid limit. The rule change will also eliminate existing provisions for allowing applicants for public works licensing to use indemnification as a means to satisfy minimum financial requirements for licensure.

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

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: NA

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change was discussed at publicly held Idaho Public Works Contractors License Board meetings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Bureau Chief, 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 26, 2005.

DATED this 24th day of August, 2005.

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0501-0501

110. APPLICATION FOR LICENSURE - DOCUMENTATION; APPRAISALS; REFERENCES; BONDING; AND FINANCIAL STATEMENTS.

01. Application Documentation. To obtain a license, the applicant shall submit to the administrator, on such forms as the administrator shall prescribe, accompanied by the required fee for the class of license applied for, a written, notarized application for such license. All of the information submitted by the applicant shall specifically pertain to work that is similar in scope and value to that for which licensure is being requested or which is being requested in a petition to change or add types of construction. The information contained in such application forms shall include: (3-20-04)

a. A complete statement of the general nature of applicant's contracting business, including a concise description of the applicant's experience and qualifications as a contractor and a list of clients for whom work has been performed; (3-20-04)

b. A description of the value and character of contract work completed and for whom performed during the three (3) year period prior to filing the application; (3-20-04)

c. A general description of applicant's machinery and equipment; (3-20-04)

d. An annual financial statement, as herein defined, that was issued no more than twelve (12) months prior to the date of submission of the application, indicating compliance with such financial requirements as the board may prescribe by rule and which may include a letter from applicant's bonding company stating the amount of the applicant's bonding capability per project and in the aggregate; (3-20-04)

e. For class A, AA, and AAA license applications, financial statements shall be accompanied by an independent auditor's report or be reviewed. For class B license applications, financial statements must be accompanied by an independent audit report or be reviewed or compiled by a certified public accountant. For class C and D license applications, financial statements must be accompanied by an independent audit report or be reviewed, compiled, or on the form provided by the administrator, and include such additional information as may be required by the administrator to determine the applicant's fitness for a license. (3-20-04)

f. The name, social security number, and business address of an individual applicant or, if the applicant is a partnership, its tax identification number, business address, and the names and addresses of all general partners; and if the applicant is a corporation, association, limited liability company, limited liability partnership, or other organization, its tax identification number, business address, and the names and addresses of the president, vice president, secretary, treasurer, and chief construction managing officers, or responsible managing employee. (3-20-04)

g. Applicants requesting a licensing class higher than that for which the applicant is currently licensed shall provide documentation, satisfactory to the administrator, of having performed projects, similar in scope and character to those for which license is requested. The monetary value of those jobs must fall within a range not less that thirty percent (30%) below that for which the applicant is currently licensed. (____)

02. Application for Change in Licensing Class. Requests for a licensing class higher than that for which the applicant ~~*qualifies*~~ is currently licensed shall be accompanied by the information in Subsection~~s~~ 110.01~~*.a., 110.01.b., 110.01.d., and 110.01.e.*~~, and the applicable fee. Licenses granted under Subsection 110.02 shall be valid for a period of twelve (12) months from the date of issuance. ~~*(3-20-04)*~~(____)

03. Extension of Time to File Financial Statement. The administrator may grant an extension of time to file the annual financial statement if the licensee provides an interim compiled balance sheet and income statement for the applicant's fiscal year-to-date, duly certified as true by the applicant, and if a partnership, limited liability company, or limited liability partnership by a member thereof, and if a corporation, by its executive or financial officer. Such renewal application shall be filed prior to the first day of such renewal licensing period. In the event an extension is granted, the renewal license shall be valid for a period of twelve (12) months from the date of the issuance of the renewal license. (3-20-04)

04. Appraisals. The administrator may require submission of an independent appraisal of any real or chattel property reported by an applicant or licensee. Such appraisals shall be conducted by a disinterested person or firm established and qualified to perform such services. (3-20-04)

05. References. The administrator may require an applicant for an original or renewal license to furnish such personal, business, character, financial, or other written references as deemed necessary and advisable in determining the applicant's qualifications. (3-20-04)

06. Bonding. Applicants may submit letters from a bonding company, not an insurance agent, stating the amount of the applicant's bonding capability per project and in the aggregate, together with supporting information. (3-20-04)

Former Section 111 has been moved and renumbered to Section 202

~~*202*~~111.~~*GUIDELINES*~~ FINANCIAL REQUIREMENTS.
The financial ~~*guidelines*~~ requirements for obtaining and maintaining a license under this Act shall be as follows: ~~*(7-1-93)*~~(____)

01. Heavy, Highway, Building, and Specialty Construction Class AAA License. An applicant requesting a Class AAA license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of six hundred thousand dollars ($600,000) with two hundred thousand dollars ($200,000) in working capital.

(3-19-99)

02. Heavy, Highway, Building, and Specialty Construction Class AA License. An applicant requesting a Class AA license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of four hundred fifty thousand dollars ($450,000) with one hundred fifty thousand dollars ($150,000) in working capital. (3-19-99)

03. Heavy, Highway, Building, and Specialty Construction Class A License. An

applicant requesting a Class A license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of three hundred thousand dollars ($300,000) with one hundred thousand dollars ($100,000) in working capital. (3-19-99)

04. Heavy, Highway, Building, and Specialty Construction Class B License. An applicant requesting a Class B license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of one hundred fifty thousand dollars ($150,000) with fifty thousand dollars ($50,000) in working capital. (3-19-99)

05. Heavy, Highway, Building, and Specialty Construction Class C License. An applicant requesting a Class C license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of twenty five thousand dollars ($25,000) with seven thousand five hundred dollars ($7,500) in working capital. (3-19-99)

06. Heavy, Highway, Building, and Specialty Construction Class D License. An applicant requesting a Class D license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of ten thousand dollars ($10,000) with three thousand dollars ($3,000) in working capital. (3-19-99)

~~***07. Indemnification****. If the applicant's financial resources do not meet the Board requirements, an applicant may seek to indemnify its net worth and working capital by using a third party's assets to meet the minimum requirements for licensure. This must be done prior to licensure in writing in a form and manner approved by the Board.*~~ ~~*(3-19-99)*~~

(BREAK IN CONTINUITY OF SECTIONS)

Former Section 202 has been moved and renumbered to Section 111

~~111~~202.COMPLAINTS.
Complaints alleging a violation of the License Act or these rules shall be in writing and filed with the administrator as provided in these rules. All complaints must be verified and submitted on forms provided by the board. (3-20-04)

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

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

DOCKET NO. 07-0701-0501

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 54-5004(1) and 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 the June 1, 2005 Idaho Administrative Bulletin, Volume 05-6, pages 23 through 29.

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: This rulemaking will have no effect on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ted Hogander, Plumbing Bureau Chief, at 208-332-7154.

DATED this 1st day of July, 2005.

The Following Notice Was Published With The Temporary Rule

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2005.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 54-5004(1) and 54-5005(2), Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of the supporting reasons for adopting the temporary rule:

The temporary rulemaking is necessary to clarify the building codes pertaining to HVAC installations. The rulemaking will provide consistency between statutes and rules for purposes of enforcement. Because inspections are to begin January 1, 2005 it is necessary for the rule to be promulgated as temporary to protect the public safety.

The temporary rulemaking will also establish requirements for specialty journeyman certification, and requirements for apprentice and specialty apprentice registration.

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

Adoption of the temporary rule is necessary to protect the public's health, safety and welfare by clarifying the building codes pertaining to HVAC installations and establishing requirements for specialty journeyman certification, and requirements for apprentice and specialty apprentice registration.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Ted Hogander, Plumbing Bureau Chief, at (208) 332-7154.

DATED this 30th day of December, 2004.

The Following Notice Was 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 54-5004(1) and 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 June 15, 2005.

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

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

The proposed rulemaking is necessary to clarify the building codes pertaining to HVAC installations. The rulemaking will provide consistency between statutes and rules for purposes of enforcement. The proposed rulemaking will also establish requirements for specialty journeyman certification and requirements for apprentice and specialty apprentice registration.

In February 2005, the Division of Building Safety adopted this rule as a temporary rule with an effective date of January 1, 2005. The temporary rule was published in the Idaho Administrative Bulletin, Volume 05-2, February 2, 2005, pages 12 and 18. With this publication the Department is initiating proposed rulemaking.

Senate Concurrent Resolution No. 116 (SCR 116) rejected certain subsections of the temporary rule adopted under Docket No. 07-0701-0501. The following subsections were found to be inconsistent with legislative intent and were rejected and declared null, void and of no force and effect: Subsections 07.07.01.005.01.d, 005.01.i., 006.01.e. and 006.01.i. These rejected subsections are being republished as part of the proposed rule to show the affect of SCR 116.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the of the need to adopt a temporary rule to protect the public's health, safety and welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ted Hogander, Plumbing Bureau Chief, (208) 332-7154.

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 June 22, 2005.

DATED this 29th day of April, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100/Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.
This chapter is adopted in accordance with Sections 54-5001 and 54-5005(2), Idaho Code.
~~*(3-16-04)*~~(1-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

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

01. ~~*There are no documents that have been incorporated by reference into this rule.*~~ **The International Mechanical Code**, 2003 Edition, including appendix "A", (herein IMC) is adopted and incorporated by reference with the following amendments: ~~*(3-16-04)*~~(1-1-05)T

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. (1-1-05)T

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. (1-1-05)T

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. (1-1-05)T

d. Section 312. Sizing requirements shall be as established by the authority having jurisdiction. (1-1-05)T

02. **The International Mechanical Code**, 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. (1-1-05)T

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:
(1-1-05)T

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. (1-1-05)T

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. (1-1-05)T

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. (1-1-05)T

d. 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. (1-1-05)T

e. 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. (1-1-05)T

f. Section 406.4.2. The test duration shall not be less than twenty (20) minutes. (1-1-05)T

g. 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. (1-1-05)T

02. **The International Fuel Gas Code**, 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. (1-1-05)T

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.

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. (1-1-05)T

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. (1-1-05)T

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. (1-1-05)T

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. (1-1-05)T

d. Section M1401.3. Sizing requirements shall be as established by the authority having jurisdiction. (1-1-05)T

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. (1-1-05)T

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. (1-1-05)T

g. Section G2417.4.2 (406.4.2). The test duration shall not be less than twenty (20) minutes. (1-1-05)T

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. (1-1-05)T

00~~5~~7. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The principal place of business of the Division of Building Safety, HVAC Bureau is located at 1090 E. Watertower Street, Meridian, Idaho. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is: Division of Building Safety, HVAC Bureau, 1090 E. Watertower Street, Meridian, Idaho 83642. The office telephone number is (208) 334-~~*3950*~~ 6180 and the facsimile number is (208) 855-~~*2164*~~ 0768. ~~*(3-16-04)*~~(1-1-05)T

00~~6~~8. FILING OF DOCUMENTS.
All written communications and documents that are intended to be part of an official record for decision in a rulemaking or contested case, must be filed with the administrator of the Division. Communications and documents shall be filed by mail, hand-delivery, or by facsimile transmission. One (1) original must be filed with the administrator, and one (1) copy must be submitted to the opposing parties. Whenever documents are filed by facsimile transmission, originals shall be deposited in the mail the same day or hand-delivered the following business day to the administrator and opposing parties. (3-16-04)

00~~7~~9. PUBLIC RECORDS ACT COMPLIANCE.
These rules were promulgated in accordance with the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. These rules and all records of the HVAC board are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (3-16-04)

0~~08~~10. CHANGES IN NAME AND ADDRESS -- ADDRESS FOR NOTIFICATION PURPOSES.

01. Change of Name. Whenever a change of name occurs for a certified contractor, journeyman, specialty journeyman, specialty contractor, ~~or~~ registered apprentice, or specialty apprentice, the HVAC board must be notified immediately, in writing, of the change. Documentation confirming the change of name must be provided to the board on request. ~~(3-16-04)~~(1-1-05)T

02. Change of Address. Whenever a change of mailing address occurs for a certificated contractor, journeyman, specialty journeyman, specialty contractor, ~~or~~ registered apprentice, or specialty apprentice, the HVAC board must be notified immediately, in writing, of the change. ~~(3-16-04)~~(1-1-05)T

03. Address for Notification Purposes. The most recent mailing address on record with the HVAC board will be utilized for purposes of all written communication with certified contractors, journeymen, specialty journeymen, specialty contractors, ~~and~~ registered apprentices, and specialty apprentices, including, but not limited to, notification of renewal and notices related to inspections. ~~(3-16-04)~~(1-1-05)T

0~~09~~11. MEETINGS.
HVAC Board meetings are subject to the provisions of the Idaho Open Meeting Law, Title 67, Chapter 23, Idaho Code. (3-16-04)

01~~0~~2. DEFINITIONS.

01. Administrator. The administrator of the Idaho Division of Building Safety. (3-16-04)

02. Board. The Idaho Heating, Ventilation, and Air Conditioning (HVAC) Board. (3-16-04)

03. Bureau. The Idaho Division of Building Safety, Heating, Ventilation, and Air Conditioning Bureau. (3-16-04)

04. Division. The Idaho Division of Building Safety. (3-16-04)

05. Additional Definitions. Terms defined in Section 54-5003, Idaho Code, will have the same meaning when utilized in these rules. (3-16-04)

06. Rules. IDAPA 07.07.01, "Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems, Division of Building Safety". (3-16-04)

01~~1~~3. CERTIFICATES OF COMPETENCY -- ISSUANCE, RENEWAL, EXPIRATION-REVIVAL.

01. Issuance. Certificates of competency shall be issued in such a manner as to create

a renewal date that coincides with the birth month 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 (3) three 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 birth month. (4-6-05)

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

02. Renewal. Certificates of competency shall be renewed in such a manner as to create a staggered system of certificate renewals using the birth month 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 the certificate is issued. (4-6-05)

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

a. Certificates that are not timely renewed will expire on the last day of the month in which the renewal is due. (4-6-05)

b. Revived certificates shall be issued in such a manner as to create a renewal date that coincides with the birth month of the applicant so as to create a staggered system of renewal. (4-6-05)

01~~2~~4. -- 019. (RESERVED).

020. HVAC CONTRACTOR AND HVAC JOURNEYMAN APPLICATIONS FOR EXAMINATION AND CERTIFICATES OF COMPETENCY, AND REGISTRATION OF APPRENTICES.

Application forms for HVAC contractor, HVAC specialty contractor, ~~*and*~~ HVAC journeyman, and HVAC specialty journeyman examinations or certificates of competency and for HVAC apprentice or HVAC specialty apprentice registrations, shall be printed and made available by the administrator. ~~*(3-16-04)*~~(1-1-05)T

01. Application Forms. All applications for certificates and all applications for registration shall be submitted on forms provided by the administrator and shall be properly completed, giving all pertinent information, and all signatures shall be notarized. (3-16-04)

02. Application, Renewal, and Registration Fees. Fees for applications for examination, certificates of competency, renewal of certificates, and fees for apprentice

registration shall be as set forth in Section 54-5012, Idaho Code. (3-16-04)

03. Application Submission. All applications shall be submitted to the Board and shall be approved by an administrator before any examination may be taken and before any certificate of competency is issued. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

023. HVAC JOURNEYMAN CERTIFICATES OF COMPETENCY.

01. Requirements for HVAC Journeyman. (3-16-04)

a. Experience. Demonstrate, to the satisfaction of the board, a minimum of four (4) years experience working in the trade, in compliance with the requirements of the state in which the applicant received his supervision, or as a registered HVAC apprentice making HVAC installations on the job under the ~~*constant*~~ supervision of a qualified HVAC journeyman. ~~*(3-16-04)*~~(1-1-05)T

b. Education. Successfully complete any required apprenticeship training courses. (3-16-04)

c. Examination. Applicants for certification as HVAC journeymen must successfully complete the examination designated by the board. (3-16-04)

02. Alternate Requirements for HVAC Journeyman (Applies Only Until April 1, 2005). (3-16-04)

a. Qualification. Proof, satisfactory to the board, of having been engaged or being qualified to be engaged in the installation, improvement, extension, alteration, or repair of HVAC systems as a journeyman prior to July 1, 2004. Forms of proof include, but are not limited to: (3-16-04)

i. Copies of journeyman certification; (3-16-04)

ii. Licensure or registration; (3-16-04)

iii. Signed notarized affidavits from employers or labor organizations; or (3-16-04)

iv. Certificates of completion from journeyman educational or training programs. (3-16-04)

b. Examination. Copies of the HVAC statute and rules, along with an examination regarding the statute and rules will be included in each application package. The examination is to be completed using the statute and rules and a written verification of completion of the

examination must be submitted at the same time as the completed application for a certificate of competency. (3-16-04)

024. HVAC SPECIALTY JOURNEYMAN CERTIFICATES OF COMPETENCY.
Requirements for HVAC Specialty Journeyman. (1-1-05)T

01. Experience. Demonstrate, to the satisfaction of the board, a minimum of two (2) years experience working in the trade, in compliance with the requirements of the state in which the applicant received his supervision, or as a registered HVAC apprentice or registered HVAC specialty apprentice making HVAC installations on the job under the supervision of a qualified HVAC journeyman or qualified HVAC specialty journeyman. (1-1-05)T

02. Education. Successfully complete any required apprenticeship training courses. (1-1-05)T

03. Examination. Applicants for certification as HVAC specialty journeymen must successfully complete an examination designated by the board. (1-1-05)T

025. HVAC APPRENTICE REQUIREMENTS FOR REGISTRATION.
Requirements for HVAC Apprentice. (1-1-05)T

01. Age. Minimum of eighteen (18) years of age unless registered in a Bureau of Apprenticeship Training (BAT) certified HVAC training program. (1-1-05)T

02. Training. Maintain enrollment in or successfully complete a training program approved by the board. (1-1-05)T

03. Supervision. Work under the supervision of a certified HVAC journeyman. (1-1-05)T

026. HVAC SPECIALTY APPRENTICE REQUIREMENTS FOR REGISTRATION.
Requirements for HVAC Specialty Apprentice. (1-1-05)T

01. Age. Minimum of eighteen (18) years of age unless registered in a Bureau of Apprenticeship Training (BAT) certified HVAC training program. (1-1-05)T

02. Training. Maintain enrollment in or successfully complete a training program approved by the board. (1-1-05)T

03. Supervision. Work under the supervision of a certificated HVAC journeyman or certificated HVAC specialty journeyman. (1-1-05)T

02~~4~~7. -- 049. (RESERVED).

COMMERCE & HUMAN RESOURCES

IDAPA 07 - DIVISION OF BUILDING SAFETY

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

DOCKET NO. 07-0701-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 54-5004, 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 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 102 through 105.

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: This rulemaking will have no fiscal impact on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Stephen L. Keys, Bureau Chief, (208) 332-8986.

DATED this 28th day of October, 2005.

Stephen L. Keys
Bureau Chief
Division of Building Safety
1090 E. Watertower St.
Meridian, ID 83642
Phone: (208) 332-8986
Fax: (208) 855-2164

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2005.

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 54-5004, 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 19, 2005.

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 will establish criteria for issuance of a specialty journeyman certificate of competency to include approved educational programs and on the job experience.

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:

The temporary rule is necessary to protect the public health, safety and welfare by ensuring the proper education and licensing of specialty journeymen.

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 resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is being proposed at the request of industry and has been reviewed and discussed at publicly held Idaho Heating, Ventilation, and Air Conditioning Board meetings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Keys, Bureau Chief, 208-332-8968.

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 26, 2005.

DATED this 24th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

021. HVAC CONTRACTOR CERTIFICATE OF COMPETENCY - REQUIREMENTS.

~~***01. Requirements for HVAC Contractor.*** *(3-16-04)*~~

~~***a***~~**01.** **Bond**. Applicants shall provide a performance bond in the amount of two thousand dollars ($2,000). (3-16-04)

~~***b***~~**02.** **Qualification**. Applicants shall provide proof, satisfactory to the board, of having legally acted as an HVAC journeyman for a period of not less than twenty-four (24) months. (3-16-04)

~~***c***~~**03.** **Examination**. Applicants for certification as HVAC contractors must successfully complete the examination designated by the board. (3-16-04)

~~***02. Alternate Requirements for HVAC Contractor.*** *(Applies only until April 1, 2005).* *(3-16-04)*~~

~~***a. Bond.*** *Applicants shall provide a performance bond in the amount of two thousand dollars ($2,000).* *(3-16-04)*~~

~~***b. Qualification.*** *Proof, satisfactory to the board, of having engaged in the business of HVAC contracting prior to July 1, 2004. Forms of proof include, but are not limited to:* *(3-16-04)*~~

~~*i. Copies of business licenses or registrations;* *(3-16-04)*~~

~~*ii. Tax returns;* *(3-16-04)*~~

~~*iii. Business advertisements;* *(3-16-04)*~~

~~*iv. Client affidavits; or* *(3-16-04)*~~

~~*v. Descriptions of work done to date.* *(3-16-04)*~~

~~***c. Examination.*** *Copies of the HVAC statute and rules, along with an examination regarding the statute and rules will be included in each application package. The examination must be completed using the statute and rules and a written verification of completion of the examination must be submitted at the same time as the completed application for a certificate of competency.* *(3-16-04)*~~

022. HVAC SPECIALTY CONTRACTOR CERTIFICATE OF COMPETENCY - REQUIREMENTS.

~~***01. Requirements for HVAC Specialty Contractor.*** *(3-16-04)*~~

~~*a*~~**01.** **Bond**. Applicants shall provide a performance bond in the amount of two thousand dollars ($2,000). (3-16-04)

~~*b*~~**02.** **Qualification**. Applicants shall provide proof, satisfactory to the board, of having legally acted as an HVAC specialty journeyman for a period of not less than twenty four (24) months. (3-16-04)

~~*c*~~**03.** **Examination**. Applicants for certification as HVAC specialty contractors must successfully complete the examination designated by the board. (3-16-04)

~~***02. Alternative Requirements for HVAC Specialty Contractor***. *(Applies only until April 1, 2005).* *(3-16-04)*~~

~~***a.*** *Bond. Applicants shall provide a performance bond in the amount of two thousand dollars ($2,000).* *(3-16-04)*~~

~~***b.*** *Qualification. Proof, satisfactory to the board, of having engaged in the business of HVAC specialty contracting prior to July 1, 2004. Forms of proof include, but are not limited to:* *(3-16-04)*~~

~~*i.* *Copies of business licenses or registrations;* *(3-16-04)*~~

~~*ii.* *Tax returns;* *(3-16-04)*~~

~~*iii.* *Business advertisements;* *(3-16-04)*~~

~~*iv.* *Client affidavits; or* *(3-16-04)*~~

~~*v.* *Descriptions of work done to date.* *(3-16-04)*~~

~~***c.*** *Examination. Copies of the HVAC statute and rules, along with an examination regarding the statute and rules will be included in each application package. The examination must be completed using the statute and rules and a written verification of completion of the examination must be submitted at the same time as the completed application for a certificate of competency.* *(3-16-04)*~~

023. HVAC JOURNEYMAN CERTIFICATES OF COMPETENCY~~____~~- REQUIREMENTS.

~~***01. Requirements for HVAC Journeyman***. *(3-16-04)*~~

~~*a*~~**01.** **Experience**. Demonstrate, to the satisfaction of the board, a minimum of four (4) years experience working in the trade, in compliance with the requirements of the state in which the applicant received his supervision, or as a registered HVAC apprentice making HVAC installations on the job under the supervision of a qualified HVAC journeyman. (1-1-05)T

~~*b*~~**02.** **Education**. Successfully complete any required apprenticeship training courses. (3-16-04)

~~*c*~~**03.** **Examination**. Applicants for certification as HVAC journeymen must successfully complete the examination designated by the board. (3-16-04)

~~***02. Alternate Requirements for HVAC Journeyman (Applies Only Until April 1, 2005).*** *(3-16-04)*~~

~~***a.*** *Qualification. Proof, satisfactory to the board, of having been engaged or being qualified to be engaged in the installation, improvement, extension, alteration, or repair of HVAC systems as a journeyman prior to July 1, 2004. Forms of proof include, but are not limited to:* *(3-16-04)*~~

~~*i.* *Copies of journeyman certification;* *(3-16-04)*~~

~~*ii.* *Licensure or registration;* *(3-16-04)*~~

~~*iii.* *Signed notarized affidavits from employers or labor organizations; or* *(3-16-04)*~~

~~*iv.* *Certificates of completion from journeyman educational or training programs.* *(3-16-04)*~~

~~***b.*** *Examination. Copies of the HVAC statute and rules, along with an examination regarding the statute and rules will be included in each application package. The examination is to be completed using the statute and rules and a written verification of completion of the examination must be submitted at the same time as the completed application for a certificate of competency.* *(3-16-04)*~~

024. HVAC HEARTH SPECIALTY JOURNEYMAN CERTIFICATES OF COMPETENCY LIMITATIONS – REQUIREMENTS.
Certification as a hearth specialty journeyman entitles the holder to install hearth appliances and the associated gas lines. Requirements for HVAC Hearth Specialty Journeyman~~.~~ are: ~~*(1-1-05)T*~~(9-1-05)T

01. **Experience**. Demonstrate, to the satisfaction of the board, a minimum of ~~*two*~~ one (~~*2*~~1) year~~*s*~~ experience working in the trade, in compliance with the requirements of the state in which the applicant received his supervision, or as a registered HVAC apprentice or registered HVAC specialty apprentice making HVAC installations on the job under the supervision of a qualified HVAC journeyman or qualified HVAC specialty journeyman. ~~*(1-1-05)T*~~(9-1-05)T

02. **Education**. Successfully complete ~~*any required apprenticeship*~~ a board approved training course(s), such as the National Fireplace Institute program and a minimum of sixty (60) hours of education in gas piping. ~~*(1-1-05)T*~~(9-1-05)T

03. **Examination**. Applicants for certification as HVAC specialty journeymen must successfully complete an examination designated by the board. (1-1-05)T

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.04 - RULES OF THE BENEFIT PAYMENT CONTROL BUREAU

DOCKET NO. 09-0104-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 96 and 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 resulting from this rulemaking: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 reflect housekeeping changes and name changes in response to the reorganization of the department's tax and benefit overpayment bureaus.**

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because 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, Tax & Benefit Control Bureau Chief, 332-3570 x 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 24, 2005.

DATED this 1st day of July, 2005.

Don Arnold
Tax & Benefit Control Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 x 3258
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 09
TITLE 01
CHAPTER 04

09.01.04 - ~~*RULES OF THE BENEFIT PAYMENT CONTROL BUREAU*~~
UNEMPLOYMENT INSURANCE BENEFIT FRAUD AND OVERPAYMENT RULES

000. LEGAL AUTHORITY.
These rules are promulgated under the legal authority of Section ~~*72-1333(2)*~~ 67-4702, Idaho Code. ~~*(3-19-99)*~~(____)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 09.01.04, "~~*Rules of the Benefit Payment Control Bureau*~~ Unemployment Insurance Benefit Fraud and Overpayment Rules". (____)

02. Scope. With respect to the Idaho Department~~'s~~ of Commerce and Labor's administration of the Unemployment Insurance Program, these rules address fraud prevention measures, collection of overpayments, and waivers of overpayments. ~~*(3-19-99)*~~(____)

002. WRITTEN INTERPRETATIONS.
Explanations for rule changes are available for public inspection at the Idaho Department of Commerce and Labor, 317 W. Main Street, Boise, Idaho, 83735. Brochures explaining various programs administered by the Department are also available at the above address.~~*(3-19-99)*~~(____)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.04 - RULES OF THE BENEFIT PAYMENT CONTROL BUREAU

DOCKET NO. 09-0104-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the September 7, 2005, Idaho Administrative Bulletin, Volume 05-9, pages 67 and 68.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 September 21, 2005.

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 change to IDAPA 09.01.04.40 will remove the provision allowing offset to occur on overpayments that resulted from a fraud determination making the rule consistent with the provisions of Section 72-1366(12), Idaho Code. The change is necessary due to the change in eligibility criteria contained in Section 72-1366(12), Idaho Code, which makes fraud claimants ineligible to claim UI benefits. Without the change to this rule, there would be an inconsistency between the eligibility criteria and the permitted recovery mechanisms.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is in response to legislative changes to governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

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 28, 2005.

DATED this 7th day of September, 2005.

Don Arnold
Tax & Benefit Control Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 x 3258

334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

040. RECOVERIES.
Unless the overpayment resulted from a determination that the claimant willfully made a false statement or willfully failed to report a material fact, ~~O~~overpayments shall be deducted from any future benefits payable. Ref. Secs. 72-1369 and 72-1366, Idaho Code. ~~*(3-19-99)*~~(7-1-05)T

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.04 - RULES OF THE BENEFIT PAYMENT CONTROL BUREAU

DOCKET NO. 09-0104-0503

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the September 7, 2005, Idaho Administrative Bulletin, Volume 05-9, pages 69 and 70.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 September 21, 2005.

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:

Definitions are being added at IDAPA 09.01.04.010 to allow the phrases "fraud overpayment" and "non-fraud overpayment" to be used in Department documents and to provide for an automatic write-off of de minimus overpayments. IDAPA 09.01.04.041 sets forth the manner in which payments for overpayments will be applied by the Department. IDAPA 09.01.04.041 clarifies for claimants how payments made on overpayments that have the new penalties and/or accrued interest contained in Section 72-1369, Idaho Code, assessed against them are going to be applied. If the rule is not promulgated, claimants will not know how their payments are being applied.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with deadlines in amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is in response to legislative changes to governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

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 28, 2005.

DATED this 7th day of September, 2005.

Don Arnold
Tax & Benefit Control Bureau Chief
Department of Commerce and Labor
317 W. Main Street

Boise, ID 83735
332-3570 x 3258
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. DEFINITIONS.
These terms shall have the following meanings when used in these rules, in interpretations, in forms, and in other official documents issued by the Department of Commerce and Labor. (7-1-05)T

01. Tolerance Amount. A tolerance of four dollars and ninety-nine cents ($4.99) is established in connection with the recovery of overpayments and at the discretion of the Director, no delinquency or credit will be issued or carried on the books for overpayments for this amount or less. Ref. Sec. 72-1369, Idaho Code. (7-1-05)T

02. Fraud Overpayment. Is defined as an established overpayment resulting from a determination that the claimant willfully made a false statement or willfully failed to report a material fact in order to obtain benefits. Ref. Sec. 72-1369, Idaho Code. (7-1-05)T

03. Nonfraud Overpayment. Is defined as any established overpayment other than an overpayment resulting from a determination that a claimant made a false statement or willfully failed to report a material fact in order to obtain benefits. Ref. Sec. 72-1369, Idaho Code. (7-1-05)T

01~~0~~1. MATERIALITY, FRAUD DETERMINATIONS.
For purposes of Idaho Code Section 72-1366(12), a fact is material if it is relevant to a determination of a claimant's right to benefits. To be considered material, the fact need not actually affect the outcome of an eligibility determination. Ref. Sec. 72-1366, Idaho Code. (3-19-99)

01~~1~~2. -- 039. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

041. PARTIAL PAYMENTS OF AMOUNTS OWED THE DEPARTMENT.
Upon the Department's receipt of a partial payment of an overpayment or overpayments of unemployment insurance benefits and accrued interest and penalties thereon, the Department shall, unless other arrangements have been made with the debtor and approved by the Department, apply the partial payment to the amounts owed as follows: (7-1-05)T

01. Interest. The partial payment shall be applied first to any accrued interest of the amounts due, starting with the oldest accrued interest; (7-1-05)T

02. **Penalties**. After any accrued interest has been paid in full, the partial payment shall be applied next to any assessed penalties, starting with the oldest assessed penalty; (7-1-05)T

03. **Fraud Overpayments**. After all accrued interest and assessed penalties have been paid in full, the partial payment shall be applied next to any fraud overpayments due, starting with the oldest fraud overpayment; and (7-1-05)T

04. **Nonfraud Overpayments**. After all fraud overpayments have been paid in full, the partial payment shall be applied next to any nonfraud overpayments, starting with the oldest nonfraud overpayment. Ref. Sec. 72-1369, Idaho Code. (7-1-05)T

04~~1~~2. -- 049. (RESERVED).

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.06 - RULES OF THE APPEALS BUREAU

DOCKET NO. 09-0106-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the September 7, 2005, Idaho Administrative Bulletin, Volume 05-9, pages 71 through 73.

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: This is a federally funded program and there is no financial impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joe Karpach, Appeals Bureau Chief, (208) 332-3570 ext. 3572.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 September 21, 2005.

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 09.01.06.026.13 would be amended to provide that evidence that is irrelevant, unduly repetitious, or privileged may be excluded from appeal hearings. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: All parties to hearings at the department's Appeals Bureau would benefit from a rule clearly setting out the evidentiary standard that applies to the hearings. The standard may now be found in case law, but it is difficult for parties who do not have attorneys to obtain this information.

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: This is a federally funded program and there is no financial impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being amended to clarify the evidentiary standard that applies to hearings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Joe Karpach, Appeals Bureau Chief, (208) 332-3570 ext. 3572.

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 28, 2005.

DATED this 3rd day of August, 2005.

Joe Karpach
Appeals Bureau, Chief
Department of Commerce and Labor

317 W. Main Street
Boise, ID 83735
(208) 332-3570 ext. 3572
(208) 334-6440 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

026. CONDUCT OF HEARING.
Upon request for appeal, a hearing shall be set and written notice of the time and place of hearing shall be mailed to each interested party not less that seven (7) days prior to the hearing date. (2-25-94)

01. Telephone Hearings. Hearings will be held by telephone unless, in the sole discretion of the appeals examiner, a personal hearing should be set. In deciding the manner in which to conduct the hearing, the appeals examiner shall consider factors, including but not limited to the desires of the parties, possible delay and expense, the burden of proof, the complexity of the issues, and the number and location of witnesses. (3-19-99)

02. Continuance. The appeals examiner may postpone or continue a hearing for good cause on the examiner's own motion or that of any party, before a hearing is concluded. The appeals examiner may order the dismissal of an appeal for good cause, such as abandonment of the appeal. (3-19-99)

03. Rehearing. An application for rehearing shall be in writing and filed in person or postmarked within ten (10) days after the appeals examiner's decision is served. (3-19-99)

04. No Appearance Hearings. If no party appears to present additional evidence, a decision will then be based on the available evidence. (2-25-94)

05. Exhibits and Recordings. The exhibits and tape recordings from a hearing may be destroyed, reused, or otherwise disposed of after the expiration of the time period for appeal from the decisions of the appeals examiner. (3-19-99)

06. Subpoenas. After determining that a subpoena of a witness or records is necessary and reasonable, the appeals examiner shall issue the subpoena, which may be served by mail or in person. (3-19-99)

07. Failure to Respond to Subpoena. If a person fails to respond to a subpoena issued by mail, the appeals examiner will proceed with the scheduled hearing and determine, after hearing the available testimony, whether the subpoena is still necessary and reasonable. If so, the hearing will be continued and a second subpoena will be issued and personally served. (3-19-99)

08. Witness Fees. Individuals who attend hearings before the appeals examiner as subpoenaed witnesses, not parties, shall be entitled to receive a fee of seven dollars and fifty cents ($7.50) for each day or portion thereof for attendance. In no case shall a witness be paid more than seven dollars and fifty cents ($7.50) for any one (1) day. Subpoenaed witnesses shall also be

entitled to mileage expense at the current allowable mileage reimbursement rate as determined by the Idaho State Board of Examiners. For appeals under the Employment Security Law, such witness fees and mileage expenses shall be paid from the Employment Security Administration fund. Under no circumstances shall interested parties to a hearing be granted witness fees or mileage expenses. Mileage fees are not allowed for vicinity travel. (4-5-00)

09. Undecided Issues. When it is apparent that there is no prior ruling on an issue which must be decided under the Act, the appeals examiner may hear and decide the issue. (3-19-99)

10. Type of Hearing. The proceeding before an appeals examiner will be a hearing "de novo" or original hearing and not solely a review proceeding. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

11. Role of Appeals Examiner. The appeals examiner will function as a fact finder and not solely as a judge. The appeals examiner will have the responsibility of developing all the evidence that is reasonably available. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

12. Order of Witnesses. The appeals examiner will direct the order of witnesses and develop evidence in a logical and orderly manner to move the hearing along as expeditiously as possible. Therefore, as a general rule, the party who bears the burden of proof will be called to testify first. The appeals examiner will exercise reasonable discretion in directing the order, which must be flexible and dependent upon the particular circumstances of each case and which party has the most information. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

13. ~~*Exclusion of Irrelevant Testimony*~~ <u>Evidence</u>. The appeals examiner ~~*will control the undue extension of the hearing by excluding repetitious or irrelevant testimony*~~ <u>may exclude evidence that is irrelevant, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of this state. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs.</u> Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. ~~*(4-5-00)*~~<u>(7-1-05)T</u>

14. Disruptive Individuals. The appeals examiner may exclude disruptive individuals from the hearing or may postpone the hearing if the integrity of the proceedings is being compromised. If an interested party is excluded, he will be provided a copy of the tape recording of the proceedings and given an opportunity to submit written evidence and argument prior to the issuance of the decision and the opposing party will be given an opportunity to respond. Ref. Sec. 72-1368(6) and Sec. 45-617(7). Idaho Code. (4-5-00)

15. Challenge of General Knowledge. If judicially cognizable facts or general, technical, or scientific facts within the appeals examiner's specialized knowledge are used in the decision, the parties will be given an opportunity to challenge them either at the time of the hearing or prior to or at the time of the issuance of the decision. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

16. Closing Arguments. Closing arguments including response in an appeals hearing

will be limited to a total of five (5) minutes for each party unless the appeals examiner grants an exception. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.06 - RULES OF THE APPEALS BUREAU

DOCKET NO. 09-0106-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the September 7, 2005, Idaho Administrative Bulletin, Volume 05-9, pages 74 through 76.

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: This is a federally funded program and there is no financial impact on the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joe Karpach, Appeals Bureau Chief, (208) 332-3570 ext. 3572.

DATED this 5th day of October, 2005.

The Following Notice Was 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) 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 September 21, 2005.

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 09.01.06.026.04 would be amended to provide that if no party appears to present additional evidence at an appeal hearing, the examiner may make a decision on the existing record, and specifying what that record would include.

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: This is a federally funded program and there is no financial impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because The agency determined it was not feasible because of the nature of the change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joe Karpach, Appeals Bureau Chief, (208) 332-3570 ext. 3572.

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 September 28, 2005.

DATED this 3rd day of August, 2005.

Joe Karpach
Appeals Bureau, Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
(208) 332-3570 ext. 3572
(208) 334-6440 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

026. CONDUCT OF HEARING.
Upon request for appeal, a hearing shall be set and written notice of the time and place of hearing

shall be mailed to each interested party not less that seven (7) days prior to the hearing date. (2-25-94)

01. Telephone Hearings. Hearings will be held by telephone unless, in the sole discretion of the appeals examiner, a personal hearing should be set. In deciding the manner in which to conduct the hearing, the appeals examiner shall consider factors, including but not limited to the desires of the parties, possible delay and expense, the burden of proof, the complexity of the issues, and the number and location of witnesses. (3-19-99)

02. Continuance. The appeals examiner may postpone or continue a hearing for good cause on the examiner's own motion or that of any party, before a hearing is concluded. The appeals examiner may order the dismissal of an appeal for good cause, such as abandonment of the appeal. (3-19-99)

03. Rehearing. An application for rehearing shall be in writing and filed in person or postmarked within ten (10) days after the appeals examiner's decision is served. (3-19-99)

04. No Appearance Hearings. If no party appears to present additional evidence, a decision ~~*will*~~ may then be based on the ~~*available evidence*~~ existing record. For this purpose, the existing record will consist of documents maintained by the Department in the ordinary course of adjudicating the issues in the case, copies of which have been provided to the parties with the notice of hearing. ~~*(2-25-94)*~~( )

05. Exhibits and Recordings. The exhibits and tape recordings from a hearing may be destroyed, reused, or otherwise disposed of after the expiration of the time period for appeal from the decisions of the appeals examiner. (3-19-99)

06. Subpoenas. After determining that a subpoena of a witness or records is necessary and reasonable, the appeals examiner shall issue the subpoena, which may be served by mail or in person. (3-19-99)

07. Failure to Respond to Subpoena. If a person fails to respond to a subpoena issued by mail, the appeals examiner will proceed with the scheduled hearing and determine, after hearing the available testimony, whether the subpoena is still necessary and reasonable. If so, the hearing will be continued and a second subpoena will be issued and personally served. (3-19-99)

08. Witness Fees. Individuals who attend hearings before the appeals examiner as subpoenaed witnesses, not parties, shall be entitled to receive a fee of seven dollars and fifty cents ($7.50) for each day or portion thereof for attendance. In no case shall a witness be paid more than seven dollars and fifty cents ($7.50) for any one (1) day. Subpoenaed witnesses shall also be entitled to mileage expense at the current allowable mileage reimbursement rate as determined by the Idaho State Board of Examiners. For appeals under the Employment Security Law, such witness fees and mileage expenses shall be paid from the Employment Security Administration fund. Under no circumstances shall interested parties to a hearing be granted witness fees or mileage expenses. Mileage fees are not allowed for vicinity travel. (4-5-00)

09. Undecided Issues. When it is apparent that there is no prior ruling on an issue which must be decided under the Act, the appeals examiner may hear and decide the issue.

(3-19-99)

10. Type of Hearing. The proceeding before an appeals examiner will be a hearing "de novo" or original hearing and not solely a review proceeding. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

11. Role of Appeals Examiner. The appeals examiner will function as a fact finder and not solely as a judge. The appeals examiner will have the responsibility of developing all the evidence that is reasonably available. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

12. Order of Witnesses. The appeals examiner will direct the order of witnesses and develop evidence in a logical and orderly manner to move the hearing along as expeditiously as possible. Therefore, as a general rule, the party who bears the burden of proof will be called to testify first. The appeals examiner will exercise reasonable discretion in directing the order, which must be flexible and dependent upon the particular circumstances of each case and which party has the most information. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

13. Exclusion of Irrelevant Testimony. The appeals examiner will control the undue extension of the hearing by excluding repetitious or irrelevant testimony. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

14. Disruptive Individuals. The appeals examiner may exclude disruptive individuals from the hearing or may postpone the hearing if the integrity of the proceedings is being compromised. If an interested party is excluded, he will be provided a copy of the tape recording of the proceedings and given an opportunity to submit written evidence and argument prior to the issuance of the decision and the opposing party will be given an opportunity to respond. Ref. Sec. 72-1368(6) and Sec. 45-617(7). Idaho Code. (4-5-00)

15. Challenge of General Knowledge. If judicially cognizable facts or general, technical, or scientific facts within the appeals examiner's specialized knowledge are used in the decision, the parties will be given an opportunity to challenge them either at the time of the hearing or prior to or at the time of the issuance of the decision. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

16. Closing Arguments. Closing arguments including response in an appeals hearing will be limited to a total of five (5) minutes for each party unless the appeals examiner grants an exception. Ref. Sec. 72-1368(6) and Sec. 45-617(7), Idaho Code. (4-5-00)

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.30 - RULES OF THE BENEFITS BUREAU

DOCKET NO. 09-0130-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 98 and 99.

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

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

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 change is a housekeeping change to rename this chapter of the Department's rules to "Unemployment Insurance Benefits Administration Rules".**

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because 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, UI Benefits Bureau Chief, 332-3570 x 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 24, 2005.

DATED this 1st day of July, 2005.

Roger Holmes
UI Benefits Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3233
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

09.01.30 - ~~*RULES OF THE BENEFITS BUREAU*~~
UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 09.01.30, "~~*Rules of the Benefits Bureau*~~ Unemployment Insurance Benefits Administration Rules". ~~*(3-19-99)*~~( )

02. **Scope.** These rules govern claims for unemployment insurance benefits. (3-19-99)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.30 - RULES OF THE BENEFITS BUREAU

DOCKET NO. 09-0130-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 100 through 106.

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

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

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 09.01.30.425.06 would be amended to provide that interstate claimants must register for work in the State in which they reside. IDAPA 09.01.30.575.07 would be amended to clearly state that claimants must register for work and report on work-seeking activity.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rules are being amended to clarify work-seeking and reporting provisions in existing rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Roger Holmes, UI Benefits Bureau Chief, 332-3570 x 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 24, 2005.

DATED this 1st day of July, 2005.

Roger Holmes
UI Benefits Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3233
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

425. NEW CLAIMS/ADDITIONAL CLAIMS.
Ref. Sec. 72-1308, Idaho Code. (3-19-99)

01. Claims for Benefits, Delayed Filing. When any claims taking office has reason to believe there will be more claimants than can be served on any given day, an appointment slip must be used to adjust the claims load for the filing of initial claims. Appointment slips shall be

issued to potential claimants who cannot be served on the date they first make contact with the office. A claimant who receives an appointment slip does not forfeit any benefit rights provided, however, that he subsequently files his claim on the day assigned. When any claims taking office has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to a local office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved will be considered timely if filed during the same week or the next week after the claim is filed. (3-30-01)

02. Effective Date of Backdated Claims. When the filing of an initial claim for benefits is backdated due to local office scheduling problems or a Department system malfunction, the effective date shall be the Sunday of the week in which the claimant first reported to the local office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. (3-30-01)

03. Filing of New Claims. New intrastate and interstate claims may be filed electronically, in person at a local office or at an itinerant location, or by mail if permitted by a claims examiner. New interstate claims may also be filed by telephone. (3-30-01)

a. Electronically Filed Claims. Claimants may file claims electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. A claim filed electronically will automatically be assigned to the local office that services the zip code for the mailing address provided by the claimant. (3-30-01)

b. In-person Filing. A claimant may file a claim in person at the local Job Service office serving the claimant's area of residence. Job Service offices are open Monday through Friday, 8 a.m. until 5 p.m., except on state holidays. When a claimant reports to a local office to file a claim during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

c. Interstate Claims. Any claim filed by an interstate claimant shall be accepted in the same manner and under the same conditions for which claims are accepted from intrastate claimants. Interstate claimants may also file claims by calling the Department's interstate claims unit. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the interstate claims unit to initiate the claim. (3-30-01)

d. Itinerant Locations. Claims may be filed at itinerant points established by the Department for the taking of claims. A claim filed at an itinerant point on the first regular itinerant visit after the claimant's separation will be effective as of the Sunday preceding the first business day of the period of unemployment. If the claimant has filed the claim on a date later than the first regular itinerant visit, the claim shall be effective as of the Sunday preceding the date the claim is actually filed. (3-30-01)

e. Mailed Claims. A claims examiner may allow a claimant to file a claim by mail when in-person filing or other methods of filing would cause undue hardship. If a claimant who has been granted permission to file a claim by mail completes and returns the claim form to the local office within seven (7) days of the date the form was mailed to the claimant by the Department, the claim will be effective as of the Sunday preceding the date the claimant requested permission to file the claim by mail. If the claimant fails to return the claim form within the seven (7) day period, and mail facilities were available for such mailing within the period, the claim will be effective as of the Sunday preceding the date the claimant mails the claim form, as determined by the postmark. (3-30-01)

04. Itinerant Claims. Itinerant points for the taking of unemployment insurance claims may be established, changed, or discontinued at administrative discretion. Where itinerant service is being inaugurated, changed, or discontinued for a particular community, public notice of such inauguration, change, or discontinuance shall be conspicuously posted and public notification placed in a daily or weekly newspaper of general distribution for the affected community two (2) weeks prior to such inauguration, change or discontinuance. Ref. Sec. 72-1368(1), Idaho Code. (3-19-99)

05. Registration for Work. All claimants who cannot demonstrate a firm attachment to an employer, industry, or union will be required to register for employment. Unless otherwise requested by the claimant, such registration should apply only to the days or parts of the days that the claimant is in fact unemployed and available for employment. The work history of each claimant shall be recorded, and a work application completed and filed. Ref. Sec. 72-1366(2), Idaho Code. (3-19-99)

06. Registration/Reporting Requirements - Interstate Claimants. Interstate claimants shall be required to register for work in the ~~*same manner*~~ State in which they reside and to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. ~~*(3-30-01)*~~( )

07. Requirement to Provide Information. If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant may be denied benefits until the information is provided. Any individual making a claim for benefits shall provide the Department with: (3-15-02)

a. The claimant's legal name; (3-15-02)

b. The claimant's Social Security Number; (3-15-02)

c. The address where the claimant's mail is delivered; (3-15-02)

d. The claimant's place of last employment; (3-15-02)

e. The name, correct mailing address, and the reason for separation from all of the claimant's most recent and base-period employers; (3-15-02)

f. If requested by the Department, a list of all other employment in the past twenty-

four (24) months; (3-15-02)

g. The claimant's plans for finding other employment at the earliest possible time; and (3-15-02)

h. Other information necessary for the proper processing of the claim. (3-15-02)

i. Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess the claimant's compliance with personal eligibility requirements. (3-15-02)

08. Right to Claim Benefits. In no instance, under any circumstances or conditions, shall an individual be denied the right to file a claim and to receive in writing a decision regarding his eligibility. Ref. Sec. 72-1366(1), Idaho Code. (3-19-99)

09. Separation Information. Unless separation information has been provided by other means, such as a mass layoff list, a notice of the filing of a claim and a request for separation information must be completed and mailed to the claimant's last employer and each next preceding employer until the wages received by the claimant equal or exceed twelve (12) times his weekly benefit amount. For all such employers, the claimant must provide the Department with the employer's name and correct mailing address, the claimant's dates of employment, the type of employment performed, and the claimant's gross earnings from each employment. Ref. Sec. 72-1366 (1), (5) and (14), Idaho Code. (3-19-99)

10. Separation Notice. (3-19-99)

a. Request for Separation Information. Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), after receiving a request for separation information from the Department because an individual has filed a claim for benefits, shall submit to the Department a report of the reasons for the separation whenever such claimant: (4-5-00)

i. Left his employment voluntarily; (3-19-99)

ii. Was discharged from his employment due to misconduct; (3-19-99)

iii. Is unemployed due to a strike, lockout, or other labor dispute; or (3-19-99)

iv. Was separated for any other reason except lack of available work. (3-19-99)

b. Employer Response. The employer's response shall be completed in accordance with instructions printed on the Department's request for separation information and shall be completed by the employer or on the employer's behalf by someone having personal knowledge of the facts therein stated. (3-15-02)

11. Filing of an Additional Claim or Reopening a Claim. A claim series may be reestablished, electronically, in person at a local office or at an itinerant location, by telephone, or by mail. The additional or reopened claim (AC/RO) must be filed during a week in which the claimant becomes unemployed and/or wants to reestablish the claim. (3-30-01)

a. In-person Filing. When a claimant reports to a local office to file an AC/RO during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

b. Mailing. A claimant may file an AC/RO by mailing the completed AC/RO documents to a local office. The claim shall be effective as of the Sunday preceding the date the claimant mails the documents, as determined by the postmark. (3-30-01)

c. Electronic Filing. A claimant may file an AC/RO electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the AC/RO process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. (3-30-01)

d. Telephone Filing. A claimant may file an AC/RO by telephone by calling a local office. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the local office to initiate the claim. (3-30-01)

e. Reestablished Claim. A claim must be reestablished after a claimant has failed to report or has reported excessive earnings for two (2) or more consecutive weeks. Claims shall be reestablished as follows: (3-19-99)

i. If the break in the claim series is two (2) weeks or longer, the claim must be reestablished by filing a reopen or additional claim; or (3-19-99)

ii. If the claimant is reporting excessive earnings for no more than two (2) consecutive weeks, the claim may be automatically reestablished if the claimant notifies the local office at the time of or prior to filing the report for the second week that he has become unemployed. Otherwise, the claim must be reestablished by filing a reopen/additional claim. (3-19-99)

12. Use of Wage Credits. All unemployment insurance wage credits from any source which are assignable to the state of Idaho shall be used in establishing a claim and determining the claimant's monetary eligibility. Ref. Sec. 72-1367(1), Idaho Code. (3-19-99)

13. Valid Claim. To be a valid claim for benefits, a claim must be filed during a week of no work, a week of less than full-time work in which the total wages payable to the claimant for work performed in such week amount to less than one and one-half (1-1/2) times the claimant's weekly benefit amount, or a week in which the claimant is separated from employment. Ref. Sec. 72-1327A, Idaho Code. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

575. SEEKING WORK.
Ref. Sec. 72-1366(4), (6), Idaho Code. (3-19-99)

01. Attitude and Behavior. A claimant's attitude and behavior must be conducive to a positive reaction by employers to his job search. (3-19-99)

02. Effort to Secure Employment. A claimant will be expected to do what is normally done by unemployed persons that are seeking work. (3-19-99)

03. Employer's Hiring Practices. An employer's reluctance to hire a claimant because of his appearance or physical condition is not a determining factor in ruling on the claimant's eligibility. (3-19-99)

04. Job Attachment Classifications. For the purpose of administering the work search requirements of Section 72-1366(4) and (6), Idaho Code, claimants will be classified according to their attachment to an employer or industry, as follows: (3-19-99)

a. Code R-Recall, U-Union or X-Both. Claimants who have a firm attachment to an employer, industry or union, or who are temporarily or seasonally unemployed, and expect to return to their former jobs or employers in a reasonable length of time. (3-19-99)

b. Code B. Claimants who possess marketable skills in an occupation, but have no immediate prospects for reemployment, and whose employment expectations (i.e., wages, hours, etc.) are realistic in relation to the normal labor market supply and demand in their areas of availability. (3-19-99)

c. Code C. Claimants who have no marketable skills or whose skills have become obsolete and who are unable to return to their former occupations, or who have a special need for employment-related services. (3-19-99)

d. Code D. Claimants who are assigned to a training course under the provisions of Section 72-1366(8), Idaho Code. (3-19-99)

05. Jobs Availability. A claimant will not be required to make useless employer contacts if there are no jobs available in the area due to seasonal factors. (3-19-99)

06. No Employment Prospects. A claimant shall apply for and accept a lower or beginning pay rate for employment if he has no prospects for a better paying job in the locality. (3-19-99)

07. Register<u>ing</u> ~~*for*~~ <u>and Reporting on</u> Work<u>-Seeking Activity</u>. A claimant must register for work and report as required to be eligible for benefits. Ref. Sec. 72-1366(1), (2), Idaho Code. ~~*(3-19-99)*~~<u>( )</u>

08. Seasonal Availability. A claimant who is regularly employed on a seasonal basis shall be available for other types of work in the off-season to be eligible for benefits. (3-19-99)

09. Work-Seeking Requirement Categories. Claimants shall seek work in

accordance with the following categories of work-seeking activity, as instructed by a Department representative or as notified by the Department via electronic claims messaging. A claimant must meet the requirements of the code to which the claimant is assigned. A claimant's category of work-seeking activity will be determined and modified based on the claimant's length of unemployment, the prevailing local labor market conditions, and/or the average county unemployment rates. Claimants that are required to secure employment must register with Job Service within two (2) weeks of filing an initial claim for benefits. Failure to comply with work-seeking requirements may result in a denial of benefits. (3-15-02)

a. Code O claimants must: (3-15-02)

i. Maintain regular contact with their employer(s) or union. Code O claimants may also be required to engage in one (1) or more of the following activities to increase their prospects of returning to work or securing employment: (3-15-02)

ii. Make local inquiries; (3-19-99)

iii. Maintain contact with the local Job Service office; (3-15-02)

iv. Check "help-wanted" ads in newspapers or trade publications; (3-15-02)

v. Attend a Job Search Workshop; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Job Service representative. (3-15-02)

b. Code 1 claimants will be required to engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-15-02)

i. Make at least one (1) employer contact each week in the manner prescribed by the local Job Service office; (3-15-02)

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Job Service representative. (3-15-02)

c. Code 2 claimants will be required to engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-15-02)

i. Make at least two (2) employer contacts per week in the manner prescribed by the

local Job Service office; (3-15-02)

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Job Service representative. (3-15-02)

d. Code 3 claimants will be required to engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-15-02)

i. Make at least three (3) employer contacts per week in the manner prescribed by the local Job Service office; (3-15-02)

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a Job Service representative. (3-15-02)

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.30 - RULES OF THE BENEFITS BUREAU

DOCKET NO. 09-0130-0503

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 107 through 113.

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

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

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: These temporary rules are effective July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 09.01.30.000 would be amended to cite Section 67-4702, Idaho Code, as the source of the Department's rule making authority. The references to "Job Service" in IDAPA 09.01.30.425.03.b. and 09.01.30.575.09 would be changed to "local office or "Department." IDAPA 09.01.30.575.09 would also be amended to require only those claimants who have not yet registered to register for work with a local office, and "length of unemployment" would be deleted as one of the criteria for determining a claimant's category of work-seeking activity.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with amendments to governing law and because it confers a benefit to unemployment insurance claimants.

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 IDAPA 04.11.01.811, negotiated rule making was not conducted because the Department needed to adopt a temporary rule and it was determined that it was not feasible to enter into negotiated rulemaking at this time.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Roger Holmes, UI Benefits Bureau Chief, 332-3570 x 3233.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2005.

DATED this 1st day of July, 2005.

Roger Holmes
UI Benefits Bureau Chief
Department of Commerce and Labor
317 W. Main Street, Boise, ID 83735
332-3570 ext. 3233

334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.
These rules are promulgated under the legal authority of Section ~~*72-1333(2)*~~ 67-4702, Idaho Code. ~~*(3-19-99)*~~(7-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

425. NEW CLAIMS/ADDITIONAL CLAIMS.
Ref. Sec. 72-1308, Idaho Code. (3-19-99)

01. Claims for Benefits, Delayed Filing. When any claims taking office has reason to believe there will be more claimants than can be served on any given day, an appointment slip must be used to adjust the claims load for the filing of initial claims. Appointment slips shall be issued to potential claimants who cannot be served on the date they first make contact with the office. A claimant who receives an appointment slip does not forfeit any benefit rights provided, however, that he subsequently files his claim on the day assigned. When any claims taking office has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to a local office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved will be considered timely if filed during the same week or the next week after the claim is filed. (3-30-01)

02. Effective Date of Backdated Claims. When the filing of an initial claim for benefits is backdated due to local office scheduling problems or a Department system malfunction, the effective date shall be the Sunday of the week in which the claimant first reported to the local office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. (3-30-01)

03. Filing of New Claims. New intrastate and interstate claims may be filed electronically, in person at a local office or at an itinerant location, or by mail if permitted by a claims examiner. New interstate claims may also be filed by telephone. (3-30-01)

a. Electronically Filed Claims. Claimants may file claims electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. A claim filed electronically will

automatically be assigned to the local office that services the zip code for the mailing address provided by the claimant. (3-30-01)

b. In-person Filing. A claimant may file a claim in person at the local ~~*Job Service*~~ office serving the claimant's area of residence. ~~*Job Service*~~ Local offices are open Monday through Friday, 8 a.m. until 5 p.m., except on state holidays. When a claimant reports to a local office to file a claim during regular business hours, the claim shall be effective as of the Sunday of that week. ~~*(3-30-01)*~~(7-1-05)T

c. Interstate Claims. Any claim filed by an interstate claimant shall be accepted in the same manner and under the same conditions for which claims are accepted from intrastate claimants. Interstate claimants may also file claims by calling the Department's interstate claims unit. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the interstate claims unit to initiate the claim. (3-30-01)

d. Itinerant Locations. Claims may be filed at itinerant points established by the Department for the taking of claims. A claim filed at an itinerant point on the first regular itinerant visit after the claimant's separation will be effective as of the Sunday preceding the first business day of the period of unemployment. If the claimant has filed the claim on a date later than the first regular itinerant visit, the claim shall be effective as of the Sunday preceding the date the claim is actually filed. (3-30-01)

e. Mailed Claims. A claims examiner may allow a claimant to file a claim by mail when in-person filing or other methods of filing would cause undue hardship. If a claimant who has been granted permission to file a claim by mail completes and returns the claim form to the local office within seven (7) days of the date the form was mailed to the claimant by the Department, the claim will be effective as of the Sunday preceding the date the claimant requested permission to file the claim by mail. If the claimant fails to return the claim form within the seven (7) day period, and mail facilities were available for such mailing within the period, the claim will be effective as of the Sunday preceding the date the claimant mails the claim form, as determined by the postmark. (3-30-01)

04. Itinerant Claims. Itinerant points for the taking of unemployment insurance claims may be established, changed, or discontinued at administrative discretion. Where itinerant service is being inaugurated, changed, or discontinued for a particular community, public notice of such inauguration, change, or discontinuance shall be conspicuously posted and public notification placed in a daily or weekly newspaper of general distribution for the affected community two (2) weeks prior to such inauguration, change or discontinuance. Ref. Sec. 72-1368(1), Idaho Code. (3-19-99)

05. Registration for Work. All claimants who cannot demonstrate a firm attachment to an employer, industry, or union will be required to register for employment. Unless otherwise requested by the claimant, such registration should apply only to the days or parts of the days that the claimant is in fact unemployed and available for employment. The work history of each claimant shall be recorded, and a work application completed and filed. Ref. Sec. 72-1366(2), Idaho Code. (3-19-99)

06. Registration/Reporting Requirements – Interstate Claimants. Interstate

claimants shall be required to register for work in the same manner and to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. (3-30-01)

07. Requirement to Provide Information. If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant may be denied benefits until the information is provided. Any individual making a claim for benefits shall provide the Department with: (3-15-02)

a. The claimant's legal name; (3-15-02)

b. The claimant's Social Security Number; (3-15-02)

c. The address where the claimant's mail is delivered; (3-15-02)

d. The claimant's place of last employment; (3-15-02)

e. The name, correct mailing address, and the reason for separation from all of the claimant's most recent and base-period employers; (3-15-02)

f. If requested by the Department, a list of all other employment in the past twenty-four (24) months; (3-15-02)

g. The claimant's plans for finding other employment at the earliest possible time; and (3-15-02)

h. Other information necessary for the proper processing of the claim. (3-15-02)

i. Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess the claimant's compliance with personal eligibility requirements. (3-15-02)

08. Right to Claim Benefits. In no instance, under any circumstances or conditions, shall an individual be denied the right to file a claim and to receive in writing a decision regarding his eligibility. Ref. Sec. 72-1366(1), Idaho Code. (3-19-99)

09. Separation Information. Unless separation information has been provided by other means, such as a mass layoff list, a notice of the filing of a claim and a request for separation information must be completed and mailed to the claimant's last employer and each next preceding employer until the wages received by the claimant equal or exceed twelve (12) times his weekly benefit amount. For all such employers, the claimant must provide the Department with the employer's name and correct mailing address, the claimant's dates of employment, the type of employment performed, and the claimant's gross earnings from each employment. Ref. Sec. 72-1366 (1), (5) and (14), Idaho Code. (3-19-99)

10. Separation Notice. (3-19-99)

a. Request for Separation Information. Every employer (including employers not

subject to Title 72, Chapter 13, Idaho Code), after receiving a request for separation information from the Department because an individual has filed a claim for benefits, shall submit to the Department a report of the reasons for the separation whenever such claimant: (4-5-00)

i. Left his employment voluntarily; (3-19-99)

ii. Was discharged from his employment due to misconduct; (3-19-99)

iii. Is unemployed due to a strike, lockout, or other labor dispute; or (3-19-99)

iv. Was separated for any other reason except lack of available work. (3-19-99)

b. Employer Response. The employer's response shall be completed in accordance with instructions printed on the Department's request for separation information and shall be completed by the employer or on the employer's behalf by someone having personal knowledge of the facts therein stated. (3-15-02)

11. Filing of an Additional Claim or Reopening a Claim. A claim series may be reestablished, electronically, in person at a local office or at an itinerant location, by telephone, or by mail. The additional or reopened claim (AC/RO) must be filed during a week in which the claimant becomes unemployed and/or wants to reestablish the claim. (3-30-01)

a. In-person Filing. When a claimant reports to a local office to file an AC/RO during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

b. Mailing. A claimant may file an AC/RO by mailing the completed AC/RO documents to a local office. The claim shall be effective as of the Sunday preceding the date the claimant mails the documents, as determined by the postmark. (3-30-01)

c. Electronic Filing. A claimant may file an AC/RO electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the AC/RO process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. (3-30-01)

d. Telephone Filing. A claimant may file an AC/RO by telephone by calling a local office. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the local office to initiate the claim. (3-30-01)

e. Reestablished Claim. A claim must be reestablished after a claimant has failed to report or has reported excessive earnings for two (2) or more consecutive weeks. Claims shall be reestablished as follows: (3-19-99)

i. If the break in the claim series is two (2) weeks or longer, the claim must be reestablished by filing a reopen or additional claim; or (3-19-99)

ii. If the claimant is reporting excessive earnings for no more than two (2) consecutive weeks, the claim may be automatically reestablished if the claimant notifies the local office at the time of or prior to filing the report for the second week that he has become unemployed. Otherwise, the claim must be reestablished by filing a reopen/additional claim. (3-19-99)

12. Use of Wage Credits. All unemployment insurance wage credits from any source which are assignable to the state of Idaho shall be used in establishing a claim and determining the claimant's monetary eligibility. Ref. Sec. 72-1367(1), Idaho Code. (3-19-99)

13. Valid Claim. To be a valid claim for benefits, a claim must be filed during a week of no work, a week of less than full-time work in which the total wages payable to the claimant for work performed in such week amount to less than one and one-half (1-1/2) times the claimant's weekly benefit amount, or a week in which the claimant is separated from employment. Ref. Sec. 72-1327A, Idaho Code. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

575. SEEKING WORK.
Ref. Sec. 72-1366(4), (6), Idaho Code. (3-19-99)

01. Attitude and Behavior. A claimant's attitude and behavior must be conducive to a positive reaction by employers to his job search. (3-19-99)

02. Effort to Secure Employment. A claimant will be expected to do what is normally done by unemployed persons that are seeking work. (3-19-99)

03. Employer's Hiring Practices. An employer's reluctance to hire a claimant because of his appearance or physical condition is not a determining factor in ruling on the claimant's eligibility. (3-19-99)

04. Job Attachment Classifications. For the purpose of administering the work search requirements of Section 72-1366(4) and (6), Idaho Code, claimants will be classified according to their attachment to an employer or industry, as follows: (3-19-99)

a. Code R-Recall, U-Union or X-Both. Claimants who have a firm attachment to an employer, industry or union, or who are temporarily or seasonally unemployed, and expect to return to their former jobs or employers in a reasonable length of time. (3-19-99)

b. Code B. Claimants who possess marketable skills in an occupation, but have no immediate prospects for reemployment, and whose employment expectations (i.e., wages, hours, etc.) are realistic in relation to the normal labor market supply and demand in their areas of availability. (3-19-99)

c. Code C. Claimants who have no marketable skills or whose skills have become

obsolete and who are unable to return to their former occupations, or who have a special need for employment-related services. (3-19-99)

d. Code D. Claimants who are assigned to a training course under the provisions of Section 72-1366(8), Idaho Code. (3-19-99)

05. Jobs Availability. A claimant will not be required to make useless employer contacts if there are no jobs available in the area due to seasonal factors. (3-19-99)

06. No Employment Prospects. A claimant shall apply for and accept a lower or beginning pay rate for employment if he has no prospects for a better paying job in the locality. (3-19-99)

07. Register for Work. A claimant must register for work and report as required to be eligible for benefits. Ref. Sec. 72-1366(1), (2), Idaho Code. (3-19-99)

08. Seasonal Availability. A claimant who is regularly employed on a seasonal basis shall be available for other types of work in the off-season to be eligible for benefits. (3-19-99)

09. Work-Seeking Requirement Categories. Claimants shall seek work in accordance with the following categories of work-seeking activity, as instructed by a Department representative or as notified by the Department via electronic claims messaging. A claimant must meet the requirements of the code to which the claimant is assigned. A claimant's category of work-seeking activity will be determined and modified based on the claimant's ~~*length of unemployment, the*~~ prevailing local labor market conditions~~,~~ and/or the average county unemployment rates. Claimants that have not registered for work when filing their claims and that are required to secure employment must register with ~~*Job Service*~~ the local office within two (2) weeks of filing an initial claim for benefits. Failure to comply with work-seeking requirements may result in a denial of benefits. ~~*(3-15-02)*~~(7-1-05)T

a. Code O claimants must: (3-15-02)

i. Maintain regular contact with their employer(s) or union. Code O claimants may also be required to engage in one (1) or more of the following activities to increase their prospects of returning to work or securing employment: (3-15-02)

ii. Make local inquiries; (3-19-99)

iii. Maintain contact with the local ~~*Job Service*~~ office; ~~*(3-15-02)*~~(7-1-05)T

iv. Check "help-wanted" ads in newspapers or trade publications; (3-15-02)

v. Attend a Job Search Workshop; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a ~~*Job Service*~~ Department representative. ~~*(3-15-02)*~~(7-1-05)T

b. Code 1 claimants will be required to engage in one (1) or more of the following

activities to increase their prospects of securing employment: (3-15-02)

i. Make at least one (1) employer contact each week in the manner prescribed by the local ~~*Job Service*~~ office; ~~*(3-15-02)*~~(7-1-05)T

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a ~~*Job Service*~~ Department representative. ~~*(3-15-02)*~~(7-1-05)T

c. Code 2 claimants will be required to engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-15-02)

i. Make at least two (2) employer contacts per week in the manner prescribed by the local ~~*Job Service*~~ office; ~~*(3-15-02)*~~(7-1-05)T

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a ~~*Job Service*~~ Department representative. ~~*(3-15-02)*~~(7-1-05)T

d. Code 3 claimants will be required to engage in one (1) or more of the following activities to increase their prospects of securing employment: (3-15-02)

i. Make at least three (3) employer contacts per week in the manner prescribed by the local ~~*Job Service*~~ office; ~~*(3-15-02)*~~(7-1-05)T

ii. Attend a Job Search Workshop; (3-15-02)

iii. Expand work search efforts to surrounding areas or states; (3-15-02)

iv. Send resumes to firms/businesses that hire people with their skills; (3-15-02)

v. Enroll in and attend a specific training program to meet the requirements of the

claimant's employment plan; or (3-15-02)

vi. Engage in other work search activities such as resume preparation or labor market research, as prescribed by a ~~*Job Service*~~ Department representative. ~~*(3-15-02)*~~(7-1-05)T

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.30 - RULES OF THE BENEFITS BUREAU

DOCKET NO. 09-0130-0504

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 114 through 118

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

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

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: These temporary rules are effective July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 09.01.30.425.07 would be amended by the addition of a paragraph providing that if a claimant's identifying data does not match data provided by another public entity for identity verification purposes, the claimant will have 2 business days if notified by phone or 5 business days if notified by mail to provide proof of identity before benefits may be denied.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with federal program standards and conferring a benefit.

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 IDAPA 04.11.01.811, negotiated rule making was not conducted because the rule change is in response to federal program standards.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Roger Holmes, UI Benefits Bureau Chief, 332-3570 x 3233.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2005.

DATED this 1st day of July, 2005.

Roger Holmes
UI Benefits Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3233
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

425. NEW CLAIMS/ADDITIONAL CLAIMS.
Ref. Sec. 72-1308, Idaho Code. (3-19-99)

01. Claims for Benefits, Delayed Filing. When any claims taking office has reason to believe there will be more claimants than can be served on any given day, an appointment slip must be used to adjust the claims load for the filing of initial claims. Appointment slips shall be issued to potential claimants who cannot be served on the date they first make contact with the office. A claimant who receives an appointment slip does not forfeit any benefit rights provided, however, that he subsequently files his claim on the day assigned. When any claims taking office has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to a local office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved will be considered timely if filed during the same week or the next week after the claim is filed. (3-30-01)

02. Effective Date of Backdated Claims. When the filing of an initial claim for benefits is backdated due to local office scheduling problems or a Department system malfunction, the effective date shall be the Sunday of the week in which the claimant first reported to the local office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. (3-30-01)

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a. Electronically Filed Claims. Claimants may file claims electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. A claim filed electronically will automatically be assigned to the local office that services the zip code for the mailing address provided by the claimant. (3-30-01)

b. In-person Filing. A claimant may file a claim in person at the local Job Service office serving the claimant's area of residence. Job Service offices are open Monday through Friday, 8 a.m. until 5 p.m., except on state holidays. When a claimant reports to a local office to file a claim during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

c. Interstate Claims. Any claim filed by an interstate claimant shall be accepted in the same manner and under the same conditions for which claims are accepted from intrastate

claimants. Interstate claimants may also file claims by calling the Department's interstate claims unit. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the interstate claims unit to initiate the claim. (3-30-01)

d. Itinerant Locations. Claims may be filed at itinerant points established by the Department for the taking of claims. A claim filed at an itinerant point on the first regular itinerant visit after the claimant's separation will be effective as of the Sunday preceding the first business day of the period of unemployment. If the claimant has filed the claim on a date later than the first regular itinerant visit, the claim shall be effective as of the Sunday preceding the date the claim is actually filed. (3-30-01)

e. Mailed Claims. A claims examiner may allow a claimant to file a claim by mail when in-person filing or other methods of filing would cause undue hardship. If a claimant who has been granted permission to file a claim by mail completes and returns the claim form to the local office within seven (7) days of the date the form was mailed to the claimant by the Department, the claim will be effective as of the Sunday preceding the date the claimant requested permission to file the claim by mail. If the claimant fails to return the claim form within the seven (7) day period, and mail facilities were available for such mailing within the period, the claim will be effective as of the Sunday preceding the date the claimant mails the claim form, as determined by the postmark. (3-30-01)

04. Itinerant Claims. Itinerant points for the taking of unemployment insurance claims may be established, changed, or discontinued at administrative discretion. Where itinerant service is being inaugurated, changed, or discontinued for a particular community, public notice of such inauguration, change, or discontinuance shall be conspicuously posted and public notification placed in a daily or weekly newspaper of general distribution for the affected community two (2) weeks prior to such inauguration, change or discontinuance. Ref. Sec. 72-1368(1), Idaho Code. (3-19-99)

05. Registration for Work. All claimants who cannot demonstrate a firm attachment to an employer, industry, or union will be required to register for employment. Unless otherwise requested by the claimant, such registration should apply only to the days or parts of the days that the claimant is in fact unemployed and available for employment. The work history of each claimant shall be recorded, and a work application completed and filed. Ref. Sec. 72-1366(2), Idaho Code. (3-19-99)

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07. Requirement to Provide Information. If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant may be denied benefits until the information is provided. Any individual making a claim for benefits shall provide the Department with: (3-15-02)

a. The claimant's legal name; (3-15-02)

b. The claimant's Social Security Number; (3-15-02)

c. The address where the claimant's mail is delivered; (3-15-02)

d. The claimant's place of last employment; (3-15-02)

e. The name, correct mailing address, and the reason for separation from all of the claimant's most recent and base-period employers; (3-15-02)

f. If requested by the Department, a list of all other employment in the past twenty-four (24) months; (3-15-02)

g. The claimant's plans for finding other employment at the earliest possible time; and (3-15-02)

h. Other information necessary for the proper processing of the claim. (3-15-02)

i. Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess the claimant's compliance with personal eligibility requirements. (3-15-02)

j. If the claimant's identifying information does not match with data provided by the Social Security Administration, the Division of Motor Vehicles, or other public entities for identity verification purposes, the claimant will be provided notice and an opportunity to provide proof of identity before benefits may be denied for failure to provide proof of identity. A claimant notified by telephone of the need to provide proof of identity must provide the information to the Department within two (2) business days. A claimant notified by mail of the need to provide proof of identity must provide the information to the Department within five (5) business days of the date of mailing of the notice. (7-1-05)T

08. Right to Claim Benefits. In no instance, under any circumstances or conditions, shall an individual be denied the right to file a claim and to receive in writing a decision regarding his eligibility. Ref. Sec. 72-1366(1), Idaho Code. (3-19-99)

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10. Separation Notice. (3-19-99)

a. Request for Separation Information. Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), after receiving a request for separation information from the Department because an individual has filed a claim for benefits, shall submit to the

Department a report of the reasons for the separation whenever such claimant: (4-5-00)

i. Left his employment voluntarily; (3-19-99)

ii. Was discharged from his employment due to misconduct; (3-19-99)

iii. Is unemployed due to a strike, lockout, or other labor dispute; or (3-19-99)

iv. Was separated for any other reason except lack of available work. (3-19-99)

b. Employer Response. The employer's response shall be completed in accordance with instructions printed on the Department's request for separation information and shall be completed by the employer or on the employer's behalf by someone having personal knowledge of the facts therein stated. (3-15-02)

11. Filing of an Additional Claim or Reopening a Claim. A claim series may be reestablished, electronically, in person at a local office or at an itinerant location, by telephone, or by mail. The additional or reopened claim (AC/RO) must be filed during a week in which the claimant becomes unemployed and/or wants to reestablish the claim. (3-30-01)

a. In-person Filing. When a claimant reports to a local office to file an AC/RO during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

b. Mailing. A claimant may file an AC/RO by mailing the completed AC/RO documents to a local office. The claim shall be effective as of the Sunday preceding the date the claimant mails the documents, as determined by the postmark. (3-30-01)

c. Electronic Filing. A claimant may file an AC/RO electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the AC/RO process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. (3-30-01)

d. Telephone Filing. A claimant may file an AC/RO by telephone by calling a local office. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the local office to initiate the claim. (3-30-01)

e. Reestablished Claim. A claim must be reestablished after a claimant has failed to report or has reported excessive earnings for two (2) or more consecutive weeks. Claims shall be reestablished as follows: (3-19-99)

i. If the break in the claim series is two (2) weeks or longer, the claim must be reestablished by filing a reopen or additional claim; or (3-19-99)

ii. If the claimant is reporting excessive earnings for no more than two (2) consecutive weeks, the claim may be automatically reestablished if the claimant notifies the local

office at the time of or prior to filing the report for the second week that he has become unemployed. Otherwise, the claim must be reestablished by filing a reopen/additional claim. (3-19-99)

12. Use of Wage Credits. All unemployment insurance wage credits from any source which are assignable to the state of Idaho shall be used in establishing a claim and determining the claimant's monetary eligibility. Ref. Sec. 72-1367(1), Idaho Code. (3-19-99)

13. Valid Claim. To be a valid claim for benefits, a claim must be filed during a week of no work, a week of less than full-time work in which the total wages payable to the claimant for work performed in such week amount to less than one and one-half (1-1/2) times the claimant's weekly benefit amount, or a week in which the claimant is separated from employment. Ref. Sec. 72-1327A, Idaho Code. (3-19-99)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.30 - RULES OF THE BENEFITS BUREAU

DOCKET NO. 09-0130-0505

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 119 through 121.

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

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

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: These temporary rules are effective July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 09.01.30.010.05 would be amended to clarify that State government and cost reimbursement employers are included in the total wages paid in covered employment.

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

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 IDAPA 04.11.01.811, negotiated rule making was not conducted because the change is in response to legislative changes during the last legislative session and to clarify an existing rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Roger Holmes, UI Benefits Bureau Chief, 332-3570 x 3233.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2005.

DATED this 1st day of July, 2005.

Roger Holmes
UI Benefits Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3233
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. DEFINITIONS.
Unless the context clearly requires otherwise, these terms shall have the following meanings when used in these Rules, in interpretations, in forms, and in other official documents issued by the Director of the Department of Commerce and Labor. (3-19-99)

01. Additional Claim. An initial claim made after a period of employment subsequent to a new claim in the same benefit year. (3-19-99)

02. Administrative Office. The main office in Boise, Idaho, wherein the administrative functions of the Department of Commerce and Labor are performed. (3-19-99)

03. Appealed Claim. An interested party's appeal to the Appeals Bureau of a claims examiner's decision on a claim or a request for review by the Industrial Commission of a decision made by an appeals examiner. (3-19-99)

04. Average Annual Wage. For the purpose of determining the taxable wage base, under Section 72-1350(1), Idaho Code, the average annual wage shall be computed by dividing that calendar year's total wages in covered employment, excluding State government and cost reimbursement employers, by the average number of workers in covered employment for that calendar year as derived from data reported to the Department of Commerce and Labor by covered employers. (3-19-99)

05. Average Weekly Wage. For the purpose of establishing the maximum weekly benefit amount, under Section 72-1367(2)(a), Idaho Code, the average weekly wage shall be computed by dividing the total wages paid in covered employment (including State government ~~*employment*~~ and cost reimbursement employers) for the preceding calendar year, as computed from data reported to the Department of Commerce and Labor by covered employers, by the monthly average number of workers in covered employment for the preceding calendar year and then dividing the resulting figure by fifty-two (52). ~~*(3-19-99)*~~(7-1-05)T

06. Benefit Balance. The unpaid portion of the total benefits payable with respect to a claimant's unemployment during a given benefit year. (3-19-99)

07. Chargeability Determination. A determination issued by the Director or his authorized agent with respect to whether a covered employer's account shall be charged for benefits paid on a claim. (3-19-99)

08. Claim. An application for unemployment insurance or "benefits". (3-19-99)

09. Combined Wage Claim. A claim filed under any interstate agreement whereby an unemployed worker with covered wages in more than one (1) state may combine such wages. (3-19-99)

10. Compensable Claim. An application for benefits which certifies to the completion of a benefit period (one (1) or more weeks). (3-19-99)

11. Contested Claim. A claim in which an interested party disputes the claimant's right to benefits. (3-19-99)

12. Continued Claim. An application for waiting-week credit or for benefits for specific compensable weeks. (3-19-99)

13. Employment. For the purpose of the personal eligibility conditions of Section 72-1366(5), Idaho Code, "employment" means that employment subsequent to which a claimant has not earned twelve (12) times his weekly benefit amount. (3-19-99)

14. Full-Time Employment. A week of full-time employment for a claimant is one in which he has worked what are customarily considered full-time hours for the industry in which he has been employed that week or in which the earnings are more than one and one-half (1-1/2) times his weekly benefit amount. (4-5-00)

15. Initial Claim. The first claim for benefits made by an unemployed individual during a continuous period of unemployment. An initial claim may be either new or additional. (3-19-99)

16. Interstate Claim. A claim filed by a worker who resides in a state other than the state (or states) in which he has earned wages in covered employment. (3-19-99)

17. Intrastate Claim. A claim filed by a worker who has earned wages within that state or who has federal wages assigned to that state. (3-19-99)

18. Itinerant Point. A place where claims-taking services are regularly provided for less than four (4) days a week by a local office which carries on its primary operations at another point. (3-19-99)

19. Liability Determination. A determination issued by the Director or his authorized agent with respect to whether a cost reimbursement employer shall be charged for benefits paid on a claim. (3-19-99)

20. Local Office. A community office of the Department of Commerce and Labor at which claims are taken and job placement services are provided to applicants and employers. (3-19-99)

21. Mail Claim. A claim filed by mail rather than in person at a local office. (3-19-99)

22. Monetary Determination. A determination of eligibility which lists a claimant's base period employer(s) and wages and establishes, if the claimant is eligible, his benefit year, his weekly benefit amount, and his total benefit amount. (3-19-99)

23. New Claim. The first initial claim made in a benefit year. (3-19-99)

24. Non-Monetary Determination. A determination issued by a claims examiner with respect to the personal eligibility conditions of a claimant. (3-19-99)

25. Personal Identification Number (PIN). A confidential number or other electronic method of verification unique to a claimant or an employer that is required for such persons to perform certain transactions with the Department by electronic or telephonic means. A PIN has the same force and effect as a manual signature. (4-6-05)

26. Regular Claim. A claim based on wages earned during a base period, excluding extended benefit claims. (3-19-99)

27. Signature, Signed. The Personal Identification Number (PIN) is considered the same as a manual signature and has the same force and effect when a claimant or an employer uses Department-approved electronic or telephonic means to submit information to or engage in transactions with the Department. (4-6-05)

28. Telephone Claim. A claim filed by telephone rather than in person at a local office. (3-19-99)

29. Total Benefit Amount. The full amount of benefits to which a claimant may be entitled during a benefit year on his regular claim. (3-19-99)

30. Unemployment. An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are allocable, or in any week in which the total wages payable to him for less than full-time work performed in such week amounted to less than one and one-half (1-1/2) times his weekly benefit amount. (3-19-99)

31. Weekly Benefit Amount. The full amount of benefits to which a claimant may be entitled for one (1) week of total unemployment. (3-19-99)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.30 - RULES OF THE BENEFITS BUREAU

DOCKET NO. 09-0130-0506

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 122 through 128.

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

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

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: These temporary rules are effective July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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: As part of HB 4, Section 72-1366(14), Idaho Code, was amended to provide that a claimant who has been found ineligible for benefits must reestablish eligibility by receiving wages for bona fide work of at least 14 times the weekly benefit amount, rather than 12 times the weekly benefit amount. The references to this requalification requirement in IDAPA 09.01.30.010.13, 09.01.30.250.06, and 09.01.30.425.09 would be changed from 12 times to 14 times the weekly benefit amount.

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

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 IDAPA 04.11.01.811, negotiated rule making was not conducted because it is in response to legislative changes to governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Roger Holmes, UI Benefits Bureau Chief, 332-3570 x 3233.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2005.

DATED this 1st day of July, 2005.

Roger Holmes
UI Benefits Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3233
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. DEFINITIONS.
Unless the context clearly requires otherwise, these terms shall have the following meanings when used in these Rules, in interpretations, in forms, and in other official documents issued by the Director of the Department of Commerce and Labor. (3-19-99)

01. Additional Claim. An initial claim made after a period of employment subsequent to a new claim in the same benefit year. (3-19-99)

02. Administrative Office. The main office in Boise, Idaho, wherein the administrative functions of the Department of Commerce and Labor are performed. (3-19-99)

03. Appealed Claim. An interested party's appeal to the Appeals Bureau of a claims examiner's decision on a claim or a request for review by the Industrial Commission of a decision made by an appeals examiner. (3-19-99)

04. Average Annual Wage. For the purpose of determining the taxable wage base, under Section 72-1350(1), Idaho Code, the average annual wage shall be computed by dividing that calendar year's total wages in covered employment, excluding State government and cost reimbursement employers, by the average number of workers in covered employment for that calendar year as derived from data reported to the Department of Commerce and Labor by covered employers. (3-19-99)

05. Average Weekly Wage. For the purpose of establishing the maximum weekly benefit amount, under Section 72-1367(2)(a), Idaho Code, the average weekly wage shall be computed by dividing the total wages paid in covered employment (including State government employment) for the preceding calendar year, as computed from data reported to the Department of Commerce and Labor by covered employers, by the monthly average number of workers in covered employment for the calendar year and then dividing the resulting figure by fifty-two (52). (3-19-99)

06. Benefit Balance. The unpaid portion of the total benefits payable with respect to a claimant's unemployment during a given benefit year. (3-19-99)

07. Chargeability Determination. A determination issued by the Director or his authorized agent with respect to whether a covered employer's account shall be charged for benefits paid on a claim. (3-19-99)

08. Claim. An application for unemployment insurance or "benefits". (3-19-99)

09. Combined Wage Claim. A claim filed under any interstate agreement whereby an unemployed worker with covered wages in more than one (1) state may combine such wages. (3-19-99)

10. Compensable Claim. An application for benefits which certifies to the

completion of a benefit period (one (1) or more weeks). (3-19-99)

11. Contested Claim. A claim in which an interested party disputes the claimant's right to benefits. (3-19-99)

12. Continued Claim. An application for waiting-week credit or for benefits for specific compensable weeks. (3-19-99)

13. Employment. For the purpose of the personal eligibility conditions of Section 72-1366(5), Idaho Code, "employment" means that employment subsequent to which a claimant has not earned ~~*twelve*~~ fourteen (1~~2~~4) times his weekly benefit amount. ~~*(3-19-99)*~~(7-1-05)T

14. Full-Time Employment. A week of full-time employment for a claimant is one in which he has worked what are customarily considered full-time hours for the industry in which he has been employed that week or in which the earnings are more than one and one-half (1-1/2) times his weekly benefit amount. (4-5-00)

15. Initial Claim. The first claim for benefits made by an unemployed individual during a continuous period of unemployment. An initial claim may be either new or additional. (3-19-99)

16. Interstate Claim. A claim filed by a worker who resides in a state other than the state (or states) in which he has earned wages in covered employment. (3-19-99)

17. Intrastate Claim. A claim filed by a worker who has earned wages within that state or who has federal wages assigned to that state. (3-19-99)

18. Itinerant Point. A place where claims-taking services are regularly provided for less than four (4) days a week by a local office which carries on its primary operations at another point. (3-19-99)

19. Liability Determination. A determination issued by the Director or his authorized agent with respect to whether a cost reimbursement employer shall be charged for benefits paid on a claim. (3-19-99)

20. Local Office. A community office of the Department of Commerce and Labor at which claims are taken and job placement services are provided to applicants and employers. (3-19-99)

21. Mail Claim. A claim filed by mail rather than in person at a local office. (3-19-99)

22. Monetary Determination. A determination of eligibility which lists a claimant's base period employer(s) and wages and establishes, if the claimant is eligible, his benefit year, his weekly benefit amount, and his total benefit amount. (3-19-99)

23. New Claim. The first initial claim made in a benefit year. (3-19-99)

24. Non-Monetary Determination. A determination issued by a claims examiner

with respect to the personal eligibility conditions of a claimant. (3-19-99)

25. Personal Identification Number (PIN). A confidential number or other electronic method of verification unique to a claimant or an employer that is required for such persons to perform certain transactions with the Department by electronic or telephonic means. A PIN has the same force and effect as a manual signature. (4-6-05)

26. Regular Claim. A claim based on wages earned during a base period, excluding extended benefit claims. (3-19-99)

27. Signature, Signed. The Personal Identification Number (PIN) is considered the same as a manual signature and has the same force and effect when a claimant or an employer uses Department-approved electronic or telephonic means to submit information to or engage in transactions with the Department. (4-6-05)

28. Telephone Claim. A claim filed by telephone rather than in person at a local office. (3-19-99)

29. Total Benefit Amount. The full amount of benefits to which a claimant may be entitled during a benefit year on his regular claim. (3-19-99)

30. Unemployment. An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are allocable, or in any week in which the total wages payable to him for less than full-time work performed in such week amounted to less than one and one-half (1-1/2) times his weekly benefit amount. (3-19-99)

31. Weekly Benefit Amount. The full amount of benefits to which a claimant may be entitled for one (1) week of total unemployment. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

250. DETERMINATIONS/APPELLATE PROCESSES.

01. Chargeability Determination. The Department will issue a determination of chargeability to the major base period employer and include the right to protest the determination within fourteen (14) days of the date of service. Ref. Sec. 72-1351(2), Idaho Code. (3-19-99)

02. Continuing a Claim During Appellate Procedures. While a decision concerning eligibility on a claim is pending at any appellate stage of review, claimants shall be advised to continue the regular filing of claims during any week in which they may be eligible to receive benefits. Ref. Sec. 72-1368(1), Idaho Code. (3-19-99)

03. Corrected Monetary Determination. The Department shall issue a corrected monetary determination when there is a change in base period wages which occurs within a year from the date of the last monetary determination based on such base period wages. Ref. Sec. 72-

1367, 72-1368(4), Idaho Code. (3-19-99)

04. Non-Monetary Determination. A non-monetary determination shall be made in writing and served on the interested parties when there is an issue as to whether a claimant meets the personal eligibility conditions of Section 72-1366, Idaho Code. Ref. Sec. 72-1368(3), Idaho Code. (3-19-99)

05. Rebuttal Procedure. Whenever any information is provided in response to a claim, and the information contradicts a statement made previously, all interested parties shall be given an opportunity for rebuttal. Ref. Sec. 72-1368(3), Idaho Code. (3-19-99)

06. Reestablishing Eligibility After A Determination Of Ineligibility. An individual who previously was found ineligible for benefits has the burden of proving he has reestablished his eligibility by having obtained bona fide work and received wages therefor in an amount of at least ~~*twelve*~~ fourteen (1~~2~~4) times his weekly benefit amount. Evidence of requalifying wages includes, but is not limited to, the name of the employer, the mailing address, the dates of employment, the type of employment performed, and the claimant's gross earnings. Ref. Sec 72-1366(14), Idaho Code. ~~*(3-19-99)*~~(7-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

425. NEW CLAIMS/ADDITIONAL CLAIMS.
Ref. Sec. 72-1308, Idaho Code. (3-19-99)

01. Claims for Benefits, Delayed Filing. When any claims taking office has reason to believe there will be more claimants than can be served on any given day, an appointment slip must be used to adjust the claims load for the filing of initial claims. Appointment slips shall be issued to potential claimants who cannot be served on the date they first make contact with the office. A claimant who receives an appointment slip does not forfeit any benefit rights provided, however, that he subsequently files his claim on the day assigned. When any claims taking office has determined that a claimant's attempt to file an initial claim was delayed due to problems with the Department's telephone or electronic filing system, the claim may be backdated if the claimant reported the access problem to a local office within seven (7) days of the date the problem occurred. When a claim is backdated, the continued claim report for the period of time involved will be considered timely if filed during the same week or the next week after the claim is filed. (3-30-01)

02. Effective Date of Backdated Claims. When the filing of an initial claim for benefits is backdated due to local office scheduling problems or a Department system malfunction, the effective date shall be the Sunday of the week in which the claimant first reported to the local office to file the claim or attempted to access the telephone or electronic claim filing system and there were problems with the system. (3-30-01)

03. Filing of New Claims. New intrastate and interstate claims may be filed electronically, in person at a local office or at an itinerant location, or by mail if permitted by a

claims examiner. New interstate claims may also be filed by telephone. (3-30-01)

a. Electronically Filed Claims. Claimants may file claims electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the application process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. A claim filed electronically will automatically be assigned to the local office that services the zip code for the mailing address provided by the claimant. (3-30-01)

b. In-person Filing. A claimant may file a claim in person at the local Job Service office serving the claimant's area of residence. Job Service offices are open Monday through Friday, 8 a.m. until 5 p.m., except on state holidays. When a claimant reports to a local office to file a claim during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

c. Interstate Claims. Any claim filed by an interstate claimant shall be accepted in the same manner and under the same conditions for which claims are accepted from intrastate claimants. Interstate claimants may also file claims by calling the Department's interstate claims unit. A claim filed via telephone shall be effective as of the Sunday of the week in which the claimant first calls the interstate claims unit to initiate the claim. (3-30-01)

d. Itinerant Locations. Claims may be filed at itinerant points established by the Department for the taking of claims. A claim filed at an itinerant point on the first regular itinerant visit after the claimant's separation will be effective as of the Sunday preceding the first business day of the period of unemployment. If the claimant has filed the claim on a date later than the first regular itinerant visit, the claim shall be effective as of the Sunday preceding the date the claim is actually filed. (3-30-01)

e. Mailed Claims. A claims examiner may allow a claimant to file a claim by mail when in-person filing or other methods of filing would cause undue hardship. If a claimant who has been granted permission to file a claim by mail completes and returns the claim form to the local office within seven (7) days of the date the form was mailed to the claimant by the Department, the claim will be effective as of the Sunday preceding the date the claimant requested permission to file the claim by mail. If the claimant fails to return the claim form within the seven (7) day period, and mail facilities were available for such mailing within the period, the claim will be effective as of the Sunday preceding the date the claimant mails the claim form, as determined by the postmark. (3-30-01)

04. Itinerant Claims. Itinerant points for the taking of unemployment insurance claims may be established, changed, or discontinued at administrative discretion. Where itinerant service is being inaugurated, changed, or discontinued for a particular community, public notice of such inauguration, change, or discontinuance shall be conspicuously posted and public notification placed in a daily or weekly newspaper of general distribution for the affected community two (2) weeks prior to such inauguration, change or discontinuance. Ref. Sec. 72-1368(1), Idaho Code. (3-19-99)

05. Registration for Work. All claimants who cannot demonstrate a firm attachment to an employer, industry, or union will be required to register for employment. Unless otherwise requested by the claimant, such registration should apply only to the days or parts of the days that the claimant is in fact unemployed and available for employment. The work history of each claimant shall be recorded, and a work application completed and filed. Ref. Sec. 72-1366(2), Idaho Code. (3-19-99)

06. Registration/Reporting Requirements – Interstate Claimants. Interstate claimants shall be required to register for work in the same manner and to comply with the same reporting requirements prescribed for regular Idaho intrastate claimants. Ref. Sec. 72-1366(1), (2), Idaho Code. (3-30-01)

07. Requirement to Provide Information. If a claimant fails to provide the Department with all necessary information pertinent to eligibility, the claimant may be denied benefits until the information is provided. Any individual making a claim for benefits shall provide the Department with: (3-15-02)

a. The claimant's legal name; (3-15-02)

b. The claimant's Social Security Number; (3-15-02)

c. The address where the claimant's mail is delivered; (3-15-02)

d. The claimant's place of last employment; (3-15-02)

e. The name, correct mailing address, and the reason for separation from all of the claimant's most recent and base-period employers; (3-15-02)

f. If requested by the Department, a list of all other employment in the past twenty-four (24) months; (3-15-02)

g. The claimant's plans for finding other employment at the earliest possible time; and (3-15-02)

h. Other information necessary for the proper processing of the claim. (3-15-02)

i. Once a claim has been established, the claimant must provide, upon request, a record of the claimant's work search, in order for the Department to assess the claimant's compliance with personal eligibility requirements. (3-15-02)

08. Right to Claim Benefits. In no instance, under any circumstances or conditions, shall an individual be denied the right to file a claim and to receive in writing a decision regarding his eligibility. Ref. Sec. 72-1366(1), Idaho Code. (3-19-99)

09. Separation Information. Unless separation information has been provided by other means, such as a mass layoff list, a notice of the filing of a claim and a request for separation information must be completed and mailed to the claimant's last employer and each next

preceding employer until the wages received by the claimant equal or exceed ~~*twelve*~~ fourteen (1~~2~~4) times his weekly benefit amount. For all such employers, the claimant must provide the Department with the employer's name and correct mailing address, the claimant's dates of employment, the type of employment performed, and the claimant's gross earnings from each employment. Ref. Sec. 72-1366 (1), (5) and (14), Idaho Code. ~~*(3-19-99)*~~(7-1-05)T

10. Separation Notice. (3-19-99)

a. Request for Separation Information. Every employer (including employers not subject to Title 72, Chapter 13, Idaho Code), after receiving a request for separation information from the Department because an individual has filed a claim for benefits, shall submit to the Department a report of the reasons for the separation whenever such claimant: (4-5-00)

i. Left his employment voluntarily; (3-19-99)

ii. Was discharged from his employment due to misconduct; (3-19-99)

iii. Is unemployed due to a strike, lockout, or other labor dispute; or (3-19-99)

iv. Was separated for any other reason except lack of available work. (3-19-99)

b. Employer Response. The employer's response shall be completed in accordance with instructions printed on the Department's request for separation information and shall be completed by the employer or on the employer's behalf by someone having personal knowledge of the facts therein stated. (3-15-02)

11. Filing of an Additional Claim or Reopening a Claim. A claim series may be reestablished, electronically, in person at a local office or at an itinerant location, by telephone, or by mail. The additional or reopened claim (AC/RO) must be filed during a week in which the claimant becomes unemployed and/or wants to reestablish the claim. (3-30-01)

a. In-person Filing. When a claimant reports to a local office to file an AC/RO during regular business hours, the claim shall be effective as of the Sunday of that week. (3-30-01)

b. Mailing. A claimant may file an AC/RO by mailing the completed AC/RO documents to a local office. The claim shall be effective as of the Sunday preceding the date the claimant mails the documents, as determined by the postmark. (3-30-01)

c. Electronic Filing. A claimant may file an AC/RO electronically by accessing Idaho's Internet claim system through the Internet or, if filing through an Idaho Works location, by accessing the Department's Intranet claim system. Electronically filed claims will be date and time stamped at the time the claimant begins the AC/RO process. The claim will not be completed until the claimant has finished the process and has electronically submitted the claim to the Department. A claim filed via the Internet or an Idaho Works location shall be effective as of the Sunday of the week of the date shown on the date/time stamp. (3-30-01)

d. Telephone Filing. A claimant may file an AC/RO by telephone by calling a local office. A claim filed via telephone shall be effective as of the Sunday of the week in which the

claimant first calls the local office to initiate the claim. (3-30-01)

e. Reestablished Claim. A claim must be reestablished after a claimant has failed to report or has reported excessive earnings for two (2) or more consecutive weeks. Claims shall be reestablished as follows: (3-19-99)

i. If the break in the claim series is two (2) weeks or longer, the claim must be reestablished by filing a reopen or additional claim; or (3-19-99)

ii. If the claimant is reporting excessive earnings for no more than two (2) consecutive weeks, the claim may be automatically reestablished if the claimant notifies the local office at the time of or prior to filing the report for the second week that he has become unemployed. Otherwise, the claim must be reestablished by filing a reopen/additional claim. (3-19-99)

12. Use of Wage Credits. All unemployment insurance wage credits from any source which are assignable to the state of Idaho shall be used in establishing a claim and determining the claimant's monetary eligibility. Ref. Sec. 72-1367(1), Idaho Code. (3-19-99)

13. Valid Claim. To be a valid claim for benefits, a claim must be filed during a week of no work, a week of less than full-time work in which the total wages payable to the claimant for work performed in such week amount to less than one and one-half (1-1/2) times the claimant's weekly benefit amount, or a week in which the claimant is separated from employment. Ref. Sec. 72-1327A, Idaho Code. (3-19-99)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.30 - RULES OF THE BENEFITS BUREAU

DOCKET NO. 09-0130-0507

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 129 through 132.

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

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

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: These temporary rules are effective July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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: As part of HB 4, the exception to the personal eligibility conditions for a benefit claimant in Section 72-1366(4)(a), Idaho Code, concerning compelling personal circumstances was changed. The rule concerning compelling personal circumstances need to be changed to be consistent with the statute, plus the term needed to be more clearly defined to provide guidance in interpretation. IDAPA 09.01.30.175.04 would be amended to incorporate the changes in the statute and the term "compelling personal circumstances" would be more clearly defined.

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

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 IDAPA 04.11.01.811, negotiated rule making was not conducted because it is in response to legislative changes to governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Roger Holmes, UI Benefits Bureau Chief, 332-3570 x 3233.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2005.

DATED this 1st day of July, 2005.

Roger Holmes
UI Benefits Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3233
334-6301 fax

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 ~~*out of his normal labor market area*~~ unavailable due to compelling personal circumstances, ~~*and the absence*~~ his unavailability does not exceed a minor portion of ~~*the*~~ 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. ~~*To be "compelling", the circumstances must be caused by factors over which the claimant has no control.*~~ For the purposes of this rule, compelling personal circumstances are defined as: ~~*(3-19-99)*~~(7-1-05)T

a. A situation in which the claimant required the assistance of emergency response personnel; (7-1-05)T

b. The serious illness or death or funeral of an immediate family member; or (7-1-05)T

c. The wedding of the claimant or an immediate family member. (7-1-05)T

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. (7-1-05)T

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 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 eligibility under the Americans with Disabilities Act. Ref. Sec. 72-1366(6), Idaho Code. (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)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU

DOCKET NO. 09-0135-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 133 and 134.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: These temporary rules are effective July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 change to IDAPA 09.01.35.040 is intended to include the ability to compromise the civil penalty provisions of Section 72-1372, Idaho Code, which is effective July 1, 2005. Without this change there would be no ability to compromise civil penalties or provide waivers for employers who otherwise meet the criteria for waiver or compromise of penalty. This change will provide uniformity in the application of the compromise provision.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The proposed change to IDAPA 09.01.35.040 is intended to include the ability to compromise the civil penalty provisions of Section 72-1372, Idaho Code, which is effective July 1, 2005.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is in response to legislative changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 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 24, 2005.

DATED this 1st day of July, 2005.

Don Arnold
Tax & Benefit Control Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3258
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

040. COMPROMISE OF PENALTY AND CIVIL PENALTY.
Pursuant to Section 72-1354, Idaho Code, the Director or his authorized representative may, for good cause shown, compromise the amount of penalties owed on an employer account. An employer shall submit a request in writing for compromise of penalties, setting forth the reason(s) for the delinquency, and attaching any available evidence supporting the request.
~~(3-19-99)~~(7-1-05)T

01. Good Cause. An employer has good cause for the failure to timely pay contributions or for compromise of civil penalties when, in the opinion of the Director or his authorized representative, the employer has established that one (1) of the following criteria has been met: ~~(3-19-99)~~(7-1-05)T

a. The reason for the delinquency was beyond the reasonable control of the employer. Examples of circumstances that are beyond the reasonable control of the employer include, but are not limited to, the following: (3-19-99)

i. Departmental error, including but not limited to providing incorrect information to the employer or not furnishing proper forms in sufficient time to permit timely payment of contributions; (3-19-99)

ii. Death or serious illness or injury of the employer or the employer's accountant or members of their immediate families; (3-19-99)

iii. Destruction by fire or other casualty of the employer's place of business or business records; or (3-19-99)

iv. Postal service delays. (3-19-99)

b. The delinquency was due to circumstances for which the imposition of penalties would be inequitable. (3-19-99)

c. Good cause is also established in the case of an employer who has never received a status determination, who has never paid any contributions to the director, who voluntarily approaches the Department to inquire as to whether workers are engaged in covered employment, and the failure to pay contributions was due to the employer's good faith belief that the employer was not a covered employer pursuant to the provisions of Idaho Employment Security Law. Ref. Sec. 72-1354, Idaho Code. (7-1-05)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU

DOCKET NO. 09-0135-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 135 and 136.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: These temporary rules are effective July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 change to IDAPA 09.01.35.134 will change the catchline of the subsection to better reflect the subject matter of the rule and establish the time restrictions for PEOs to apply for experience rate transfers from their clients. Without the change professional employer organizations (PEOs) might be unaware that the time frame for experience rate transfer applications of 180 days applies to them. This change will bring PEOs under the same guidelines already established for other entities.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with the recently-enacted Section 72-1351A, Idaho Code, which proscribes SUTA-dumping by employers and generally requires an employer's tax rate to reflect that individual employer's prior experience with the UI system. The change to the rule requires the PEO and the employer/client jointly to apply for the employer/client to be included within the PEO's blended experience rate, giving the Department an opportunity to evaluate each request to ensure that it is consistent with the requirements of Section 72-1351A, 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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is intended to clarify an existing rule related to the time frame for experience rate transfers for PEOs.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 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 24, 2005.

DATED this 1st day of July, 2005.

Don Arnold
Tax & Benefit Control Bureau Chief
Department of Commerce and Labor

317 W. Main Street
Boise, ID 83735
332-3570 ext. 3258
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

134. PROFESSIONAL EMPLOYER ORGANIZATIONS.
A professional employer organization shall fully comply with the requirements of the Professional Employer Recognition Act, Chapter 24, Title 44, Idaho Code in order to be eligible for any transfers of experience rating as allowed by Section 72-1349B, Idaho Code. (3-15-02)

01. Methods of Reporting. To report the wages and employees covered by the professional employer arrangement between a professional employer and client, professional employers and their clients shall make reports to the Department in one (1) of the following ways, subject to the conditions in Subsections 134.02 through 134.06 of this rule: (3-15-02)

a. Report the workers included in the professional employer arrangement under the employer account number of the professional employer and transfer the rate of the client to the professional employer; or (3-15-02)

b. Report the workers included in the professional employer arrangement under the employer account number of the client without an experience rate transfer. Ref. Sec. 72-1349B, Idaho Code. (3-15-02)

02. Joint Transfer of Experience Rate. In order to effect a transfer of a client's experience rate into the experience rate of a professional employer organization, both the client and the professional employer organization shall jointly apply for the transfer of the experience rate within the same timeframes as required of employers by Section 72-1351(4), Idaho Code, from the date of the contract entered into between the professional employer organization and the client required by Section 44-2405, Idaho Code. Failure to submit a timely joint request for transfer of experience rate shall result in the professional employer organization reporting wages for the client under the employer account number of the client. Ref. Sec. 72-1351(4), Idaho Code. (7-1-05)

03. Partial Transfers of Experience Rate Prohibited. In the event that a client and a professional employer organization jointly apply to transfer the experience rate of the client into that of the professional employer, the client's entire experience rate and factors of experience rate shall be transferred into that of the professional employer, and no partial transfers of experience factors or the experience rate shall be allowed. Ref. Sec. 72-1349B, Idaho Code. (3-15-02)

04. ~~***Mandatory Transfer of Experience Rate***~~ **Joint Application**. If the professional employer organization elects to report the workers assigned to ~~*the*~~ a client under the experience rate account of the professional employer~~*, and the client employer has a deficit experience rate, the experience rate transfer shall be mandatory*~~ a joint application signed by the professional employer organization and the client employer must be submitted within one hundred eighty

(180) days of the contract between the professional employer organization and the client. If the application is not received within this time frame, the workers assigned to the client employer must be reported under the experience rate account of the client without an experience rate transfer. Ref. Sec. 72-1351, and 72-1349B, Idaho Code. ~~*(3-15-02)*~~(7-1-05)T

05. Partial Reporting of Workers. If some of the client's workers are included in the professional employer arrangement and some are not included, and the professional employer organization and the client elect to report the workers included in the professional employer arrangement under the employer account number of the client, then only one (1) quarterly report shall be remitted to the Department, which shall list or include all the client's workers whether or not included in the professional employer arrangement. Ref. Sec. 72-1349B, Idaho Code. (3-15-02)

06. Combined Wages or Services for Purposes of Coverage. If a client employer has employees or employment, or both, that does not independently meet the coverage or threshold requirements necessary to constitute covered employment, such employees, services or employment shall nonetheless be deemed to meet the coverage requirements of the Employment Security Law if, in combination with other employees, employment or services of such other employees of the professional employer organization or any of its clients, such wages, services or employees do jointly meet coverage requirements. (3-15-02)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU

DOCKET NO. 09-0135-0503

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 137 through 143.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 reflect housekeeping changes and name changes in response to the reorganization of the Department's tax and benefit overpayment bureaus. The changes are needed to reflect the name change for the tax and benefit overpayment bureaus, changes to statutory references which are no longer valid and non-substantive housekeeping changes.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the nature of the proposed changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 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 24, 2005.

DATED this 1st day of July, 2005.

Don Arnold
Tax & Benefit Control Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3258
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

09.01.35 - ~~*RULES OF THE EMPLOYER ACCOUNTS BUREAU*~~
UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

000. LEGAL AUTHORITY.
These rules are promulgated under the legal authority of Section ~~*72-1333(2)*~~ 67-4702, Idaho

Code. ~~*(3-19-99)*~~(____)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 09.01.35, "~~*Rules of the Employer Accounts Bureau*~~ Unemployment Insurance Tax Administration Rules". ~~*(3-19-99)*~~ (____)

02. Scope. These rules govern Department procedures and the rights and duties of employers under the Unemployment Insurance Program. (3-19-99)

002. WRITTEN INTERPRETATIONS.
Explanations for rule changes are available for public inspection at the Idaho Department of Commerce and Labor, 317 W. Main Street, Boise, Idaho, 83735. Brochures explaining various provisions of Idaho's Employment Security Law are also available at the above address.
~~*(3-19-99)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

011. GENERAL PROVISIONS.
The following ~~*Rules for Employer Contributions*~~ Unemployment Insurance Tax Administration Rules are adopted pursuant to Section ~~*72-1333(2)*~~ 67-4702, Idaho Code. ~~*(3-19-99)*~~(____)

01. Quarterly Reporting. Subject employers shall report all wages paid for services in covered employment each calendar quarter. Ref. Sec. 72-1337, Idaho Code. (3-19-99)

02. Contribution Due Date. Contributions are due on or before the last day of the month following the calendar quarter except if the last day of the month falls on a weekend or holiday, in which case the next workday is the due date. Ref. Sec. 72-1349, Idaho Code.(3-19-99)

03. Penalties and Interest on Bankruptcy. Penalty and/or interest shall not be assessed on amounts covered in the Department's Proof of Claim with the Bankruptcy Court for the period after the filing date of the Bankruptcy Petition and ending with the conclusion of bankruptcy proceedings and distribution of assets. Post petition penalty and interest shall be compromised, provided the amount due is paid in full by a date established after the termination of the bankruptcy proceedings. Ref. Sec. 72-1356, Idaho Code. (3-19-99)

04. Lien Interest. Lien interest on a delinquent account shall be assessed against the remaining unpaid balance computed from the day following the recording of a tax lien, at a rate established by law. (See Section 056). Ref. Sec. 72-1360, Idaho Code. (3-19-99)

05. Penalty and Interest During Controversy. Penalty and/or interest shall be compromised for periods when a valid controversy exists if amounts determined to be due are paid in full by a date established at the conclusion of the issue. Ref. Sec. 72-1354 and 72-1360, Idaho Code. (3-19-99)

06. Confidential Information. Information obtained from an employer shall be held as confidential and shall not be released without the consent of the employer except as provided in IDAPA 09.01.08, "Rules on Disclosure of Information," Section 011 or when disclosure is necessary for collection of any amount due under the employment security law, or as otherwise provided by law or these rules. Ref. Sec. 9-340 and 72-1342, Idaho Code. (3-19-99)

07. Filing of an Employer Appeal. (3-30-01)

a. An appeal shall be in writing, signed by an interested party or representative, and shall contain words that, by fair interpretation, request the appeal process for a specific determination or redetermination of the Department. The appeal may be filed by delivering it, or faxing it, to any ~~*Job Service*~~ Idaho Commerce & Labor local office or to the ~~*Employer Accounts*~~ Tax and Benefit Control Bureau of the Idaho Department of Commerce and Labor, 317 W. Main Street, Boise, Idaho 83735. The date of personal delivery shall be noted on the appeal and shall be deemed the date of filing. A faxed appeal that is received by a ~~*Job Service*~~ Idaho Commerce & Labor local office or the ~~*Employer Accounts*~~ Tax and Benefit Control Bureau by 5 p.m. (as of the time zone of the office receiving the appeal) on a business day shall be deemed filed on that date. A faxed appeal that is received by a ~~*Job Service*~~ Idaho Commerce & Labor local office or the ~~*Employer Accounts*~~ Tax and Benefit Control Bureau on a weekend or holiday or after 5 p.m. on a business day shall be deemed filed on the next business day. An appeal may also be filed by mailing it to any ~~*Job Service*~~ Idaho Commerce & Labor local office or to the ~~*Employer Accounts*~~ Tax and Benefit Control Bureau, Idaho Department of Commerce and Labor, 317 W. Main Street, Boise, Idaho 83735. If mailed, the appeal shall be deemed to be filed on the date of mailing as determined by the postmark on the request. Ref. Sec. 72-1361, Idaho Code. ~~*(3-30-01)*~~( )

b. An appeal should be accompanied by a specific statement, information or evidence which provides an explanation as to why the original determination is erroneous. (3-30-01)

c. In cases where a determination of amounts due is made by the Department pursuant to Section 72-1358, Idaho Code, the reports shall replace the determination and will be used to establish the employer's liability if (i) the employer files reports for the periods covered by the determination before the determination becomes final, and (ii) the Department determines that the reports are accurate and complete. If the Department determines the reports are not accurate or complete, the reports shall be treated as an appeal of the determination. (3-30-01)

08. Determinations. Determinations shall be in writing, signed by an authorized representative of the director, and shall contain provisions which advise the interested parties of their right to appeal the determination within fourteen (14) days from the date of mailing of the determination in accordance with Section 72-1361, Idaho Code. (3-30-01)

09. Determination of Payment Date. Each amount shall be deemed to have been paid on the date that the Department receives payment thereof in cash or by check or other order for the payment of money honored by the drawer on presentment; provided, that if sent through the mail, it shall be deemed to have been paid as of the date mailed as determined by the postmark on the envelope containing same, or the date of the check in lieu of a postmark. Provided further, that in the case of payments received by means of garnishment, execution, or levy, the amount received shall be deemed to have been paid as of the date that the order of garnishment, execution, or levy is served. Ref. Sec. 72-1349, Idaho Code. (3-19-99)

10. Release of Lien Upon Payment in Full. An amount secured by a lien shall be deemed to be satisfied when payment in full is received by the Department in the form of cash, money order, or other certified funds, or proof presented that a check or other negotiable instrument has been honored by its drawer upon presentment. Ref. Sec. 45-1908, Idaho Code. (3-19-99)

11. Contribution Reports. Each contribution shall be accompanied by an employer's contribution report in a form or medium prescribed and furnished or approved for such purpose, giving such information as may be required, including number of individuals employed and wages paid or payable to each, which must be signed or furnished by the covered employer or, on ~~*his*~~ their behalf by someone having personal knowledge of the facts therein stated, and who has been authorized by the covered employer to submit the information. Ref. Sec. 72-1349, Idaho Code. ~~*(3-19-99)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

106. CLAIMS OF EXEMPTION.
Any employer claiming that services performed for ~~*him*~~ the employer or remuneration paid by ~~*him*~~ the employer does not constitute covered employment or covered wages, as defined in Section 72-1316 and 72-1328, Idaho Code, shall make a report to the Department of Commerce and Labor of all pertinent facts upon which said claim is based, which report shall be signed by the person making the claim, if he ~~*be*~~ is the employer, or on behalf of the employer by an authorized representative. Ref. Sec. 72- 1337, Idaho Code. ~~*(3-19-99)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

132. STATUS.

01. Status Information Required. To determine the taxable status of an employer, detailed information regarding the business activities of any person engaged in business in Idaho shall be submitted as required, including articles of incorporation, articles of organization, minutes of boards of directors, financial reports, partnership agreements, number of employees, wages paid, employment contracts, income tax records, and any other records or other information which may tend to establish such person's status. Ref. Sec. 72-1337, Idaho Code. (3-19-99)

02. Notification to Liable Employers. Employers who are determined liable for contributions shall be notified by letter of their status as a covered employer. The employer's appeals rights to the determination shall also be explained in the letter. Ref. Sec. 72-1353 and 72-1361, Idaho Code. (3-19-99)

03. Status Determination. A formal determination of status shall be prepared if an

employer questions ~~*his*~~ their liability. This status determination shall state the received facts and arrive at a logical conclusion based on these facts and precedent appeals decisions or legal opinions. Ref. Sec. 72-1353, Idaho Code. ~~*(3-19-99)*~~(____)

04. Employer Quarterly Report Forms. Employers who are liable to pay tax contributions, or who have elected a cost reimbursement option in lieu of tax contributions, shall submit quarterly report forms in any form or medium designated by the director or his authorized representative. Ref. Sec. ~~*72-1333*~~ 67-4702, Idaho Code. ~~*(3-19-99)*~~(____)

05. Update Requirements. Covered employers shall furnish the Department with pertinent status data when new or additional information is available. Ref. Sec. 72-1337, Idaho Code. (3-19-99)

(BREAK IN CONTINUITY OF SECTIONS)

166. FIELD OPERATIONS CONTROL.
When circumstances dictate, and as a result of nonpayment of liabilities, the employer shall be notified by mail to ~~*his*~~ the last known address of lien proceedings against ~~*his*~~ the employer's interests, with an explanation of the amounts due, and the accrual of interest at the proper rate until the lien is satisfied. Ref. Sec. 72-1360, Idaho Code. ~~*(3-19-99)*~~(____)

01. Statute of Limitations for Audits and Inspections of Employer Records. In the absence of fraudulent practices, the Department shall not audit an employer's records for a period greater than three (3) years for purposes of establishing a tax liability. The three (3) year period shall be determined by, and extend three (3) years back from, the date that the employer is notified, orally or in writing by any representative of the Department, of an intent to perform an audit of the records, and shall be deemed to include every quarter which, in whole or in part, falls within the three (3) year period. This statute of limitations shall not apply in any case in which an employer has engaged in fraudulent practices. (3-30-01)

02. Tolling of Statute of Limitations. The three (3) year statute of limitations is tolled for any period in which the employer does not reside within the state. (3-30-01)

03. Notification of Audits. Employers shall be notified as soon as practicable of an impending payroll records audit for tax liability purposes. This shall allow time in which to agree as to a convenient time and place for audit. Ref. Sec. 72-1337, Idaho Code. (3-19-99)

04. Frequency of Audits. The frequency of audits or inspections of an employer's records to ensure compliance with the law and Department rules shall be based on the following criteria: (3-30-01)

a. On the basis of random selection and other selection criteria in accordance with federal requirements; (3-30-01)

b. As a result of information received from any source, provided that the information

received is of such a nature that it would be reasonable to conduct an audit or inspection of records as a result of that information; or (3-30-01)

c. As a result of a previous audit, if the business practices or records of the employer are of such a nature that it would be reasonable for a Department employee to re-inspect or re-audit the records to ensure future compliance with the law. Ref. Sec. 72-1337, Idaho Code. (3-30-01)

05. Statute of Limitations for Collections of Contributions, Penalty and Interest. Administrative proceedings for collection of taxes from subject employers shall be instituted within five (5) years from the date of a final determination, decision or order establishing the employer's liability. (3-30-01)

a. The time limits contained in Subsection 166.05 shall not apply once a tax liability is recorded as a lien against the property of an employer. (3-30-01)

b. If the employer or his representative acknowledges the indebtedness or makes a partial payment thereon, the statute of limitations for collection shall be extended an additional three (3) years from the date of such payment or acknowledgement. (3-30-01)

06. Execution Against Assets. The Department of Commerce and Labor, when the situation warrants, shall levy upon or execute against any real or personal property, both tangible and intangible, in which an indebted person has an interest, including any offsets as allowed by Section 67-1026, Idaho Code. Ref. Sec. 72-1360, Idaho Code. (3-30-01)

07. Relief of Indebtedness. Neither the full running of the statute of limitations nor the writing off of the account as uncollectible relieves an employer of tax indebtedness. Ref. Sec. 72-1364, Idaho Code. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

186. ACCOUNTING AND DELINQUENCY CONTROL.
Overpayments on employer accounts may be refunded without written application by the employer. Credits resulting from overpayments or adjustments to an employer's account shall be refunded periodically unless such credit is applied to a subsequent balance due. Ref. Sec. 72-1357, Idaho Code. (3-19-99)

01. Erroneous Wage Reports. An employer submitting an erroneous report of employee wages resulting in payment of unearned unemployment insurance benefits shall have said benefit payments subtracted from any refund due that employer, if such employer benefited from the unearned benefit payments. Ref. Sec. ~~*72-1333*~~ 67-4702 and 72-1372, Idaho Code. ~~*(3-19-99)*~~(____)

02. Notification of Underpayments. Employers shall be notified periodically of any taxes, penalties, or lien interest due on their tax account. Ref. Sec. 72-1349, Idaho Code.

(3-19-99)

03. Cancellation of Refund Warrants. Refund warrants, outstanding after the validity date, shall be canceled, stop-payment procedures initiated, and then reissued only upon completion of an affidavit for the replacement of the lost or destroyed warrant. Ref. Sec. ~~72-1333~~ 67-4702, Idaho Code. ~~(3-19-99)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

231. EXPERIENCE RATING - QUALIFYING PERIOD.
When an eligible employer ceases to have covered employment for a period of six (6) consecutive quarters or more, ~~he~~ they must complete another qualifying period in order to again be eligible for consideration for a reduced contribution rate. Ref. Sec. 72-1319, Idaho Code. ~~(3-19-99)~~( )

232. -- 240. (RESERVED).

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 Commerce and 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 ~~his~~ the employee will not be included in the employee's gross income if it meets the following tests: ~~(3-19-99)~~( )

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. 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)

(BREAK IN CONTINUITY OF SECTIONS)

275. UI DELIVERY SYSTEMS.
The Department of Commerce and Labor shall be responsible for analyzing, designing, testing, and assisting in implementing new and improved UI delivery systems for claimants and employers. Ref. Sec. ~~*72-1333*~~ 67-4702, Idaho Code. ~~*(3-19-99)*~~(____)

01. Testing. The testing of new or improved UI delivery systems in Idaho shall be accomplished at various selected locations with selected claimants and/or employers as pilot projects. Ref. Sec. ~~*72-1333*~~ 67-4702, Idaho Code. ~~*(3-19-99)*~~(____)

02. Inclusion in Testing or Development. The development or testing of a UI delivery system shall not necessarily include all claimants or employers at a location or at all locations serving the public. Ref. Sec. ~~*72-1333*~~ 67-4702, Idaho Code. ~~*(3-19-99)*~~(____)

03. Advisement of Changes. All claimants and employers included in a test system shall be advised of any changes which may occur and which may affect their eligibility for benefits or the amount of taxes which they must pay. Ref. Sec. ~~*72-1333*~~ 67-4702, Idaho Code. ~~*(3-19-99)*~~(____)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU

DOCKET NO. 09-0135-0504

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 144 and 145.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: These temporary rules are effective July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 change to IDAPA 09.01.35.056 clarifies that interest on civil penalties and civil penalties imposed will be paid after tax interest, tax penalty and tax have been paid for each calendar quarter.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The rule is being changed to provide guidance and notice to the public regarding the order in which payments received by the Department will be applied to taxes owed, tax interest, tax penalty and civil penalties assessed. The rule is being changed in response to Section 72-1372, Idaho Code, which is effective July 1, 2005.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because it is being amended to clarify the payment order for interest, civil penalties and penalties in an existing rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 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 24, 2005.

DATED this 1st day of July, 2005.

Don Arnold
Tax & Benefit Control Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3258
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

056. APPLICATION OF PAYMENTS ON DELINQUENT ACCOUNTS.
Whenever and if a delinquency exists in the account of an employer, and payment in an amount less than the total delinquency is submitted to the Department upon said account, the Department shall, unless other arrangements have been made and approved by the Department, apply payment as follows: (3-19-99)

01. First Application. First, credit such payment in satisfaction of interest due for the calendar quarter or period most delinquent in point of time; (3-19-99)

02. Second Application. Next, credit the remainder of such payment in satisfaction of penalty due for such calendar quarter or period most delinquent in point of time; (3-19-99)

03. Third Application. Next, credit the remainder of such payment in satisfaction of contributions due for the calendar quarter or period most delinquent in point of time; (3-19-99)

04. Subsequent Applications. Such applications shall be applied in a like manner for each remaining delinquent quarter. Any remaining credit shall be applied to interest on civil penalties then to civil penalty due until the amount of payment is exhausted. Ref. Sec. 72-1354, Idaho Code. ~~(3-19-99)~~(7-1-05)T

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU

DOCKET NO. 09-0135-0505

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 146 through 149.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 change to IDAPA 09.01.35.061 adds a definition for casual labor and clarifies the application of the casual labor exemption. The definition is being added to conform to federal unemployment tax provisions which exclude corporations from the unemployment tax exemption for casual labor.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is being made to be consistent with federal law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 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 24, 2005.

DATED this 1st day of July, 2005.

Don Arnold
Tax & Benefit Control Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3258
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

061. DEFINITIONS.
The definitions listed in IDAPA 09.01.35, "~~*Rules of the Employer Accounts Bureau*~~ Unemployment Insurance Tax Administration Rules," Section 011, and the following are applicable to ~~this~~ the Tax and Benefit Control Bureau. ~~*(3-19-99)*~~(____)

01. Tolerance Amount. A tolerance of four dollars and ninety-nine cents ($4.99) is

established in connection with collection of amounts due; and under normal circumstances, no delinquency or credit will be issued or carried on the books of accounts for this amount or less. Ref. Sec. 72-1349, Idaho Code. (3-19-99)

02. Wages. The term "wages" includes all remuneration from whatever source, paid or given in exchange for services performed or to be performed, including the cash value of remuneration in any medium other than cash. "Wages" in covered employment, and subject to unemployment insurance reporting, include, but are not limited to: (3-19-99)

a. Commissions, bonuses, draws, distributions, dividends and any other forms or types of payments made by corporations or other similar entities if paid in exchange for services; (4-5-00)

b. Bonuses, prizes, and gifts given to an employee in recognition of services, sales, or production; (3-19-99)

c. Commissions for past services in covered employment; (3-19-99)

d. Remuneration paid to corporate officers which is paid in exchange for services performed or to be performed for or on behalf of the corporation; (4-5-00)

e. Salary advances against commissions; (3-19-99)

f. All forms of profit sharing for services rendered unless specifically exempt under Section 72-1328, Idaho Code; (3-19-99)

g. Excess travel or employer business allowances over actual expense, or over the federal allowance per diem rate for the area of travel, unless returned to the employer; (3-19-99)

h. Vacation or "idle-time" pay, no matter when paid; (3-19-99)

i. Personal expense reimbursement, not gifts, i.e., clothing, family expenses, rent. (3-19-99)

j. The director or his authorized representative shall determine the fair market value of any other remuneration, regardless of its classification, form, or label, which is paid to a worker in exchange for services. In making such determination, consideration will be given to the prevailing wage for similar services. Ref. Sec. 72-1328, Idaho Code. (3-19-99)

k. Noncash payments for farm work, if such payments would be classified as wages for federal tax purposes. Ref. Sec. 72-1328, Idaho Code. (3-15-02)

03. Exclusions From Wages. The term "wages" described in Section 72-1328, Idaho Code, does not include the following: (3-19-99)

a. Prizes or gifts for special occasions which are expressions of good will; (3-19-99)

b. Bonuses paid for signing a contract; (3-19-99)

c. Fees paid to participate periodically in meetings of boards of directors unless exceedingly high; i.e., amounts comparable to other employers in the same industry, of relatively the same size; (3-19-99)

d. Drawings or advances by partners of a partnership, or by members of a limited liability company treated for federal tax purposes as a partnership or sole proprietorship; (4-5-00)

e. Rental charge for personal equipment provided by the employee on the job: if (3-19-99)

i. There is a rental agreement; and (3-19-99)

ii. The worker has received a reasonable wage for services performed; and (3-19-99)

iii. The fees are held separately on the employer's records. (3-19-99)

f. Stock or membership interests issued for purposes other than services performed or to be performed; (3-19-99)

g. Reimbursement for actual employee expense, or business allowance arrangements with employees that requires them: (3-19-99)

i. To have paid or incurred reasonable job related expenses while performing services as employees; and (3-19-99)

ii. To account adequately to the employer for these expenses; and (3-19-99)

iii. To return any excess reimbursement or allowance. (3-19-99)

h. Payments for employee travel expenses, provided: (3-19-99)

i. Payments are job related expenses while performing services; and (3-19-99)

ii. Payments do not exceed actual expenses or the federal allowance per diem rate for the area of travel; and (3-19-99)

iii. Records for days of travel pertaining to per diem payments are verifiable. (3-19-99)

i. Employee fringe benefits as set forth in Section 132 of the Internal Revenue Code, which are excluded from an employee's gross income and which are not subject to federal unemployment taxes. (3-19-99)

j. Noncash payment to farmworkers. Noncash payments for farm work will be excluded from wages if they are "de minimis" in relation to the amount of cash wages paid to the farmworkers, or are not intended to be treated as the cash equivalent of wages, or as the cash payment of wages. Ref. Sec. 72-1328, Idaho Code. (3-15-02)

04. Treatment of Limited Liability Companies. For purposes of state unemployment tax coverage, a limited liability company will have the same status as it may have elected for federal tax purposes, or as that status may be determined or required by the federal government, subject to the provisions of Subsections 061.02 and 061.03. (4-5-00)

05. Domestic Employment. Domestic employment is defined as work performed in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority, as distinguished from services as an employee in pursuit of an employer's trade, occupation, profession, enterprise, or vocation. In general, domestic employment "in the operation or maintenance of a private home, local college club, or local chapter of a college fraternity or sorority" includes, but is not limited to, services rendered by: (3-15-02)

a. Cooks; (3-15-02)

b. Waiters; (3-15-02)

c. Butlers; (3-15-02)

d. Maids; (3-15-02)

e. Janitors; (3-15-02)

f. Laundresses; (3-15-02)

g. Furnacemen; (3-15-02)

h. Handymen; (3-15-02)

i. Gardeners; (3-15-02)

j. Housekeepers; (3-15-02)

k. Housemothers; and (3-15-02)

l. In-home caregivers. Ref. Sec. 72-1315, Idaho Code. (3-15-02)

06. Casual Labor. Services performed by an individual not in the course of the employer's trade or business who earns less than fifty dollars ($50) per calendar quarter per service provided and is not regularly employed by that employer to perform such service, are exempt from unemployment insurance coverage. Ref. Sec. 72-1316A(19), Idaho Code. Domestic employment exempt as casual labor may not be exempt if the employer is covered for such service under Section 72-1315(8), Idaho Code. The term, "services not in the course of the employer's trade or business", refers to services that do not promote or advance the trade or business of the employer. The casual labor exemption found under Section 72-1316A(19), Idaho Code, does not apply to services performed for corporations because all services performed for a corporation are considered to be in the course of the trade or business of the corporation. (____)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU

DOCKET NO. 09-0135-0506

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 150 and 151.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: These temporary rules are effective July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 09.01.35.096 is being amended to include online registration as an additional method for employer business registration reporting.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The online Idaho Business Registration system was deployed in 2004 as an efficient and alternative method for businesses to register with the Department. This change reflects this additional method of registration of benefit to Idaho employers.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the nature of the proposed change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 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 24, 2005.

DATED this 1st day of July, 2005.

Don Arnold
Tax & Benefit Control Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3258
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

096. EMPLOYER STATUS REPORT.

01. Status Report. Each employer shall report on such form or ~~*forms*~~ any online system as may be prescribed and furnished, such information as may be necessary to make an initial or subsequent determination of ~~*his*~~ status under the Idaho Code. Said reports shall be signed by ~~*the person making the same if he is*~~ the employer, or on behalf of the employer by ~~*his*~~ a duly authorized representative for such purpose. Ref. Sec. 72-1337, Idaho Code.

~~*(3-19-99)*~~(7-1-05)T

02. Exceptions. The provisions of this Rule shall not apply to any employer for whom the services performed do not, by virtue of the provisions of Section 72-1316, Idaho Code, constitute covered employment, except that the director reserves the right, in his discretion, to require any such employer at any time to make the reports mentioned in Section 096 of this rule. Ref. Sec. 72-1337, Idaho Code. (3-19-99)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU

DOCKET NO. 09-0135-0507

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 152 and 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 resulting from this rulemaking: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: These temporary rules are effective July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 to IDAPA 09.01.35.081 are intended to provide clear authority for the Department's request for employer records for a variety of statutorily required investigations, including new federal requirements to perform SUTA dumping investigations.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This change is in response to new federal requirements for the Department to perform investigations to determine if SUTA dumping has occurred.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is in response to federal requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2005.

DATED this 1st day of July, 2005.

Don Arnold
Tax & Benefit Control Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3258
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

081. EMPLOYER RECORDS.
Each person hiring one (1) or more individuals, whether or not such employment is sufficient to create the status of a covered employer, shall establish and maintain records to show the information hereinafter indicated. Such records shall be kept for a period of three (3) years after the calendar year in which the remuneration was due. Ref. Sec. 72- 1337, Idaho Code. (3-19-99)

01. Required Information. Such records shall show with respect to each employee unless the Department has ruled that ~~*his*~~ the services do not constitute covered employment: ~~*(3-19-99)*~~(7-1-05)T

a. Full name and home address of worker; (3-19-99)

b. Social Security account number; (3-19-99)

c. ~~*His*~~ The place of work within this State; ~~*(3-19-99)*~~(7-1-05)T

d. Date on which employee was hired, rehired, or returned to work after temporary or partial layoff; (3-19-99)

e. Date employment was terminated; whether the termination occurred by voluntary action of the individual and the reason given, or by discharge or death, and the reason for discharge; (3-19-99)

f. Wages paid for employment in each pay period and total wages for all pay periods ending in each quarter of the year, showing separately: (3-19-99)

i. Money wages; (3-19-99)

ii. The cash value of other remuneration; and (3-19-99)

iii. The amount of all bonuses or special commissions. (3-19-99)

02. Special Remuneration. Any special remuneration paid for services performed in more than one quarter (1/4) of the year, such as annual commissions or bonuses, gifts and prizes, showing separately: (3-19-99)

a. Money payments; and (3-19-99)

b. The cash value of other remuneration and the nature thereof. (3-19-99)

03. Travel or Employee Business Expenses. Amounts paid to employees as allowances or reimbursement for travel and employee business expenses and the amounts of such expenditures actually incurred and accounted for by them. (3-19-99)

04. Records to be Made Available. The records to be made available to the director or his authorized representative, in accordance with the provisions of Section 72-1337, Idaho Code, shall include all of the business records, such as journals, ledgers, time books, minute books, or any other records or information which would tend to establish the existence of and/or amounts paid for services performed, whether or not in covered employment, and for information necessary to assist in or enable collection efforts or any other investigations conducted by the department. ~~*(3-19-99)*~~(7-1-05)T

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU

DOCKET NO. 09-0135-0508

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, 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 resulting from this rulemaking: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: These temporary rules are effective July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 August 17, 2005.

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 to IDAPA 09.01.35.221 will substitute a notice provision for all interested parties in lieu of the issuance of a status determination when a request for experience rate transfer is requested. The method that is used to compute partial experience rate transfers. Removal of the quantitative explanation of what constitutes substantially the same ownership, management or control in a predecessor business to reflect current federal regulations. The quantitative explanation will be replaced with examples of factors that will be considered when determining whether the successor business is substantially the same as the predecessor business.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Current federal regulations object to quantitative requirements for determining a continuation of ownership, management or control from predecessor to successor businesses when transferring an experience rating. The change is being made to comply with requirements in the federal SUTA Dumping Act.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is in response to federal requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

Anyone may submit written comments regarding this temporary and proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2005.

DATED this 1st day of July, 2005.

Don Arnold
Tax & Benefit Control Bureau Chief
Department of Commerce and Labor

317 W. Main Street
Boise, ID 83735
332-3570 ext. 3258
334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

221. TRANSFER OF EXPERIENCE RATING.
Upon request, employers shall be informed of the requirements for transferring an experience rating record. ~~*A status determination*~~ Notification shall be issued to interested parties when an experience rating record transfer request is made. Ref. Sec. 72-1351, Idaho Code.
~~*(3-15-02)*~~(7-1-05)T

01. Mandatory Transfer of Rate. An experience rating record transfer shall be mandatory if there is a continuity of business activity and ownership or management or control is substantially the same between the predecessor and successor. The parties in interest shall be notified of such transfer of experience as determined from the facts applicable to the case. Such determination may be appealed as provided in Ref. Sec. 72-1351, 72-1361, Idaho Code.
~~*(3-20-04)*~~(7-1-05)T

02. Partial Experience Rate Transfers. The following method is used to compute the pro-rata share of the experience rate account that is to be transferred from the predecessor to a successor. The pro-rata share is determined by dividing the gross payroll associated with the portion of the business acquired by the total gross payroll for the entire business operations for the same time period. The time period upon which this computation is based is the four (4) most recently completed quarters as reported by the predecessor prior to the date of acquisition or change in entity. (7-1-05)T

0~~2~~3. Continued Predecessor Employment for Liquidation. When a total transfer of experience rating record has been completed and it is found that the predecessor employer continues to have employment in connection with the liquidation of his business, such employer shall continue to pay contributions at the assigned rate for the period of liquidation but not to extend beyond the balance of the rate year. Ref. Sec. 72-1351, Idaho Code. (3-19-99)

0~~3~~4. Management or Ownership ~~*Unchanged*~~ or Control Substantially the Same. For the purposes of Sections 72-1351(~~*4*~~5)(a) and (b), Idaho Code, ~~*management and/or ownership shall be considered substantially the same if at least fifty percent (50%) of the business enterprise of the successor is owned or controlled by individuals who, immediately preceding the change in the legal entity, owned or controlled fifty percent (50%) or more of the enterprise. Ref. Sec. 72-1351, Idaho Code*~~ in determining whether the ownership or management or control of a successor is substantially the same as the ownership or management or control of the predecessor factors to be considered include, but are not limited to, the extent of policy making authority, the involvement in daily management of operations, the supervision over the workforce, the percentage of ownership of shares or assets, and the involvement on boards of directors or other controlling bodies. ~~*(3-15-02)*~~(7-1-05)T

0~~4~~5. Wage Paid by Predecessor. The successor employer may use wages paid by the predecessor employer to arrive at the wage base for purposes of calculating taxable wages only when the experience rate of a predecessor employer has been transferred to a successor employer. Ref. Sec. 72-1349(1), 72-1351(~~4~~5), and 72-1350(8), Idaho Code. ~~*(3-15-02)*~~(7-1-05)T

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.01.35 - RULES OF THE EMPLOYER ACCOUNTS BUREAU

DOCKET NO. 09-0135-0509

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the September 7, 2005, Idaho Administrative Bulletin, Volume 05-9, pages 77 through 79.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Don Arnold, Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 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 September 21, 2005.

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 change to IDAPA 09.01.35.112 eliminates the following factor from consideration on the "direction and control" test for independent contractors: whether the putative employer can terminate the worker without contractual liability. The change to the rule is to comply with an Idaho Supreme Court decision issued on June 21, 2005, Excell Construction v. Idaho Department of Commerce & Labor. The Court invalidates this factor in the footnote on page 9 of the opinion. This change is being made to comply with the guidance provided by the Supreme Court.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Compliance with an Idaho Supreme Court decision issued June 21, 2005.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is in response to a Supreme Court decision.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Don Arnold Tax & Benefit Control Bureau Chief, 332-3570 x 3258.

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 28, 2005.

DATED this 7th day of September, 2005.

Don Arnold
Tax & Benefit Control Bureau Chief
Department of Commerce and Labor
317 W. Main Street
Boise, ID 83735
332-3570 ext. 3258

334-6301 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

112. DETERMINING STATUS OF WORKER.

01. Determining If Worker is an Employee. In making a determination as to whether a worker is performing services in covered employment, it shall be determined whether the worker is an employee. To determine whether a worker is an employee, the following factors shall be considered: (3-19-99)

a. The way in which the business entity represented its relationship with the worker prior to the investigation or litigation, including representations to the Internal Revenue Service; (3-19-99)

b. Statements made to the department; (3-19-99)

c. Method of payment to the worker, in particular whether federal, state, and FICA taxes are withheld from paychecks; and (3-19-99)

d. Whether life, health, or other benefits are provided to the worker at the business entity's expense. (3-19-99)

02. Determining If Worker is an Independent Contractor. If it cannot be determined that a worker is an employee pursuant to Subsection 112.01 above, then a determination shall be made whether the worker is an "independent contractor" pursuant to the terms of Section 72-1316(4), Idaho Code. For the purposes of that section and these rules, an independent contractor is a worker who meets the requirements of both Sections 72-1316(4)(a) and (b), Idaho Code. (3-19-99)

03. Proving Worker is Free From Control or Direction in His Work. To meet the requirement of Section 72-1316(4)(a), Idaho Code, it must be proven that a worker has been and will continue to be free from control or direction in the performance of his work, both under his contract of service and in fact. The following factors shall be considered in this determination: (3-19-99)

a. Whether the alleged employer has control over: (3-19-99)

i. The details of the work; (3-19-99)

ii. The manner, method or mode of doing the work; and (3-19-99)

iii. The means by which the work is to be accomplished, but without reference to having control over the results of the work. (3-19-99)

b. The freedom from direction and control must exist in theory (under a contract of service) and in fact; and ~~(3-19-99)~~(7-1-05)T

c. The employer must demonstrate that it lacked a right to control the worker~~;~~. ~~*and* *(3-19-99)*~~(7-1-05)T

~~***d.*** *Whether either of the parties could summarily terminate or be terminated during the progress of the work without resulting contractual liability or rights.* *(3-19-99)*~~

04. Proving Worker is Engaged in Independently Established Business. To meet the requirement of Section 72-1316(4)(b), Idaho Code, it must be proven that a worker is engaged in an independently established trade, occupation, profession or business. The following factors shall be considered in this determination: (3-19-99)

a. Skills, qualifications, and training required for the job; (3-19-99)

b. Method of payment, benefits, and tax withholding; (3-19-99)

c. Right to negotiate agreements with other workers; (3-19-99)

d. Right to choose sales techniques or other business techniques; (3-19-99)

e. Right to determine hours; (3-19-99)

f. Existence of outside businesses or occupations; (3-19-99)

g. Special licensing or regulatory requirements for performance of work; (3-19-99)

h. Whether the work is part of the employer's general business; (3-19-99)

i. The nature and extent of the work; (3-19-99)

j. The term and duration of the relationship; (3-19-99)

k. The control of the premises; (3-19-99)

l. Whether the worker has the authority to hire subordinates; (3-19-99)

m. Whether the worker owns or leases major items of equipment or incurs substantial unreimbursed expenses, provided, that in a case where a worker leases major items of equipment from the alleged employer: (3-19-99)

i. The terms of the lease; and (3-19-99)

ii. The actions of the parties pursuant to those terms must be commercially reasonable as measured by applicable industry standards. (3-19-99)

n. Whether either party would be liable to the other party upon peremptory or unilateral termination of the business relationship; and, (3-19-99)

o. Other factors which, viewed fairly in light of all the circumstances in a given case, may indicate the existence or lack of an independently established trade occupation, profession or business. (3-19-99)

05. Meeting Criteria for Covered Employment. A worker who meets one (1), but not both, of the tests in Subsections 112.03 and 112.04 above shall be found to perform services in covered employment. (3-19-99)

06. Evidence of Contractual Liability for Termination. For purposes of making a determination under Section 72-1316(4), Idaho Code, and this regulation, the party alleging that summary termination by either party would result in contractual liability must present some evidence upon which to base such allegation. Ref. Sec. 72-1316(4), Idaho Code. (3-19-99)

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.02.01 - IDAHO COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

DOCKET NO. 09-0201-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is September 1, 2005. This pending rule has been adopted by the agency and is now pending review by the 2006 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 and temporary rule. The action is authorized pursuant to Section(s) 67-4702, 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 proposed and adopted changes to IDAPA 09.02.01 eliminate inaccurate or redundant language and application requirements, change the point values for ranking applications, remove biases against some types of project applications, encourage applications for preferred types of projects, allow for teleconferencing and the electronic submission of information, and require applicants to follow state and federal procurement standards. Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the proposed/temporary rule and are being published with this Notice of Rulemaking as part of the pending rule.

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 of Commerce and Labor has amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes that differ from the proposed/temporary text are printed in this bulletin. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 156 through 182.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Dianna Clough, Community Development Manager, (208) 334-2650 ext. 2140.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is effective September 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 67-4702, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Date & Time:	**Tuesday, August 23, 2005, at 5:00 p.m.**
Location:	**A and B Conference Room** **Idaho Commerce and Labor** **700 W. State St.** **Boise, ID 83702**

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

DESCRIPTIVE SUMMARY: The following is 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: These proposed changes to IDAPA 09.02.01 eliminate inaccurate or redundant language and application requirements, change the point values for ranking applications, remove biases against some types of project applications, encourage applications for preferred types of projects, allow for teleconferencing and the electronic submission of information, and require applicants to follow state and federal procurement standards.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This rule will take effect at the beginning of the new grant application period. The changes to these rules confer benefits to applicants by allowing electronic submissions of materials thereby reducing the cost to these applicants and the changes allow smaller cities and counties to more effectively compete when applying for grants.

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 IDAPA 04.11.01.811, negotiated rule making was not conducted because the Department needed to adopt a temporary rule and it was determined that it was not feasible to enter into negotiated rulemaking at this time.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dianna Clough, Community Development Manager, (208) 334-2650 ext. 2140.

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 24, 2005.

DATED this 3rd day of August, 2005.

Dianna Clough
Community Development Manager
Department of Commerce and Labor
State Street Office
700 W. State Street
Boise, ID 83720-0093
334-2650 ext. 2140
334-2631 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

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 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 ~~*Joint Training Partnership Act (JTPA) Program*~~ Workforce Investment Act (WIA) program), except for referrals under the ~~*JTPA Title III*~~ WIA program for dislocated workers. ~~*(3-20-97)*~~(9-1-05)T

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 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)

(BREAK IN CONTINUITY OF SECTIONS)

053. GRANT APPLICATION PROCESS.

01. Grant Application. The Grant Application generally consists of a Notice of Intent to apply, the Application, and an Addendum. These are submitted to the Department at different times in the application process. (7-6-94)

a. Notice of Intent. A one (1) page letter sent to the Department as soon as a community decides to submit a grant application. This is an optional, but strongly recommended, step. It allows the Department to assist the community with eligibility and structuring of the proposed project. (7-6-94)

b. Application. The major required document which describes and documents the applicant's proposed project. It contains the information required to document that the proposed project will meet a national objective and consists of eligible activity(ies). The Application is the basis of the Department's and the EAC's review and ranking of the project. (7-6-94)

c. Addendum. Additional information required by the Department to further document the project or to fulfill additional federal requirements once the Application has been selected by the Economic Advisory Council. (7-6-94)

02. Project. A project shall address a single need and may consist of one (1) or more eligible activities which are to be undertaken with the ICDBG funds and any other funds committed to the project. A project also includes all the benefits which are to result from the related activities and from compliance with all federal and state laws and regulations which are conditions of the grant. The principal activity which directly addresses the problem area shall represent a majority of funds requested; other activities must be incidental to, and in support of, the principal activity. For example, a program which addresses a housing need might include housing rehabilitation as the principal activity. Support activities such as street improvements or demolition must be incidental and clearly in support of the principal activity. (7-6-94)

03. Funding. In addition to ICDBG funds, the other funds committed to a project are divided into other government funds, local matching funds, and private funds. Other government funds are from state, federal, or foundation sources provided to the grantee for the project. Local matching funds are defined as cash donations, capital reserves, program income (Section 171), cash resulting from debt financing, local improvement districts, general obligation or revenue bonds, tax levies, land sales or miscellaneous revenue. Local matching funds are generally those funds and contributions raised by the residents of the grantee. ~~*Local cash the community has raised prior to submittal of the application, i.e. cash reserves, cash donations, program income and capital improvement funds, which is not debt financing, will be calculated at a higher rate than other contributions of local match.*~~ Also to be considered as local matching funds are~~;~~ the fair market value of the time of local government crews (force account) working on the project, donations of land, materials, and equipment for the project, waiver of local fees, and volunteer labor. Private funds are from individuals, businesses, or corporations which are spent on private property, but are necessary to the completion of the project and the generation of the benefits. Direct loans to individuals on housing projects will not be considered local match.

~~*(3-30-01)*~~(9-1-05)T

04. Documentation. Firm evidence of in-kind contributions of equipment or materials will be considered as cash. The value of land may be considered as local match if the value of the real estate is documented. Architectural or engineering estimates of labor, materials and equipment should be prepared to determine value of these items. Other documentation such as Bills of Sale, catalogue price lists, retail prices, etc. should be used. The value of a donation or a commitment of land should be documented by appraisals or fair market value. Volunteer labor should be estimated by man hour, types of skills needed and wage rates. Documentation of insurance coverage for volunteers should be included in the application. This documentation should be a letter from the insurance agent of the community or civic group. (7-6-94)

(BREAK IN CONTINUITY OF SECTIONS)

065. PRESENTATION TO ECONOMIC ADVISORY COUNCIL.
The applicant's presentation to the Advisory Council shall be optional and may be done through teleconferencing. The presentation shall be made by an elected official of the local government applying for a grant. These elected officials include the mayor or council members or county commissioners. Others may be involved in the presentation to present additional information. The presentation should briefly review the project, the local commitment to the project, the local effort on the project, the degree of local economic impact from the project and the degree to which the project improves the community as a place to live. ~~*(7-6-94)*~~(9-1-05)T

066. INVITATION TO SUBMIT APPLICATION ADDENDA.
~~*After the presentations*~~ For public facility and economic development applications, the Council will ~~*then*~~ review the staff recommendation and the information presented. The Council will assign their points and will direct the Department to invite the highest rated applicants to submit application Addenda, if required and if funding is available. ~~*(7-6-94)*~~(9-1-05)T

067. ECONOMIC ADVISORY COUNCIL POINTS.
The Council, in assigning these points to the Applications and Addenda, shall consider the degree of impact from the project upon the community and shall compare similar type projects with each other. Consideration may include local ability to finance the project, local effort and commitment to the project, and local and regional economic impact of the project. These points shall be assigned to Applications based upon the Council's review of the information contained in the Application and the staff's review and recommendations. These points shall be assigned to the Addendum by the Economic Advisory Council after their review of the Applications and Addenda ~~*and after hearing the presentations from applicants*~~. The Council shall decide on the amount of points to be assigned to each Application in the Council's regular meeting for reviewing Applications or at a special meeting according to Subsection 094.04.~~*(7-6-94)*~~(9-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

072. FORMAT.
An Application shall be submitted on eight and one-half inch (8-1/2") by eleven inch (11") white paper. It may be printed on both sides of the paper. Maps and larger sheets shall be folded to eight and one-half inch (8-1/2") by eleven inch (11") size. Left and right margins shall be one (1) inch. The text shall be typed single-spaced with double spaces between paragraphs. Pages shall be numbered. The types of headings and numbering systems are optional to the applicant. Supporting documents should be noted and placed in an appendix. All Applications shall be bound. Type of binding is optional to the applicant. The original and ~~*one (1) copy of*~~ an electronic Application shall be submitted to the Department of Commerce and Labor as prescribed in the ICDBG Application Handbook. ~~*The applicant shall also submit one (1) copy to its regional representative on the Idaho Economic Advisory Council.*~~ ~~*(7-6-94)*~~(9-1-05)T

073. ~~*LENGTH*~~ (RESERVED).
~~*The Economic Development project Application shall consist of no more than twenty (20) pages, plus attachments. PFH and SR Applications shall be on forms prepared by the Department and shall not exceed fifteen (15) pages, plus attachments. The forms, the narrative, and appended information shall comprise the Application. All applications shall be authorized by the chief elected official of the applying city/county.*~~ ~~*(7-6-94)*~~

074. SECTIONS.
The Application shall consist of the following sections: (7-6-94)

01. Cover. The cover shall contain "An application for an Idaho Community Development Block Grant by the _____ (City/County) of _____ (Name) _____ Date:_____". (one (1) page) (7-6-94)

02. Cover Letter. A cover letter signed by the Mayor or the Chairman of the Board of County Commissioners on official stationery. This is the official letter of application for a grant. (one (1) page) (7-6-94)

03. Table of Contents. (one (1) page) (7-6-94)

04. ICDBG Application Information Form. Fully completed and signed by the applicant. (one (1) page) (7-6-94)

05. Threshold Factors. The first four (4) factors must all be answered in the affirmative before an Application is to be reviewed and ranked. An Application shall include only Subsections 074.05.a. through 074.05.d. An Addendum shall include Subsections 074.05.e. through 074.05.g. (3-19-99)

a. The applicant must be an eligible applicant (Section 012). Describe how the applicant meets the eligibility criteria. If this is a joint or in-behalf-of application, describe agreements and arrangements for managing the grant and the project. (7-6-94)

b. The project shall be an eligible activity(ies). Describe why the project and the various activities are eligible according to the rules in Section 022. (7-6-94)

c. The applicant shall adopt a citizen participation plan and shall conduct a public participation process. Applicants shall submit a copy of the Citizen Participation Plan and results of citizen involvement in developing the project. A copy of the Citizen Participation Plan must be submitted with the Application. An ICDBG may be awarded only if the grantee certifies that it is following a detailed citizen participation plan which: provides for and encourages citizen participation, with particular emphasis on participation of persons of low and moderate income who are residents of slum and blight areas or provides for participation of residents in low and moderate income neighborhoods as defined by the applicant; provides citizens with reasonable and timely access to local meetings, information, and records relating to the grantee's proposed use of funds; provides for public hearings to obtain citizen views and to respond to proposals and questions at all stages of the community development program, including, at least, the development of needs, the review of proposed activities, and review of program performance. Hearings shall be held after adequate notice, at times and locations convenient to potential or

actual beneficiaries, and with accommodation for persons with disabilities; provides for a timely written answer to written complaints and grievances, within fifteen (15) working days where practicable; and identifies how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate. (3-19-99)

d. At least one (1) public hearing is required to permit public examination and appraisal of the Application. Public hearings shall be scheduled in ways and at times to provide for full participation of citizens. The building or facility must be accessible to persons with disabilities. All information presented in the hearings shall also be available, upon request, in a form usable by persons with disabilities. Proper notification shall be given by a public advertisement in a local newspaper no less than seven (7) days prior to the meeting date. The seven (7) days shall be counted beginning the date the advertisement appears and ending the day before the date of the hearing. The notice shall include: a brief description of the proposed project; the amount of funds being requested; the time and place of the public hearing, including a statement that the hearing will be held in a handicapped accessible facility; notification that both written and verbal comments will be accepted; and a description of the availability of services for persons with disabilities, upon request. It is recommended the applicant also post notification of the public hearing at various public locations and use other media notices of the hearing. At a minimum, applicants shall provide in the minutes of the meeting, evidence the following occurred at the public hearing: The Application and Application Handbook were available for review; the amount of funds available for local community development and housing activities was discussed; the range of activities to be undertaken was presented including community impact and benefit to low and moderate income (LMI) persons; verification that citizen's comments and views on the proposed Application were considered prior to submittal and, if determined appropriate, a description of how the Application was modified; a copy of the public notice, minutes and a list of those attending the public hearing(s); a description of any plans for the project regarding citizen participation, i.e., the formation of a citizen's advisory committee; and a description of any assistance for persons with disabilities requested and provided. (3-20-97)

e. The applicant shall have the administrative capacity to administer the grant. This means having completed the procurement process for a Department-approved grant manager in accordance with the Section 212. The grant manager shall be included in project development and Application writing efforts. (3-20-97)

f. The applicant shall have adopted a Fair Housing Ordinance or resolution. This ordinance or resolution must have been adopted and publicly advertised within the twelve (12) month period preceding the Addendum deadline date. Once the Fair Housing Resolution or Ordinance has been adopted, applicants do not have to re-adopt the Resolution or Ordinance. The applicant will be required to show documentation the Resolution or Ordinance was published within the previous twelve (12) month period. (3-19-99)

g. The applicant shall <u>either certify it will follow the Idaho Department of Commerce and Labor's Anti-displacement Plan or</u> have adopted an Anti-Displacement and Relocation Plan. ~~*This*~~ <u>If the applicant adopts its own plan, the</u> ordinance or resolution must have been publicly advertised within the twelve (12) month period preceding the Addendum deadline date. Once the Anti-Displacement and Relocation Plan has been adopted, applicants do not have to re-adopt the Plan. The applicant will only be required to show documentation the Plan was published within

the previous twelve (12) month period. ~~*(3-19-99)*~~(9-1-05)T

06. General Project Description. This is the critical section of the Application. It should include enough information for the reviewer to clearly understand the community, its needs, the project, and how the grant will help to solve the community problem. The information in each ranking section should substantively expand upon the project description. The narrative should, in three (3) pages, succinctly describe the following items: a description of the community as to size, location and economy; a thorough assessment of all the community's needs and how the proposed project is a priority in comparison with the other needs addressed. The applicant should also include a description which discusses how the existing condition came about, the number of people affected, and the seriousness of the problem(s); the particular project that is being proposed shall be described in detail. Describe the project, the various components, anticipated costs, schedule of activities, maps showing the location of the project to the community (detailed enough to locate it by car) and a map of the boundaries of the project area. This description shall be detailed enough that it can be used to write a contract scope of work; describe the benefits of the project, how it solves the identified need, and how it will enhance the community and its economy. Provide a demographic profile of the persons to benefit. This shall include gender, minority status, persons with disabilities, and female head of household. Describe how the project meets the state objectives of the ICDBG program (see Sections 000, 010, and 011); and if program income is expected to be generated, a re-use plan must be developed according to Section 175. (3-19-99)

07. ICDBG Budget Form Fully Completed by the Applicant. (one (1) page) (7-6-94)

08. Assurances. The applicant shall sign the Assurances Form certifying that it will comply with the following federal laws and regulations: National Environmental Policy Act of 1969; Civil Rights Act of 1964 Pub.L 88-352; Civil Rights Act of 1968 Pub.L 90-284; Age Discrimination Act of 1975; Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 as amended and the implementing regulations at 49 CFR Part 24; Rehabilitation Act of 1973, Section 504 "Handicapped Accessibility"; Housing and Community Development Act of 1974 as amended Pub. L 93-383; Davis-Bacon Act (40-USC 276a--5); Historic Preservation Act; Anti-Lobbying Certification; Excessive Force Certification; and Section 106 of the Housing and Urban Recovery Act of 1983, certifying they will: minimize displacement and follow a residential anti-displacement and relocation assistance plan, affirmatively further fair housing, provide citizen participation, not use assessments or fees on low and moderate income owner occupants to recover capital costs of ICDBG-funded public improvements; Prohibition of Use of Assistance For Employment Relocation, Section 588 of the Quality Housing and Work Responsibility Act of 1998 Pub. L 105-276. (one (1) page). (3-30-01)

09. Review and Ranking Narrative. The applicant shall address each point category in the order given in the review and ranking section of the applicable grant category, referenced below. If a particular point category is not applicable or not selected, it should be indicated. (7-6-94)

a. Economic Development Grants: ~~*(ten (10) pages)*~~ ~~*(7-6-94)*~~(9-1-05)T

i. Infrastructure (Section 096). (7-6-94)

ii. Downtown Revitalization (Section 097). (7-6-94)

b. PFH (Sections 083 through 087) and SR (Section 101) Grants: (7-6-94)

i. Program Impact and Eligible Activity Point Form. ~~*(two (2) pages)*~~ ~~*(7-6-94)*~~(9-1-05)T

ii. National Objectives. ~~*(one (1) page)*~~ ~~*(7-6-94)*~~(9-1-05)T

iii. Project Categories. ~~*(one (1) page)*~~ ~~*(7-6-94)*~~(9-1-05)T

iv. Advisory Council Points Narrative. ~~*(one (1) page)*~~ ~~*(7-6-94)*~~(9-1-05)T

10. Additional Information From Applicant (Appendix). Maps, letters of support, technical studies and appropriate background documentation should be placed in this section and bound into the Application (no page limit). (7-6-94)

(BREAK IN CONTINUITY OF SECTIONS)

084. PROGRAM IMPACT.
Three hundred twenty (320) points. Some or all of the points may be granted in each subcategory. The local financing factors, which represents the largest portion of the total number of points each applicant may receive, is intended ~~*are*~~ *to* ensure that the best overall proposals are selected for funding. The score on this factor is determined by evaluating how effectively local funds are used in comparison with other applicants. The Department may require an applicant to provide supplemental financial information to clarify the local ability to finance all or a portion of a proposed ICDBG project. The applicant should provide evidence or documentation of the nature, amount and/or value of match committed to the project. Housing projects should (if match is not committed) provide the names of the agency, staff person and program(s) which may provide match, a description of the program and a time table for the match approval process.
~~*(7-6-94)*~~(9-1-05)T

01. Percentage of ICDBG Dollars in Total Project (fifty (50) points). All Applications will be ranked by percentage of Community Development funds requested divided by total project costs. Total project costs are the total funds committed from all sources - federal, state, local and private funds. The applicant must clearly identify the other funding sources with dollar amounts from each. The rankings shall be divided into four (4) equal categories. The lowest ICDBG percent (%) receives the most points and the highest ICDBG percent (%) receives the least points. Points will be assigned according to the following schedule: (3-19-99)

a. First Quartile - fifty (50) points. (3-19-99)

b. Second Quartile - thirty (30) points. (3-19-99)

c. Third Quartile - fifteen (15) points. (3-19-99)

d. Fourth Quartile - zero (0) points. (7-6-94)

02. Percentage of Local Matching Funds (sixty (60) points). All Applications will be ranked by the percentage of local matching funds divided by the total of local match and ICDBG funds. The highest percentage of local dollars will receive the highest points. See Subsection 053.03 for definition of local match. The rankings shall be divided into four (4) equal categories. The highest local match percentage (%) receives the most points and the lowest local match percentage (%) receives the least points. ~~*A one dollar and fifty cent ($1.50) cash value shall be calculated for every one dollar ($1) of local cash match committed to the project.*~~ Points will be assigned according to the following schedule: ~~*(3-30-01)*~~(9-1-05)T

a. First Quartile - sixty (60) points. (7-6-94)

b. Second Quartile - forty (40) points. (7-6-94)

c. Third Quartile - twenty (20) points. (7-6-94)

d. Fourth Quartile - zero (0) points. (7-6-94)

03. ICDBG Dollars Per Person (fifty (50) points). The ratio of total persons directly benefited by the project, compared to ICDBG funds requested (ICDBG dollars per person) shall be ranked and divided into quartiles. The lowest ICDBG dollars receives the most points and the highest ICDBG dollars receives the least points. The points shall be assigned to the ratio of ICDBG dollars per person as follows: (7-6-94)

a. First Quartile - fifty (50) points. (7-6-94)

b. Second Quartile - thirty (30) points. (7-6-94)

c. Third Quartile - fifteen (15) points. (7-6-94)

d. Fourth Quartile - zero (0) points. (7-6-94)

04. Local Matching Funds Per Person (sixty (60) points). The ratio of total persons directly benefited by the project, compared to local matching funds shall be ranked and divided into quartiles. The Department may request supplemental financial data from any applicant to determine local ability to finance a proposed project or clarify a community's financial situation. The Department may take into consideration a community's ability to contribute local matching funds in determining all rating and ranking points. The highest local funds per person receives the most points and the lowest local funds per person receives the least points. ~~*A one dollar and fifty cent ($1.50) cash value shall be calculated for every one dollar ($1) of local cash match committed to the project.*~~ The points shall be assigned to the ratio of local matching funds per person as follows: ~~*(3-30-01)*~~(9-1-05)T

a. First Quartile - sixty (60) points. (3-19-99)

b. Second Quartile - forty (40) points. (3-19-99)

c. Third Quartile - twenty (20) points. (3-19-99)

d. Fourth Quartile - zero (0) points. (7-6-94)

05. Eligible Activity Priority Ranking (one hundred (100) points). Each eligible activity (Sections 022 through 051) is assigned a priority point factor. The applicant should list the activities and the ICDBG funds budgeted to each. These points shall be assigned to an Application based upon the percentage of the total ICDBG funds committed to each activity and multiplied by the priority points assigned to each. The total of the priority points so calculated is the total of the priority points for the Application. Health and safety-related projects are defined as sewer, water, fire protection facilities, medical facilities, nursing homes, streets, and other similar projects. Social service facilities are defined to include community centers, senior centers, libraries, assisted housing, shelter care, senior housing, auditoriums, cultural facilities, recreation facilities, and parks. (7-6-94)

TABLE 1 -- "Eligible Activity Priority Ranking"	
Acquisition of Real Property	~~*Twenty-five*~~ One hundred (~~*25*~~100) points
Acquisition of Real Property for Housing Projects	Fifty (50) points
Public Facilities and Improvements - Health and Safety Related	One hundred (100) points
Public Facilities and Improvements - Housing Related	Seventy-five (75) points
Public Facilities and Improvements - Social Service Related	Fifty (50) points
Engineering - Architectural	~~*Seventy-five*~~ One hundred (~~*75*~~100) points
Code Enforcement	Fifty (50) points
Clearance and Demolition	Ten (10) points
Removal of Architectural Barriers	Fifty (50) points
Rental Income Payments	Zero (0) points
Disposition of Property	Ten (10) points
Public Services	Zero (0) points
Completion of Urban Renewal Projects	Zero (0) points
Relocation Payments	Twenty-five (25) points
Planning Activities	Zero (0) points
Administration Activities	One hundred (100) points
Grants to Nonprofit Community Organizations	Zero (0) Points
Grants to Nonprofit Community Organizations for Housing Projects	Seventy-five (75) points
Energy Planning	Zero (0) points
Housing Rehabilitation	Seventy-five (75) points

~~*(3-30-01)*~~(9-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

090. PROJECT CATEGORIES.
Two hundred and twenty (220) points. PFH Applications shall address each of the categories below. The project description and its benefits should be discussed in previous sections. This section is a measure of the preparedness of the project and the community to undertake the project. To earn points, the applicant must demonstrate that the appropriate actions, procedures, agencies, permits, financing and inspections to initiate and complete the project were discovered and show how much has been completed. The object is to have well thought out projects which will then be quickly executed if funded. The items identified in the following categories must be related to each other. (3-30-01)

01. Planning, Previous Actions and Schedule (one hundred and ~~*sixty*~~ eighty (1~~6~~80) points). According to the categories listed below, ~~*T*~~the applicant shall describe and document the process used to plan the project and describe the components of the project. The completeness of the process and project detail earn more points. ~~*Describe the problem identification process, the public involvement, the appropriate agency(s) involvement. Describe the steps and actions necessary to implement or construct the project, including, but not limited to, permits, approvals, easements and property acquisition, demolition, relocation, other funding needed and the process to secure it, zoning, environmental problems, historic preservation, preliminary architectural or engineering, construction period, service hookups, fees and special assessments, program income, grant administration, accounting and audits by completing the schedule in Appendix 11, pages 231 and 232 of the application form. All activities needed to successfully administer and construct a project are carefully scheduled to advance the project to completion rapidly and smoothly. All activities that have not yet been accomplished are considered planning. These activities shall receive one (1) point each. Activities that have been accomplished are considered previous actions. These activities shall receive three (3) points each.*~~ ~~*(3-30-01)*~~(9-1-05)T

a. ~~*For street and street related projects, applicants shall also provide a maintenance record for the project area for eighteen (18) months, prior to submittal of the application or addendum and a method of how the project was prioritized over other needs.*~~ Design Professional (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has issued an RFP and completed a design professional selection process. The process must have met state and federal procurement requirements as described in the most recent ICDBG Administration manual. A copy of the RFP, proof of published notice if ~~*over twenty-five thousand dollars ($25,000)*~~ *applicable*, and completed evaluation rating sheets must be submitted to receive full points. ~~*(3-30-01)*~~(9-1-05)T

b. ~~*Applicants for water and sewer projects shall conduct a rate study and complete the Financial Viability Profile included in Exhibit 11 of the Application Handbook.*~~ Grant Administration (twenty (20) points). A maximum of twenty (20) points will be awarded if the applicant has issued an RFP and completed the administrator selection process. The process must have met state and federal procurement requirements as described in the most recent ICDBG

Administration manual. A copy of the RFP, solicitation process, and completed evaluation rating sheets must be submitted to receive full points. ~~(3-30-01)~~(9-1-05)T

c. ~~*Applicants for fire safety projects must show efforts to comply with fire code fire insurance rating factors, maintenance personnel training and incident reporting. Bonus points are available for fire inspector certification and community education. (See Subsections 085.01.d. and 085.01.e.*~~ Plan/Studies (twenty (20) points). A maximum of twenty (20) points will be awarded in this category if the applicant documents a plan or a study has been completed which includes a survey of the existing condition of the system or facility, develops and screens alternatives to enable the system to meet future needs, selects a recommended alternative, and evaluates the potential impact of the project on the environment. For pre-fab buildings, provide a letter from local building officials that the building meets state of Idaho building, electrical, and plumbing codes. Include additional information by project type: ~~(3-30-01)~~(9-1-05)T

i. Water and sewer system projects. A conditional approval issued by DEQ on the facilities study or the project's specification and drawings. (9-1-05)T

ii. Health care facility projects. A letter of intent submitted to the Idaho Bureau of Facilities Standards describing the proposed scope of work. Provide a copy of the letter and any response from the Bureau of Facilities Standards. (9-1-05)T

iii. Road and transportation system projects. Conditional approval of construction plans by the Idaho Transportation Department or local highway district. (9-1-05)T

iv. Housing projects. Project meets the community's comprehensive plan and zoning ordinance. Also, completed a financial performance and management plan. (9-1-05)T

v. Fire or EMT station projects. A public works or design professional facilities review. The review shall include survey of existing condition of the building (if applicable), an analysis of costs including rehabilitation costs versus new construction, site location consideration including environmental issues, existing building problems, and the need for the size of the facility. (9-1-05)T

d. ~~*Youth center projects shall be modeled after the Boys and Girls Club of America in that they shall provide services and programs for at-risk youth, ages six (6) to eighteen (18). These programs shall assist disadvantaged youth in developing the skills to overcome challenges and become responsible leaders by focusing on character and leadership, education and career, health and life styles, the arts, fitness and recreation and other specialized programs such as family support and intervention. Applicants shall provide information on the management and operation of the center and community outreach activities. Applicants requesting ICDBG funds for new construction must show the cost of rehabilitation exceed new construction costs, or the construction of a youth center facility will be in a community where no facility now exists, and if local operating funds are committed.*~~ Environmental Scoping (ten (10) points). A maximum of ten (10) points will be awarded if the applicant or sub-recipient has completed a Field Notes Checklist as prescribed in the ICDBG Application Handbook and mailed out environmental information request letters before submission of application. ~~(3-30-01)~~(9-1-05)T

e. Agency Viability (thirty (30) points). A maximum of thirty (30) points will be

awarded in this category if the applicant documents the following per project type: (9-1-05)T

i. Sewer or water projects. Completion of ICDBG financial viability worksheet with the utility rate reviewed by at least one (1) of the following: The USDA Rural Development, Boise State University Environmental Finance Center, the Rural Community Assistance Corporation, or the Idaho Rural Water Association. (9-1-05)T

ii. Health care, transportation, housing, fire/EMT, or other projects. The applicant's or sub-recipient's viability will be based on having the following components: A lawful governing body, completion of ICDBG financial viability profile, a stable funding source and positive cash flow, and capital improvement and facility management plans. (9-1-05)T

iii. Youth center projects. Projects must be modeled after the Boys and Girls Club of America and assist youth ages six (6) to eighteen (18) in developing skills to overcome challenges and become responsible leaders. The applicant or sub-recipient must provide information on management and operation of the center, outreach activities, a cost analysis of rehabilitation versus new construction and document that local operating funds are committed. (9-1-05)T

f. Property Acquisition (twenty (20) points). A maximum of twenty (20) points shall be awarded if the applicant or sub-recipient has achieved project site control. (9-1-05)T

i. The applicant or sub-recipient has ownership of the property including easements or right of way permits. Identify if there are existing buildings on the property and whether or not businesses, individuals, or farms will be displaced and provide documentation of site control; or (9-1-05)T

ii. If property (land, buildings, rights of way, easements) is not secured but is identified on a plat map five (5) points will be awarded. Identify if individuals or businesses, including farms will be displaced. (9-1-05)T

g. Funding Commitments (forty (40) points). A maximum of forty (40) points will be awarded if one hundred percent (100%) of match funds are committed to the project. A commitment letter must be included with the application addendum. A support letter is not a commitment. If match is a bond, provide documentation the bond has passed and identify who will buy it. (9-1-05)T

h. Schedule (five (5) points). A maximum of five (5) points will be awarded in this category if the dates to start and complete construction have taken into account weather conditions, other funding availability, environmental mitigation issues, real estate site control, and bidding time frame. (9-1-05)T

i. Administrative Capacity (fifteen (15) points). A maximum of fifteen (15) points will be awarded in this category. (9-1-05)T

i. ICDBG project track record and general stability of applicant and sub-recipient. Review may include financial audit reports, board make-up, staff turnover and recall elections (five (5) points). (9-1-05)T

ii. Completion of Section 504 Self Evaluation and Transition plan. Submit the transition plan and the name of the ADA coordinator to certify which elements have been completed (five (5) points). (9-1-05)T

iii. Document that Fair Housing Accessibility Standards have been adopted either separately or inclusively with the most current building code utilized by the applicant (five (5) points). (9-1-05)T

02. Cost Analysis (forty (40) points). Cost estimates for the project should be an accurate and realistic analysis of the administrative, legal, accounting, engineering or architectural services, property acquisition, construction and closeout costs. The various sources of funding should be assigned to the appropriate parts of the project. ~~*The source of the cost estimate should be described and documented.*~~ In order to receive points, construction costs will need to be: ~~*(3-19-99)*~~(9-1-05)T

a. Identified by a licensed design professional's cost estimate within four (4) weeks of the application due date; (9-1-05)T

b. Completed Project Cost Estimate. Estimate should reflect: (9-1-05)T

i. Acquisition costs including appraisals, land, relocation, and closing costs; (9-1-05)T

ii. Construction costs including divisions 1 - 16 as described in the most recent MASTERFORMAT, Davis Bacon wage rate, overhead, profit, contingency, bonding, permits; (9-1-05)T

iii. Design professional fees including design fees, construction administration, and reimbursable fees; (9-1-05)T

iv. Grant administration fees including writing and administration; (9-1-05)T

v. Soft costs including soil studies, market study, environmental; and (9-1-05)T

vi. Financing expenses. (9-1-05)T

~~***03. Certified Gem Communities (twenty (20) points)****. Applicants which are "Certified Gem Communities" will receive twenty (20) points. A Certified Gem Community is one which has been certified for the first time or recertified, according to the Department's records as of the deadline date for Application or Addendum submission and is actively involved in the Gem Community Program. To receive Gem Community points, applicants shall make certain the most current Gem Community Action Plan is filed with the Department. At a minimum, the action plan shall include planned priorities, a completion schedule and responsible key Gem Community team members. Applicants must also provide a brief description of Gem Community activities accomplished six (6) months prior to the application deadline. If the applicant community is not active, but located in an active county, the community is not entitled to Gem Community points.*~~ ~~*(3-30-01)*~~

091. ECONOMIC ADVISORY COUNCIL POINTS.
(Two hundred (200) points). The Council, in assigning these points to the Applications and Addenda, shall consider the degree of impact from the project upon the community and shall compare similar type projects with each other. Consideration may include local ability to finance the project, local effort and commitment to the project, and local and regional economic impact of the project. These points shall be assigned to Applications based upon the Council's review of the information contained in the Application and the staff's review and recommendations. These points shall be assigned to Application and Addendum by the Economic Advisory Council after their review of the Applications and Addenda~~ *and after hearing the presentations from applicants*~~. The Council shall decide on the amount of points to be assigned to each Application in the Council's regular meeting for reviewing Applications. ~~*(7-6-94)*~~(9-1-05)T

092. AWARD PROCESS.
The Applications will be submitted, reviewed, ranked and recommended by the Department to the Economic Advisory Council. The Council will review the Applications, the staff review process, assign the Economic Advisory Council points, then rank and invite the top ranked applicants to submit an Addenda to their Applications. If the Department receives additional funding, to ensure the process remains competitive and that several projects may be selected for standby projects, the Council shall invite at least two (2) more projects than the amount of PFH set-aside amount. The Council may invite Addendums totaling up to one hundred fifty percent (150%) of the PFH set aside. Applicants may then prepare and submit their Addenda. The Addenda shall be reviewed, ranked and recommended to the Economic Advisory Council. The Council shall review the recommendations, ~~*hear presentations from the applicants,*~~ assign the Economic Advisory Council points, rank the Applications and recommend to the Governor the top-ranked projects for which funds are available. Several standby projects may also be recommended. The Governor may review the recommendations and then announce the award of grants to the applicants. Once the Governor's announcement has been made, the Department will contact the grantees to begin the process to develop and execute a grant contract. ~~*(7-6-94)*~~(9-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

094. APPLICATION.
Preparation and filing of the Application and Addendum will be assisted by the Department Staff. (7-6-94)

01. Notice of Intent. Accepted continuously. To be submitted following an applicant's decision to prepare an Application (see Section 061). (7-6-94)

02. Information to be Included. The Application shall contain the information required by Sections 072 through 074. The Application shall be reviewed and ranked according to the criteria contained in Section 096 or Section 097. The Application may be rejected at any time that, in the opinion of the Department, the evaluation process indicates the project is unable to meet the minimum requirements or that the project will receive a point ranking below the minimum required for approval. (7-6-94)

03. Deadline. ED Applications for job creation projects will be due in on the third Monday of the month prior to a quarterly Economic Advisory Council (EAC) meetings held in January, April, July and October. Applications received after this date will not be presented to the Council at that quarterly meeting. ED Applications for slum and blight downtown revitalization projects will be due in November and if invited to submit an Addendum, in March. (3-19-99)

04. Deadline Exception. The EAC may hold a special public meeting, which may be done through teleconferencing, to consider projects when, in the opinion of the Chairperson, a project's urgency will not permit a delay in processing an Application. ~~*(7-6-94)*~~(9-1-05)T

05. Restrictions. If an applicant has a currently funded ED grant(s), they may apply for an additional ED grant(s) if additional administrative capacity is demonstrated, and, if all previous ED grant(s) are under contract. Only one (1) Ed application for job creation projects is allowed in any quarterly funding cycle with the conditions noted above. (3-19-99)

06. Presentation. If the project passes the threshold point total it will be recommended by the staff to the EAC where the applicant may make a presentation, according to Section 065. (7-6-94)

(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 and Labor screening referral agency. (3-19-99)

b. The applicant ~~*and the business*~~ must certify compliance with applicable federal circulars A-87, ~~*A-102,*~~ A-110, and A-122 and meet the necessary assurances as listed in Subsection 074.08 as applicable. ~~*(7-6-94)*~~(9-1-05)T

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 Subsection 040.02.a. If the project qualifies under Subsection 040.02.b., a determination of Necessary or Appropriate is required. (7-6-94)

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. ~~*(Attachment) A*~~ 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. ~~*(3-20-97)*~~(9-1-05)T

g. ~~*(Attachment) A*~~ 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. ~~*(3-30-01)*~~(9-1-05)T

h. ~~*(Attachment) A*~~ 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. ~~*(3-19-99)*~~(9-1-05)T

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. ~~*Direct new jobs are those jobs created as a result of the ICDBG grant, over and above employment at the project site prior to the grant, and which do not displace any other employment in the same labor market area.*~~ 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 thousand dollars ($10,000) ICDBG per job will not be considered. ~~*Points are assigned by the formula: (Number of jobs) X (two hundred fifty thousand dollars ($250,000)) divided by (the requested ICDBG funds), up to ninety (90) points.*~~ If jobs are not being created or retained, a project cannot be funded. ~~*(3-19-99)*~~(9-1-05)T

b. Quality of New or Retained Jobs (~~*ninety*~~ one hundred (~~*9*~~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 and Labor 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 ~~*ninety*~~ one hundred (~~*9*~~100) = Wage Quality Points. ~~*(3-30-01)*~~(9-1-05)T

c. Fringe Benefits (~~*twenty*~~ one hundred (~~*2*~~100) points). The businesses creating or retaining jobs as a result of ICDBG assistance shall document their fringe benefit plans~~ *for low and moderate income employees. Ten (10) points will be given for a comprehensive employer paid health program and ten (10) points for an employer paid pension program, 401-K matching program, or equivalent. If health or pension benefits are not offered, applicants may receive ten (10) points in this category if the employer provides training or education courses, daycare and paid vacation and sick leave are offered. All three (3) benefits must be available to receive the ten (10) points*~~. 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. ~~*(3-19-99)*~~(9-1-05)T

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. ~~*(zero (0) to one-hundred (100) points)*~~.
~~*(3-20-97)*~~(9-1-05)T

e. Planning, Schedule and Cost (one hundred and ~~*fifty*~~ seventy (1~~*5*~~70) 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. ~~*(Subsection 090.04)*~~ ~~*(3-19-99)*~~(9-1-05)T

i. Planning~~.~~ (~~*F*~~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. ~~*(3-19-99)*~~(9-1-05)T

ii. Schedule~~.~~ (~~*F*~~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. ~~*(3-19-99)*~~(9-1-05)T

iii. Cost~~.~~ (~~F~~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. ~~*(Subsection 090.04)*~~ ~~*(3-19-99)*~~(9-1-05)T

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. (9-1-05)T

f. Minority Benefit (~~F~~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. ~~*(3-30-01)*~~(9-1-05)T

g. Local Investment Leverage~~.~~ (maximum of one hundred (100) points). ~~*The amount of local cash match shall be multiplied by one point five (1.5) to determine a total for local cash match. This total local cash match will then be added to other local match, i.e. revenue bonds, in-kind match, etc.*~~ The total of all local match will ~~*then*~~ 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. ~~*(one hundred (100) minus ICDBG percentage).*~~ ~~*(3-30-01)*~~(9-1-05)T

h. Distressed Areas (twenty (20) points). ~~*A maximum of thirty (30) points will be given to distressed areas: Fifteen (15) points if the project is located in a county which has an average annual unemployment that is one and one-half percent (1.5%) above the state average and fifteen (15) points if the per capita income is below the statewide average.*~~ Maximum points will be given if the project is located in a historically underutilized business (HUB) zone. ~~*(3-19-99)*~~(9-1-05)T

i. ~~*Rural Impact. Jobs created in smaller communities have a greater stabilizing influence than in larger communities. The points shall be assigned as follows:*~~ Existing Idaho Business (twenty (20) points). To qualify for points, a business must have a significant Idaho presence.

~~*TABLE 4 - "Rural Impact On Jobs" Community Population*~~	
~~*Population (latest census estimates)*~~	~~*Points 25 Total*~~
~~*0 - 1,000*~~	~~*25*~~
~~*1,001 - 3,000*~~	~~*15*~~
~~*3,001 - 10,000*~~	~~*5*~~
~~*10,001 - 50,000*~~	~~*0*~~

~~*(7-6-94)*~~(9-1-05)T

~~***j.*** *Gem Community. Applicants which are "Certified Gem Communities" will receive thirty (30) points. Certified Communities must be currently certified or recertified and actively participating in the Gem Community Program as of the quarterly deadline date to be eligible for these points. To receive Gem Community points, applicants must make certain the most current Gem Community Action Plan is filed with the department. At a minimum, the Action Plan shall include planned priorities, a completion schedule and responsible Gem Community team members. Applicants must also provide a brief description of Gem Community activities and accomplishments six (6) months prior to the application deadline. If the applicant community is not active, but located in an active county, the community is not entitled to Gem Community points.*~~ ~~*(3-30-01)*~~

~~***k***~~**j.** Private Leverage~~.~~ (one hundred (100) points). ~~*This is the percentage of ICDBG funds in the sum of total private investment plus ICDBG funds in the project. This includes t*~~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 ~~*in*~~ 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. ~~*(one hundred (100) minus ICDBG percentage).*~~ ~~*(3-30-01)*~~(9-1-05)T

~~***l***~~**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. ~~*(Percentage of twenty-five (25) points).*~~ ~~*(7-6-94)*~~(9-1-05)T

~~***m***~~**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. ~~*(3-20-97)*~~(9-1-05)T

~~***n***~~**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. ~~*This shall be done by providing a one (1) page narrative of project benefits. (two hundred (200) points).*~~ The EAC evaluation process shall be prescribed in the ICDBG Application Handbook.

~~*(3-30-01)*~~(9-1-05)T

097. REVIEW AND RANKING OF DOWNTOWN REVITALIZATION.

01. Introduction. Downtown Revitalization occurs only as merchants and landowners and other community representatives implement a series of actions which take advantage of community strengths and the economic and market forces operating in their community. An Idaho Community Development Block Grant program is only one (1) of the resources which can assist a downtown revitalization process. Therefore, the grant Application must be reviewed against the background of the total revitalization efforts. The following areas are reviewed by staff to evaluate the project. (3-19-99)

02. Organization (~~*one hundred*~~ seventy-five (~~*100*~~75) points). This is a measure of the strength and depth of the local commitment to downtown revitalization. Obvious problems and lack of cooperation will detract from the points. The Application should describe how the community is actively organized to plan and implement a downtown revitalization process. At the center of the process there should be a take-charge steering committee representing the major community actors, such as merchants, city officials, local economic development organizations, utilities, and banks. Active subcommittees shall undertake components of the process in promotion, design, and economic restructuring. Other areas include infrastructure, finance, historic preservation, architecture, and various regulations. The process will be unsuccessful without the participation of, communication with, and cooperation from, various local, state and federal governmental agencies, such as the Department of Transportation, Health and Welfare, Post Office, BLM, Forest Service, City Hall, County Courthouse, School Board, Highway Districts, Sewer, Water, and Fire Districts and Irrigation Districts. Participation of major companies, particularly those which drive the local economy, along with the utilities and banks, is also critical to the process. ~~*(3-19-99)*~~(9-1-05)T

03. Assessments (~~*one hundred*~~ seventy-five (~~*100*~~75) points). This is a measure of the accuracy, completeness and comprehensiveness of each of the assessments which underlie the implementation plan. Knowing and understanding the market forces which support a community's downtown is the foundation of any revitalization effort. Consequently, an analysis of the local economy's market or trade area is critical to determine the effort's direction. Only with this information can plans be made to select the mix of goods and services that can be supported and to decide the nature of the improvements to infrastructure, regulations, buildings, and promotional campaigns. The downtown area may no longer be a retail center and maybe some other use is appropriate. This should be identified and the plans accordingly developed around this activity. Therefore, the Application must contain the background studies that were conducted to assess the local economic forces, market conditions, demographics, and sales volumes; the present conditions of streets and sidewalks, sewers, water and storm drain systems, and traffic patterns; the mix of land uses, conditions of buildings and vacancy rates, physical design, including accessibility for persons with disabilities, and environmental conditions. To receive full points, a community assessment must include market analysis which includes a survey of the primary trade areas, customer market and business and property owner information. ~~*(3-19-99)*~~(9-1-05)T

04. Implementation (two hundred (200) points). The Implementation Plan, by its very nature, needs to be action-oriented, with resources, time frames, and assigned responsibilities for each activity. The Plan should begin with an estimate of the economic potential of the downtown and the effect that revitalization will have upon the businesses and services. Next should be the goal statement(s) of the revitalization effort. Goals should be stated in general terms with implementation activities in specific, measurable terms. Suggested goal statements include marketing, promotion, regulatory, cleanup, and infrastructure. The Implementation Activities should be set out in detail with the responsible party(ies) identified, a completion time frame established, and the needed resources identified. Since revitalization will take a partnership of the public and private sectors to accomplish the goals, the activities may be divided into public and private categories. Points will be assigned to the Implementation Plan as follows: (7-6-94)

a. Action Plan (fifty (50) points). This is a measure of the detail of the implementation plan. The detail should include specific actions with assigned responsibilities and time frames for completion. (7-6-94)

b. Architectural/Engineering Plans (fifty (50) points). This will measure the extent of architectural design or engineering undertaken to determine the scope of the grant project and estimate costs. (7-6-94)

c. Implementation Time Frame (fifty (50) points). This will measure whether reasonable time frames have been determined for the grant project and that all the major actions and accomplishments have been identified, including those necessary for the implementation of the grant. (7-6-94)

d. Previous Amount Accomplished (fifty (50) points). This is a measure of all other action items in the implementation plan, how many have been started, and the progress towards completion. (7-6-94)

05. Slum and Blight (two hundred (200) points). This is a threshold which shall be met for the Application to be eligible for review. An Application will be disqualified if, in the opinion of the Department, the project does not meet the definition of Slum and Blight, (Section 020) or does not receive more than one hundred twenty-five (125) points in this category. The geographic boundaries of the downtown area shall be reasonable and officially designated. The conditions within the area shall be described and shall include the condition of all the infrastructure, the conditions of buildings and structures, and the economic forces which are causing the conditions of slum and blight. The Application shall describe the need for the proposed ICDBG project and the impact the project will have on the conditions of slum and blight. This will include the overall impact on the downtown revitalization efforts and the long-term impact on the community. Some project activities may, more appropriately, meet another national objective. If so, it should be described in detail and documented according to the standards for that national objective. (7-6-94)

a. Need and impact (one hundred (100) points). This is a measure of the proposed area's need to prevent or eliminate conditions of slum and blight. It is also a determination of the project's impact on the conditions of slum and blight. A project must address the critical need of the slum and blighted area, have an impact on the economics of the downtown area, and have a measurable impact. The criteria for measuring the impact of the project on the conditions of slum and blight must be described in measurable terms, such as increase in private investment, establishment of new businesses or business expansions, sales growth, improvement in the appearance and value of property, reduction in vacancy rates and increase in housing units. This includes the economic impact and community impact. (7-6-94)

b. Relationship to overall plan (one hundred (100) points). This is a measure of: how the proposed grant project is related to the other actions and needs of the Implementation Plan; whether it is foundational to the revitalization of the downtown economy or it is peripheral to the needs of the economy; and how logically sequenced the activities being proposed are in relation to the other activities. If another national objective is included in the justification for some of the activities, include the description here and it will be judged upon its need and impact as described in this section. (7-6-94)

06. The ICDBG Project (three hundred fifty (3~~0~~50) points). The Application shall generally describe the eligible activities being proposed for funding. Any combination of eligible activities may be considered in designing the project. The eligible activity(ies) should be located on a detailed map. The relationship of the block grant project to the other implementation activities must be clear. Any matching funds shall be committed with the sources and schedules identified. All the other collateral implementation activities should be discussed and the funds expended documented. The Application shall describe the following items: ~~*(7-6-94)*~~(9-1-05)T

a. Project Local Match (~~*seventy-five*~~ one hundred (~~*75*~~100) points). The amount and percentage of "local match" firmly committed to the grant project shall be described. Evidence of commitment shall be provided by letter or agreements. 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. ~~*The amount of local cash match shall be multiplied by one point five (1.5) to determine a total for local cash match.*~~ This total local cash match will then be added to other local match i.e. revenue bonds, in-kind match, etc. The total of all local match will then 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. The percentage times the points (~~*seventy-five*~~ one hundred (~~*75*~~100)) will determine the amount of points assigned.
~~*(3-30-01)*~~(9-1-05)T

b. Project Other Match (seventy-five (75) points). The percentage of other funds committed to the proposed ICDBG project from private and other state and federal sources. The percentage shall be calculated by dividing the total of the other sources by the sum of total project costs which is all match plus the ICDBG request. The percentage times the points (seventy-five (75)) will determine the amount of points assigned. (3-19-99)

c. ~~*Gem Community (fifty (50) points). In order to promote the ongoing planning process and to more directly relate the grant funding to local economic development efforts, a proposed project should be identified as a priority in the One (1) Year Gem Community Plan. Certified Communities which generally include the proposed project in their One (1) Year Gem Community plan are awarded the full fifty (50) points. The proposed project must be identified in the current one (1) year plan on file with the Department at the date of application. The project must also be related to the goals and objectives of the plan. Applicants which are "Certified Gem Communities" will receive fifty (50) points. Certified communities must be currently certified or re-certified and active in the program as of the quarterly deadline date to be eligible for these points. If the applicant community is not active, but located in an active county, the community is not entitled to claim Gem Community points.*~~ BID/LID Commitment (fifty (50) points). A maximum of fifty (50) points will be awarded to communities who have established a formal business improvement district or local improvement district prior to submission of the application addendum. ~~*(3-30-01)*~~(9-1-05)T

d. Related Implementation Expenditures (~~*fifty*~~ sixty (~~*5*~~60) points). The percentage of private investment or ~~*other funds*~~ related expenditures spent on the other implementation plan action items compared to the ICDBG funds being requested. Amounts spent within one (1) year prior to the grant Application submittal and those committed to be spent during the year following

the submittal of the Application may be counted for this section. The percentage shall be calculated by dividing the total of the other funds by the sum of other funds plus the ICDBG request. The percentage multiplied by the points (~~*fifty*~~ sixty (~~*5*~~60)) will determine the amount of points assigned. ~~*(7-6-94)*~~(9-1-05)T

e. Long-term Program Involved (~~*fifty*~~ sixty-five (~~*50*~~65) points). The use of grant funds to leverage a payback mechanism so that funds will sustain the downtown redevelopment efforts over the long term. For example, this can be done through various types of loans, fees, bonds and tax increment financing. The pool of funds is to be dedicated to the downtown area. ~~*(7-6-94)*~~(9-1-05)T

07. Economic Advisory Council Points (one hundred (100) points). The ~~*Economic Advisory Council*~~ EAC, after ~~*hearing the community's presentation and*~~ reviewing the staff's ranking and recommendation, shall award its points based upon both the information presented and the Application. The ~~*Council*~~ EAC may award all or some of the points depending upon its opinion that the grant will promote the revitalization of the downtown economy. Projects which only fix a problem but do not leave the downtown in a better economic condition would receive fewer points. ~~*(7-6-94)*~~(9-1-05)T

098. AWARD PROCESS.

01. Evaluation of Proposal. Upon receipt of an Application, Department staff shall conduct an evaluation of the proposal and verify the information contained therein. Such evaluation and investigation will ensure the availability of all information necessary for rating the Application. The review will also establish a high probability that the project is viable, the business is committed, and that a national objective can be met. The Applications will be submitted, reviewed, ranked, and recommended by the Department to the ~~*Economic Advisory Council*~~ EAC to make a presentation according to Section 065. ~~*(7-6-94)*~~(9-1-05)T

02. Ranking. The ~~*Council*~~ EAC will review the Applications, ~~*presentations, and*~~ staff review process, assign the ~~*Economic Advisory Council*~~ EAC points, and rank the Applications. The top-ranked applicants will be invited to submit their Addenda to the Department. The ~~*Addendum*~~ Addenda shall amend and expand upon the Application. Department staff shall inform the applicant as to additional information, documents and actions necessary to complete full application. The staff will review and rank the Addenda, checking that all requirements are met. Applications will be recommended to the Governor for funding if submitted before the next ~~*Council*~~ EAC quarterly meeting, and if the Application and ~~*Addendum*~~ Addenda contain sufficient assurances and commitment. ~~*(7-6-94)*~~(9-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

101. REVIEW AND RANKING PROCESS.
The Application shall be reviewed according to the following point categories and shall be based upon the information submitted and any additional information requested by the Department. (one thousand (1,000) points possible). (7-6-94)

01. Physical Conditions (three hundred fifty (350) points). Points will be assigned to the needs of the center based upon the number of needs and the urgency of the needs. Department staff shall, upon review of the documentation and descriptions in the application, determine a rating from one (1) to three (3) based upon the criticalness and urgency of each of the following problems. The ratings will be totaled and ranked. Those Applications ranking the highest will receive the most points. (The number of Applications divided into three hundred fifty (350) points equals the points per rank.)

TABLE 5 -- "CRITICALNESS AND URGENCY OF PROBLEMS"				
		Problem or Need Rating		
		Violation of Laws/ Bldg. Codes/Health and Safety Concerns	Health and Safety Problems	No Violations or Health and Safety Concerns
Identified in Project Description Narrative	Identification of Problem	Critical 1	Urgent 2	Nice to Have 3
	Physical Conditions: Structural Problems			
	Roof			
	Walls			
	Foundation			
	Floors			
	Weatherization			
	Expansion for adult day care			
	New Center			
	Other			
	Interior Problems:			
	Asbestos/lead based paint			
	Bathrooms			
	Access for persons with Disabilities			
	Electrical/plumbing/lighting			
	Heating/air conditioning			
	Fire safety			
	Unusable space			
	New Center			
	Unusable space			
	Other			
	Kitchen and Food Storage:			

TABLE 5 -- "CRITICALNESS AND URGENCY OF PROBLEMS"				
		Problem or Need Rating		
		Violation of Laws/ Bldg. Codes/Health and Safety Concerns	Health and Safety Problems	No Violations or Health and Safety Concerns
Identified in Project Description Narrative	Identification of Problem	Critical 1	Urgent 2	Nice to Have 3
	Health inspection			
	Capacity of dry storage			
	Capacity of cold storage			
	Equipment			
	New Center			
	Other			
	Access for Persons with Disabilities			
	Parking			
	Entry			
	Bathrooms			
	New Center			
	Other			
	TOTALS:			
		ASSIGNED RANKING		

(3-30-01)

02. Planning and Schedule (two hundred (200) points). Points will be assigned according to the apparent effort made to determine the needs of the center, the nature of the problems, the solutions, and the costs of the project and a realistic schedule for implementing the project. (7-6-94)

a. Pre-Planning (fifty (50) points). This is a measure of the effort made to quantify the problems through building code inspections, health inspections, and architectural and engineering review. (7-6-94)

b. Project Planning (fifty (50) points). This is a measure of the effort made to coordinate all of the various agencies that may be involved in funding and planning the project. Also included is all relevant information that all grant responsibilities and requirements have been included in the planning. (7-6-94)

c. Schedule (fifty (50) points). This is a measure of the effort to schedule all the project activities, including the different grant requirements and contractors that may be involved.

(7-6-94)

d. Costs (fifty (50) points). This is a measure of the effort to determine reasonable cost estimates for the various elements of the project. (7-6-94)

03. Benefits (one hundred fifty (150) points). (7-6-94)

a. Activities Provided (one hundred (100) points). This is a measure of how well the center is meeting the needs of its members, neighborhood, or community. It is based upon the number and quality of activities and services the center is providing on an annual basis. Service days will be calculated by taking the number of days an activity or service is offered during the course of the month multiplied by twelve (12). Activities can include health, recreational, social, educational, and transportation services. Quartile points will be assigned to this area.

TABLE 6 - "Ranking By Quartiles"	
Highest Quartile	One hundred (100) points
Second Quartile	Sixty (60) points
Third Quartile	Thirty (30) points
Fourth Quartile	zero (0) points

(3-30-01)

b. Low and Moderate Income and Minority Outreach Activities (fifty (50) points). This is a measure of existing or proposed efforts made to include low and moderate income and minority participation in the center's activities. (7-1-98)

04. Match (one hundred (100) points). Cash and in-kind donations which are committed to the project shall receive points according to the percentage committed up to the total points in the category of match. ~~*A one dollar and fifty cent ($1.50) value shall be calculated for every one dollar ($1) of local cash committed to the project.* *(3-30-01)*~~(9-1-05)T

a. The sixty (60) points for cash match shall be assigned on a quartile basis by taking the percentage resulting from the division of cash match by the total project. Quartile points will be assigned to this area in a descending order based upon the percentage of cash match in the project. (3-30-01)

i. First Quartile - sixty (60) points. (3-30-01)

ii. Second Quartile - thirty (30) points. (3-30-01)

ii. Third Quartile - fifteen (15) points. (3-30-01)

iv. Fourth Quartile - zero (0) points. (3-30-01)

b. The forty (40) points for in-kind match shall be assigned on a quartile basis by taking the percentage in-kind match divided by the total project. Quartile points will be assigned

to this area in a descending order based upon the percentage of in-kind match in the project. (3-30-01)

i. First Quartile - forty (40 points. (3-30-01)

ii. Second Quartile - twenty (20) points. (3-30-01)

iii. Third Quartile - ten (10) points. (3-30-01)

iv. Fourth Quartile - zero (0) points. (3-30-01)

102. -- 105. (RESERVED).

106. ECONOMIC ADVISORY COUNCIL POINTS.
(Two hundred (200) points). The ~~*Council*~~ EAC, in assigning these points to the Applications, shall consider the degree of impact from the project upon the community and shall compare similar type projects with each other. Consideration may include local ability to finance the project, local effort and commitment to the project, and local impact of the project. These points shall be assigned to Applications by the ~~*Economic Advisory Council*~~ EAC after their review of the Applications ~~*and after hearing the presentations from applicants*~~. The ~~*Council*~~ EAC shall decide on the amount of points to be assigned to each Application in the ~~*Council's*~~ EAC's regular meeting for reviewing Applications. ~~*(7-6-94)*~~(9-1-05)T

107. AWARD PROCESS.
The Department shall review the Applications submitted ~~*and select the top-ranked Applications using a sum of one hundred thirty percent (130%) of the funds, plus one (1) more Application. These applicants shall be invited to submit their Addenda, then present their projects to*~~ with the ~~*Economic Advisory Council*~~ EAC during its March meeting. The EAC, after reviewing the Applications, ~~*Addenda,*~~ and staff recommendations, ~~*and presentations,*~~ will assign the points and recommend Applications to the Governor for funding and standby status. ~~*(7-6-94)*~~(9-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

118. TECHNICAL ASSISTANCE ~~*GRANTS*~~.
To assist communities and applicants in their planning efforts and discourage uncoordinated piecemeal approaches to solving community problems, one percent (1%) of the annual Community Development allocation shall be set aside for technical assistance ~~*grants*~~. ~~*(3-20-97)*~~(9-1-05)T

~~***119. STATEWIDE TECHNICAL ASSISTANCE GRANT.***~~

~~***01. Purpose****. To create a statewide information base which all communities can use in their economic development, community development, growth management, housing activities, and grant compliance.* *(3-20-97)***

~~***02. Contract for Services****. The Department may contract for these services.* *(3-20-97)***

~~***03. Technical Assistance Program**. Shall collect, develop, and provide information and materials including, but not limited to, "how to" information and "boiler plate" ordinances on capital improvement planning and budgeting; tax increment financing; impact fees; zoning; subdivisions; housing information; housing plans; community development and economic development plans; other ordinances and information on development as may be appropriate. (3-20-97)*~~

~~120~~119. -- 134.(RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

153. PROCUREMENT.

~~*Service needed by local governments to complete ICDBG projects typically include professional grant managers, engineers, architects, construction contractors, and materials and equipment. The city or county may choose to perform these services with their own staff and equipment or contract for these services. If the city or county chooses to obtain these services from outside sources, then formal procurement procedures must be followed. However, city or county staff doing grant management must be certified by the Department (according to Section 213.).*~~ Grantees and sub-recipients will follow state and federal procurement law as outlined in the most recent ICDBG Grant Administrator's Manual. ~~*(7-6-94)*~~(9-1-05)T

~~***01. ICDBG Funds**. If an applicant chooses to use ICDBG funds to pay for part or all of a contract, the applicant shall use the procedures outline in this rule. (7-6-94)*~~

~~***02. Other Funds**. If an applicant chooses to use its own funds to pay all of a contract amount, the applicant may use its own procurement procedures. However, the applicant shall not at a later time use ICDBG grant funds to pay any contract costs not procured by the ICDBG procurement rules. (7-6-94)*~~

~~***03. Provisions**. Applicants are still required to follow applicable provisions of state law for procurement of goods and services. An applicant may accept proposals or bids from companies, non-profits and persons which have provided guidance and technical assistance in establishing the applicants procurement process as long as the process is open and competitive; the procurement standards are not unreasonably restrictive and no conflict of interest (as defined by Section 191) exists. (7-6-94)*~~

154. -- ~~160~~163.(RESERVED).

~~***161. PROFESSIONAL SERVICES.***~~

~~***01. Small Purchase Procurement**. If the cost of the grant management, does not exceed one-hundred thousand dollars ($100,000), or twenty-five thousand dollars ($25,000) for engineering or architectural services, then a "small purchase" method or informal method of procurement can be used. The grantee should write or call two (2) or more potentially qualified professionals and request written qualifications. Verbal requests for qualifications must be clearly*~~

~~*documented in the grantee's file. This documentation shall, at a minimum, be date, person's name, company name, services discussed, dollar amounts or basis of rates quoted. Once qualifications have been reviewed, the grantee shall inform the proposers of the selection and provide the reasons the professional was selected or rejected.* (3-19-99)~~

~~***02. Competitive Negotiation Procurement**. If the amount of grant management, exceeds one-hundred thousand dollars ($100,000) or twenty-five thousand ($25,000) for engineering or architectural services, then a formal competitive negotiation method of procurement shall be utilized. The appropriate procedures for the competitive negotiation procurement method are as follows:* (3-19-99)~~

~~***a.** Prepare request for proposals (RFP). RFP must include all factors that will be used to evaluate submissions. Evaluation factors must be outlined and the weight of each factor must be identified.* (7-6-94)~~

~~***b.** Cities must publish the RFP in local newspaper of general circulation. The RFP must be published at least twice. The proposal due date must be at least two (2) weeks after the first publication. Counties must publish the RFP in a newspaper of general circulation. The RFP must be published at least twice, not less than three (3) weeks apart. The proposal due date must be at least thirty (30) days from the first publication date. The RFP must also be sent to the Disadvantaged Resource Center. It is advisable to send a copy of the Request to local and area firms that may be qualified to respond.* (3-30-01)~~

~~***c.** Establish a selection committee. This may be the governing body, a citizen review committee, or a combination of members of both.* (7-6-94)~~

~~***d.** Evaluate all submitted RFPs for completeness and appropriateness. Review and rank the proposals according to the review criteria. All grant managers selected must be certified by the Department. Check with the Department for certification before awarding grant management contracts. Notify, in writing, all proposers about the decision and the reasons for the committee's selection or rejection.* (7-6-94)~~

~~***e.** Draft a services contract and send the draft, a copy of the RFP, the minutes of the selection committee decision, and a sample of the ranking document to the Department for approval. Do not execute the contract until Department approval is received. All contracts for professional services must be submitted to the Department for review and approval thirty (30) days before the intended effective date.* (7-6-94)~~

~~***162. CONSTRUCTION SERVICES.***~~

~~***01. Costs Under Five Thousand Dollars**. If the cost of the construction is under five thousand dollars ($5,000), then the "small purchase" method of procurement may be used. The grantee should write or call two (2) or more potentially qualified contractors and request written or verbal quotations for the construction needed. The documentation of this transaction shall include, at a minimum, the date of communication, the person's name, the company name, the services discussed, the dollar amounts, and the basis of rates quoted. Once a contractor has been selected, the grantee shall inform the contractors of the selection and the reasons they were selected or rejected.* (7-6-94)~~

~~**a.** *Price quotes - when an expenditure exceeds five thousand dollars ($5,000) and is less than twenty- five thousand dollars ($25,000) three (3) price quotes are required to be obtained from registered vendors having a significant economic presence in Idaho.* (3-20-97)~~

~~**b.** *Responsible vendor - when a city finds it impractical or impossible to obtain three (3) quotations for the proposed transaction then the city may procure the goods or services from the lowest responsible bidder/vendor.* (3-20-97)~~

~~**c.** *Bid security - cities are no longer required to obtain bid security but may at its discretion require bid security when it is in the best interest of the city.* (3-20-97)~~

~~**d.** *Competitive bids - when an expenditure exceeds twenty-five thousand dollars ($25,000) it shall be contracted for and let to the lowest responsible bidder. Where both bids and quality of property offered are the same, preference shall be given to property of local and domestic production and manufacture or from bidders having a significant Idaho economic presence as defined in Section 67-2349, Idaho Code.* (3-20-97)~~

~~**e.** *Check with the Department ten (10) days prior to bid opening to update Davis-Bacon wage rates.* (7-6-94)~~

~~**f.** *Open and read bids publicly at the time and place specified in the newspaper publication. Document the bid opening proceedings with official minutes.* (7-6-94)~~

~~**g.** *Choose a responsible, apparent low bidder. If two (2) bids are the same, preference shall be given to the bidder that has significant Idaho economic presence as defined in Section 69-2349, Idaho Code.* (3-20-97)~~

~~**h.** *Check with the Department for clearance of the successful bidder against the Federal Debarred List. This needs to be done prior to the Notice of Award being sent to the apparent low bidder.* (7-6-94)~~

~~**i.** *Award the contract.* (7-6-94)~~

~~**02.** **Costs in Excess of Twenty-Five Thousand Dollars**. *If the cost of the construction is over twenty-five thousand dollars ($25,000), then the competitive sealed bid procedure must be followed. In most cases the grant manager and the project engineer will prepare the bid documents for review. The steps required to award construction contracts through the competitive sealed bid process are as follows:* (7-6-94)~~

~~**a.** *Prepare bid documents.* (3-20-97)~~

~~**b.** *Contact the Department for most current wage decision to be included in the bid documents.* (3-20-97)~~

~~**c.** *Submit the bid documents to the Department for review and approval. Bid documents shall be submitted to the Department thirty (30) days prior to the proposed bid opening. Failure to meet the thirty (30) day time frame may result in the city/county and grant*~~

~~*manager being liable for lacking or wrong information.* *(3-20-97)*~~

~~***d.*** *Publicly advertise bids in local newspaper of general circulation (minimum two (2) weeks for cities, thirty (30) days for counties). Cities shall publish twice, not less than one (1) week apart, two (2) weeks before the bid opening, and counties need to publish twice, at least one (1) week apart, with first publication thirty (30) days before bid opening.* *(3-20-97)*~~

~~***e.*** *Check with the Department ten (10) days prior to bid opening to update Davis-Bacon wage rates.* *(3-20-97)*~~

~~***f.*** *Open and read bids publicly at the time and place specified in the newspaper publication. Document the bid opening proceedings with official minutes.* *(3-20-97)*~~

~~***g.*** *Choose a responsible, apparent low bidder. If two (2) bids are the same, preference shall be given to the bidder that has significant Idaho economic presence as defined in Section 69-2349 Idaho Code.* *(3-20-97)*~~

~~***h.*** *Check with the Department for clearance of the successful bidder against the Federal Debarred List. This needs to be done prior to the Notice of Award being sent to the apparent low bidder.* *(3-20-97)*~~

~~***i.*** *Award the contract.* *(3-20-97)*~~

~~***163. MATERIAL AND EQUIPMENT.***~~
~~*The guidelines in these rules for construction services also regulate the procurement process of materials and equipment, with the one (1) exception that ten thousand dollars ($10,000) is the limit, rather than five thousand dollars ($5,000).* *(7-6-94)*~~

COMMERCE & HUMAN RESOURCES

IDAPA 09 - DEPARTMENT OF COMMERCE AND LABOR

09.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 09-0203-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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. The pending rule is being adopted as originally proposed. The original text of the proposed rule was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 183 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 resulting from this rulemaking: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact ReNea Nelson, Grant Analyst, (208)334-2650 ext. 2153.

DATED this 5th day of October, 2005.

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given of this agency proposed rulemaking. This action is authorized pursuant to Section(s) 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 August 17, 2005.

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.

DEPARTMENT OF COMMERCE AND LABOR ***Docket No. 09-0203-0501***
Idaho Regional Travel & Convention Grant Program ***PENDING RULE***

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: A change is being made to the website address listed in IDAPA 09.02.03.204.08.f. to the new website address for this grant program and correction of clerical errors.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the simple nature of the proposed change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact ReNea Nelson, Grant Analyst, (208)334-2650 ext. 2153.

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 24, 2005.

DATED this 1st day of July, 2005.

ReNea Nelson, Grant Analyst
Idaho Department of Commerce and Labor
State Street Office
700 West State Street
Boise, ID 83720-0093
(208)334-2650 ext. 2153
(208)334-2631 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

204. PLAN REQUIREMENTS.
Applicants must follow these requirements: (2-22-93)

01. Goals/Objectives. The needs of the plan must be consistent with the ITC Strategic Objectives. (2-22-93)

02. Adequate Management. The applicant must show his/her ability to properly operate and maintain the management and accounting system for the plan. (7-1-98)

03. Previous Grant Versus New Application. The ITC encourages successful

applicants to complete all grants in a timely fashion. When considering applicants for funding, the ITC will scrutinize the applicant's historic grant record in terms of timeliness and effectiveness of implementation. (2-22-93)

04. Application Completeness. The applicant must submit applications to the Department of Commerce and Labor on the appropriate forms which will be provided by the department. The application must include a complete plan, grant summary sheet signed by the grantee, a detailed scope of work and a budget which includes sufficient funds for sales tax and an audit. (7-1-98)

05. Application Amendments/Withdraws. Amendments to either the scope of work or the budget on grant applications will be allowed only if changes are submitted to the Department of Commerce and Labor ten (10) working days prior to the grant awards utilizing the same format as the application submittal. Any other changes must occur on the floor during awards by the Council and can only be amended by a member of the Council. Applicants wishing to withdraw applications must provide written notice to the Department of Commerce and Labor ten (10) working days prior to grant awards. (3-20-04)

06. Plan Duration. Applicants are encouraged to limit the duration of their plan to fourteen (14) months or less. (2-22-93)

07. Local/Regional Support. Applicants may show local/regional support of the plan by submitting up to three (3) letters of support. One (1) letter summarizing local match must be submitted with the application. (2-22-93)

08. Credit Logo and Printing Identification. All plans funded by the Idaho Regional Travel and Convention Grant Program shall credit said program. (5-3-03)

a. A logo, as determined and provided by the ITC, with the following guidelines, will be placed on all ITC funded brochures. Special permission to adjust the size of the approved ITC logo, except where specified in these rules, must be granted by the state. (5-3-03)

i. The approved ITC logo will be used in all publications in a color in keeping with the design of the piece and must be pre-approved by ITC staff before final printing. (5-3-03)

b. Eight and one-half by eleven inch (8 1/2" x 11") or larger brochures will incorporate the use of a one-half inch (1/2") logo; eight by ten inch (8" x 10") or smaller brochures, will incorporate the use of a one-fourth inch (1/4") logo. (5-3-03)

c. Printing Identification: ITC grant year, assigned ITC grant number, printed quantity. (5-3-03)

d. State 800 Telemarketing Number: "For additional information on Idaho, call 1-800-VISIT-ID." (2-22-93)

e. The word "IDAHO" shall appear prominently on the front of the brochure. The ITC approved logo will appear on either the front cover, the inside front cover, or the back cover of the brochure. (5-3-03)

f. Other printed materials, websites, and print advertising shall include the approved ITC logo. Size of logo to be proportional to the size of the website or publication. See ~~*www.idoc.state.id.us*~~ www.tourism.idaho.gov/grants for current downloadable graphic elements. ~~*(5-3-03)*~~(____)

i. Slide shows, videos, films, TV productions or commercials will include the approved ITC logo. Size to be proportional to the size of the grantee approved content. (5-3-03)

ii. Radio advertisements will include the following ITC acknowledgement: "Visit Scenic Idaho". (3-20-04)

iii. Billboards will include the approved ITC logo. Size to be proportional to the size of the display. (5-3-03)

iv. Trade show booths will display the approved ITC logo in a size and location easily viewable by the public. (5-3-03)

g. FAMS funded by the Idaho Regional Travel and Convention Grant Program will credit that program with the approved ITC logo in materials appropriate to the event. (5-3-03)

h. Failure to comply with crediting the ITC for project funding could jeopardize payment for that project and future plan funding. (2-22-93)

09. Consultants. Indirect personnel costs are inherently eligible when applying for a specific project to be subcontracted to a consultant. The following regulations apply to hiring a consultant: (7-1-98)

a. The contract between the consultant and the grantee must be approved by the Department of Commerce and Labor and shall include language stating the contractor has sufficient Workmen's Compensation or liability insurance. Payment will not be reimbursed until the Department of Commerce and Labor has approved the contract. (2-22-93)

b. Consultant's billing must be itemized. Lump sum billings will not be eligible for payment. (2-22-93)

c. The Council will not fund retainers or other regular ongoing fees for consultant services or pay a consultant to administer a grant. (2-22-93)

COMMERCE & HUMAN RESOURCES

IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

10.01.01 - RULES OF PROCEDURE

DOCKET NO. 10-0101-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 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.

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the September 7, 2005 Idaho Administrative Bulletin, Volume 05-9, pages 81 through 84.

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 to the State General Fund or the agency dedicated funds.

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

DATED this 29th day of September, 2005.

The Following Notice Was 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: 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 21, 2005.

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 amendments will change the contact information for the Board office to current status and they will preclude the Board from proctoring examinations for other jurisdictions except for state-specific examinations.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees associated with these proposed amendments.

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 to the State General Fund or the agency dedicated funds.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the July 6, 2005 Idaho Administrative Bulletin, Volume 05-7, page 12. A public meeting was held and no comments were received verbally or in writing.

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 (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 September 28, 2005.

DATED this 22nd day of July, 2005.

David L. Curtis, P.E., Executive Director
Idaho Board of Registration of Professional
Engineers and Professional Land Surveyors
5535 W. Overland Road
Boise, Idaho 83705-2728
Phone (208) 373-7210/Fax 373-7213

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS -- TELEPHONE NUMBERS.
The office of the Board shall be at ~~*600 South Orchard, Suite A, Boise, Idaho 83705-1242*~~ 5535 W. Overland Road, Boise, Idaho 83705-2728. Normal office hours shall be from 7:00 am to 4:00 pm Monday through Friday except holidays as recognized by the state of Idaho. The mailing address shall be the same as the street address. The telephone number shall be (208) ~~*334-3860*~~ 373-7210. The telephone number for the facsimile machine shall be (208) ~~*334-2008*~~ 373-7213. The telephone number for the TDD relay shall be 1-800-377-3529. ~~*(5-3-03)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

017. EXAMINATIONS.

01. Semiannually or Annually; Special or Oral Examination. Examinations for professional engineer, professional land surveyor, engineer-in-training and land surveyor-in-training will be held annually or semi-annually, the exact time and place to be determined by the Board. Special oral or written examinations during the year may be given by the Board. (7-1-93)

02. Eligibility for Examinations, Educational Requirements. The application for registration for professional engineer, professional land surveyor or certification of engineer-in-training or land surveyor-in- training, 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 to any examination. (7-1-93)

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). Non-EAC/ABET accredited engineering 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-in-Training or as required by Section 54-1212(1)(b), Idaho Code, for assignment to the examination for licensure as a

professional engineer. (3-20-04)

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. 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 registered professional engineer in Idaho. (7-1-93)

ii. Have two (2) years of work experience in the field of structural engineering after being registered 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 examination shall be sixteen (16) hours. (7-1-93)

d. 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 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 in the discipline of the applicant's master's 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. (4-5-00)

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)

05. 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)

06. Two Examinations for Engineering Registration. The complete examining procedure for registration as a professional engineer consists of two (2) separate written examinations. The first is the Fundamentals of Engineering examination for engineer-in-training certification, and the second is the Principles and Practice of Engineering for professional engineer registration. Each examination shall be eight (8) hours in length. 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 curriculum. A certificate as an Engineer-in-Training 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. (4-22-94)

07. 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.

(4-5-00)

08. 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)

09. Two Examinations for Land Surveying Registration. The complete examining procedure for registration as a professional land surveyor consists of two (2) separate written examinations. The first is the Fundamentals of Land Surveying examination for land surveyors-in-training certification, and the second is the Principles and Practice of Land Surveying registration. Each examination will be a total of eight (8) hours in length. Having passed the Fundamentals of Land Surveying examination, applicants will be required to take the Principles and Practice of Land 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 Land Surveying examination may consist of separate modules, each of which must be passed. (4-5-00)

10. 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. Special Examinations. A special examination, written or oral or both, may be

required in certain instances where the applicant is seeking registration through comity 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 registration 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. (7-1-93)

12. Grading. Each land surveyor-in-training, engineer-in-training and professional engineer applicant must normally attain a scaled score of seventy (70) or above on the entire eight (8) hour examination before being awarded certification or registration. Examinees on the Principles and Practice of Land Surveying examination must normally attain a scaled score of seventy (70) or above on each section of the examination. (4-5-00)

13. Use of NCEES Examinations. Examinations prepared and graded by the National Council of Examiners for Engineering and Surveying (NCEES) for professional engineer, engineers-in-training, professional land surveyors, and land surveyors-in-training 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. (7-1-93)

14. 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)

16. Proctoring of Examinations. Unless otherwise approved, ~~T~~the Board will not proctor an examination for another jurisdiction ~~*if the candidate would qualify under Title 54, Chapter 12, Idaho Code and these rules for assignment to the examination being proctored*~~ except State-Specific examinations. ~~*(3-20-04)*~~( )

COMMERCE & HUMAN RESOURCES

IDAPA 12 - DEPARTMENT OF FINANCE

12.01.08 - RULES PURSUANT TO THE UNIFORM SECURITIES ACT

DOCKET NO.12-0108-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 30-14-605(A).

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 5, 2005 Idaho Administrative Bulletin, Volume 05-10, pages 139 through 151.

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 Marilyn Chastain, Securities Bureau, (208) 332-8070.

DATED this 26th day of October, 2005.

Marilyn Chastain
Securities Bureau Chief
Idaho Department of Finance/Securities Bureau
700 West State Street
PO Box 83720
Boise, ID 83720-0031
Phone: 332-8070 Fax: 332-8099

The Following Notice Was 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 30-14-605(a), 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 26, 2005.

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:

12.01.08.020.02.a: Adds language to allow issuers with less than one year of operations to file reviewed financial statements until the end of the first fiscal year.

12.01.08.052: This is a new rule requiring individuals to register as an issuer agent if not exempted by Sections 30-14-402(b)(3), (4), or (5), Idaho Code, if the individual receives compensation for certain activities.

12.01.08.053.02.d: Adds language from the prior Idaho Securities Act requiring that a broker-dealer or salesman who is registered elsewhere also must register in Idaho in connection with Regulation D, Rule 506 offerings.

12.01.08.059.02: Brings the Idaho Rules in line with the disqualifications put forth by federal law in 17 C.F.R. Section 230.262.

12.01.08.059.10: Adds language from the prior Idaho Securities Act requiring that a broker-dealer or salesman who is registered elsewhere also must register in Idaho in connection with Regulation D, Rule 505 offerings.

12.01.08.080.07: Removes "by order."

12.01.08.083.07: Removes "by order."

12.01.08.089.07: Adds language allowing the administrator to defer the effective date of registration of an investment adviser until the forty-fifth day after the filing of an amendment completing the application.

12.01.08.090.07: Adds language allowing the administrator to defer the effective date of registration of an investment adviser representative until the forty-fifth day after the filing of an amendment completing the application.

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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are simple in nature and were made to bring the Idaho rules into alignment with Securities and Exchange Commission regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marilyn Chastain, Securities Bureau Chief, (208) 334-4004.

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 19, 2005.

DATED this 24th day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

020. APPLICATION FOR REGISTRATION OF SECURITIES (RULE 20).

01. Registration by Coordination. A registration statement to register securities by coordination shall contain the following: (3-24-05)

a. The Form U-1 and accompanying documents (including subscription agreement); (3-24-05)

b. A consent to service of process (Form U-2) in compliance with Section 30-14-611, Idaho Code; (3-24-05)

c. A copy of the prospectus, including financial statements where: (3-24-05)

i. The prospectus for a securities registration by coordination under Section 30-14-303, Idaho Code, shall be prepared using the forms required under the Securities Act of 1933, and (3-24-05)

ii. All historical financial statements in the registration statement shall be in conformity with generally accepted accounting principles (GAAP) and financial statements filed with a registration statement by coordination shall comply with the requirements of the United States Securities and Exchange Commission. (3-24-05)

d. All exhibits filed with the United States Securities and Exchange Commission in connection with the registration statement; (3-24-05)

e. The filing fee specified in Section 30-14-305(b), Idaho Code; and (3-24-05)

f. Any additional information or documents requested by the Department. (3-24-05)

02. Registration by Qualification. A registration statement to register securities by qualification shall contain the following in addition to the requirements of Section 30-14-304, Idaho Code: (3-24-05)

a. Financial Statements. Except for SCOR applications, registration statements filed pursuant to Section 30-14-304, Idaho Code, shall contain audited financial statements of the issuer for its last two (2) fiscal years. An issuer with less than one (1) year of operations may file reviewed financial statements until the end of its first fiscal year. Registration statements filed with SCOR applications on the Form U-7 shall contain the financial statements specified in the instructions to the Form U-7. ~~(3-24-05)~~( )

b. Unaudited Interim Financial Statements. If the audited financial statements or unaudited financial statements required in Subsection 020.02.a. of this rule are not current to within four (4) months of the date of filing of the registration statement, additional unaudited financial statements as of the issuer's last fiscal quarter or any later date designated by the Administrator shall be included. (3-24-05)

c. Small Company Offering Registration (SCOR). A SCOR registration statement shall contain the following: (3-24-05)

i. The Form U-1 and accompanying documents (including subscription agreement); (3-24-05)

ii. An executed Form D; (3-24-05)

iii. A consent to service of process (Form U-2) in compliance with Section 30-14-611, Idaho Code; (3-24-05)

iv. For SCOR offerings, the prospectus to be used shall be the Form U-7, as adopted and revised by NASAA in September 1999. (3-24-05)

v. The filing fee specified in Section 30-14-305(b), Idaho Code; and (3-24-05)

vi. Any additional information or documents requested by the Department. (3-24-05)

d. Registration statements by qualification shall contain the following: (3-24-05)

i. The Form U-1 and accompanying documents (including subscription agreement); (3-24-05)

ii. A consent to service of process (Form U-2) in compliance with Section 30-14-611, Idaho Code; (3-24-05)

iii. Financial statements prepared in accordance with Subsection 020.02.a. of this rule. (3-24-05)

iv. A copy of the prospectus containing the information or records specified in Sections 30-14-304(b)(1) through 304(b)(18), Idaho Code; (3-24-05)

v. The prospectus shall be prepared using one of the following forms: Part II of Form 1-A of Regulation A of the Securities Act of 1933; Parts I and II of Form SB-2 of the Securities Act of 1933; Form U-7; or any other applicable form used to prepare a prospectus under the Securities Act of 1933, if approved by the department. (3-24-05)

03. Other Forms. Any other applicable form used to prepare a prospectus under the Securities Act of 1933, if approved by the Department, containing: (3-24-05)

a. The filing fee specified in Section 30-14-305(b), Idaho Code; and (3-24-05)

b. Any additional information or documents requested by the Department. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

049. -- 05~~2~~1. (RESERVED).

052. Investment Agent Registration.
Any individual not exempted pursuant to Sections 30-14-402(b)(3), (4) or (5), Idaho Code, must be registered as an issuer agent or comply with the registration requirement of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. ( )

053. FEDERAL COVERED SECURITIES (RULE 53).

01. Investment Company Notices. (3-24-05)

a. Notice Requirement. Pursuant to Section 30-14-302, Idaho Code, prior to the offer in this state of a series or portfolio of securities of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, that is not otherwise exempt under Sections 30-14-201 through 30-14-203, Idaho Code, the issuer must file a notice with the Administrator relating to such series or portfolio of securities. (3-24-05)

b. Content of Notice. Each required notice shall include the following; (3-24-05)

i. A properly completed Form NF; (3-24-05)

ii. A consent to service of process (Form U-2); (3-24-05)

iii. A filing fee of three hundred dollars ($300) for mutual funds and one hundred dollars ($100) for unit investment trusts; (3-24-05)

iv. Notification of SEC effectiveness (3-24-05)

c. Renewal of Notice. The effectiveness of a notice required pursuant to Subsection 053.01.a. of this rule may be renewed each year for an additional one (1) year period of effectiveness by filing on or before the expiration of the effectiveness of such notice: (3-24-05)

i. A properly completed Form NF clearly indicating the state file number of the Notice to be renewed; (3-24-05)

ii. A consent to service of process (Form U-2) in accordance with Section 30-14-611, Idaho Code; and (3-24-05)

iii. A renewal fee of three hundred dollars ($300) for mutual funds and one hundred dollars ($100) for unit investment trusts. (3-24-05)

d. Amendments. Amendment filings are required for the following: (3-24-05)

i. Issuer name change; (3-24-05)

ii. Address change for contact person; and (3-24-05)

iii. Notification of termination or completion. (3-24-05)

e. Other Documents. Documents other than those required in Subsections 053.01.b., 053.01.c., and 053.01.d. of this rule, unless specifically requested by the Department, should not be filed with the Department. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature. (3-24-05)

02. Regulation D Rule 506 Notice Filing. (3-24-05)

a. Notice Requirement. Issuers offering a security in this state in reliance upon Section 30-14-301, Idaho Code, by reason of compliance with Regulation D, Rule 506, adopted by the United States Securities and Exchange Commission, shall be required to file a notice with the Department pursuant to the authority of Section 30-14-302(c), Idaho Code, if a sale of a security in this state occurs as a result of such offering. (3-24-05)

b. Terms of Notice Filing. The issuer shall file with the Department no later than fifteen (15) days after the first sale of a security in this state for which a notice is required under Subsection 053.02.a. of this rule: (3-24-05)

i. One (1) copy of the Form D currently updated, and the Appendix thereto; (3-24-05)

ii. A consent to service of process (Form U-2); and (3-24-05)

iii. The notice filing fee of fifty dollars ($50). (3-24-05)

iv. A cover letter should be included in the notice filing which states the date in which the first sale of securities occurred in Idaho. (3-24-05)

c. Terms of Late Notice Filing. An issuer failing to file with the Administrator as required by Subsection 053.02.b. of this rule may submit its notice filing as required in Subsection 053.02.b. of this rule with an additional fifty dollars ($50) late filing payment within thirty (30) days after the first sale of a security in this state. Failure to file a notice on or before the thirtieth day after the first sale of a securities in Idaho will result in the inability of the issuer to rely on Section 30-14-302(c), Idaho Code, for qualification of the offering in Idaho. (3-24-05)

d. Issuer Agent Registration. Pursuant to Section 30-14-402(b)(5), Idaho Code, an individual who represents an issuer who effects transactions in a federal covered security under Section 18(b)(4)(d) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(D)) is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. In addition, if such person is registered as a broker-dealer or agent in another state or with the NASD, or affiliated with a broker-dealer registered in another state, with the SEC or NASD, then such person must also be similarly registered in Idaho. ~~*(3-24-05)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

059. NOTICE FILINGS FOR TRANSACTIONS UNDER REGULATION D, RULE 505 (RULE 59).

01. Exempt Securities. Pursuant to Section 30-14-203(1), Idaho Code, transactions that are exempt securities under 17 CFR 230.505 are exempt from Section 30-14-301, Idaho Code. As a condition of this exemption, the issuer shall comply with the requirements in Subsection 059.02 of this rule. (3-24-05)

02. Disqualification. ~~*The exemption under Subsection 059.01 of this rule, is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter*~~ Unless upon a showing of good cause and without prejudice to any other action by the Administrator, the Administrator determines that it is not necessary under the circumstances that the exemption provided by Subsection 059.01 be denied, the exemption shall not be available for the offer or sale of securities if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently

connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter: ~~*(3-24-05)*~~( )

a. ~~*Within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the U.S. Securities and Exchange Commission*~~ Is subject to any of the disqualifications in 17 C.F.R. Section 230.262, as in effect on August 24, 2005; ~~*(3-24-05)*~~( )

b. ~~*Within the last five (5) years, has been convicted of any criminal offense in connection with the offer, purchase or sale of any security, or involving fraud or deceit;*~~ Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involved an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance. ~~*(3-24-05)*~~( )

c. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or (3-24-05)

d. Is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five (5) years, temporarily, preliminary or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security. (3-24-05)

03. Exceptions. Subsection 059.02 of this rule shall not apply if: (3-24-05)

a. The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party; (3-24-05)

b. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or (3-24-05)

c. The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under Subsection 059.03 of this rule. (3-24-05)

04. Notice Filings for Rule 505. The notice filing required for transactions in Idaho under 17 CFR 230.505, shall consist of the following: (3-24-05)

a. One (1) manually signed copy of the Form D (including the Appendix); (3-24-05)

b. Consent to service of process (Form U-2); (3-24-05)

c. Copy of the private placement memorandum, and (3-24-05)

d. Each notice shall be filed with the Department no later than ten (10) business days prior to effecting a sale in Idaho. (3-24-05)

05. Amendments. During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice filing remains current and accurate. (3-24-05)

06. Nonaccredited Investors. In all sales to nonaccredited investors in this state, one (1) of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry, shall believe that one (1) of the following conditions is satisfied: (3-24-05)

a. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable. (3-24-05)

b. The purchaser either alone or with her purchaser representative(s) has such knowledge and experience in financial and business matters that she is or they are capable of evaluating the merits and risks of the prospective investment. (3-24-05)

07. Due Diligence. Nothing in this rule is intended to relieve registered securities broker-dealers or agents from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such registered person. (3-24-05)

08. Disclosure. Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act. (3-24-05)

09. Denial, Suspension, Revocation, Condition or Limitation of Exemption. Any issuer relying on the exemption under Regulation D, Rule 505 may be subject to the enforcement remedies provided in Section 30-14-204, Idaho Code, if it fails to satisfactorily address issues raised by the Department in comment letters or otherwise. (3-24-05)

10. Issuer Agent Registration. Pursuant to Section 30-14-402(9), Idaho Code, an individual who represents an issuer who effects transactions that are exempt securities under17 CFR 230.505 and exempt from Section 30-14-301, Idaho Code, is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. In addition, if such person is registered as a broker-dealer or agent in another state or with the NASD, or affiliated with a broker-dealer registered in another state, with the SEC or NASD, then such person must also be similarly registered in Idaho. ~~(3-24-05)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

080. BROKER-DEALER REGISTRATION -- APPLICATION/RENEWAL (RULE 80).

01. Initial Application - NASD Member Firms. Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are contemporaneously applying for NASD membership or who are an NASD member, shall file: (3-24-05)

a. With CRD, a completed Form BD, including Schedules A-E; (3-24-05)

b. With CRD, a filing fee as specified in Section 30-14-410, Idaho Code. (3-24-05)

02. Initial Application - Non-NASD Member Firms. Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are not contemporaneously applying for NASD membership or are not an NASD member, shall file with the Department: (3-24-05)

a. A completed Form BD, including Schedules A-E; (3-24-05)

b. The filing fee specified in Section 30-14-410, Idaho Code; (3-24-05)

c. Audited financial statements; (3-24-05)

d. Documentation of compliance with the minimum capital requirements of Section 087 of these rules; (3-24-05)

e. Designation and qualification of a principal officer; (3-24-05)

f. A list of the addresses, telephone numbers and resident agents of all office locations within the state of Idaho, to be provided within sixty (60) days of becoming registered; (3-24-05)

g. A copy of the written supervisory procedures of the broker-dealer; (3-24-05)

h. Any additional documentation, supplemental forms and information as the Administrator may deem necessary. (3-24-05)

03. Incomplete Applications. After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (3-24-05)

04. Annual Renewal. (3-24-05)

a. An NASD member shall renew its registration by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD according to their policies and procedures. A non-NASD member shall renew its registration by submitting to the Department current information required for initial registration, and the renewal fee specified in Section 30-

14-410, Idaho Code. (3-24-05)

b. It is required that an application for the renewal of the registration of a broker-dealer must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the broker-dealer to reapply for registration with the Department in accordance with the requirements of the Act. (3-24-05)

05. Updates and Amendments. (3-24-05)

a. A broker-dealer must file with CRD, in accordance with the instructions in Form BD, any amendments to the broker-dealer's Form BD. All broker-dealers must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form BD or by direct notice to the Department. (3-24-05)

b. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment; and (3-24-05)

c. Litigation Notice. Any broker-dealer shall notify the Administrator in writing or through the CRD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer.(3-24-05)

d. Notice of Address. Every broker-dealer shall provide the Department, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (3-24-05)

e. Change of Name. If a registered broker-dealer desires to change its name, notice of such an intent must be submitted to the CRD or this Department for non-NASD members, either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. (3-24-05)

06. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. (3-24-05)

07. Deferral of Effectiveness. The Administrator may~~*, by order,*~~ defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ~~*(3-24-05)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

083. BROKER-DEALER AGENT/ISSUER AGENT REGISTRATION (RULE 83).

01. Broker-Dealer Agents. Agents of broker-dealers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following: (3-24-05)

a. With CRD, a completed Form U-4; (3-24-05)

b. With CRD, the filing fee specified in Section 30-14-410, Idaho Code; (3-24-05)

c. With CRD, proof of successful completion of the applicable examinations specified in Section 103 of these rules; (3-24-05)

d. With the Department, any additional documentation, supplemental forms and information as the Administrator may deem necessary. (3-24-05)

e. With the Department, Subsections 083.01.a. through 083.01.d. of this rule, for any agent of a non-NASD member. (3-24-05)

02. Agents of Issuer. (3-24-05)

a. Agents of issuers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following with the Department: (3-24-05)

i. A completed Form U-4; (3-24-05)

ii. The fee specified in Section 30-14-410, Idaho Code; (3-24-05)

iii. Proof of successful completion of the applicable examination(s) specified in Section 103 of these rules; (3-24-05)

iv. Proof of a bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of ten thousand dollars ($10,000) and conditioned upon faithful compliance with the provisions of the Act by the agent, such that upon failure to so comply by the agent, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Provided, however, that the obligation of the surety bond must be maintained at all times in the amount therein provided; and provided further, that a certificate of deposit issued by any bank in the state of Idaho and assigned to the Administrator in an amount equal to the bond which would otherwise be required may be accepted by the administrator in lieu of a bond, if the certificate of deposit is maintained at all times in the amount and manner herein provided during the term for which the registration is effective and for three (3) years thereafter. (3-24-05)

v. Any additional documentation, supplemental forms and information as the Administrator may deem necessary. (3-24-05)

b. An individual who represents an issuer that effects transactions in a federal covered security under Section 18(b)(3) (transactions relating to “qualified purchasers” as that term may be defined by the SEC) or 18(b)(4)(D) (commonly known as Regulation D, Rule 506)

of the Securities Act of 1933 is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated, directly or indirectly, for participation in the specified securities transactions. (3-24-05)

c. Exceptions for officers. If there are not more than two (2) officers of an issuer, such officers may be registered as agents for a particular original offering of the issuer's securities without being required to pass such written examination or file a agent's bond as required by Subsection 083.02.a.iii. and 083.02.a.iv. of this rule, unless such person has registered under this rule within the prior five (5) years. (3-24-05)

03. Incomplete Applications. After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (3-24-05)

04. Annual Renewal. (3-24-05)

a. Broker-Dealer Agent. Agents of NASD members shall renew their registrations by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD. Agents of non-NASD members shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. (3-24-05)

b. Issuer Agent. Issuer agents shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. (3-24-05)

05. Updates and Amendments. (3-24-05)

a. A broker-dealer agent or agent of issuer must file with CRD, or with this Department, in accordance with the instructions in Form U-4, any amendments to the broker-dealer agent's or issuer agent's Form U-4. It is the responsibility of each broker-dealer agent or issuer agent to assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4 or by direct notice to the Department. (3-24-05)

b. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment; and (3-24-05)

c. Litigation Notice. Any broker-dealer agent or issuer agent shall notify the Administrator in writing or through the CRD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer. (3-24-05)

d. Notice of Address. Every broker-dealer agent and issuer agent shall provide the Department with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (3-24-05)

e. Change of Name. If a registered broker-dealer agent or issuer agent changes his or her name, notice of such must be submitted to the CRD or this Department within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. (3-24-05)

06. Completion of Filing. An application for initial or renewal registration is not considered complete for purposes of Section 30-14-406(c), Idaho Code, until the required fee and all required amendments, including submissions requested by the Department, have been received by the Department. (3-24-05)

07. Deferral of Effectiveness. The Administrator may~~*, by order,*~~ defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ~~*(3-24-05)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

089. INVESTMENT ADVISER REGISTRATION -- APPLICATION/RENEWAL (RULE 89).

01. Initial Application. The application for initial registration as an investment adviser, pursuant to Section 30-14-406, Idaho Code, shall be made by completing Form ADV which can be found at 17 C.F.R. 279.1 in accordance with the form instructions and by filing the form with IARD. The application for initial registration shall also include the following: (3-24-05)

a. Proof of compliance by the investment adviser with the examination requirements of Section 103 of these rules; (3-24-05)

b. A bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of twenty-five thousand ($25,000) and conditioned upon faithful compliance with the provisions of the Act by the investment adviser such that upon failure to so comply by the investment adviser, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Except that an investment adviser that has its principal place of business in a state other than this state shall be excluded from these bonding requirements provided that such investment adviser is registered as an investment adviser in the state where it maintains its principal place of business and is in compliance with such state's bonding requirements; (3-24-05)

c. A hard copy of the completed Form ADV Part II, only until such time as this form can be electronically submitted via IARD; (3-24-05)

d. A copy of the investment advisory contract to be executed by Idaho clients; (3-24-05)

e. A balance sheet dated as of the investment adviser's prior fiscal year-end; however, if the investment adviser has not been in operation for an entire year, a balance sheet dated within ninety (90) days of filing shall be submitted; (3-24-05)

f. The fee required by Section 30-14-410, Idaho Code; and; (3-24-05)

g. Any other information the Department may reasonably require. (3-24-05)

02. Incomplete Applications. After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (3-24-05)

03. Annual Renewal. The application for annual renewal registration as an investment adviser shall be filed with IARD according to their policies and procedures. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. (3-24-05)

04. Applications Prior to Expiration. An application for the renewal of the registration of an investment adviser must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the investment adviser to reapply for registration with the Department in accordance with the requirements of the Act. (3-24-05)

05. Updates and Amendments. (3-24-05)

a. An investment adviser must file with IARD, in accordance with the instructions in Form ADV, any amendments to the investment adviser's Form ADV. All investment advisers must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form ADV or by direct notice to the Department. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. (3-24-05)

b. Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file a copy of the investment adviser's balance sheet as of the prior fiscal year-end. (3-24-05)

c. Litigation Notice. Any investment adviser shall notify the Administrator in writing or through the IARD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser. (3-24-05)

d. Notice of Address. Every investment adviser representative shall provide the Department, through IARD, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (3-24-05)

06. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. (3-24-05)

07. Deferral of Effectiveness. The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ( )

090. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION - APPLICATION/RENEWAL (RULE 90).

01. Initial Application. The application for initial registration as an investment adviser representative pursuant to Section 30-14-406, Idaho Code, shall be made by completing Form U-4 in accordance with the form instructions and by filing Form U-4 with CRD. The application for initial registration also shall include the following: (3-24-05)

a. Proof of compliance by the investment adviser representative with the examination requirements of Section 103 of these rules; and (3-24-05)

b. The fee required by Section 30-14-410, Idaho Code. (3-24-05)

02. Incomplete Applications. After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (3-24-05)

03. Annual Renewal. The application for annual renewal registration as an investment adviser representative shall be filed with CRD. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. (3-24-05)

04. Updates and Amendments. (3-24-05)

a. The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur. All investment adviser representatives must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4. (3-24-05)

b. An investment adviser representative and the investment adviser must file promptly with CRD any amendments to the representative's Form U-4. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. (3-24-05)

c. Litigation Notice. Any investment adviser representative shall notify the Administrator in writing, through CRD, of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as an

investment adviser representative. (3-24-05)

d. Change of Name. If a registered investment adviser representative changes his or her name, notice of such must be submitted to the CRD or this Department either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. (3-24-05)

e. Notice of Address. Every investment adviser representative shall provide the Department with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (3-24-05)

05. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. (3-24-05)

06. Dual Registration Exemption. A person may transact business in this state as an investment adviser representative if he is registered as an agent pursuant to Section 30-14-402, Idaho Code, and is employed by a broker-dealer registered pursuant to Section 30-14-401, Idaho Code, and (3-24-05)

a. The person's investment advisory activities are limited to recommending the investment advisory services of an investment adviser registered under Section 30-14-403, Idaho Code, or a federal covered adviser that has made a notice filing pursuant to Section 30-14-405, Idaho Code, and all such recommendations are made on behalf of the employing broker-dealer; (3-24-05)

b. The person is not compensated directly for making such recommendations; and (3-24-05)

c. The person provides written notice to the administrator that he is relying on this exemption from the requirement to be registered as an investment adviser representative. (3-24-05)

07. Deferral of Effectiveness. The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ( )

COMMERCE & HUMAN RESOURCES

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.09 - SENIOR CONSUMER PROTECTION IN ANNUITY TRANSACTIONS

DOCKET NO. 18-0109-0501 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 41-1940, 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 purpose of this rule is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed. This rule will apply to any recommendation to purchase or exchange an annuity made to a senior consumer by a producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 273 through 278.

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 Shad Priest at (208) 334-4250.

DATED this 9th day of November, 2005.

Gary L Smith
Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

DEPARTMENT OF INSURANCE ***Docket No. 18-0109-0501 (New Chapter)***
Senior Consumer Protection in Annuity Transactions ***PENDING RULE***

Telephone No. (208) 334-4250
Facsimile No. (208) 334-4298

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is November 1, 2005.

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 41-1940, 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 17, 2005.

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 purpose of this rule is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed. This rule will apply to any recommendation to purchase or exchange an annuity made to a senior consumer by a producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

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

The rulemaking is needed to implement the requirements of Section 41-1940, Idaho Code, which became effective July 1, 2005.

FEE SUMMARY: This rulemaking does not impose any fees.

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: This rulemaking does not have a fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the June 1, 2005 Idaho

Administrative Bulletin, Volume No. 05-6, page 34.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Shad Priest, Department of Insurance, (208)334-4250.

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 24, 2005.

DATED this 30th day of June, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 18
TITLE 01
CHAPTER 09

18.01.09 - SENIOR CONSUMER PROTECTION IN ANNUITY TRANSACTIONS

000. LEGAL AUTHORITY.
This rule is promulgated pursuant to authority granted by Sections 41-211 and 41-1940, Idaho Code. (11-1-05)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 18.01.09 - Senior Consumer Protection in Annuity Transactions. (11-1-05)T

02. Propose. The purpose of this rule is to set forth standards and procedures for recommendations to senior consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of senior consumers at the time of the transaction are appropriately addressed. (11-1-05)T

03. Scope. This rule shall apply to any recommendation to purchase or exchange an annuity made to a senior consumer by a producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended. (11-1-05)T

002. WRITTEN INTERPRETATIONS.
There are no written interpretations for these rules. (11-1-05)T

003. ADMINISTRATIVE APPEALS.
All administrative appeals shall be governed by 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” - General Provisions. (11-1-05)T

004. INCORPORATION BY REFERENCE.

01. Incorporated Documents. IDAPA 18.01.09, "Senior Consumer Protection in Annuity Transactions," adopts and incorporates by reference the following documents; (11-1-05)T

a. United States Code, Title 29 - Labor, Chapter 18 - Employee Retirement and Income Security Act (ERISA). (11-1-05)T

b. United States Code, Title 26 – Internal Revenue Code. (11-1-05)T

c. NASD Manual Conduct Rules pertaining to suitability, specifically Rule 2310. Recommendations to Customers (Suitability) as amended. (11-1-05)T

02. Availability of Referenced Documents. Printed copies of the documents described in section 004.01.a. and b. are available from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954 as well as from the Department; the telephone number is (202) 512-1800, and electronic copies are available at http://straylight.law.cornell.edu/uscode/. Printed copies of the documents described in section 004.01.c. are available from the Department and electronic copies are available from http://nasd.complinet.com/nasd/display/index.html. (11-1-05)T

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

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (11-1-05)T

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (11-1-05)T

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. (11-1-05)T

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. (11-1-05)T

007. -- 009. (RESERVED).

010. DEFINITIONS.
As used in this rule, unless the context requires otherwise, the following words shall have the following meanings: (11-1-05)T

01. Annuity. A fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity. (11-1-05)T

02. Insurer. Includes every person engaged as indemnitor, surety or contractor in the

business of entering into contracts of insurance or of annuity. (11-1-05)T

03. Producer. A person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities. (11-1-05)T

04. Recommendation. Advice provided by a producer, or an insurer where no producer is involved, to an individual senior consumer that results in a purchase or exchange of an annuity in accordance with that advice. (11-1-05)T

05. Senior Consumer. A person sixty-five (65) years of age or older. In the event of a joint purchase by more than one party, the purchaser(s) will be considered to be a senior consumer if any of the parties is age sixty-five (65) or older. (11-1-05)T

011. EXEMPTIONS.
Unless otherwise specifically included, this rule shall not apply to recommendations of annuity purchases or exchanges involving (11-1-05)T

01. Direct Response Solicitations. A response to a direct solicitation where there is no recommendation made based on information collected from the senior consumer pursuant to this rule; (11-1-05)T

02. Contracts Used to Fund. (11-1-05)T

a. An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA) as amended; (11-1-05)T

b. A plan described by Sections 401(a), 401(k), 403(b), 408(k), or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer; (11-1-05)T

c. A government or church plan defined in Section 414 of the IRC, as amended, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC, as amended; (11-1-05)T

d. A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor; (11-1-05)T

e. Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; (11-1-05)T

f. Formal prepaid funeral contracts; or (11-1-05)T

g. Contracts used to fund funeral and related funeral expenses. (11-1-05)T

012. -- 014. (RESERVED).

015. DUTIES OF INSURERS AND OF PRODUCERS.

01. General Rule. In recommending to a senior consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the senior consumer on the basis of the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs. (11-1-05)T

02. Collection of Information. Prior to a recommendation to a senior consumer of a purchase or exchange of an annuity, a producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning: (11-1-05)T

a. The senior consumer's financial status; (11-1-05)T

b. The senior consumer's tax status; (11-1-05)T

c. The senior consumer's investment objectives; and (11-1-05)T

d. Such other information used or considered to be reasonable by the producer, or the insurer where no producer is involved, in making recommendations to the senior consumer. (11-1-05)T

03. Exceptions. (11-1-05)T

a. Except as provided under Subsection 015.03.b., neither a producer, nor an insurer where no producer is involved, shall have any obligation to a senior consumer under Subsection 015.01 related to any recommendation if a consumer: (11-1-05)T

i. Refuses to provide relevant information requested by the insurer or producer. (11-1-05)T

ii. Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or producer; or (11-1-05)T

iii. Fails to provide complete or accurate information. (11-1-05)T

b. If a producer, or the insurer where no producer is involved, sells an annuity to a senior consumer that is not the product recommended, the producer or insurer where no producer is involved, must: (11-1-05)T

i. Document that the recommendation was not accepted as presented; and(11-1-05)T

ii. Obtain the signature of the senior consumer evidencing the rejection or modification of the recommendation. (11-1-05)T

016. SUPERVISORY DUTIES OF INSURER.

01. Written Procedures. An insurer shall either assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this rule is established

and maintained by complying with Subsections 016.02 and 016.03, or shall establish and maintain such a system itself, which system shall include, but not be limited to: (11-1-05)T

a. Maintaining written procedures; and (11-1-05)T

b. Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this rule. (11-1-05)T

02. Third Party. An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Subsection 016.01 with respect to insurance producers under contract with or employed by the third party. (11-1-05)T

03. Third Party Contracting. An insurer shall make reasonable inquiry to assure that the third party contracting under Subsection 016.02 is performing the functions required under Subsection 016.01 and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following: (11-1-05)T

a. Annually obtaining a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and (11-1-05)T

b. Based on reasonable selection criteria, periodically selecting third parties contracting under Subsection 016.02 for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances. (11-1-05)T

04. Complies With the Requirements to Supervise. An insurer that contracts with a third party pursuant to Subsection 016.02 and that complies with the requirements to supervise in Subsection 016.03 shall have fulfilled its responsibilities under Subsection 016.01. (11-1-05)T

05. Insurer, General Agent or Independent Agency. An insurer, general agent or independent agency is not required by Subsection 016.01 to: (11-1-05)T

a. Review, or provide for review of, all producer solicited transactions; or (11-1-05)T

b. Include in its system of supervision a producer's recommendations to senior consumers of products other than the annuities offered by the insurer, general agent or independent agency. (11-1-05)T

06. Unable to Meet the Certification Criteria. A general agent or independent agency contracting with an insurer pursuant to Subsection 016.02 shall promptly, when requested by the insurer pursuant to Subsection 016.03, give a certification as described in Subsection 016.03.a. or give a clear statement that it is unable to meet the certification criteria. (11-1-05)T

a. No person may provide a certification under Subsection 016.03.a. unless: (11-1-05)T

i. The person is a senior manager with responsibility for the delegated functions; and (11-1-05)T

ii. The person has a reasonable basis for making the certification. (11-1-05)T

07. **Director's Ability to Enforce the Provisions**. Compliance with the NASD Conduct Rules pertaining to suitability shall satisfy the requirements under Sections 015 and 016 for the recommendation of variable annuities. However, nothing in Section 016 shall limit the director's ability to enforce the provisions of this rule. (11-1-05)T

017. -- 020. (RESERVED).

021. RECORDKEEPING.

01. Maintaining Records. The insurer, general agent, independent agency and producer shall maintain or be able to make available to the director records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions, as long as the contract remains in force. An insurer is permitted, but shall not be required, to maintain documentation on behalf of a producer, except as noted in Subsection 021.02. (11-1-05)T

02. Termination. If the producer terminates the appointment with the insurer or his license, the producer must remit copies of all records as described under Subsection 021.01 to the insurer within twenty-one (21) days of termination. (11-1-05)T

03. Form. Records required to be maintained by this rule may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document. (11-1-05)T

022. -- 024. (RESERVED).

025. VIOLATIONS.
Any violation of this rule will be deemed a violation of Section 41-1940, Idaho Code. (11-1-05)T

026. -- 999. (RESERVED).

COMMERCE & HUMAN RESOURCES

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.10 - PRODUCERS HANDLING OF FIDUCIARY FUNDS

DOCKET NO. 18-0110-0501 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 41-211 and 41-1024, 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 purpose of this rulemaking is to develop rules to implement amendments to Section 41-1024, Idaho Code, which were enacted this year and will require that all insurance producers (agents and brokers) maintain a trust account to hold all fiduciary funds received by the producer.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, to correct a reference to an applicable section. Only those 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 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 278 through 284.

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 Shad Priest at (208) 334-4250.

DATED this 9th day November, 2005.

Gary L Smith
Director
Idaho Department of Insurance
700 West State Street - 3rd Floor

P.O. Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250
Facsimile No. (208) 334-4298

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2006.

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 41-1024 of the 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 17, 2005.

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 purpose of this rulemaking is to develop rules to implement amendments to Section 41-1024, Idaho Code, which were enacted this year and will require that all insurance producers (agents and brokers) maintain a trust account to hold all fiduciary funds received by the producer.

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

The rulemaking is needed to implement amendments to Section 41-1024, Idaho Code, that will become effective July 1, 2005.

FEE SUMMARY: This rulemaking does not impose any fees.

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: This rulemaking does not have a fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the June 1, 2005

Idaho Administrative Bulletin, Volume No. 05-6, page 35.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Shad Priest, Department of Insurance, (208)334-4250.

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 24, 2005.

DATED this 30th day of June, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 18
TITLE 01
CHAPTER 10

18.01.10 - PRODUCERS HANDLING OF FIDUCIARY FUNDS

000. LEGAL AUTHORITY.
This rule is promulgated pursuant to authority granted by Sections 41-211 and 41-1024, Idaho Code. (1-1-06)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 18.01.10, "Producers Handling of Fiduciary Funds". (1-1-06)T

02. Scope. This rule will affect "Producers," as defined in Section 41-1003, Idaho Code, who handle funds held in a fiduciary capacity. (1-1-06)T

002. WRITTEN INTERPRETATIONS.
There are no written interpretations for these rules. (1-1-06)T

003. ADMINISTRATIVE APPEALS.
All administrative appeals shall be governed by 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 - General Provisions". (1-1-06)T

004. INCORPORATION BY REFERENCE.
No documents have been incorporated by reference into these rules. (1-1-06)T

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

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. (1-1-06)T

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. (1-1-06)T

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83702-0043. (1-1-06)T

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. (1-1-06)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Fiduciary Fund Account. A financial account established to hold fiduciary funds as provided in Section 016. (1-1-06)T

02. Fiduciary Funds. All premiums, return premiums, premium taxes and fees received by a producer. Fiduciary funds shall include: (1-1-06)T

a. All funds paid to a producer for selling, soliciting or negotiating policies of insurance except for those earned fees recognized by statute as earned by the producer upon receipt which are payable to the producer and not the insurance company, pursuant to Section 41-1030, Idaho Code. (1-1-06)T

b. All funds received by a producer from or on behalf of a client or premium finance company that are to be paid to an insurance company, its agents, or to the producer's employer. (1-1-06)T

c. All funds provided to a producer by an insurance company or its agents that are to be paid to a policyholder or claimant pursuant to a contract of insurance. (1-1-06)T

d. All checks or other negotiable instruments collected by the producer that are made payable to the insurer. (1-1-06)T

03. Premium. The consideration for insurance by whatever name called, and as more fully defined by Section 41-1803, Idaho Code. (1-1-06)T

04. Producer. A person required to be licensed under the laws of this state to sell, solicit or negotiate insurance. (1-1-06)T

05. Receive. To collect or otherwise take actual or constructive possession of fiduciary funds. Receiving, includes but is not limited to, taking possession of money, checks, or other negotiable instruments. If fiduciary funds are in the form of a credit or offset on an account or

other liability for the benefit of the consumer, without the producer actually taking possession of the funds, then constructive receipt shall be deemed to have occurred on the due date to the insurer. (1-1-06)T

011. -- 013. (RESERVED).

014. FIDUCIARY FUND ACCOUNT.

01. Payable to an Insurer. Fiduciary funds that are in the form of a check or another negotiable instrument that is made payable to an insurer as described in Subsection 010.02.d. shall be remitted to the insurer within the time period as set forth in the terms and conditions as required by the insurer, or if not specified, then within twenty one (21) days of receipt. (1-1-06)T

02. Payable to a Policyholder. Fiduciary funds that are in the form of a check or another negotiable instrument that is made payable to a policyholder or claimant as described in Subsection 010.02.c. shall be remitted to the policyholder or claimant within fourteen (14) days of receipt or as required by the terms of the policy of insurance, the insurer, or applicable law. (1-1-06)T

03. All Other Fiduciary Funds. All other fiduciary funds received by the producer, except as described under Subsections 014.01 *and 014.02* must be deposited into a fiduciary fund account according to the following schedule: ~~*(1-1-06)T*~~(____)

a. If in the form of cash, within seven (7) days of receipt, except that, when a producer holds fiduciary funds in the form of cash that exceed two thousand dollars ($2,000), such funds must be deposited within three (3) business days. (1-1-06)T

b. If in the form of checks, money orders or other negotiable instruments received or collected by the producer, within seven (7) days of receipt, except that the producer may remit such funds to the following: (1-1-06)T

i. Another licensed producer or licensed business entity, subject to the time frames of Subsection 014.03.b.; or (1-1-06)T

ii. A person designated by the insurer who has the obligation to remit the fiduciary funds to the insurer subject to the time frames of Subsection 014.03.b. (1-1-06)T

04. Document the Receipt of Fiduciary Funds. A producer who receives fiduciary funds shall document the receipt of those funds in sufficient detail to determine, at a minimum, the date received, the name of the payee, and the amount received. If the producer receives cash, the producer shall give the payer a detailed receipt at the time of payment. The receipt shall include an indication that cash was received, the date received, the amount received, the payer's name, the payee's name, the purpose of payment, and any other information important to the transaction. The producer shall maintain the receipt records as records of a transaction, and keep those records for a period of at least five (5) years. (1-1-06)T

015. DEPOSIT OF OTHER FUNDS IN ACCOUNT.
A producer may deposit other additional funds for the sole purpose of: (1-1-06)T

01. Establishing Reserves for Payment of Return Premiums. (1-1-06)T

02. Advancing Funds Sufficient to Pay Bank Charges. (1-1-06)T

03. Contingencies. For any contingencies that may arise in the business of receiving and transmitting premium or return premium funds (any such deposit is hereinafter referred to as "voluntary deposit"). (1-1-06)T

016. TYPES OF ACCOUNTS PERMITTED.
A producer shall maintain the fiduciary funds only in: (1-1-06)T

01. Accounts in Federally Insured Financial Institutions. Checking accounts, demand accounts, savings accounts or other accounts in a federally insured financial institution; or (1-1-06)T

02. Exceed the Federally Insured Limits. If such funds held exceed the federally insured limits, then in addition to Subsection 016.01, those funds that exceed the federally insured limits may be deposited into the following: (1-1-06)T

a. An investment account that invests monies in United States government bonds, United States Treasury certificates or in federally guaranteed obligations; (1-1-06)T

b. Money market mutual funds registered with the SEC which are rated AAA by Moody's or AAA by S&P. (1-1-06)T

03. Separate Fiduciary Funds Account. Nothing in this rule requires a producer to maintain and hold fiduciary funds in his, her, or its, own separate fiduciary funds account. Nevertheless, each producer is responsible for compliance with the provisions of this rule even if fiduciary funds are maintained in a fiduciary funds account established by another affiliated producer. (1-1-06)T

017. ACCOUNT DESIGNATION.

01. Designation of a Fiduciary Fund. A fiduciary fund account shall be so designated on the records of the financial institution. The account shall have a separate account number, a separate check register and its own checks. (1-1-06)T

02. Trust Fund Account. The phrase, "Trust Fund Account" shall be displayed on the face of each check drawn on a fiduciary fund account or other similar designation as permitted by the financial institution to identify the checks as being from a fiduciary fund account. (1-1-06)T

018. INTEREST EARNINGS.
A fiduciary fund account may be interest-bearing or an investment account in accordance with Section 016. The producer shall maintain records establishing the existence and amount of interest accrued and shall make such records available for examination by the director. (1-1-06)T

019. PERMISSIBLE DISTRIBUTION OF FIDUCIARY FUNDS.

Distributions from a fiduciary fund account shall only be made for the following purposes, and in the manner stated: (1-1-06)T

01. Remit Premiums. To remit premiums to an insurer or an insurer's designee pursuant to a contract of insurance; (1-1-06)T

02. Return Premiums. To return premiums to an insured or other person or entity entitled to the premiums; (1-1-06)T

03. Remit Surplus Lines Taxes and Stamping Fees. To remit surplus lines taxes and stamping fees collected to the appropriate state; (1-1-06)T

04. Reimburse Voluntary Deposits. To reimburse voluntary deposits made by the producer to the extent that the funds in the fiduciary account exceed the amount necessary to meet all fiduciary obligations, only if the reimbursement can be matched and identified with the previous voluntary deposit. (1-1-06)T

05. Transfer or Withdraw Accrued Interest. To transfer or withdraw accrued interest to the extent that fiduciary fund account funds exceed the amount necessary to meet all fiduciary obligations, only if the reimbursement can be matched and identified with the previous interest deposit by the financial institution. (1-1-06)T

06. Transfer or Withdraw Actual Commissions. To transfer or withdraw actual commissions and those earned fees recognized as earned by the producer, upon receipt, which are payable to the producer, only if the commissions and fees can be matched and identified with funds previously deposited in the fiduciary account. (1-1-06)T

07. Pay Charges Imposed. To pay charges imposed by the financial institution that directly relate to the operation and maintenance of the fiduciary funds account to the extent that fiduciary account funds exceed fiduciary obligations; and (1-1-06)T

08. Transfer Funds. To transfer funds from one (1) fiduciary fund account to another fiduciary fund account. (1-1-06)T

020. AUDIT OF FIDUCIARY FUNDS.
A producer shall make all records of collections for, deposits to and disbursements from each fiduciary fund account, as well as any related records accessible to the director for purposes of examination and audit or other general inquiry.
(1-1-06)T

021. PROHIBITED PRACTICES.
A producer shall not use fiduciary funds for personal use, including but not limited to: (1-1-06)T

01. Use Fiduciary Funds as a Personal Asset. Using or allowing other persons to use fiduciary funds as a personal asset, or as collateral for a personal or business loan; (1-1-06)T

02. Misreporting Fiduciary Funds. Reporting fiduciary funds on a financial statement without recording an equivalent liability and disclosing through a footnote that the

fiduciary funds are not available for use by the reporting entity; (1-1-06)T

03. Withhold Issue of Money From a Fiduciary Fund Account. Authorizing a financial institution to withhold issue of money from a fiduciary fund account unless required by a court order; or (1-1-06)T

04. Seize Money From a Fiduciary Fund. Authorizing a financial institution to seize money from a fiduciary fund account unless required by a court order. (1-1-06)T

022. TIMELY DISBURSEMENT OF FIDUCIARY FUNDS.
In addition to the requirements of Section 014, after receiving fiduciary funds, a producer shall: (1-1-06)T

01. Remit Premiums. Remit premiums directly to an insurer or an insurer's designee within the time period as set forth in the terms and conditions as required by the insurer, or if not specified, within fourteen (14) days of receipt; (1-1-06)T

02. Return Money Received. Return to the payer the money received as a premium deposit which is retained by the producer or returned to the producer by the insurer to the payer by the earlier of: (1-1-06)T

a. Fourteen (14) days from the date the premium is received by the producer from the insurer, or (1-1-06)T

b. Fourteen (14) days from the date the insurer notifies the insurance applicant that coverage has been denied if the producer retained the premium deposit. (1-1-06)T

03. Refund Received From the Insurer. Issue a refund received from the insurer within fourteen (14) days by disbursing money to the insured or other party entitled thereto by notifying the insured that the refund is being applied to an outstanding amount owed or to be owed by the insured. If the producer is applying the refund to an outstanding amount owed by the insured, the producer shall obtain the insured's permission and provide the insured a detailed description of the amount owed to which the refund is being applied. (1-1-06)T

04. Dispute of Entitlement of Funds. If there is a dispute as to entitlement of funds under Subsections 022.01 or 022.03, notify the parties of the dispute and seek to resolve the dispute and document the steps taken to resolve the dispute. (1-1-06)T

05. Funds Held for More Than Ninety Days. If fiduciary funds within the scope of Subsections 022.01 or 022.03 are held for more than ninety (90) days, investigate to determine the entitlement to fiduciary funds and pay those fiduciary funds when due to the appropriate person in accordance with this section. (1-1-06)T

023. VIOLATIONS.
Any violation of this rule may subject a producer to any sanction authorized pursuant to Section 41-1016(1), Idaho Code. (1-1-06)T

024. - 999. (RESERVED).

COMMERCE & HUMAN RESOURCES

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.18 - OPEN LINES FOR EXPORT - SURPLUS LINES

DOCKET NO. 18-0118-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 41-1216 of the 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.

At the request of the Idaho Surplus Lines Association, the Department is making changes to the listing of lines of insurance that are considered to be "open lines" for purposes of treatment as surplus lines insurance. The insurance lines included in this listing represent lines of insurance for which there appears to be no reasonable or adequate market among insurers authorized to do business in this state. The Department is also making some technical changes to the rule to replace outdated or unnecessary wording.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8, pages 285 through 294.

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 Shad Priest at (208) 334-4250.

DATED this 9th day of November, 2005.

Gary L Smith
Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720

Boise, ID 83720-0043
Telephone No. (208) 334-4250
Facsimile No. (208) 334-4298

The Following Notice Was Published With The Temporary and Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2005.

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 41-1216 of the 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 17, 2005.

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:

At the request of the Idaho Surplus Lines Association, the Department is making changes to the listing of lines of insurance that are considered to be "open lines" for purposes of treatment as surplus lines insurance. The insurance lines included in this listing represent lines of insurance for which there appears to be no reasonable or adequate market among insurers authorized to do business in this state. The Department is also making some technical changes to the rule to replace outdated or unnecessary wording.

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

This rule is intended to confer a benefit by providing the public easier access to lines of insurance that are not readily obtainable from authorized insurers in Idaho.

FEE SUMMARY: This rulemaking does not impose any fees.

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: This rulemaking does not have a fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking

was conducted. The Notice of Negotiated Rulemaking was published in the June 1, 2005 Idaho Administrative Bulletin, Volume No. 05-6, page 36.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Shad Priest, Department of Insurance, (208)334-4250.

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 24, 2005.

DATED this 30th day of June.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

003. ADMINISTRATIVE APPEALS.
~~*There is no appeal to the Attorney General from application of this rule. All such appeals must be instituted by written demand for a hearing before the Director of Insurance, per Idaho Code Section 41-232. Further appeal from the Director's decision can be taken to district court, pursuant to Sections 41-242 and 67-5270, Idaho Code.*~~ All administrative appeals shall be governed by 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, Idaho Rules of Administrative Procedure of the Attorney General – General Provisions.
~~*(1-1-94)*~~(8-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

~~***012. OPEN LINES FOR EXPORT - SURPLUS LINES.***~~
~~*The attached list of open lines for export to eligible surplus lines insurers will continue in effect during the existence of the conditions upon which predicated, subject to earlier termination by the Director. A class or classes may be deleted at the direction of the Director if conditions appear to warrant such action. This list supersedes any previous list published or compiled for use in the state of Idaho. This list becomes effective November 15, 1980.*~~ ~~*(1-1-94)*~~

~~***013***~~**012.SEVERABILITY.**
If any provision of this Rule shall be held invalid, the remainder of the Rule shall not be affected thereby. (1-1-94)

~~***014***~~**013.OPEN LINES FOR EXPORT - SURPLUS LINES.**

01. Code AH Accident and Health. (1-1-94)

a. Accidental death - high limit or hazardous occupation. (1-1-94)

b.	Accidental death - world wide coverage.	(1-1-94)
c.	Air crew personal accident.	(1-1-94)
d.	Aviation accident, personal.	(1-1-94)
e.	Dread disease.	(1-1-94)
f.	Twenty-four (24) hour accident - high limits.	(1-1-94)
g.	High Limit Disability - Uninsurable and Excess.	(8-1-05)T
h.	International Travel Medical.	(8-1-05)T
02.	**Code AL Auto Liability**.	(1-1-94)
a.	Ambulance service.	(1-1-94)
b.	Automobile “Bobtail” liability.	(1-1-94)
c.	Automobile bus or livery.	(1-1-94)
d.	Automobile diving schools.	(1-1-94)
e.	Auto racing liability.	(1-1-94)
f.	Auto U-drive.	(1-1-94)
g.	Butane-propane hauling,	(1-1-94)
h.	Explosive hauling.	(1-1-94)
i.	Gasoline distribution.	(1-1-94)
j.	Go-karts.	(1-1-94)
k.	Logging truck liability	(1-1-94)
l.	~~*Long haul trucks.*~~ Auto Excess liability.	~~*(1-1-94)*~~(8-1-05)T
m.	Midget autos.	(1-1-94)
n.	Private patrol service.	(1-1-94)
o.	Taxi cabs.	(1-1-94)
p.	Used auto dealers	(8-1-05)T

q.	Non-owned/hired auto monoline.	(8-1-05)T
03.	**Code AP Auto Physical Damage**.	(1-1-94)
a.	~~*Automobile, antique*~~ Butane, propane hauling.	~~*(1-1-94)*~~(8-1-05)T
b.	~~*Automobile, classic*~~ Fleet - Monoline.	~~*(1-1-94)*~~(8-1-05)T
c.	~~*Auto renters conversion*~~ Racing.	~~*(1-1-94)*~~(8-1-05)T
d.	Logging trucks.	(1-1-94)
e.	Long haul trucks.	(1-1-94)
f.	Taxi cabs.	(1-1-94)
g.	~~*Ambulance*~~ Emergency vehicles.	~~*(1-1-94)*~~(8-1-05)T
h.	Tow truck operations.	(8-1-05)T
04.	**Code AV Aviation and Aircraft**.	(1-1-94)
a.	Air cargo.	(1-1-94)
~~***b.***~~	~~*Aircraft - antique.*~~	~~*(1-1-94)*~~
~~***c.***~~	~~*Aircraft - chartered.*~~	~~*(1-1-94)*~~
~~***d.***~~	~~*Aircraft applicators liability including crop damage, chemical drift.*~~	~~*(1-1-94)*~~
~~***e***~~**b.**	Aircraft - excess ~~*passenger*~~ liability.	~~*(1-1-94)*~~(8-1-05)T
~~***f.***~~	~~*Aircraft - fixed base operations.*~~	~~*(1-1-94)*~~
~~***g.***~~	~~*Aircraft - hull.*~~	~~*(1-1-94)*~~
~~***h.***~~	~~*Aircraft - liability.*~~	~~*(1-1-94)*~~
~~***i.***~~	~~*Aircraft - nonownership liability.*~~	~~*(1-1-94)*~~
~~***j***~~**c.**	Airmeet liability.	(1-1-94)
~~***k.***~~	~~*Airport liability.*~~	~~*(1-1-94)*~~
~~***l***~~**d.**	Aviation - workmen's compensation and employers' liability.	(1-1-94)
~~***m***~~**e.**	Hangar-Keeper's legal liability.	(1-1-94)

05. Code FA Fire and Allied Lines. (1-1-94)

a. Amusement devices. (1-1-94)

b. Amusement parks and carnivals. (1-1-94)

c. Business Interruption - value, excess. (1-1-94)

d. Business Interruption - contingent, excess. (1-1-94)

e. Bowling alleys. (1-1-94)

f. Chattel Mortgage, non-filing or non-recording. (1-1-94)

g. ~~*Collapse of building*~~ Commercial/Residential Protection class 9 and 10. ~~*(1-1-94)*~~(8-1-05)T

h. Crop Insurance - all weather hazards. (1-1-94)

i. Drought insurance. (1-1-94)

j. Earthquake. (1-1-94)

k. Greenhouses - wind and hail. (1-1-94)

l. Polyurethane insulated buildings. (1-1-94)

m. ~~*Riot and civil commotion*~~ Residential with water losses. ~~*(1-1-94)*~~(8-1-05)T

n. Sawmills. (1-1-94)

o. Valued business interruption. (1-1-94)

p. Woodhandlers. (1-1-94)

q. Distress Fire - unprotected lodges, restaurants and taverns. (1-1-94)

r. Residential and Commercial with EIFS exposure- synthetic stucco. (8-1-05)T

s. Bars, taverns, private clubs. (8-1-05)T

t. Single family dwellings seventy-five thousand dollars ($75,000) or less, duplexes. (8-1-05)T

u. Builders Risk PC 7-10 - Course of Construction. (8-1-05)T

v. Vacant buildings. (8-1-05)T

w. Nuclear energy property. (8-1-05)T

x. Buildings built prior to 1975 without significant updating or renovation. (8-1-05)T

y. Restaurants without auto fire suppression. (8-1-05)T

06. Code GL General Liability. (1-1-94)

a. Amusement devices. (1-1-94)

b. Amusement parks. (1-1-94)

c. Anhydrous ammonia dealers and haulers. (1-1-94)

d. Animal rides. (1-1-94)

e. Carnivals. (1-1-94)

f. ~~*Contractors "X", "C", and "U" coverage*~~ Artisan Contractors. ~~*(1-1-94)*~~(8-1-05)T

g. Corporate officers, directors, and trustees liability. (1-1-94)

h. Demolition contractors liability. (1-1-94)

i. Dude ranch liability. (1-1-94)

j. Environmental impairment. (1-1-94)

k. Excess limits liability. (1-1-94)

l. Exterminators liability. (1-1-94)

m. Fairgrounds, fairs, liability. (1-1-94)

n False arrest, municipal or other public body. (1-1-94)

o. Go-karts, spectators liability. (1-1-94)

p. Ground applicators - chemical drift. (1-1-94)

q. Health club liability. (1-1-94)

r. ~~*Homes for Aged - liability*~~ Residential/Assisted Living/Nursing homes. ~~*(1-1-94)*~~(8-1-05)T

s. ~~*Innkeeper legal liability*~~ Recreational vehicle rental: snowmobiles, atvs, jet skis. ~~*(1-1-94)*~~(8-1-05)T

t. Liquified petroleum dealers. (1-1-94)

u. Liquor liability and Dram Shop Act liability. (1-1-94)

v. Loggers ~~*property damage liability*~~ All Lines. ~~*(1-1-94)*~~(8-1-05)T

w. Non-accidental seepage and pollution. (1-1-94)

x. Nursing home liability. (1-1-94)

y. Outfitters and guides. (1-1-94)

z. ~~*Personal injury liability including false arrest, detention or imprisonment, malicious prosecution, libel, slander, defamation, violation of privacy, wrongful entry, or eviction or other invasions of right of private occupancy.*~~ EIFS Contractors. ~~*(1-1-94)*~~(8-1-05)T

aa. Products liability. (1-1-94)

bb. Radio and T.V. broadcasters and producers liability. (1-1-94)

cc. Rodeos and horse shows - liability. (1-1-94)

dd. ~~*Saddle horse*~~ Equine ~~*l*~~Liability. ~~*(1-1-94)*~~(8-1-05)T

ee. Ski-lifts and tows liability. (1-1-94)

ff. Snowmobile dealers. (1-1-94)

gg. Special schools. (1-1-94)

hh. Spectator liability - special events. (1-1-94)

ii. Swimming pools. (1-1-94)

jj. Theatrical presentations. (1-1-94)

kk. ~~*Manufacturing*~~ General contractors. ~~*(1-1-94)*~~(8-1-05)T

ll. Petroleum drilling and maintenance - on and off shore. (1-1-94)

mm. Social service agencies. (8-1-05)T

nn. Non profit clubs, associations, charitable organizations. (8-1-05)T

oo. Gun dealers. (8-1-05)T

pp. Bullet manufacturers. (8-1-05)T

qq.	Antique dealers/pawn shops.	(8-1-05)T
rr.	Motorcycle dealership.	(8-1-05)T
ss.	Security service.	(8-1-05)T
tt.	Homeowners association.	(8-1-05)T
uu.	Used auto dealers.	(8-1-05)T
vv.	Aircraft hangers.	(8-1-05)T
ww.	Bars, taverns, private clubs.	(8-1-05)T
xx.	Products Liability Monoline.	(8-1-05)T
yy.	Real Estate Developers.	(8-1-05)T
zz.	Gas/Fuel Distributors.	(8-1-05)T
aaa.	Quarry/Sand/Gravel Ops.	(8-1-05)T
bbb.	Garbage/Refuse Collection.	(8-1-05)T
ccc.	Irrigation Systems.	(8-1-05)T
ddd.	Pawn Shops.	(8-1-05)T
eee.	Recreation Vehicles and Mobile Home Dealers.	(8-1-05)T
fff.	Janitorial.	(8-1-05)T
ggg.	Vacant Buildings.	(8-1-05)T
hhh.	Lessors Risk Only (Rental Dwellings).	(8-1-05)T
iii.	Boats/houseboats.	(8-1-05)T
jjj.	Bridges.	(8-1-05)T
kkk.	Mining Equipment.	(8-1-05)T
lll.	Alcohol/drug rehabilitation centers/programs.	(8-1-05)T
mmm.	Automobile wrecking yards.	(8-1-05)T
nnn.	Building Moving.	(8-1-05)T

ooo.	Child care.	(8-1-05)T
ppp.	Courier services.	(8-1-05)T
qqq.	Crane rental.	(8-1-05)T
rrr.	Detective agencies.	(8-1-05)T
sss.	Employment Agencies – temporary.	(8-1-05)T
ttt.	Environmental remediation.	(8-1-05)T
uuu.	Firearms liability - gun smithing.	(8-1-05)T
vvv.	Fire alarm systems - installation contractors.	(8-1-05)T
www.	Fraternities.	(8-1-05)T
xxx.	Freight Handlers - lumpers.	(8-1-05)T
yyy.	Fuel tank testers.	(8-1-05)T
zzz.	Garage Service.	(8-1-05)T
aaaa	Habitational (apartments, condos, residential).	(8-1-05)T
bbbb.	Habitational materials - manufacturers.	(8-1-05)T
07.	**Code IM Inland Marine**.	(1-1-94)
a.	Anhydrous ammonia apparatus.	(1-1-94)
b.	Cameras - all risk coverage.	(1-1-94)
c.	Cargo - excess limits.	(1-1-94)
d.	Coin dealers - all risk coverage.	(1-1-94)
e.	Coin operated devices.	(1-1-94)
~~**f.**~~	~~*Contact lenses.*~~	~~*(1-1-94)*~~
~~**g**~~**f.**	Data processing equipment - excess limits.	(1-1-94)
~~**h**~~**g.**	Fine arts - all risk coverage.	(1-1-94)
~~**i**~~**h.**	Furs - all risk coverage.	(1-1-94)

~~j~~i. Jewelry - all risk coverage. (1-1-94)

~~k~~j. All ~~*M*~~motor truck cargo~~ *long haul*~~. ~~(1-1-94)~~(8-1-05)T

~~l~~k. Professional musical instrument floater. (1-1-94)

08. Code OM Ocean Marine. (1-1-94)

a. Ocean marine. (1-1-94)

09. Code MS Miscellaneous Specialty Lines. (1-1-94)

a. Excess crime. (1-1-94)

b. Hole-in-one insurance. (1-1-94)

c. Mortality - livestock and pets. (1-1-94)

d. Twin insurance. (1-1-94)

e. Water damage including flood. (1-1-94)

f. Difference in condition. (1-1-94)

g. Intellectual property - copyright/patent infringement. (8-1-05)T

h. Garagekeepers Legal. (8-1-05)T

i. Food Borne Illness. (8-1-05)T

j. Asbestos - all coverages. (8-1-05)T

k. International exposures. (8-1-05)T

l. Kidnap, ransom. (8-1-05)T

10. Code PL Professional Liability and Malpractice (Includes Errors and Omissions). (1-1-94)

a. Abstractors. (1-1-94)

b. Accountants. (1-1-94)

c. Ambulance personnel. (1-1-94)

d. Anesthetists. (1-1-94)

e.	Architects.	(1-1-94)
f.	Attorneys and mediators.	~~*(1-1-94)*~~(8-1-05)T
g.	Beauty and barber shops.	(1-1-94)
h.	Beauty and barber schools.	(1-1-94)
i.	Cemeteries.	(1-1-94)
j.	Chiropodists.	(1-1-94)
k.	Chiropractors.	(1-1-94)
l.	County clerks.	(1-1-94)
m.	Dentists.	(1-1-94)
n.	Druggists.	(1-1-94)
o.	Engineers.	(1-1-94)
p.	Hospitals.	(1-1-94)
q.	Insurance agents.	(1-1-94)
r.	~~*Management c*~~Consultants.	~~*(1-1-94)*~~(8-1-05)T
s.	Nurses.	(1-1-94)
t.	Opticians.	(1-1-94)
u.	Optometrists.	(1-1-94)
v.	Osteopaths.	(1-1-94)
w.	Physicians and surgeons.	(1-1-94)
x.	Psychologists and sociologists.	(1-1-94)
y.	~~*Radiologists*~~ Insurance companies.	~~*(1-1-94)*~~(8-1-05)T
z.	Real estate agents.	(1-1-94)
aa.	Surveyors.	(1-1-94)
bb.	Title insurance company and agents.	(1-1-94)

cc.	X-ray specialists.	(1-1-94)
dd.	Seedsmen.	(1-1-94)
ee.	Employment Practices.	(8-1-05)T
ff.	Computer technology.	(8-1-05)T
gg.	Law Enforcement.	(8-1-05)T
hh.	Appraisers.	(8-1-05)T
ii.	Social Services.	(8-1-05)T
jj.	Actuaries.	(8-1-05)T
kk.	Clinical labs.	(8-1-05)T
ll.	Drug testing.	(8-1-05)T
mm.	Foster care Agencies.	(8-1-05)T
nn.	Property management.	(8-1-05)T
oo.	Public officials.	(8-1-05)T
pp.	Residential home inspectors.	(8-1-05)T

~~015~~014. -- 999.(RESERVED).

COMMERCE & HUMAN RESOURCES

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.54 - RULE TO IMPLEMENT THE NAIC MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS MODEL ACT

DOCKET NO. 18-0154-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 41-211 and Chapter 44, Title 41, Idaho Code, and "The Medicare Prescription Drug, Improvement, and Modernization Act of 2003" (Public Law No. 108-73).

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 federal Medicare, Prescription Drug, Improvement, and Modernization act of 2003 adds prescription drug coverage to Medicare and creates new requirements for Medicare supplement policies offered by insurers regulated by the Department of Insurance. This rulemaking amends existing state rules governing Medicare supplement policies to conform to the federal law changes, including the addition of two additional Medicare supplement insurance plans. The Centers for Medicare & Medicaid Services (CMS) require states to implement the amendments to the model NAIC rule by September 8, 2005. The rule is also being amended to clarify that there can be only one rate increase in a 12 month period unless an additional increase is required by federal law. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 6, 2005 Idaho Administrative Bulletin, Vol. 05-7, pages 22 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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Joan Krosch at (208) 334-4250.

DATED this 9th day of November, 2005.

Gary L Smith
Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043

Telephone No. (208) 334-4250
Facsimile No. (208) 334-4298

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 41-211 and 41-4404, Idaho Code, and "The Medicare Prescription Drug, Improvement, and Modernization Act of 2003" (Public Law No. 108-73).

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 20, 2005.

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 federal Medicare, Prescription Drug, Improvement, and Modernization act of 2003 adds prescription drug coverage to Medicare and creates new requirements for Medicare supplement policies offered by insurers regulated by the Department of Insurance. This rulemaking amends existing state rules governing Medicare supplement policies to conform to the federal law changes, including the addition of two additional Medicare supplement insurance plans. The Centers for Medicare & Medicaid Services (CMS) require states to implement the amendments to the model NAIC rule by September 8, 2005.

The rule is also being amended to clarify that there can be only one rate increase in a 12 month period unless an additional increase is required by federal law.

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

The rulemaking is needed to comply with deadlines imposed by federal law.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: 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: This rulemaking does not have a fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are needed to conform to requirements imposed by federal law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Joan Krosch, Department of Insurance, (208)334-4250.

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 27, 2005.

DATED this 3rd day of June, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. DEFINITIONS.
For the purposes of IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act," 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 certificate holder. (4-5-00)

02. Bankruptcy. A Medicare~~+*Choice*~~ 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. ~~*(4-5-00)*~~(7-1-05)T

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 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 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. ~~*(3-15-02)*~~(7-1-05)T

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~~+*Choice*~~ <u>Advantage</u> 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: ~~*(3-15-02)*~~<u>(7-1-05)T</u>

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~~+*Choice*~~ <u>Advantage</u> medical savings account; and ~~*(4-5-00)*~~<u>(7-1-05)T</u>

c. Medicare~~+*Choice*~~ <u>Advantage</u> private fee-for-service plans. ~~*(4-5-00)*~~<u>(7-1-05)T</u>

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. <u>"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.</u> ~~*(4-5-00)*~~<u>(7-1-05)T</u>

13. **Policy Form**. The form on which the policy is delivered or issued for delivery by the issuer. (4-5-00)

14. **Secretary**. The Secretary of the United States Department of Health and Human Services. (4-5-00)

005. 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 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 016, ~~E~~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: ~~*(4-5-00)*~~(7-1-05)T

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 Heath 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. ~~*(4-5-00)*~~(7-1-05)T

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).

008. POLICY PROVISIONS.

01. Medicare Supplement Policy. Except for permitted preexisting condition clauses as described in Subsections 009.01.a. and 010.01.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. (7-1-05)T

a. Subject to Subsections 009.01.d,, 009.01.e,, 009.01.j,, and 010.01.d., and 010.01.e, 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. (7-1-05)T

b. A Medicare supplement policy with benefits for outpatient prescription drugs shall not be issued after December 31, 2005. (7-1-05)T

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: (7-1-05)T

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 (7-1-05)T

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. (7-1-05)T

009. MINIMUM BENEFIT STANDARDS FOR 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". (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. 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 009.01.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 010.02. (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 009.01.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. ~~*(4-5-00)*~~(7-1-05)T

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 009.01. (7-1-05)T

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 (61st) day through the ninetieth (90th) 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)

010. BENEFIT STANDARDS FOR POLICIES OR CERTIFICATES ISSUED OR DELIVERED ON OR AFTER JULY 1, 1992.
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. 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". (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. 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 Subsection 010.01.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 subsection. (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 offer the certificate holder the conversion opportunity described in Subsection 010.01.e.iii.; or, 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 010. (7-1-05)T

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. ~~*(4-5-00)*~~(7-1-05)T

i. 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)

ii. 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)

iii. 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 certificate holder 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. Reinstitution of coverages as defined in Subsections 010.01.f.ii. and 010.01.f.iii.: (5-3-03)

i. Shall not provide for any waiting period with respect to treatment of preexisting conditions; (4-5-00)

ii. Shall provide for resumption of coverage ~~*which*~~ that is substantially equivalent to ~~*the*~~ 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 ~~*(4-5-00)*~~(7-1-05)T

iii. 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)

02. Standards for Basic (Core) Benefits Common to ~~*All*~~ 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. ~~*(4-5-00)*~~(7-1-05)T

a. Coverage of Part A Medicare eligible expenses for hospitalization to the extent not covered by Medicare from the sixty-first (61st) day through the ninetieth (90th) 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 ~~*the*~~ one hundred percent (100%) of Medicare Part A eligible expenses for hospitalization paid at the ~~*diagnostic related group (DRG) day outlier per diem*~~ 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. ~~*(4-5-00)*~~(7-1-05)T

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. ~~*NOTE:*~~ 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. ~~*(5-3-03)*~~(7-1-05)T

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 011 of IDAPA 18.01.54, "Rule to Implement the NAIC Medicare Supplement Insurance Minimum Standards Model Act". (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 (21st) day through the one hundredth (100th) 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. ~~*(4-5-00)*~~(7-1-05)T

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. ~~*(4-5-00)*~~(7-1-05)T

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: ~~*(4-5-00)*~~(7-1-05)T

a. An annual clinical preventive medical history and physical examination that may include tests and services from Subsection 010.04.b., and patient education to address preventive health care measures. (4-5-00)

b. ~~*Any one (1) or a combination of the following p*~~Preventive screening tests or preventive services, the selection and frequency of which is ~~*considered*~~ determined to be medically appropriate~~:~~ by the attending physician. ~~*(4-5-00)*~~(7-1-05)T

~~*i. Digital rectal examination; (3-15-02)*~~

~~*ii. Dipstick urinalysis for hematuria, bacteriuria, and proteinuria; (4-5-00)*~~

~~*iii. Pure tone (air only) hearing screening test, administered or ordered by a physician;(4-5-00)*~~

~~*iv. Serum cholesterol screening (every five (5) years); (4-5-00)*~~

~~*v. Thyroid function test; (4-5-00)*~~

~~*vi. Diabetes screening. (4-5-00)*~~

~~*c. Tetanus and diphtheria booster (every ten (10) years). (3-15-02)*~~

~~*d*~~**c.** ~~*Any other tests or preventive measures determined appropriate by the attending physician.*~~ 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. ~~*(4-5-00)*~~(7-1-05)T

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 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. ~~***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 goal of simplification of Medicare supplement policies.~~ **Standards for Plan K**. Standardized Medicare supplement benefit plan "K" shall consist of the following: ~~*(4-5-00)*~~(7-1-05)T

a. Coverage of one hundred percent (100%) of the Part A hospital coinsurance amount for each day used from the sixty-first (61st) through the ninetieth (90th) day in any Medicare benefit period; (7-1-05)T

b. 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 (91st) through the one hundred fiftieth (150th) day in any Medicare benefit period; (7-1-05)T

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; (7-1-05)T

d. 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 Subsection 010.07.j.; (7-1-05)T

e. Skilled Nursing Facility Care: Coverage for fifty percent (50%) of the coinsurance amount for each day used from the twenty-first (21st) day through the one hundredth (100th) 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 Subsection 010.07.j.; (7-1-05)T

f. 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 Subsection 010.07.j.; (7-1-05)T

g. 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 Subsection 010.07.j.; (7-1-05)T

h. Except for coverage provided in Subsection 010.07.i., 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 Subsection 010.07.j.; (7-1-05)T

i. 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 (7-1-05)T

j. 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. (7-1-05)T

08. **Standards for Plan L**. Standardized Medicare supplement benefit plan "L" shall consist of the following: (7-1-05)T

a. The benefits described in Subsections 010.07.a. through 010.07.c., and 010.07.i.; (7-1-05)T

b. The benefit described in Subsections 010.07.d. through 010.07.h. but substituting seventy-five percent (75%) for fifty percent (50%); and (7-1-05)T

c. The benefit described in Subsection 010.07.j. but substituting two thousand dollars ($2,000) for four thousand dollars ($4,000). (7-1-05)T

011. STANDARD MEDICARE SUPPLEMENT BENEFIT PLANS.

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 010.02. (4-5-00)

02. Medicare Supplement Benefits. 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 01~~0~~1.07 and in Section 012. ~~*(4-5-00)*~~(7-1-05)T

03. Benefit Plans. Benefit plans shall be uniform in structure, language, designation and format to the standard benefit plans "A" through "~~J~~L" listed in this subsection and conform to the definitions in Section 004. Each benefit shall be structured in accordance with the format

provided in Subsections 010.02, ~~*and*~~ 010.03, 010.07, and 010.08 and list the benefits in the order shown in this Section 011. For purposes of Section 011, "structure, language, and format" means style, arrangement and overall content of a benefit. ~~*(4-5-00)*~~(7-1-05)T

04. Other Designations. An issuer may use, in addition to the benefit plan designations required in Subsection 011.03, 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 010.02. (4-5-00)

b. Standardized Medicare supplement benefit plan "B" shall include only the following: The core benefit as defined in Subsection 010.02, plus the Medicare Part A deductible as defined in Subsection 010.03.a. (4-5-00)

c. Standardized Medicare supplement benefit plan "C" shall include only the following: The core benefit as defined in Subsection 010.02, 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 010.03.a. through 010.03.c., and 010.03.h., respectively. (4-5-00)

d. Standardized Medicare supplement benefit plan "D" shall include only the following: The core benefit (as defined in Subsection 010.02), 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 010.03.a., 010.03.b., 010.03.h., and 010.05, respectively. (4-5-00)

e. Standardized Medicare supplement benefit plan "E" shall include only the following: The core benefit as defined in Subsection 010.02, 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 010.03.a., 010.03.b., 010.03.h., and 010.04, respectively. (4-5-00)

f. Standardized Medicare supplement benefit plan "F" shall include only the following: The core benefit as defined in Subsection 010.02, 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 010.03.a. through 010.03.c., 010.03.e., and 010.03.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 010.02, 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 010.03.a.

through 010.03.c., 010.03.e., and 010.03.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).

~~*(4-5-00)*~~(7-1-05)T

h. Standardized Medicare supplement benefit plan "G" shall include only the following: The core benefit as defined in Subsection 010.02, 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 010.03.a., 010.03.b., 010.03.d., 010.03.h., and 010.05, respectively.

(4-5-00)

i. Standardized Medicare supplement benefit plan "H" shall consist of only the following: The core benefit as defined in Subsection 010.02, 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 010.03.a., 010.03.b., 010.03.f., and 010.03.h., respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. ~~*(4-5-00)*~~(7-1-05)T

j. Standardized Medicare supplement benefit plan "I" shall consist of only the following: The core benefit as defined in Subsection 010.02, 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 010.03.a., 010.03.b., 010.03.e., 010.03.f., 010.03.h., and 010.05, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. ~~*(4-5-00)*~~(7-1-05)T

k. Standardized Medicare supplement benefit plan "J" shall consist of only the following: The core benefit as defined in Subsection 010.02, 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 010.03.a. through 010.03.c., 010.03.e., 010.03.g., 010.03.h., 010.04 and 010.05, respectively. The outpatient prescription drug benefit shall not be included in a Medicare supplement policy sold after December 31, 2005. ~~*(4-5-00)*~~(7-1-05)T

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 010.02, 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

010.03.a. through 010.03.c., 010.03.e., 010.03.g., 010.03.h., 010.04, and 010.05, 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. ~~(4-5-00)~~(7-1-05)T

06. Make-Up of Two Medicare Supplement Plans Mandated by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA): (7-1-05)T

a. Standardized Medicare supplement benefit plan "K" shall consist of only those benefits described in Subsection 010.07.01. (7-1-05)T

b. Standardized Medicare supplement benefit plan "L" shall consist of only those benefits described in Subsection 010.08.02. (7-1-05)T

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. (7-1-05)T

012. MEDICARE SELECT POLICIES AND CERTIFICATES.
This section shall apply to Medicare Select policies and certificates, as defined in this section. No policy may be advertised as a Medicare Select policy or certificate unless it meets the requirements of this section. (4-5-00)

01. Definitions. For the purposes of Section 012: (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 012 of these rules 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". (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 ~~*paragraph*~~ Subsection 012.04.a.v. shall not apply to supplemental charges or coinsurance amounts as stated

in the Medicare Select policy or certificate. ~~*(4-5-00)*~~(7-1-05)T

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 012.08. (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. ~~*(4-5-00)*~~(7-1-05)T

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 012.08 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 Section 012, 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., a significant benefit means coverage for the Medicare Part A deductible, ~~*coverage for prescription drugs,*~~ coverage for at-home recovery services or coverage for Part B excess charges. ~~*(4-5-00)*~~(7-1-05)T

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 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 Section 012, 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., a significant benefit means coverage for the Medicare Part A deductible, ~~*coverage for prescription drugs,*~~ coverage for at-home recovery services or coverage for Part B

excess charges. ~~*(4-5-00)*~~(7-1-05)T

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)

013. 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, or 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 Subsection 013.01 without regard to age. (4-5-00)

a. If an applicant qualifies under Subsection 013.01 and submits an application during the time period referenced in Subsection 013.01 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 013.01 and submits an application during the time period referenced in Subsection 013.01 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 subsection. ~~*(4-5-00)*~~(7-1-05)T

c. Except as provided in Subsection 013.01.a., and Sections 014 and 025, Subsection 013.01.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. ~~*(4-5-00)*~~(7-1-05)T

014. GUARANTEED ISSUE FOR ELIGIBLE PERSONS.

01. Guaranteed Issue. (4-5-00)

a. Eligible persons are those individuals described in Subsection 014.02 who seek to enroll under the policy during the period specified in Subsection 014.0~~3~~5, and who submit evidence of the date of termination or disenrollment or Medicare Part D enrollment with the application for a Medicare supplement policy. ~~*(5-3-03)*~~(7-1-05)T

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 014.0~~3~~5 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. ~~*(4-5-00)*~~(7-1-05)T

02. Eligible Persons. An eligible person is an individual described here in any part of ~~*the following paragraphs*~~ Subsection 014.02: ~~*(4-5-00)*~~(7-1-05)T

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~~*+Choice*~~ Advantage organization under a Medicare~~*+Choice*~~ 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~~*+Choice*~~ Advantage plan: ~~*(3-15-02)*~~(7-1-05)T

i. The certification of the organization or plan under this part has been terminated; ~~*or*~~ ~~*(5-3-03)*~~(7-1-05)T

ii. The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides; ~~*or*~~ ~~*(5-3-03)*~~(7-1-05)T

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; ~~*(4-5-00)*~~(7-1-05)T

iv. The individual demonstrates, in accordance with guidelines established by the Secretary of Health and Human Services, 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 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 the individual meets such other exceptional conditions as the Secretary may provide. ~~*(5-3-03)*~~(7-1-05)T

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 014.02.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~~+*Choice*~~ Advantage organization under a Medicare~~+*Choice*~~ 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 ~~*(5-3-03)*~~(7-1-05)T

g. The subsequent enrollment under Subsection 014.02.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~~+*Choice*~~ 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. ~~*(5-3-03)*~~(7-1-05)T

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 014.05.e. (7-1-05)T

03. Guaranteed Issue Time Periods. (5-3-03)

a. In the case of an individual described in Subsection 014.02.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 ~~*such*~~ a termination or cessation); or the date that the applicable coverage terminates or ceases; and ends sixty-three (63) days thereafter ~~*the date of the applicable notice*~~;
~~*(5-3-03)*~~(7-1-05)T

b. In the case of an individual described in Subsections 014.02.b., 014.02.c., 014.02.f., 014.02.g., or 014.02.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; ~~*(5-3-03)*~~(7-1-05)T

c. In the case of an individual described in Subsections 014.02.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 014.02.b~~*.e.iii*~~. and 014.02.~~*b*~~c.~~*e.iv.*~~, and 014.02.f., 014.02.g., or 014.02.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 ~~*(5-3-03)*~~(7-1-05)T

e. In the case of an individual described in Subsection 014.02.i., ~~*but not described in the preceding provisions of Subsection 014.03, 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.*~~ 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 ~~*(5-3-03)*~~(7-1-05)T

f. In the case of an individual described in Subsection 014.02 but not described in the preceding provisions of Subsection 014.03, 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.
(7-1-05)T

04. Extended Medigap Access for Interrupted Trial Periods. (5-3-03)

a. In the case of an individual described in Subsection 014.02.f. (or deemed to be so described, pursuant to this ~~*paragraph*~~ Subsection 014.04.a.) whose enrollment with an organization or provider described in Subsection 014.02.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 014.02.f.; ~~*(5-3-03)*~~(7-1-05)T

b. In the case of an individual described in Subsection 014.02.h. (or deemed to be so described, pursuant to this ~~*paragraph*~~ Subsection 014.04.b.) whose enrollment with a plan or in a program described in Subsection 014.02.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 014.02.h.; and ~~*(5-3-03)*~~(7-1-05)T

c. For purposes of Subsection 014.02.f. and 014.02.h., no enrollment of an individual with an organization or provider described in Subsection 014.02.f. or with a plan or in a program described in Subsection 014.02.h. may be deemed to be an initial enrollment under Subsection 014.04.c. 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: ~~*(4-5-00)*~~(7-1-05)T

a. Subsections 014.02.a. through 014.02.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. ~~*(4-5-00)*~~(7-1-05)T

b. Subsection 014.02.~~*f*~~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 014.0~~*3*~~5.a. ~~*(4-5-00)*~~(7-1-05)T

c. ~~*Subsection 014.02.h. shall include any Medicare supplement policy offered by any issuer.*~~ 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 014.05 is: ~~*(4-5-00)*~~(7-1-05)T

i. The policy available from the same issuer but modified to remove outpatient prescription drug coverage; or (7-1-05)T

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; (7-1-05)T

d. Subsection 014.02.h. shall include any Medicare supplement policy offered by any issuer. (7-1-05)T

e. Subsection 014.02.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. (7-1-05)T

06. Notification Provisions. (4-5-00)

a. At the time of an event described in Subsection 014.02 of this section 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 Section 014, and of the obligations of issuers of Medicare supplement policies under Subsection 014.01. Such notice shall be communicated contemporaneously with the notification of termination. (4-5-00)

b. At the time of an event described in Subsection 014.02 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 section, and of the obligations of issuers of Medicare supplement policies under Subsection 014.01. Such notice shall be communicated within ten (10) working days of the issuer receiving notification of disenrollment. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

016. 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 certificate holders 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: ~~*(4-5-00)*~~(7-1-05)T

i. Home office and overhead costs; (7-1-05)T

ii. Advertising costs; (7-1-05)T

iii. Commissions and other acquisition costs; (7-1-05)T

iv. Taxes; (7-1-05)T

v. Capital costs; (7-1-05)T

vi. Administrative costs; and (7-1-05)T

vii. Claims processing costs. (7-1-05)T

c. All filings of rates and rating schedules shall demonstrate that expected claims in relation to premiums comply with the requirements of this 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 016.01.a. and 017.0~~3~~1.c., 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. ~~*(4-5-00)*~~(7-1-05)T

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 Subsections 016.01.a.i. and 016.01.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 Subsections 016.01.a.i. and 016.01.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.~~*state.id.us*~~idaho.gov) for each type in a standard Medicare supplement benefit plan. ~~*(4-5-00)*~~(7-1-05)T

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 016, 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 016. (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)

017. FILING AND APPROVAL OF POLICIES AND CERTIFICATES AND PREMIUM RATES.

01. Filing and Premium Rates. 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 the director. 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. 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. Except as provided in Subsection 016.03, the insured shall not receive more than one (1) rate increase in any twelve (12) month period,

~~*(4-5-00)*~~(7-1-05)T

a. Except as provided in Subsection 017.01.b., an issuer shall not file for approval more than one form of a policy or certificate of each type for each standard Medicare supplement benefit plan. (4-5-00)

b. 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. ~~*Type.*~~ For the purposes of Subsection 017.01, "type" means an individual policy, a

group policy, an individual Medicare Select policy, or a group Medicare Select policy. ~~*(4-5-00)*~~(7-1-05)T

02. Availability of Policy Form or Certificate. Except as provided in Subsection 017.02.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. 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 017.02.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 017.02~~.*c*~~. ~~*(4-5-00)*~~(7-1-05)T

d. A change in the rating structure or methodology shall be considered a discontinuance under this Subsection 017.02 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)

03. Experience of Policy Forms. (4-5-00)

a. Except as provided in Subsection 017.03.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 016. (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)

04. 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)

05. 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)

018. 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. ~~*(4-5-00)*~~(7-1-05)T

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 018, 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)

019. 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 ~~*Health Care Financing Administration*~~ 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. ~~*(3-15-02)*~~(7-1-05)T

g. ~~*Form.*~~ For the purposes of Section 019, "form" means the language, format, type size, type proportional spacing, bold character, and line spacing. ~~*(4-5-00)*~~(7-1-05)T

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 certificate holders 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 certificate holder 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. (7-1-05)T

0~~3~~4. 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 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-~~J~~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. ~~(3-15-02)~~(7-1-05)T

0~~4~~5. Notice Regarding Policies or Certificates Which 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 001.02.b. of this ~~*regulation*~~ 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." ~~*(4-5-00)*~~(7-1-05)T

b. Applications provided to persons eligible for Medicare for the health insurance policies or certificates described in Subsection 019.04.a. shall disclose, using the applicable NAIC Model Regulation referenced as Appendix C located on the Internet (www.doi.~~*state.id.us*~~idaho.gov, - select ~~*SHIBA*~~ Services for People on Medicare under the Consumer ~~*Assistance*~~ Services link, see Attachments to NAIC Model Act implementing the Medicare supplement insurance minimum standards), 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. ~~*(4-5-00)*~~(7-1-05)T

020. 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. ~~*(4-5-00)*~~(7-1-05)T

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, ~~*T*~~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.
~~*(4-5-00)*~~(7-1-05)T

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. (7-1-05)T

~~**e**~~**f.** Counseling services are available through the Senior Health Insurance Benefit Advisors program (SHIBA), ~~*available*~~ 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). ~~*(4-5-00)*~~(7-1-05)T

03. Questions. ~~*To the best of your knowledge:*~~ See Appendix A at the end of this chapter. ~~*(4-5-00)*~~(7-1-05)T

~~***a.*** *Do you have another Medicare supplement policy or certificate in force?* *(4-5-00)*~~

~~*i.* *If so, with which company?* *(4-5-00)*~~

~~*ii.* *If so, do you intend to replace your current Medicare supplement policy with this policy?* *(4-5-00)*~~

~~***b.*** *Do you have any other health insurance coverage that provides benefits similar to this Medicare supplement policy?* *(4-5-00)*~~

~~*i.* *If so, with which company?* *(4-5-00)*~~

~~*ii.* *What kind of policy?* *(4-5-00)*~~

~~***c.*** *Are you covered for medical assistance through the state Medicaid program:* *(4-5-00)*~~

~~*i.* *As a Specified Low-Income Medicare Beneficiary (SLMB)?* *(4-5-00)*~~

~~*ii.*~~ ~~*As a Qualified Medicare Beneficiary (QMB)?*~~ ~~*(4-5-00)*~~

~~*iii.*~~ ~~*For other Medicaid medical benefits?*~~ ~~*(4-5-00)*~~

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 020.06 for an issuer shall be provided in substantially the following form based on the NAIC Model Regulation which includes Appendixes A, B, and C and all other outlines of coverage and specific plan designs. For website, go to Idaho Department of Insurance Home Page, www.doi.~~*state.id.us*~~idaho.gov, select ~~*SHIBA*~~ Services for People on Medicare under Consumer ~~*Assistance*~~ Services link, see Attachments to NAIC Model Act implementing the Medicare supplement insurance minimum standards. To obtain a copy of the NAIC Model Regulation, contact SHIBA at the Idaho Department of Insurance (208) 334-4250. ~~*(4-5-00)*~~(7-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

023. 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 ~~*coverage*~~ 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. ~~*(4-5-00)*~~(7-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

APPENDIX 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?

COMMERCE & HUMAN RESOURCES

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE

18.01.73 - RULE TO IMPLEMENT THE INDIVIDUAL HEALTH INSURANCE AVAILABILITY ACT PLAN DESIGN

DOCKET NO. 18-0173-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 41-211 and 41-5511(4), 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.

Senate Bill 1198 amended Section 41-5511(4), Idaho Code, this year to require that the Individual High Risk Reinsurance Pool Board design a Health Savings Account (HSA) compatible health insurance plan to be available through the Idaho High Risk Reinsurance Pool Program. This rule sets forth the design of the new plan. The plan will allow persons who may not otherwise be able to obtain coverage due to health conditions to have the option of purchasing a high deductible plan coupled with a federally qualified Health Savings Account, in addition to the other types of plans available through the High Risk Pool Program.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, in response to public comments. These changes are: Section 004 of the rule has been changed to clarify that copayments will count toward out-of-pocket expense maximums and that a calendar year will be used for purposes of the out-of pocket maximum; Section 010 of the rule has been changed to apply to all High Risk Pool plans; and Section 012 has been changed to clarify that benefit maximums for all plans are determined on a calendar year basis and to provide that pharmacy benefits for all High Risk Pool plans will be limited to a 30 day supply. Only those 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 September 7, 2005 Idaho Administrative Bulletin, Vol. 05-9, pages 167 through 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 pending rule, contact Joan Krosch at 208-334-4250.

DATED this 10th day of November, 2005.

Gary L Smith
Director
Idaho Department of Insurance
700 West State Street - 3rd Floor
P.O. Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250
Facsimile No. (208) 334-4298

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is August 3, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 41-211 and 41-5511(4), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 21, 2005.

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:

Senate Bill 1198 amended Section 41-5511(4), Idaho Code, this year to require that the Individual High Risk Reinsurance Pool Board design a Health Savings Account (HSA) compatible health insurance plan to be available through the Idaho High Risk Reinsurance Pool Program. This rule sets forth the design of the new plan. The plan will allow persons who may not otherwise be able to obtain coverage due to health conditions to have the option of purchasing a high deductible plan coupled with a federally qualified Health Savings Account, in addition to the other types of plans available through the High Risk Pool Program.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: It is needed to comply with amendments to Section 41-5511(4), Idaho Code, and confers a 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: 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 IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change is required by SB 1198.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Joan Krosch at 208-334-4250.

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 28, 2005.

DATED this 2nd day of August.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. DEFINITIONS.
For the purposes of this Rule, the following terms will be used as defined below: (6-30-95)

01. Benefit Percentage. Benefit percentage is the percentage of the cost of a health care service paid by the insurer under a health insurance plan, as defined in the Schedule of Benefits. (6-30-95)

02. Calendar Year. Calendar year is a period of one (1) year which starts on January 1st and ends on December 31st. (6-30-95)

03. Coinsurance. Coinsurance is a percentage of the cost of a health care service, paid by the insured under a health insurance plan, as defined in the schedule of benefits. (3-15-02)

04. Copayment. Copayment is a specified charge that must be paid each time care is received of a particular type or in a designated setting. The instances in which a copayment will be required are specified in the schedule of benefits. The copayments must be paid before any other payment will be made under the policy. The copayment will not count toward any deductible or out-of-pocket expense required under the policy, with the exception of the HSA *Compatible Plan where the copayment will count toward the out-of-pocket expense maximum*.
~~(8-3-05)T~~( )

05. Deductible. Deductible means the amount of the covered charge each insured is

obligated to pay each calendar year before the plan will pay for covered medical services. All covered charges are subject to the Deductible amount unless specifically noted otherwise. (3-15-02)

06. Out-of-Pocket Expense Maximum. Out-of-pocket expense maximum is the maximum medical expense that an insured is obligated to pay, which includes coinsurance as defined in the schedule of benefits. Under the Basic, Standard, and Catastrophic A and B health benefit plans, the out-of-pocket expense maximum does not include deductibles, copayments, pharmacy expenses, ~~*and*~~ expenses for non-covered services and supplies, and charges in excess of the eligible expense. After the out-of-pocket expense maximum has been reached, covered services will be provided at one hundred percent (100%) except for specific deductibles, copayments, pharmacy benefits, non-covered services and supplies, and charges in excess of the eligible expense. *The* HSA ~~annual~~ *Compatible Plan calendar year* out-of-pocket expense maximum, subject to any policy limitations, or ineligible out-of-pocket expenses, includes deductibles, copayments, and coinsurance including pharmacy expenses. After the HSA *Compatible Plan* out-of-pocket expense maximum has been reached, covered services will be provided at one hundred percent (100%) with the exception of services, supplies, and charges in excess of the eligible expense. ~~*(3-15-02)*~~( )

07. Pre-Existing Condition. Pre-existing condition is defined in Section 41-5208(3), Idaho Code. (6-30-95)

08. Provider. Provider means any of the following licensees duly licensed to practice in any of the following categories of health care professions: (3-15-02)

a. Licensed general hospital; (3-15-02)

b. Chiropractor; (6-30-95)

c. Dentist; (6-30-95)

d. Optometrist; (6-30-95)

e. Pharmacist; (6-30-95)

f. Physician and surgeon, of either medicine and surgery or of osteopathic medicine and surgery; (6-30-95)

g. Podiatrist; and (6-30-95)

h. Any other licensed facility or practitioner who is acting within the scope of that license and who performs a service which is payable under the policy when performed by any of the above health care providers. (3-15-02)

i. A provider does not include a person who lives with the insured or is part of the insured's family (insured, insured's spouse, or a child, brother, sister, or parent of insured or insured's spouse). (3-15-02)

09. Eligible Expense. Eligible expense means the expense incurred for a covered service or supply. A physician or other licensed facility or provider has to order or prescribe the service or supply. Expense is considered incurred on the date the service or supply is received. Expense does not include any charge: (3-15-02)

a. For a service or supply which is not medically necessary; (3-15-02)

b. Which is in excess of reasonable and customary charge for a service or supply; (3-15-02)

c. Which is in excess of any contractual arrangements; (3-15-02)

d. For any services or supplies which an Insured would have no legal obligation to pay in the absence of coverage under this policy or any similar coverage; or (3-15-02)

e. For which no charge or a different charge is usually made in the absence of insurance coverage.\ (3-15-02)

10. Medically Necessary Service or Supply. Medically necessary service or supply means one which is ordered by a provider and which the Carrier's medical staff or qualified party or entity determines is: (3-15-02)

a. Provided for the diagnosis or direct treatment of an injury or sickness; (6-30-95)

b. Appropriate and consistent with the symptoms and findings of diagnosis and treatment of the insured persons injury or sickness; (6-30-95)

c. Is not considered experimental or investigative; (6-30-95)

d. Provided in accord with generally accepted medical practice; (6-30-95)

e. The most appropriate supply or level of service which can be provided on a cost effective basis (including, but not limited to, in-patient vs. out-patient care, electric vs. manual wheelchair, surgical vs. medical or other types of care); (6-30-95)

f. The fact that the insured's provider prescribes services or supplies does not automatically mean such service or supply are medically necessary and covered by the policy. (3-15-02)

11. Emergency Services. Emergency services means those health care services that are provided in a hospital or other emergency facility after the sudden onset of a medical condition that manifests itself by symptoms of such sufficient severity including, but not limited to, severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent person who possesses an average knowledge of health and medicine, to result in: (3-15-02)

a. Placing the Insured's health in serious jeopardy; (3-15-02)

b. Serious impairment to bodily functions; or (3-15-02)

c. Serious dysfunction of any bodily organ or part. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

010. COORDINATION OF BENEFITS.
Coordination of Benefits shall be utilized on the Individual ~~*basic, standard, and catastrophic A, and catastrophic B plans, and HSA compatible benefit*~~ *High Risk Reinsurance Pool* Plans based upon IDAPA 18.01.74, "Coordination of Benefits". ~~*(8-3-05)T*~~*(____)*

011. LIMITATIONS AND EXCLUSIONS.

There Are No Changes to Subsections 011.01 Through 011.30

31. Maternity. Not a covered benefit under the HSA Compatible Plan. (8-03-05)T

32. Expenses Exceeding the Carrier's Allowable Amount. Expenses and/or charges which exceed the carrier's allowable amount for a service or supply. (8-03-05)T

012. BENEFITS.
Based on the provisions of Section 41-5511, Idaho Code, the Guaranteed Issue Schedule of Benefits Attachments for Basic Benefit Plan, Standard Benefit Plan, Catastrophic "A" Benefit Plan, and Catastrophic "B" Benefit Plan have been replaced by the new Idaho Individual High-Risk Plan Designs, as follows: (3-15-02)

BASIC BENEFIT PLAN	
Schedule of Benefits	
All Benefit Areas - Lifetime Benefit Maximum per Carrier	$500,000
Preventive Services - **Benefit Area "A"** ~~*Annual*~~ *Calendar Year* Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	$200
Benefit Areas B, C, D, E, F	
Calendar Year Deductible - Individual	$500
Benefit Percentage	50%
Coinsurance Percentage	50%

BASIC BENEFIT PLAN	
Individual Out-of-Pocket Expense Maximum not including Deductible or Copayments	$20,000
Normal Maternity Benefit Deductible - **Benefit Area "B"** Not applicable to involuntary complications of pregnancy	$5,000
Organ Transplant - **Benefit Area "C"** Lifetime Maximum Benefit	$150,000
Skilled Nursing Facility - **Benefit Area "C"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	45 days
Rehabilitation Therapy - **Benefit Area** "**C**" ~~*Annual*~~ *Calendar Year* Inpatient Benefit Maximum	$25,000
Rehabilitation Therapy - **Benefit Area "D"** Combined ~~*Annual*~~ *Calendar Year* Outpatient Benefit Maximum	$2,000
Home Health Care Benefits - **Benefit Area "D"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$5,000
Hospice Care - **Benefit Area "D"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$5,000
Ambulance Service - **Benefit Area "E"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$2,000
Durable Medical Equipment - **Benefit Area "E"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$10,000
Psychiatric and Substance Abuse Services - **Benefit Area "F"** Covered benefit as an inpatient or outpatient combined ~~*Annual*~~ *Calendar Year* Benefit Maximum	$5,000
Pharmacy - **Benefit Area "G"**	
Calendar Year Pharmaceutical Deductible - Individual	$250
Benefit Percentage	50%
Coinsurance Percentage Does not apply to Out-of-Pocket Expense limit *Benefits are limited to a thirty (30) day supply*	50%

~~(3-15-02)~~*(_____)*

STANDARD BENEFIT PLAN	
Schedule of Benefits	
All Benefit Areas - Lifetime Benefit Maximum per Carrier	$l,000,000
Preventive Services - **Benefit Area "A"** ~~*Annual*~~ *Calendar Year* Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	$200
Benefit Areas B, C, D, E, F	

STANDARD BENEFIT PLAN	
Calendar Year Deductible - Individual	$1,000
Benefit Percentage	70%
Coinsurance Percentage	30%
Individual Out-of-Pocket Expense Maximum not including Deductible or Copayments	$10,000
Normal Maternity Benefit Deductible - **Benefit Area "B"** Not applicable to involuntary complications of pregnancy	$5,000
Organ Transplant - **Benefit Area "C"** Lifetime Maximum Benefit	$150,000
Skilled Nursing Facility - **Benefit Area "C"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	45 days
Rehabilitation Therapy - **Benefit Area "C"** ~~*Annual*~~ *Calendar Year* Inpatient Benefit Maximum	$25,000
Rehabilitation Therapy - **Benefit Area "D"** Combined ~~*Annual*~~ *Calendar Year* Outpatient Benefit Maximum	$2,000
Home Health Care Benefits - **Benefit Area "D"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$5,000
Hospice Care - **Benefit Area "D"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$5,000
Ambulance Service - **Benefit Area "E"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$2,000
Durable Medical Equipment - **Benefit Area "E"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$10,000
Psychiatric and Substance Abuse Services - **Benefit Area "F"** Covered benefit as an inpatient or outpatient combined ~~*Annual*~~ *Calendar Year* Benefit Maximum	$5,000
Pharmacy - **Benefit Area "G"**	
Calendar Year Pharmaceutical Deductible - Individual	$250
Benefit Percentage	50%
Coinsurance Percentage Does not apply to Out-of-Pocket Expense limit *Benefits are limited to a thirty (30) day supply*	50%

~~*(3-15-02)*~~*(_____)*

CATASTROPHIC "A" BENEFIT PLAN	
Schedule of Benefits	
All Benefit Areas - Lifetime Benefit Maximum per Carrier	$1,000,000

CATASTROPHIC "A" BENEFIT PLAN	
Preventive Services - **Benefit Area "A"** ~~*Annual*~~ *Calendar Year* Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	$200
Benefit Areas B, C, D, E, F	
Calendar Year Deductible - Individual	$2,000
Benefit Percentage	70%
Coinsurance Percentage	30%
Individual Out-of-Pocket Expense Maximum not including Deductible or Copayments	$10,000
Normal Maternity Benefit Deductible - **Benefit Area "B"** Not applicable to involuntary complications of pregnancy	$5,000
Organ Transplant - **Benefit Area "C"** Lifetime Maximum Benefit	$150,000
Skilled Nursing Facility - **Benefit Area "C"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	45 days
Rehabilitation Therapy - **Benefit Area "C"** ~~*Annual*~~ *Calendar Year* Inpatient Benefit Maximum	$25,000
Rehabilitation Therapy - **Benefit Area "D"** Combined ~~*Annual*~~ *Calendar Year* Outpatient Benefit Maximum	$2,000
Home Health Care Benefits - **Benefit Area "D"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$5,000
Hospice Care - **Benefit Area "D"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$5,000
Ambulance Service - **Benefit Area "E"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$2,000
Durable Medical Equipment - **Benefit Area "E"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$10,000
Psychiatric and Substance Abuse Services - **Benefit Area "F"** Covered benefit as an inpatient or outpatient combined ~~*Annual*~~ *Calendar Year* Benefit Maximum	$5,000
Pharmacy - **Benefit Area "G"**	
Calendar Year Pharmaceutical Deductible - Individual	$500
Benefit Percentage	50%
Coinsurance Percentage Does not apply to Out-of-Pocket Expense limit *Benefits are limited to a thirty (30) day supply*	50%

~~*(3-15-02)*~~*(_____)*

CATASTROPHIC "B" BENEFIT PLAN	
Schedule of Benefits	
All Benefit Areas - Lifetime Benefit Maximum per Carrier	$1,000,000
Preventive Services - **Benefit Area "A"** ~~*Annual*~~ *Calendar Year* Benefit MaximumSubject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	$200
Benefit Areas B, C, D, E, F	
Calendar Year Deductible - Individual	$5,000
Benefit Percentage	80%
Coinsurance Percentage	20%
Individual Out-of-Pocket Expense Maximum not including Deductible or Copayments	$10,000
Normal Maternity Benefit Deductible - **Benefit Area "B"** Not applicable to involuntary complications of pregnancy	$5,000
Organ Transplant - **Benefit Area "C"** Lifetime Maximum Benefit	$150,000
Skilled Nursing Facility - **Benefit Area "C"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	45 days
Rehabilitation Therapy - **Benefit Area "C"** ~~*Annual*~~ *Calendar Year* Inpatient Benefit Maximum	$25,000
Rehabilitation Therapy - **Benefit Area "D"** Combined ~~*Annual*~~ *Calendar Year* Outpatient Benefit Maximum	$2,000
Home Health Care Benefits - **Benefit Area "D"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$5,000
Hospice Care - **Benefit Area "D"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$5,000
Ambulance Service - **Benefit Area "E"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$2,000
Durable Medical Equipment - **Benefit Area "E"** ~~*Annual*~~ *Calendar Year* Benefit Maximum	$10,000
Psychiatric and Substance Abuse Services - **Benefit Area "F"** Covered benefit as an inpatient or outpatient combined ~~*Annual*~~ *Calendar Year* Benefit Maximum	$5,000
Pharmacy - **Benefit Area "G"**	
Calendar Year Pharmaceutical Deductible - Individual	$500
Benefit Percentage	50%
Coinsurance Percentage Does not apply to Out-of-Pocket Expense limit *Benefits are limited to a thirty (30) day supply*	50%

~~(3-15-02)~~(_____)

HSA - COMPATIBLE BENEFIT PLAN	
Schedule of Benefits	
All Benefit Areas - Lifetime Benefit Maximum per Carrier	$1,000,000
Preventive Services - **Benefit Area "A"** ~~Annual~~ *Calendar Year* Benefit Maximum Subject to Deductible and Coinsurance Mammography benefits are not limited to the preventive services benefit	$200
Benefit Areas C, D, E, F, *G*	
Calendar Year Deductible - Individual Family	$3,000 $6,000
Benefit Percentage	60%
Coinsurance Percentage	40%
Individual Out-of-Pocket Expense Maximum including Deductible or copayments, and coinsurance Family Out-of-Pocket Expense Maximum	$5,000 $10,000
Maternity Benefit - **Benefit Area "B"** Not available under the HSA Compatible Benefit Plan *Benefits are provided for involuntary complications of pregnancy*	Not Covered
Organ Transplant - **Benefit Area "C"** Lifetime Maximum Benefit	$150,000
Skilled Nursing Facility - **Benefit Area "C"** ~~Annual~~ *Calendar Year* Benefit Maximum	45 days
Rehabilitation Therapy - **Benefit Area "C"** ~~Annual~~ *Calendar Year* Inpatient Benefit Maximum	$25,000
Rehabilitation Therapy - **Benefit Area "D"** Combined ~~Annual~~ *Calendar Year* Outpatient Benefit Maximum	$2,000
Home Health Care Benefits - **Benefit Area "D"** ~~Annual~~ *Calendar Year* Benefit Maximum	$5,000
Hospice Care - **Benefit Area "D"** ~~Annual~~ *Calendar Year* Benefit Maximum	$5,000
Ambulance Service - **Benefit Area "E"** ~~Annual~~ *Calendar Year* Benefit Maximum	$2,000
Durable Medical Equipment - **Benefit Area "E"** ~~Annual~~ *Calendar Year* Benefit Maximum	$10,000
Psychiatric and Substance Abuse Services - **Benefit Area "F"** Covered benefit as an inpatient or outpatient combined ~~Annual~~ *Calendar Year* Benefit Maximum	$5,000
Pharmacy - **Benefit Area "G"**	

Calendar Year Pharmaceutical *Benefit Maximum* ~~*Subject to Deductible and Coinsurance*~~ *Benefits are limited to a thirty (30) day supply*	$6,000

~~*(8-3-05)T*~~*(_____)*

COMMERCE & HUMAN RESOURCES

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.01.01 - RULES OF THE IDAHO BOARD OF ARCHITECTURAL EXAMINERS

DOCKET NO. 24-0101-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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 the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 453 through 456.

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 Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233 (208) 334-3945 fax

The Following Notice Was 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) 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 19, 2005.

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

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

Update document dates of incorporation by reference, update contact information for the Board, clarify examination process, provide that the examination must be completed within a five year period.

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 is no impact on general or dedicated funds.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these changes are not controversial.

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 26, 2005.

DATED this 23rd day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. INCORPORATION BY REFERENCE (RULE 4).
The document titled 200~~1~~4-200~~2~~5 NCARB Handbook for Interns and Architects, dated ~~*July*~~ August 200~~1~~4, 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 ~~*July*~~ August 200~~1~~4, 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. ~~*(3-15-02)*~~(____)

005. ADDRESS OF THE IDAHO BOARD OF ARCHITECTURAL EXAMINERS (RULE 5).
The office of the Board of Architectural Examiners is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220, Boise, Idaho 83702. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ~~*ibol@ibol.state.id.us*~~ arc@ibol.idaho.gov. The Board's official web site is at https://www.ibol.idaho.gov/arc.htm. ~~*(4-6-05)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

250. QUALIFICATIONS OF APPLICANTS (RULE 250).

01. ARE Applicants. All applicants for the Architectural Registration Examination (ARE) shall possess the minimum qualifications required by the ~~*2001-2002*~~ NCARB Handbook for Interns and Architects, ~~*dated July 2001,*~~ where such handbook ~~*for Interns and Architects*~~ does not conflict with Idaho law. All applicants for the ARE must have completed the Intern Development Program (IDP) requirements. ~~*(3-15-02)*~~(____)

02. Experience in Lieu of Degree Applicants. The Board may allow an applicant without an architecture degree to sit for the architecture examination upon determining that such applicant has attained the knowledge and skill approximating that attained by graduation from an accredited architecture curriculum including the submission of a record of eight (8) years or more of experience in architecture work of a character deemed satisfactory by the Board. Said experience shall be in addition to that necessary for completion of the Intern Development Program (IDP) requirements. Two (2) years of eight (8) or more years of experience may be accepted if determined that such experience is directly related to architecture under the direct supervision of a registered engineer (practicing as a structural, civil, mechanical or electrical engineer in the field of building construction) or a registered landscape architect. At least six (6) years of such experience must be obtained while working under the direct supervision of a licensed architect. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

350. REGISTRATION EXAMINATION (RULE 350).
The Board, having found that the content and methodology of the ARE prepared by NCARB is the most practicable and effective examination to test an applicant's qualifications for registration, adopts the ARE as the single, written and/or electronic examination for registration of architects in this state, and further adopts the following rules with respect thereto: (7-1-97)

01. When Taken. The Board will cause the ARE, prepared by NCARB, to be administered to all applicants eligible, in accordance with the requirements of the Board, by their training and education to be examined for registration on dates scheduled by the NCARB. The Board shall cause repeat divisions of the ARE to be administered to qualified candidates on such dates as are scheduled by the NCARB. The ARE examination is a multiple part examination prepared by NCARB. Content of the examination in all of its sections is available from the Board or NCARB. ~~*(7-1-98)*~~(____)

~~***02. Content**. The ARE comprises nine (9) divisions as follows: (7-1-93)*~~

~~***a.** Division A - PRE-DESIGN. (7-1-98)*~~

~~***b.** Division B - SITE PLANNING. (7-1-98)*~~

~~*i. Candidates who have not passed both Division B Written and Graphic prior to computerized ARE will need to take Site Planning. (7-1-98)*~~

~~***c.** Division C - BUILDING PLANNING and BUILDING TECHNOLOGY. (7-1-98)*~~

~~*i. Candidates who have not passed Division C prior to computerized ARE need to take both Building Planning and Building Technology. (7-1-98)*~~

~~***d.** Division D/F - GENERAL STRUCTURES. (7-1-98)*~~

~~***e.** Division E - LATERAL FORCES. (7-1-98)*~~

~~***f.** Division G - MECHANICAL AND ELECTRICAL. (7-1-98)*~~

~~***g.** Division H - MATERIALS AND METHODS. (7-1-98)*~~

~~***h.** Division I - CONSTRUCTION DOCUMENTS AND SERVICES. (7-1-98)*~~

0~~3~~2. Grading. The ARE shall be graded in accordance with the methods and procedures recommended by the NCARB. To achieve a passing grade on the ARE, an applicant must receive a passing grade in each division. Grades from the individual division may not be averaged. Applicants will have unlimited opportunities to retake division which they fail except as set forth in these rules. The Board shall accept passing grades of computer administered divisions of the ARE as satisfying the requirements for said division(s) when such examinations are administered as prescribed by the NCARB ~~*regardless of the date of the examination or location in which the examination took place*~~. ~~*(7-1-93)*~~(____)

~~***04. Transfer Credits**. Except as indicated at Subsection 350.02, above, applicants who had passed portions of the previous registration examinations (Professional Examination - Section A, Professional Examination - Section B, and Qualifying Test) will receive the transfer credits set forth below and need only take those divisions of ARE for which no transfer credit has been received. To be eligible for transfer credits for any portion of the Professional Examination - Section B, the applicant must have passed three (3) parts of that examination in one (1) sitting, in or after December, 1980.*~~

~~*NOTE: Since the history and theory of architecture is incorporated into all divisions of the ARE, no credit will be given for having passed the Qualifying Test - Section A, History.* (7-1-98)~~

~~***a.*** *For previous examinations passed credits go to the following ARE divisions:* (7-1-93)~~

~~*i.* *Professional Examination - Section B, Parts I and II -- Division A.* (7-1-93)~~

~~*ii.* *Professional Examination - Section A, (Design/Site) -- Divisions B and C.* (7-1-93)~~

~~*iii.* *Professional Examination - Section B, Part III -- Divisions D, E, F, G, and H.* (7-1-93)~~

~~*iv.* *Qualifying Test - Section B -- Divisions D, E and F.* (7-1-93)~~

~~*v.* *Qualifying Test - Section D -- Division G.* (7-1-93)~~

~~*vi.* *Qualifying Test - Section C -- Division H.* (7-1-93)~~

~~*vii.* *Professional Examination - Section B, Part IV -- Division I.* (7-1-93)~~

~~***b.*** *Applicants without an accredited professional degree in architecture must, in all cases, pass Divisions D, E, F, G and H of the ARE if they have not passed equivalent portions of the Qualifying Test: even though the applicant may have passed the professional Examination - Section B, Part III.* (7-1-93)~~

~~***c.*** *Applicants without an accredited professional degree in architecture must in all cases, pass Division A of the ARE if they have not passed Section A of the Qualifying Test: even though the applicant may have passed the Professional Examination - Section B, Parts I and II.* (7-1-93)~~

03. **Passing (ARE)**. To pass the ARE, an applicant must achieve a passing grade on each division. Effective July 1, 2006, and subject to certain conditions, a passing grade for any division of the ARE shall be valid for five (5) years, after which time the division must be retaken unless all divisions have been passed. The Board may allow a reasonable extension of such period in circumstances where completion of all divisions is prevented by a medical condition, active duty in military service, or other like causes. ( )

04. **Transition**. The transitional rules are as follows: ( )

a. For applicants who have passed all divisions of the ARE by July, 2006 regardless of the time taken, will have passed the ARE. ( )

b. For applicants who have passed one (1) or more but not all divisions of the ARE by July 1, 2006, such applicants will have five (5) years to pass all remaining divisions. A passing grade for any remaining division shall be valid for five (5) years, after which time the division must be retaken if the remaining divisions have not been passed. The five (5) year period shall

commence after July 1, 2006, on the date when the first passed division is administered. ( )

c. For applicants who have passed no divisions of the ARE by July 1, 2006, such applicants shall be governed by the above five (5) year requirement. The five (5) year period shall commence on the date when the first passed division is administered. ( )

COMMERCE & HUMAN RESOURCES

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.08.01 - RULES OF THE STATE BOARD OF MORTICIANS

DOCKET NO. 24-0801-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 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 the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 469 through 475.

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 Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233 (208) 334-3945 fax

The Following Notice Was 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) 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 19, 2005.

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

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

Correct Board contact information, add definition for funeral establishment and resident trainee, change meeting criteria, change examination dates, clarify resident trainee as mortician and/or funeral director, include funeral director in application process, define standard for pre-need trust account, minimum standards clarified as funeral establishments, clarify records of bodies, expand responsibility for records, and correct language in fee section.

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 is no impact on general or dedicated funds

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these changes are not controversial.

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 26, 2005.

DATED this 23rd day of August, 2005.

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 ~~*ibol@ibol.state.id.us*~~ mor@ibol.idaho.gov. The Board's official web site is at ~~*www2.state.id.us/ibol/mor*~~ https://www.ibol.idaho.gov/mor.htm. ~~*(3-13-02)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (RULE 10).

01. Board. The State Board of Morticians as prescribed in Section 54-1102, Idaho Code. (7-1-93)

02. Bureau. The Bureau of Occupational Licenses as prescribed in Sections 54-1106 and 67-2602, Idaho Code. (3-13-02)

03. Funeral Establishment. Funeral Establishment means a place of business at a specific street address or location devoted to the embalming and care and preparation for burial or disposal of dead human bodies including all portions of such business premises and all tools, instruments and supplies used in the preparation and embalming of dead human bodies for burial or disposal, and including any chapel or other facility in which funeral or other religious services may be conducted. ( )

04. Resident Trainee. The term "Resident Trainee" is defined as a person who is engaged in preparing to become licensed as a mortician or funeral director, and who practices under the direct and immediate personal supervision of a licensed mortician. ( )

011. -- 099. (RESERVED).

100. MEETINGS (RULE 100).
The board shall hold meetings ~~*on the third Tuesdays of July and January of each year*~~ no less than annually at such times and places as determined by the board. The annual election of ~~*officers*~~ chairman will be held during the ~~*July*~~ first meeting of each fiscal year. The chairman of the board shall preside at all meetings, appoint all committees, and perform all the functions incidental to the office of chairman. ~~*(7-1-93)*~~( )

101. -- 149. (RESERVED).

150. TIME OF EXAMINATIONS (RULE 150).
Examinations will be held no less than semi-annually ~~*in Boise, on the third (3rd) Tuesday of July and January, or*~~ at ~~*other*~~ such times or places as the Board may determine. ~~*(7-1-93)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

250. ~~*MORTICIAN*~~ RESIDENT TRAINEE (RULE 250).

01. Definition. The term "~~*Mortician*~~ Resident Trainee" as herein used is a person who is engaged in learning the practice of embalming and/or the profession of mortuary arts and sciences. Training shall be understood to mean diligent attention to the subject matter in the course of regular and full-time paid employment. Full-time employment shall mean a minimum of thirty-six (36) hours per week for fifty (50) weeks per year within the mortuary where the sponsoring resident mortician is practicing. It shall be further required that at least three-fourths (3/4) of the training period consists of a sponsoring licensed mortician instructing and demonstrating practices and procedures to increase knowledge of the service performed by a mortician or a funeral director as defined in Chapter 11, Title 54~~*-1102 Section A.*~~, Idaho Code. A ~~*Mortician*~~ Resident Trainee shall not sign a death certificate as provided under Idaho law. For the balance of the required hours it would be the responsibility of the sponsoring mortician, or his licensed appointee, to be immediately available for consultation with the trainee. All training must be served in the state of Idaho. ~~*(3-18-99)*~~(____)

02. Sponsoring Mortician. A practicing mortician within the state of Idaho who is duly registered as such with the Bureau ~~*of Occupational Licenses*~~ and assumes responsibility for the proper supervision and instruction of a "Resident ~~*Mortician*~~ Trainee". ~~*(7-1-93)*~~(____)

03. Eligibility to Be Licensed. No person shall be eligible to be licensed as a "~~*Mortician*~~ Resident Trainee" who has practiced as a resident trainee or apprentice for a total cumulative period of more than two (2) years in the state of Idaho. For purposes of accounting for total cumulative training as a "~~*Mortician*~~ Resident Trainee" the sponsoring mortician is required to notify the bureau at the beginning and termination of the training period. When a "~~*Mortician*~~ Resident Trainee" has completed ~~*his*~~ training, ~~*he must proceed to qualify*~~ qualification for licensure as a licensed "Mortician" or "Funeral Director must be completed within the following three (3) year period or said trainee must show good reason for further delay. ~~*(7-1-93)*~~(____)

04. Resident Trainee Applicants to Qualify. (7-1-93)

a. Must be a least eighteen (18) years of age. (7-1-93)

b. Must be of good moral character. (7-1-93)

c. Must have graduated from an accredited high school or have received an equivalent education as determined by the standards set and established by the state board of education. (7-1-93)

d. A photo as specified in Section 200 above. (3-13-02)

e. The effective date of the resident training shall be determined by the board at its next meeting. In no case shall it be prior to the date the application, together with the required fees, are received in the office of ~~*Occupational License*~~ the Bureau. ~~*(7-1-93)*~~(____)

f. Resident ~~*mortician*~~ training must be served under the direction of a qualified full time resident mortician licensed and practicing in Idaho. ~~*(7-1-93)*~~(____)

g. Applicants pursuing a mortician license must ~~C~~complete resident training affidavits showing time served, the number of bodies embalmed. ~~(7-1-93)~~(____)

h. ~~*The applicant must appear in person before the board before licensure may be completed.*~~ Applicants pursuing a funeral director license must complete resident training affidavits of conducting and/or providing assistance in twenty-five (25) funerals under supervision. ~~(7-1-93)~~(____)

05. Interruption in Training. An interruption in training of sixty (60) days or more constitutes termination of training. (7-1-93)

251. -- 299. (RESERVED).

300. APPLICATIONS AND ~~*REQUIREMENTS*~~ EXAMINATION (RULE 300).
In order to be admitted to the examination, the applicant must submit a~~*n*~~ completed application on ~~*a*~~ forms ~~*approved*~~ provided by the ~~*Board*~~ bureau ~~*with the required fees documenting*~~ and provide all requested documentation including proof of having completed the training period as prescribed by law and these rules, and meet the specific requirements for license as set forth in Section 54-1109 of the Idaho Code as follows: ~~(3-16-04)~~(____)

01. Age. Applicant must have attained the age of twenty-one (21) years by the time of examination. (7-1-93)

02. Moral Character. Must be of good moral character. (7-1-93)

03. Mortician Educational Requirements. Applicants for a mortician license ~~*M*~~must have completed and received credit for at least sixty (60) semester hours or ninety (90) quarter hours instruction in a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all such credits must be for courses in fields of liberal arts, business or science directly relating to the knowledge required to successfully compete in the field of mortuary science. In questionable cases the decision of the board shall be final. These requirements shall be in addition to and not considered a part of the ~~*successful*~~ completion of and graduation from a~~*n accredited embalming school for those pursuing licensure as a mortician*~~ mortuary college accredited by the American Board of Funeral Service Education that includes an embalming course of study. ~~(3-16-04)~~(____)

~~***a.*** *Applicants pursuing licensure as a mortician must also document successful completion of an embalming college accredited by the Americian Board of Funeral Service Education, Inc. or an embalming college approved by the Board.* *(3-16-04)*~~

~~***b.*** *Applicants pursuing licensure as a funeral director must also document completion of at least fifteen (15) semester credit hours from a mortuary college accredited by the American Board of Funeral Service Education, Inc., or document such credits as may otherwise be approved by the Board. An approved course of study shall include business law, psychology, sociology, funeral service counseling, funeral service management and other classes that relate to conducting funeral business.* *(3-16-04)*~~

04. ~~***Completion of One Year as a Resident Trainee***~~. ~~*Must have served one (1) year as*~~

~~required by statute as a resident trainee and receive certification from a sponsoring mortician in Idaho.~~ **Funeral Director Educational Requirements**. Applicants for a funeral director license must have completed and received at least sixty (60) semester hours' or ninety (90) quarter-hours' instruction from a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all such credits must be for courses in the fields of liberal arts, business or science as defined and specified by the board. These requirements shall be in addition to completion of at least fifteen (15) semester credit hours or the equivalent from a mortuary college accredited by the American board of funeral service education, inc., or such credits as are otherwise approved by the board, with course of study to include business law, psychology, sociology, funeral service counseling, funeral service management and other classes that relate to conducting funeral business. ~~(3-16-04)~~( )

~~**a.** *Trainees pursuing licensure as a mortician must document having assisted in embalming at least twenty-five (25) dead human bodies under the supervision of a sponsoring mortician.* (3-16-04)~~

~~**b.** *Applicants pursuing licensure as a funeral director must document having assisted in making at least twenty-five (25) funeral arrangements and in conducting twenty-five (25) funerals under the supervision of a sponsoring mortician.* (3-16-04)~~

05. ~~***Examination****. Each applicant for mortician or funeral director licensure must successfully pass the entire examination approved by the Board.*~~ **Photo**. A photo as specified in Section 200 of these rules. ~~(3-16-04)~~( )

06. Completion of One Year as a Resident Trainee. Must have served one (1) year as required by statute as a resident trainee and receive certification from a sponsoring mortician in Idaho. ( )

a. Trainees pursuing licensure as a mortician must document having assisted in embalming at least twenty-five (25) dead human bodies under the supervision of a sponsoring mortician. ( )

b. Applicants pursuing licensure as a funeral director must document having assisted in making at least twenty-five (25) funeral arrangements and in conducting twenty-five (25) funerals under the supervision of a sponsoring mortician. ( )

(BREAK IN CONTINUITY OF SECTIONS)

401. -- ~~449~~424.(RESERVED).

425. MAINTENANCE OF PRE-NEED TRUST ACCOUNT FEES (RULE 425).
Maintenance of pre-need trust accounts fee. Pursuant to Section 54-1134 D, Idaho Code, a fee not to exceed ten percent (10%) of the annual earned interest income may be charged for maintenance of pre-need trust accounts. ( )

426. -- 449. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

452. ~~*CREMATORY*~~ MINIMUM STANDARDS (RULE 452).

01. Reasonable Sanitation and Safety Required. In the interest of the protection of the public welfare, no license will be issued on an application to operate a funeral establishment or crematory unless it is apparent that the establishment or crematory can~~,~~ and will be operated in a reasonably sanitary and safe manner~~*, free from substantial annoyance to the public*~~.
~~*(3-16-04)*~~(____)

02. Reduction of Cremated Remains. No crematory will be licensed or operated unless it is capable of reducing human remains to cremains containing not more than five percent (5%) of the weight of the body immediately after death. (3-16-04)

03. Delay Before Cremation. No dead human body, regardless of cause of death, is to be cremated, nor is actual cremation of such a body to be commenced, unless the county coroner in the county in which the death occurred gives his written authorization to cremate the body. (3-16-04)

04. Embalming. If a dead human body is to be held longer than twenty-four (24) hours prior to burial, cremation, or other disposition, the body must be either embalmed or refrigerated at thirty-six degrees Fahrenheit (36F) or less until buried, cremated, or otherwise disposed of. ~~*No body can be held longer than fourteen (14) days after death prior to cremation unless there is a written request from the next-of-kin for holding the body.*~~ ~~*(3-16-04)*~~(____)

05. Casket Not Necessary. It is not necessary for the body to be in a casket for cremation to take place. (3-16-04)

a. This is not to be construed to mean that the crematory must cremate without a casket; and (3-16-04)

b. It will not prevent the operators from developing their own internal requirements for aesthetic or sanitary reasons. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

454. RECORDS ~~*OF CREMATION*~~ OF BODIES (RULE 454).

01. Content of Record. Each funeral establishment and crematory must maintain a

record of each burial, cremation, or other disposition of human remains, ~~*all in the form of that crematory log as adopted by the board,*~~ disclosing: ~~*(3-16-04)*~~(____)

a. The name of the decedent ~~*whose body was cremated*~~; and ~~*(3-16-04)*~~(____)

b. The name and address of the person, or names and addresses of the persons if more than one (1), authorizing the burial, cremation, or other disposition of that body ~~*as received by the crematory or its representative*~~; and ~~*(3-16-04)*~~(____)

~~**c.** *The date upon which that body was received by the crematory; and* *(3-16-04)*~~

~~**d.** *The place where that body was received; and* *(3-16-04)*~~

~~**e**~~**c.** A statement as to whether or not the body was embalmed; and (3-16-04)

~~**f**~~**d.** The date of the burial, cremation, or other disposition of that body; and ~~*(3-16-04)*~~(____)

~~**g**~~**e.** The subsequent disposal of ~~*the*~~ any cremated remains ~~*of that body by the crematory*~~. ~~*(3-16-04)*~~(____)

~~***02. Responsibility for Record**. Such record must be made as soon as reasonably possible after the cremation and must be dated and signed by the owner and operator of the crematory and by the licensed mortician who supervised or was otherwise directly responsible for the cremation.* *(3-16-04)*~~

~~***03. Inspection by the Board**. Such records must be maintained at the crematory and open for inspection at any reasonable time by the Board or its designated representatives.* *(3-16-04)*~~

455. RESPONSIBILITY, INSPECTION, AND CONFIDENTIALITY OF RECORDS (RULE 455).
~~*Any disclosure of information obtained by the Board in connection with licensure activities and records of funerals or cremations must comply with Idaho Public Records Act 9-337 et seq., Idaho Code.* *(3-16-04)*~~

01. Responsibility for Record. Records regarding the burial, cremation, and other disposition of human bodies must be made as soon as reasonably possible after the burial, cremation, or other disposition and must be dated and signed by the licensed mortician who supervised or was otherwise directly responsible for the burial, cremation, or other disposition. (____)

02. Inspection of Records. Records regarding the receipt, burial, cremation, and other disposition of human bodies must be maintained at the funeral establishment and crematory and be open for inspection at any reasonable time by the Board or its designated representatives. (____)

03. Confidentiality of Records. Any disclosure of information obtained by the Board

in connection with licensure activities and records of funerals or cremations must comply with Idaho Public Records Act 9-337 et seq., Idaho Code. ( )

456. -- 499. (RESERVED).

500. FEES (RULE 500).

01. Funeral Director. Funeral director - eighty-five dollars ($85). (3-13-02)

02. Funeral Establishment. Funeral establishment - one hundred twenty-five dollars ($125) (original license/annual renewal). (3-13-02)

03. Crematory Establishment. Crematory establishment - two hundred dollars ($200) (original license/annual renewal). (3-16-04)

04. Mortician. Mortician - eighty-five dollars ($85) (original license/annual renewal). (3-13-02)

05. ~~*Mortician*~~ Resident Trainee. ~~*Mortician*~~ Resident trainee - fifty dollars ($50) (original license/annual renewal). ~~*(3-13-02)*~~( )

06. Application Fee. Application fee - one hundred dollars ($100). (3-13-02)

07. Certificate of Authority. Certificate of Authority - fifty dollars ($50) (original certificate/annual renewal). (3-13-02)

08. Application for Reinstatement. Application for reinstatement within five (5) years - twenty-five dollars ($25) reinstatement fee and annual renewal fees for back years (Reference Section 67-2614, Idaho Code). (7-1-93)

~~***09. Maintenance of Pre-Need Trust Accounts Fee****. Pursuant to Section 54-1134 D., Idaho Code, a fee not to exceed ten percent (10%) of the annual earned interest income may be charged for maintenance of pre-need trust accounts.*~~ ~~*(7-1-93)*~~

COMMERCE & HUMAN RESOURCES

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD

DOCKET NO. 24-1801-0501

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: The pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective August 20, 2004, 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 and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section(s) 54-4106, Idaho Code, and Title XI of the federal statute.

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 temporary and proposed rule was published in the January 5, 2005 Idaho Administrative Bulletin, Vol. 05-1, pages 155 through 157. The effective date of the temporary rule is August 20, 2004.

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 Cherie Simpson at (208) 334-3233.

DATED this 23rd day of August, 2005.

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is August 20, 2004.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-4106, Idaho Code, and Title X1 of the federal statute.

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 January 19, 2005.

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:

As mandated by Federal requirements the educational credit for classroom hours is being changed from The appraisal foundation to the Qualifications Board.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)b, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Temporary rule is necessary to bring the education requirements into compliance with federal regulations.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this change is necessary to comply with federal requirements.

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 January 26, 2005.

DATED this 10th day of November, 2004.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste. 220
Boise, ID 83702
(208) 334-3233
(208) 334-3945 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

299. REQUIREMENTS FOR LICENSURE/CERTIFICATION (RULE 299).

All applicants for licensure/certification in any real estate appraiser classification must meet the following requirements in addition to those requirements set forth in Sections 300, 350, and 400 below. All applicants for trainee registration must meet the following requirements regarding education set forth in Section 299 in addition to those requirements set forth in Section 430. (3-13-02)

01. Examination. Successful completion of an examination approved by the Board pursuant to the guidelines of the Appraisal Foundation. (7-1-97)

02. Education. (7-1-97)

a. Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen (15) hours, and the individual successfully completes an examination pertinent to the educational offering. (7-1-97)

b. Credit for the classroom hour requirement may be obtained from the following: (7-1-97)

i. Colleges or Universities. (7-1-97)

ii. Community or Junior Colleges. (7-1-97)

iii. ~~*Any member of t*~~The Appraisal ~~*Foundation*~~ Qualifications Board. ~~*(7-1-97)*~~(8-20-04)T

iv. State or Federal Agencies or Commissions. (7-1-97)

v. Other providers approved by the Board. (7-1-97)

c. Only those courses completed preceding the date of application will be accepted for meeting educational requirements. (3-18-99)

d. Course credits which are obtained from the course provider by challenge examination without attending the course will not be accepted. (3-18-99)

e. Various appraisal courses may be credited toward the classroom hour education requirement. Applicants must demonstrate that their education involved coverage of all topics listed below. Licensed Residential and Certified Residential must include emphasis in one (1) to four (4) unit residential properties; Certified General must include emphasis in nonresidential properties. (7-1-97)

i. Influences on Real Estate Value. (7-1-97)

ii. Legal Considerations in Appraisal. (7-1-97)

iii. Types of Value. (7-1-97)

iv. Economic Principles. (7-1-97)

v. Real Estate Markets and Analysis. (7-1-97)

vi. Valuation Process. (7-1-97)

vii. Property Description. (7-1-97)

viii. Highest and Best Use Analysis. (7-1-97)

ix. Appraisal Statistical Concepts. (7-1-97)

x. Sales Comparison Approach. (7-1-97)

xi. Site Value. (7-1-97)

xii. Cost Approach. (7-1-97)

xiii. Income Approach. (7-1-97)

xiv. Valuation of Partial Interests. (7-1-97)

xv. Appraisal Standards and Ethics. (7-1-97)

f. Advanced courses will be those courses for which an introductory or basic course is required. Typically classes titled “Introductory,” “Basic,” or “Principles” will not be accepted for advanced requirements. (7-1-97)

03. Experience. (7-1-97)

a. The work product claimed for experience credit must be in conformity with the USPAP or shall be in compliance with generally accepted standards which were in effect at the time those appraisals were prepared. (3-13-02)

b. On or after July 1, 2003, appraisal experience must be obtained as a registered trainee or as a licensed or certified appraiser. A year of experience is equal to a minimum of one thousand (1,000) hours worked during a consecutive twelve (12) month period. Regardless of the number of experience hours submitted or obtained during any twelve (12) month period, no more than one thousand (1,000) of those hours may be credited to meet this requirement. Hours obtained in excess of one thousand (1,000) hours during any consecutive twelve (12) month period may not be credited or carried over into the next twelve (12) month period. (3-13-02)

c. Only experience gained during the five (5) years preceding application will be considered for evaluation. (7-1-97)

d. Acceptable non field appraisal experience includes, but is not limited to the following: Fee and Staff appraisal analysis, tax appraisal, appraisal analysis, review appraisal, real estate counseling, highest and best use analysis, and feasibility analysis/study. (3-18-99)

e. An appraiser applying for certification/licensure must verify his completion of the required experience via affidavit, under oath subject to penalty of perjury, and notarized on a form provided by the Board. (7-1-97)

i. To demonstrate experience the Board requires submission of a log which details hours claimed for experience credit. (7-1-97)

ii. The Board reserves the right to contact an employer for confirmation of length and extent of experience claimed. This may require an employer to submit appraisal reports and/or an affidavit. (7-1-97)

iii. The Board may request submission of written reports or file memoranda which substantiate an applicant's claim for experience credit. (7-1-97)

f. Ad valorem tax appraisers who demonstrate that they use techniques to value properties similar to those used by appraisers and effectively use the process as defined in Subsection 010.10, Field Real Estate Appraisal Experience will receive experience credit. (7-1-97)

COMMERCE & HUMAN RESOURCES

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD

DOCKET NO. 24-1801-0502

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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(s) 54-4106, 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 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 493 through 504.

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 Cherie Simpson at (208) 334-3233.

DATED this 14th day of November, 2005.

Rayola Jacobsen, Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233 (208) 334-3945 fax

The Following Notice Was 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) 54-4106, Idaho Code, and Title XI, federal statute.

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 19, 2005.

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

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

Update incorporation by reference and board contact information, clarify quorum for voting purposes, remove certification from fees, define when eligible for examination, amends registered trainee real estate appraiser classification, and amends qualifications criteria for certified residential and certified general real estate appraisers.

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 is no fiscal impact on general or dedicated funds.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these changes are mandated by federal Appraisal Qualifications Board.

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 26, 2005.

DATED this 23rd day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. INCORPORATION BY REFERENCE (RULE 4).
The document titled "Uniform Standards of Professional Appraisal Practice (USPAP)", 200~~5~~6 Edition published by the Appraisal Foundation and effective January 1, 200~~5~~6 as referenced in Subsection 700, is herein incorporated by reference and is available for review at the Board's office and may be purchased from the Appraisal Foundation. ~~*(4-6-05)*~~(____)

005. ADDRESS OF THE IDAHO REAL ESTATE APPRAISER BOARD (RULE 5).
The office of the Real Estate Appraiser Board is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main Street, Suite 220Boise, Idaho 83702-5642. The phone number of the Board is (208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ~~*ibol@ibol.state.id.us*~~ rea@ibol.idaho.gov. The Board's official web site address is https://www.ibol.idaho.gov. ~~*(4-6-05)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

100. ORGANIZATION AND MEETINGS (RULE 100).

01. Board Name. In accordance with Idaho Statutes, the name of this Board shall be the Idaho Real Estate Appraiser Board, hereafter called the Board. Whenever reference is made to "Law," the same shall refer to the Laws of the state of Idaho. (7-1-93)

02. Organization of Board. At the first meeting of each year, the Board shall organize and elect from its members a Chairman and Vice Chairman who shall assume the duties of their respective offices immediately upon such selection. (3-13-02)

03. Board Members and Duties. (7-1-93)

a. Chairman - The Chairman shall be a voting member of the Board, and when present preside at all meetings, appoint with the consent of the Board all committees, and shall otherwise perform all duties pertaining to the office of Chairman. The Chairman shall be an ex-officio member of all committees. (7-1-93)

b. 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)

101. -- 149. (RESERVED).

~~***150. PROCEDURES AND DUTIES (RULE 150).***~~

0~~*1*~~4. Meetings. The Board shall meet at least four (4) times annually and at such other times as requested by the Board or its chairman. (7-1-93)

0~~*2*~~5. ~~***Voting –***~~ **Quorum**. A quorum shall be three (3) board members. A majority vote of the quorum present shall be considered the action of the Board as a whole. ~~*(7-1-97)*~~(____)

~~***151. – 199. (RESERVED).***~~

~~*200*~~150.FEES (RULE ~~*200*~~150).
Fees are established in accord with Section 54-4113, Idaho Code as follows: (7-1-93)

01. Application. Application fee for ~~*Certification/Registration/*~~License - two hundred fifty dollars ($250). ~~*(3-13-02)*~~(____)

02. Original ~~*Certification/*~~License. Original ~~*Certification/*~~License - one hundred twenty-five dollars ($125*). ~~*(3-30-01)*~~(____)

03. ~~*Certification/*~~License Renewal. ~~*Certification/*~~License renewal - two hundred fifty dollars ($250*). ~~*(3-30-01)*~~(____)

04. Reinstatement. Reinstatement fees are as provided in Section 67-2614, Idaho Code - twenty-five dollars ($25). (7-1-93)

05. Application for Reciprocity. Application for reciprocity - two hundred fifty dollars ($250*). (3-30-01)

06. Original ~~*Certification/*~~License Via Reciprocity. Original ~~*Certification/*~~License via reciprocity - one hundred twenty-five dollars ($125*). ~~*(3-30-01)*~~(____)

07. Temporary Permit. Temporary permit - one hundred dollars ($100). (7-1-93)

08. Trainee Registration Fee. Trainee registration fee - fifty dollars ($50). (3-13-02)

09. Examination and Reexamination Fees. Examination and Reexamination fees will be calculated based on the actual cost of the examination. Successful applicants will be notified of the fees at the time they are scheduled for examination. (7-1-97)

10. Fees are Non-Refundable. Fees are non-refundable. (7-1-93)

11. Fees Followed By "*" Means. Proposed fees for these categories marked with an asterisk include ~~*an estimated*~~ twenty five-dollars ($25) to be submitted by the state to the federal government. Title XI, Section 1109 requires each state to submit a roster listing of state ~~*certified/*~~ licensed appraisers to the Appraiser Subcommittee "no less than annually". The state is also required to collect from such individuals who perform appraisals in federally related transactions an annual registry fee of "not more than twenty five dollars ($25)", such fees to be transmitted by the state to the federal government on an annual basis. ~~*(7-1-93)*~~(____)

151. -- 199. (Reserved).

~~*250*~~200.APPLICATION (RULE ~~*250*~~200).

01. Filing Application With Supporting Documents and Fees. Any person desiring to apply for ~~*certification/*~~licensure must submit a completed application with required supporting documents and appropriate fees to the Bureau at its official address. After the qualifications have been reviewed/verified and approved by the Board, the applicant will receive the pre-approved examination application and must submit the appropriate fees to the examining entity. ~~*(3-13-02)*~~(____)

02. Application Deadline Date. Completed applications must be received by the

Bureau at least thirty (30) days prior to the next scheduled board meeting in order to be reviewed by the Board. Applications received less than thirty (30) days in advance will be held until a subsequent meeting. (3-13-02)

03. Eligibility for Examination. The qualified applicant will be assigned to the first available examination subsequent to the determination of eligibility based on documentation that the applicant has met the required education and experience requirements. ~~*(7-1-97)*~~( )

04. Trainee Registration Application. Any person desiring registration as a trainee must submit a completed application with required supporting documents and appropriate fees to the Bureau at its official address. Completed applications must be received by the Bureau at least thirty (30) days prior to the next scheduled Board meeting in order to be reviewed by the Board. (3-13-02)

201. -- 249. (RESERVED).

Section 250 has been renumbered and moved to Section 200

~~***251. -- 298. (RESERVED).***~~

~~*299*~~250.REQUIREMENTS FOR LICENSURE~~*/CERTIFICATION*~~ (RULE ~~*299*~~250).
All applicants for licensure~~*/certification*~~ in any real estate appraiser classification must ~~*meet*~~ comply with the following education, experience and examination requirements in addition to meeting those requirements set forth in Sections 275, 300, 350, and 400 below. ~~*All applicants for trainee registration must meet the following requirements regarding education set forth in Section 299 in addition to those requirements set forth in Section 430.*~~ ~~*(3-13-02)*~~( )

~~***01. Examination**. Successful completion of an examination approved by the Board pursuant to the guidelines of the Appraisal Foundation.* *(7-1-97)*~~

0~~*2*~~1. Education. Effective July 1, 2006, hours will be credited only for courses with content that follows the Required Core Curriculum as outlined by the Appraisal Qualification Board. ~~*(7-1-97)*~~( )

a. Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen (15) hours, and the individual successfully completes a~~*n*~~ closed-book examination pertinent to the educational offering. ~~*(7-1-97)*~~( )

b. Credit for the classroom hour requirement may be obtained from the following: (7-1-97)

i. Colleges or Universities. (7-1-97)

ii. Community or Junior Colleges. (7-1-97)

iii. The Appraisal Qualifications Board. (8-20-04)T

iv. State or Federal Agencies or Commissions. (7-1-97)

v. Other providers approved by the Board. (7-1-97)

c. Only those courses completed preceding the date of application will be accepted for meeting educational requirements. (3-18-99)

d. Course credits ~~*which*~~ that are obtained from the course provider by challenge examination without attending the course will not be accepted. ~~*(3-18-99)*~~(____)

e. Various appraisal courses may be credited toward the classroom hour education requirement. Applicants must demonstrate that their education involved coverage of ~~*all*~~ those topics listed ~~*below*~~ in Subsection 250.01.e. that are required for the license classification for which application is being made. Licensed Residential and Certified Residential must include emphasis in one (1) to four (4) unit residential properties; Certified General must include emphasis in nonresidential properties. ~~*(7-1-97)*~~(____)

i. ~~*Influences on Real Estate Value*~~ Basic appraisal principles. ~~*(7-1-97)*~~(____)

ii. ~~*Legal Considerations in Appraisal*~~ Basic appraisal procedures. ~~*(7-1-97)*~~(____)

iii. ~~*Types of Value*~~ The fifteen (15) hour national USPAP course. ~~*(7-1-97)*~~(____)

iv. ~~*Economic Principles*~~ Market analysis and highest and best use. ~~*(7-1-97)*~~(____)

v. ~~*Real Estate Markets and Analysis*~~ Appraiser site valuation and cost approach. ~~*(7-1-97)*~~(____)

vi. ~~*Valuation Process*~~ Sales comparison approach. ~~*(7-1-97)*~~(____)

vii. ~~*Property Description*~~ Sales income approach. ~~*(7-1-97)*~~(____)

viii. ~~*Highest and Best Use Analysis*~~ Report writing and case studies. ~~*(7-1-97)*~~(____)

ix. ~~*Appraisal Statistical Concepts*~~ Statistics, modeling and finance. ~~*(7-1-97)*~~(____)

x. ~~*Sales Comparison Approach*~~ Advanced applications and case studies. ~~*(7-1-97)*~~(____)

xi. ~~*Site Value*~~ Appraisal subject matter electives. ~~*(7-1-97)*~~(____)

~~*xii. Cost Approach.*~~ ~~*(7-1-97)*~~

~~*xiii. Income Approach.*~~ ~~*(7-1-97)*~~

~~*xiv. Valuation of Partial Interests.*~~ ~~*(7-1-97)*~~

~~xv. Appraisal Standards and Ethics.~~ ~~(7-1-97)~~

f. Advanced courses will be those courses for which an introductory or basic course is required as a prerequisite. Typically classes titled "Introductory," "Basic," or "Principles" will not be accepted for advanced requirements. ~~(7-1-97)~~(____)

0~~3~~2. Experience. (7-1-97)

a. The work product claimed for experience credit must be in conformity with the USPAP or shall be in compliance with generally accepted standards which were in effect at the time those appraisals were prepared. (3-13-02)

b. ~~*On or after July 1, 2003,*~~ All appraisal experience must be obtained as a registered trainee or as a licensed ~~*or certified*~~ appraiser. ~~*A year of experience is equal to a minimum of one thousand (1,000) hours worked during a consecutive twelve (12) month period. Regardless of the number of experience hours submitted or obtained during any twelve (12) month period, no more than one thousand (1,000) of those hours may be credited to meet this requirement. Hours obtained in excess of one thousand (1,000) hours during any consecutive twelve (12) month period may not be credited or carried over into the next twelve (12) month period.*~~ ~~(3-13-02)~~(____)

c. Only experience gained during the five (5) years immediately preceding application will be considered for evaluation. ~~(7-1-97)~~(____)

d. Acceptable non field appraisal experience includes, but is not limited to the following: Fee and Staff appraisal analysis, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, review appraisal, real estate counseling, highest and best use analysis, and feasibility analysis/study. ~~(3-18-99)~~(____)

e. ~~*An appraiser*~~ Each applicant applying for ~~*certification/*~~licensure must verify ~~*his*~~ completion of the required experience via affidavit, under oath subject to penalty of perjury, and notarized on a form provided by the Board. ~~(7-1-97)~~(____)

i. ~~*To demonstrate experience t*~~The Board requires submission of a log ~~*which*~~ that details hours claimed for experience credit. The log must include the type of property, address of the property, report date, description of work performed, and number of work hours. ~~(7-1-97)~~(____)

ii. The Board reserves the right to contact an employer for confirmation of length and extent of experience claimed. This may require an employer to submit appraisal reports and/or an affidavit. (7-1-97)

iii. The Board may request submission of written reports or file memoranda ~~*which*~~ that substantiate an applicant's claim for experience credit. ~~(7-1-97)~~(____)

f. Ad valorem tax appraisers ~~*who*~~ must demonstrate ~~*that*~~ the~~y~~ use of techniques to value properties similar to those used by appraisers and effectively use the process as defined in

Subsection 010.10, Field Real Estate Appraisal Experience ~~will~~ in order to receive experience credit. ~~(7-1-97)~~(____)

03. **Examination**. Successful completion of an examination appropriate to the license classification being applied for and approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. (____)

251. -- 274. (RESERVED).

275. REGISTERED TRAINEE REAL ESTATE APPRAISER (RULE 275).

01. **Qualification**. Each applicant for registration as an appraiser trainee must meet the following requirements: (____)

a. Education. Beginning July 1, 2006, all applicants for registration as a trainee must document completion of at least seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: (____)

i. Basic Appraisal Principles - not less than thirty (30) hours specifically including Real Property Concepts and Characteristics, Legal Considerations, Influences on Real Estate Values, Types of Value, Economic Principles, Overview of Real Estate Markets and Analysis, and Ethics and How They Apply in Appraisal Theory and Practice; and (____)

ii. Basic Appraisal Procedures - not less than thirty (30) hours specifically including Overview of Approaches to Value, Valuation Procedures, Property Description, and Residential Applications; and (____)

iii. National USPAP Course - not less than fifteen (15) hours. (____)

b. Experience. All applicants for registration as a trainee must retain and identify at least one (1) licensed real estate appraiser who agrees to provide the supervision required by law and rule. The supervising appraiser shall: (____)

i. Hold a current and unrestricted Idaho license as a Certified Residential Appraiser or a Certified General Appraiser; and (____)

ii. Not have been disciplined by the Board within the previous four (4) years from acting as a supervisor; and (____)

iii. Not be registered to provide supervision responsibilities to more than three (3) appraiser trainees at any one (1) time; and (____)

iv. Be responsible for the training and direct supervision of the appraiser trainee; and (____)

v. Accept responsibility for all appraisal reports by signing and certifying that the report is in compliance with USPAP; and (____)

vi. Review all appraiser trainee appraisal report(s); and ( )

vii. Personally inspect each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of USPAP for the property type. ( )

c. Examination. Each trainee applicant shall document successful passage of examinations in each of the prerequisite courses required for registration as a trainee. ( )

02. **Scope and Practice**. An Appraiser Trainee shall not be involved in the appraisal of any property that exceeds the lawful scope of practice of the supervising appraiser. The appraiser trainee shall be subject to USPAP. ( )

a. Each appraiser trainee is permitted to have more than one (1) supervising appraiser provided a supervising appraiser is not registered to more than three (3) trainees at any one (1) time. ( )

b. An appraisal log shall be maintained for each supervising appraiser by the appraiser trainee and shall include no less than the following for each appraisal: ( )

i. Type of property. ( )

ii. Date of report. ( )

iii. Address of subject property. ( )

iv. Description of work performed by the trainee and the scope of review and supervision of the supervisor. ( )

v. Number of work hours. ( )

vi. Signature and license number of the supervising appraiser. ( )

c. An appraiser trainee shall be entitled to obtain copies of all appraisal reports prepared by the trainee. ( )

03. **Continuing Education**. Prior to the second renewal of an appraiser trainee registration the appraiser trainee shall be required to obtain: ( )

a. The equivalent of fifteen (15) classroom hours of instruction in approved courses or seminars during the twelve (12) month period preceding the renewal. ( )

b. All continuing education shall be in compliance with Subsections 401.01 through 401.03. ( )

c. Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities

that are determined to be equivalent to obtaining continuing education. ( )

d. The purpose of continuing education is to ensure that the appraiser trainee participates in a program that maintains and increases skill, knowledge and competence in real estate appraising. ( )

276. -- 298. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

300. LICENSED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 300).
The state licensed residential real estate appraiser classification applies to the appraisal of residential real property consisting of one (1) to four (4) noncomplex residential units having a transaction value less than one million dollars ($1,000,000) and complex one (1) to four (4) residential units having a transaction value less than two hundred fifty thousand dollars ($250,000). Applicants must meet the following ~~*examination,*~~ education, ~~*and*~~ experience and examination requirements in addition to complying with Section ~~*299*~~250. Subsequent to being licensed, ~~*an individual*~~ every licensee must annually meet the continuing education requirement. ~~*(7-1-97)*~~( )

01. Education. Prior to January 1, 2007, ~~*A*~~as a prerequisite to taking the examination for licensure as an Idaho Licensed Real Estate Appraiser, ~~*an*~~ each applicant shall present evidence satisfactory to the board ~~*that he has*~~ of having successfully completed not less than ninety (90) classroom hours of courses in subjects related specifically to real estate appraisal that have been approved by the board. Each applicant must have successfully completed not less than seventy (70) classroom hours of study related to those topics outlined under Subsection ~~*299*~~250.0~~*2*~~1.e., the basic principles of real estate appraising. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics will be credited to the classroom hour requirement. Beginning on January 1, 2007, as a prerequisite to taking the examination for licensure as an Idaho Licensed Residential Real Estate Appraiser, each applicant shall: ~~*(3-13-02)*~~( )

a. Document registration as an Appraiser Trainee; and ( )

b. Document the successful completion of not less than seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: ( )

i. Residential Market Analysis and Highest and Best Use - not less than fifteen (15) hours; and ( )

ii. Residential Appraiser Site Valuation and Cost Approach - not less than fifteen (15) hours; and ( )

iii. Residential Sales Comparison and Income Approaches - not less than thirty (30)

hours specifically including Valuation Principles and Procedures - Sales Comparison Approach; Valuation Principles and Procedures - Income Approach; Finance and Cash Equivalency; Financial Calculator Introduction; Identification, Derivation and Measurement of Adjustments; Gross Rent Multipliers; Partial Interests; Reconciliation; and Case Studies; and ( )

iv. Residential Report Writing and Case Studies - not less than fifteen (15) hours specifically including Writing and Reasoning Skills; Common Writing Problems; Form Reports; Report Options and USPAP Compliance; Case Studies. ( )

02. Experience. Prerequisite to sit for the examination: (7-1-97)

a. ~~*Equivalent of two (2) years*~~ Document two thousand (2,000) hours of supervised appraisal experience ~~*(see Subsection 299.03.b.)*~~ as a registered Appraiser Trainee in no less than twelve (12) months. Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. ~~*(7-1-97)*~~( )

b. Of the required two thousand (2,000) hours, the applicant must accumulate a minimum of one thousand five hundred (1,500) hours from field real estate appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection ~~*299.03.c*~~ 250.02.d. ~~*(7-1-97)*~~( )

03. Examination. Successful completion of the Licensed Residential Appraiser examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. ( )

301. -- 349. (RESERVED).

350. CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 350).
The State Certified Residential Real Estate Appraiser classification applies to the appraisal of residential properties of four (4) or less units without regard to transaction value or complexity. Applicants must meet the following ~~*examination,*~~ education, ~~*and*~~ experience and examination requirements in addition to complying with Section ~~*299*~~250. Subsequent to being certified ~~*an individual*~~ every licensee must annually meet the continuing education requirement.
~~*(7-1-97)*~~( )

01. Education. Prior to January 1, 2007, ~~*A*~~as a prerequisite to taking the examination for ~~*certification*~~ licensure as an Idaho Certified Residential Real Estate Appraiser, ~~*an*~~ each applicant shall present evidence satisfactory to the board ~~*that he has*~~ of having successfully completed not less than one hundred twenty (120) classroom hours of courses in subjects related specifically to real estate appraisal that have been approved by the board. Each applicant must have successfully completed not less than ninety (90) classroom hours of study related to those topics outlined under Subsection ~~*299*~~250.0~~*2*~~1.e., the basic principles of real estate appraising and thirty (30) classroom hours of advanced residential or non-residential specialized courses relating to the topics specified at Subsection ~~*299*~~250.0~~*2*~~1.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics; will be credited to the classroom hour requirement. Beginning on January 1, 2007, as a prerequisite to taking the examination for licensure as an Idaho Certified

Residential Real Estate Appraiser, each applicant shall: ~~*(3-13-02)*~~(____)

a. Hold an Associate Degree or higher from an accredited college or university or document successful completion of no less than twenty-one (21) college semester credit hours in English Composition, Principles of Economics (micro or macro), Finance, Algebra, Geometry or higher mathematics, Statistics, Introduction to Computers, and Business or Real Estate Law; and (____)

b. Document registration as an Appraiser Trainee and completion of the education required for licensure as a Licensed Residential Real Estate Appraiser or hold a current license as a Licensed Residential Real Estate Appraiser; and (____)

c. Document the successful completion of not less than fifty (50) classroom hours of courses in subjects related to real estate appraisal as follows: (____)

i. Statistics, Modeling and Finance - not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and (____)

ii. Advanced Residential Applications and Case Studies - not less than fifteen (15) hours specifically including Complex Property, Ownership and Market Conditions; Deriving and Supporting Adjustments; Residential Market Analysis; and Advanced Case Studies; and (____)

iii. Appraisal Subject Matter Electives - not less than twenty (20) hours and may include hours over the minimum shown in Subsection 350.01.c. (____)

02. Experience. Experience is a prerequisite to sit for the licensure examination: ~~*(3-18-99)*~~(____)

a. ~~*Prerequisite to sit for the examination: Equivalent of three (3) years*~~ Document two thousand five hundred (2,500) hours of appraisal experience in no less than twenty-four (24) months (see Subsection ~~*299.03.b.*~~250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. ~~*(3-18-99)*~~(____)

b. ~~*The applicant must accumulate a minimum of two thousand five hundred (2,500) hours of real estate appraisal experience in not less than thirty (30) months.*~~ Two thousand (2,000) hours of the experience shall be from residential field appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection ~~*299.03.c*~~250.02.d. ~~*(4-5-00)*~~(____)

351. -- 399. (RESERVED).

400. CERTIFIED GENERAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 400).
The State Certified General Real Estate Appraiser classification applies to the appraisal of all types of real property. Applicants must meet the following examination, education, and experience requirements in addition to complying with Section 299. Subsequent to being certified, an individual must meet the continuing education requirement. (7-1-97)

01. Education. Prior to January 1, 2007, ~~A~~as a prerequisite to taking the examination for ~~*certification*~~ licensure as an Idaho State Certified General Real Estate Appraiser, ~~*an*~~ each applicant shall present evidence satisfactory to the board ~~*that he/she has*~~ of having successfully completed not less than one hundred eighty (180) classroom hours of courses in subjects related specifically to real estate appraisal approved by the board. Each applicant must have successfully completed not less than one hundred sixty (160) classroom hours of study related to those topics outlined under Subsection ~~*299*~~250.0~~2~~1.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics; and one hundred (100) classroom hours of advanced non residential specialized courses relating to the topics specified at Subsection ~~*299*~~250.0~~2~~1.e. Beginning on January 1, 2007, as a prerequisite to taking the examination for licensure as an Idaho Certified General Real Estate Appraiser, each applicant shall: ~~*(3-13-02)*~~( )

a. Hold a Bachelors Degree or higher from an accredited college or university or document successful completion of no less than thirty (30) college semester credit hours in English Composition, Micro Economics, Macro Economics, Finance, Algebra, Geometry or higher mathematics, Statistics, Introduction to Computers, and Business or Real Estate Law, and two (2) elective courses in accounting, geography, ageconomics, business management, or real estate; and ( )

b. Document registration as an Appraiser Trainee or licensure as a Licensed Residential Real Estate Appraiser or licensure as a Certified Residential Real Estate Appraiser; and ( )

c. Document the successful completion of not less than two hundred ten (210) classroom hours of courses in subjects related to real estate appraisal as follows: ( )

i. Statistics, Modeling and Finance - not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and ( )

ii. General Appraiser Market Analysis and Highest and Best Use - not less than thirty (30) hours; and ( )

iii. General Appraiser Sales Comparison Approach - not less than thirty (30) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and ( )

iv. General Appraiser Site Valuation and Cost Approach - not less than thirty (30) hours; and ( )

v. General Appraiser Income Approach - not less than sixty (60) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and ( )

vi. General; Appraiser Report Writing and Case Studies - not less than thirty (30) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. ( )

02. Experience. Experience is a prerequisite to sit for the licensure examination: ~~(3-18-99)~~( )

a. ~~*Prerequisite to sit for the examination. Equivalent of*~~ Document three thousand (3,000) ~~*years*~~ hours of appraisal experience in no less than thirty (30) months (See Subsection ~~*299.03.b.*~~250.02.). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. ~~(3-18-99)~~( )

b. ~~*The applicant must accumulate a minimum of three thousand (3,000) hours of appraisal experience in not less than thirty-six (36) months. Two*~~ One thousand five hundred (~~*2,000*~~1,500) hours of the experience must be nonresidential ~~*field*~~ appraisal experience. The balance of one thousand five hundred (~~*1,000*~~1,500) hours may be solely residential experience or can include up to five hundred (500) hours of nonfield experience as outlined in Subsection ~~*299.03.c*~~250.02.d. ~~(4-5-00)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

~~***402. – 429. (RESERVED).***~~

~~***430. REGISTERED TRAINEE REAL ESTATE APPRAISER. (RULE 430).***~~

~~***01. Scope of Practice****. An Appraiser Trainee shall not be involved in the appraisal of any property that exceeds the lawful scope of practice of the supervising appraiser. The appraiser trainee shall be subject to USPAP. (3-13-02)***

~~***02. Supervision****. The appraiser supervising shall be subject to the following: (3-13-02)***

~~***a.*** *The appraiser trainee shall be under the direct supervision of an appraiser who holds a current Idaho license in good standing. (3-13-02)***

~~***b.*** *A supervising appraiser shall not have been disciplined by the Board within the previous four (4) years from acting as a supervisor. (3-13-02)***

~~***c.*** *A supervising appraiser shall be limited to supervising no more than three (3) appraiser trainees. (3-13-02)***

~~***d.*** *The supervising appraiser shall be responsible for the training and direct supervision of the appraiser trainee by: (3-13-02)***

~~*i. Accepting responsibility for all appraisal reports by signing and certifying that the*~~

~~*report is in compliance with USPAP.* (3-13-02)~~

~~*ii. Reviewing all appraiser trainee appraisal report(s); and* (3-13-02)~~

~~*iii. Personally inspecting each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of USPAP for the property type.* (3-13-02)~~

~~***e.*** *Each appraiser trainee is permitted to have more than one (1) supervising appraiser.* (3-13-02)~~

~~***f.*** *An appraisal log shall be maintained for each supervising appraiser by the appraiser trainee and shall include the following for each appraisal:* (3-13-02)~~

~~*i. Type of property.* (3-13-02)~~

~~*ii. Client name and address.* (3-13-02)~~

~~*iii. Address of subject property.* (3-13-02)~~

~~*iv. Description of work performed.* (3-13-02)~~

~~*v. Number of work hours.* (3-13-02)~~

~~*vi. Signature and license number of the supervising appraiser.* (3-13-02)~~

~~***03. Qualification****. An appraiser trainee must meet the following requirements:* (3-13-02)~~

~~***a.*** *There is no examination requirement for registration as a Appraiser Trainee.* (3-13-02)~~

~~***b.*** *Applicants for registration must document completion of at least seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as provided in Section 299, that shall include training in USPAP.* (3-13-02)~~

~~***04. Continuing Education****. Prior to the second renewal of an appraiser trainee registration the appraiser trainee shall be required to obtain:* (3-13-02)~~

~~***a.*** *The equivalent of fifteen (15) classroom hours of instruction in approved courses or seminars during the twelve (12) month period preceding the renewal.* (3-13-02)~~

~~***b.*** *All continuing education shall be in compliance with Subsections 401.01 through 401.03.* (3-13-02)~~

~~***c.*** *Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities*~~

~~*which are determined to be equivalent to obtaining continuing education.* *(3-13-02)*~~

~~***d.*** *The purpose of continuing education is to ensure that the appraiser trainee participates in a program that maintains and increases skill, knowledge and competence in real estate appraising.* *(3-13-02)*~~

4~~31~~02. -- 449. (RESERVED).

COMMERCE & HUMAN RESOURCES

IDAPA 33 - REAL ESTATE COMMISSION

33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

DOCKET NO. 33-0101-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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 54-2007, 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.

Effective July 1, 2005, and as a result of Senate Bill 1010, the text being deleted by this rulemaking was added to statute, at Section 54-2018, Idaho Code. The rulemaking is necessary to comply and coordinate with deadlines in the statutory amendment resulting from SB 1010. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005 Idaho Administrative Bulletin, Vol. 05-10, pages 567 through 568.

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 on the state general fund, since all licensing fee revenues are credited to the Special Real Estate Account.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Donna Jones, (208) 334-3285 ext. 232.

DATED this 28th day of October, 2005.

Donna M. Jones
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 633 N. Fourth St., Boise, ID 83702
PO Box 83720, Boise, ID 83720
(208) 334-3285; (208) 334-2050 (fax)

The Following Notice Was Published With The Temporary And Proposed Rule

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-2007, Idaho Code.

PUBLIC HEARING: Public hearing concerning this rulemaking will be held as follows:

October 26th, 2005 at 10:00 a.m.
The Idaho Real Estate Commission
633 North Fourth Street
Boise, Idaho 83720

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:

Effective July 1, 2005, and as a result of Senate Bill 1010, the text being deleted by this rulemaking has been added to statute, at Section 54-2018, Idaho Code.

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 rulemaking is necessary to comply and coordinate with deadlines in the statutory amendment resulting from SB 1010.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Donna Jones, (208) 334-3285 ext. 232.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Donna M. Jones
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 633 N. Fourth St., Boise, ID 83702
Mailing Address: PO Box 83720, Boise, ID 83720
Phone: (208) 334-3285
Fax: (208) 334-2050

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

~~400. CONTINUING EDUCATION A PREREQUISITE FOR RENEWAL OF ACTIVE LICENSE.~~
~~Every licensee applying to renew a license on active status, or applying to change from inactive to active license status, shall first meet the continuing education requirements set forth in Sections 54-2018 and 54-2023, Idaho Code. (3-20-04)~~

~~401. OBTAINING CONTINUING EDUCATION CREDIT.~~
~~In addition to those courses that have been certified or preapproved for continuing education by the Commission, and as provided in Section 54-2023(5)(e), Idaho Code, a licensee may obtain continuing education credit for the successful completion of any course meeting either of the following descriptions, without the preapproval or certification of the Commission: (3-20-04)~~

~~01. Professional Designation Courses~~*~~. Courses developed by national professional organizations and that are required in order to earn professional designations from a national organization in specialized areas of licensed real estate practice; or (3-20-04)~~*

~~02. Courses Accredited by Other Professions~~*~~. Courses approved by and offered in satisfaction of another professional or occupational licensing authority's education requirements, if within the approved topics listed in Rule 402. (3-20-04)~~*

400. -- 401. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~403. CERTIFICATION OF COMPLIANCE AND SATISFACTORY PROOF.~~
~~As required by Section 54-2018, Idaho Code, a licensee applying to renew an active license, or to change from inactive to active status, shall certify having met the continuing education requirements set forth in Section 54-2023, Idaho Code, in the form and manner approved by the commission. The licensee shall keep satisfactory proof of having completed the requirement, and upon request, shall provide satisfactory proof to the Commission of having completed the requirement. (3-20-04)~~

~~***01. Commission Request for Proof of Compliance****. The commission may request satisfactory proof of continuing education compliance from any licensee who has submitted a certification of continuing education compliance. The request shall state the time within which the proof must be received in the Commission office, which time shall not be less than ten (10) business days. (3-20-04)***~~

~~***02. Satisfactory Proof of Compliance****. Upon request from the Commission, the licensee shall submit satisfactory proof of having met the continuing education requirement. Satisfactory proof shall include, for each course listed in the certificate of compliance, the following: (3-20-04)***~~

~~***a.*** *Satisfactory evidence of having successfully completed the course, which shall consist of: (3-20-04)*~~

~~*i.* *A transcript of the course taken; (3-20-04)*~~

~~*ii.* *A letter from the provider verifying successful completion of the course; or (3-20-04)*~~

~~*iii.* *A course completion certificate; and (3-20-04)*~~

~~*iv.* *Shall clearly identify the licensee, the title of the course or challenge exam, the course provider, the number of classroom hours, and the challenge exam or course completion date; and (3-20-04)*~~

~~***b.*** *Satisfactory evidence that the course listed is approved for continuing education credit, as provided by section 54-2023, Idaho Code, which shall be established by the course certification approval number. The Commission may, in its sole discretion, accept alternative documentation establishing that the course is approved for credit. (3-20-04)***~~

~~***404. FAILURE TO SUBMIT SATISFACTORY PROOF—INACTIVATION OF LICENSE.*** *Failure of a licensee to comply with a Commission request for satisfactory proof of continuing education compliance shall be deemed an insufficient application for licensure under Section 67-5254, Idaho Code, and shall result in the immediate inactivation of the license. The inactivation of the license shall be deemed a partial expiration of the license. (3-20-04)***~~

~~***405. AUTHORITY TO INVESTIGATE AND DISCIPLINE NOT LIMITED.*** *Nothing in these rules shall limit the Commission's authority granted in Sections 54-2058 through 54-2065, Idaho Code, to investigate and discipline a licensee for misconduct. (3-20-04)***~~

~~***406. FALSIFICATION OF CERTIFICATES OR DOCUMENTATION.*** *Any licensee who, acting alone or in concert with others, wilfully or knowingly causes or allows a Certification of Continuing Education Compliance, or any written documentation verifying a Certification of Continuing Education Compliance, to be submitted to the Commission which is false, fraudulent, or misleading, shall be subject to disciplinary action, including but not limited to suspension or revocation of license, in accordance with Chapter 52, Title 67, Idaho Code; provided, however, that nothing herein shall entitle such licensee to notice and hearing on the***~~

~~*automatic inactivation of license provided for in these rules.*~~ ~~*(3-20-04)*~~

40~~7~~3. -- 999. (RESERVED).

COMMERCE & HUMAN RESOURCES

IDAPA 59 - PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO

59.01.06 - RETIREMENT RULES OF THE PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

DOCKET NO. 59-0106-0501

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 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, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 59-1314(1), 33-1228, and 67-5339, 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 text of the pending rule with an explanation of the reasons for the change.

The Board has determined, based on actuarial studies and utilization data, that the current contribution rates for funding the unused sick leave account for public school employees under Section 33-1228, Idaho Code, is inadequate to meet the future obligations created under that section. As a result, those contributions rates, which are expressed as a percentage of employees' salaries, are being increased. The Board has also determined that it is necessary to have multiple rates based on utilization, since some school districts grant more days of sick leave than other districts or permit more days to accrue, as currently permitted by Section 33-1218, Idaho Code, which disproportionately increases liabilities to the fund. The rate increases will be phased in over a three year period beginning July 1, 2006. Other changes have also been made to Rules 550 and 552 to avoid manipulation of hourly rates and daily rates used to calculate benefits under unused sick leave and to maintain equity in contribution rates in the event of non-traditional work weeks. Other technical changes have also made to the rules to update the address of the Coeur d'Alene Office in Rule 2; to correct a typographic error in Rule 6; to clarify the retirement election requirements of Rule 122 and to provide for a default election when a member fails to make one; to change terminology in Rules 142 and 147 that more accurately describes the effect of reemployment on retirement benefits; Rule 701 has been changed to conform to a statutory change allowing inactive members to purchase service. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 5, 2005, Idaho Administrative Bulletin, Vol. 05-10, pages 713 through 716.

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, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this pending rule, contact Alan

H. Winkle, Executive Director of PERSI, 334-3365.

DATED this 31st day of October, 2005.

Alan H. Winkle
Executive Director
Public Employee Retirement System of Idaho
607 N. 8th, Boise, ID 83702
P.O. Box 83720, Boise, ID 83720-0078
Phone: 208-334-3365
Fax: 208-334-3804

The Following Notice Was Published With The Proposed Rule

AUTHORITY: In compliance with Section 67-5222(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), 33-1228, and 67-5339, 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 19, 2005.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodations 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 Board has determined, based on actuarial studies and utilization data, that the current contribution rates for funding the unused sick leave account for public school employees under Section 33-1228, Idaho Code, is inadequate to meet the future obligations created under that section. As a result, those contributions rates, which are expressed as a percentage of employees' salaries, are being increased. The Board has also determined that it is necessary to have multiple rates based on utilization, since some school districts grant more days of sick leave than other districts or permit more days to accrue, as currently permitted by Section 33-1218, Idaho Code, which disproportionately increases liabilities to the fund. The rate increases will be phased in over a three year period beginning July 1, 2006. Other changes have also been made to Rules 550 and 552 to avoid manipulation of hourly rates and daily rates used to calculate benefits under unused sick leave and to maintain equity in contribution rates in the event of non-traditional work weeks.

Other technical changes have also made to the rules to update the address of the Coeur d'Alene Office in Rule 2; to correct a typographic error in Rule 6; to clarify the retirement

election requirements of Rule 122 and to provide for a default election when a member fails to make one; and to change terminology in Rules 142 and 147 that more accurately describes the effect of reemployment on retirement benefits.

Rule 701 has been changed to conform to a statutory change allowing inactive members to purchase service.

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: N/A. These rules do raise contribution rates to the unused sick leave fund for school districts but those increases come from sources other than the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, 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 Alan H. Winkle, Executive Director of PERSI, 334-3365.

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 26, 2005.

DATED this 22nd day of August, 2005.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).
Written interpretations of these rules, to the extent they exist, are available from PERSI, at the following locations:

PERSI Boise Office
607 North Eighth Street
Boise, Idaho 83702
Phone: 208/334-3365 or 1-800-451-8228
Fax: 208/334-4026

PERSI Pocatello Office
850 E. Center, Suite D
Pocatello, Idaho 83201
Phone: 208/236-6225 or 1-800-762-8228
Fax: 208/236-6159

PERSI Coeur d'Alene Office
2005 Ironwood Parkway, Suite ~~142~~ 226
Coeur d'Alene, Idaho 83814
Phone: 208/769-1474 or 1-800-962-8228
Fax: 208/769-1476

(Amended 5-6-94). ~~(5-6-94)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

006. CITATION (RULE 6).
The official citation of this chapter is IDAPA 59.01.06.000, et seq. For example, this section's citation is IDAPA 59.01.06.006. In documents submitted to PERSI or issued by PERSI these rules may be cited as PERSI Retirement Rule and ~~*action*~~ section number less leading zeros. For example, this rule may be cited as PERSI Retirement Rule 6.
(Amended 1-1-94). ~~(1-1-94)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

122. CONTINGENT ANNUITANT OPTION AND SPOUSAL CONSENT (RULE 122).
~~*In accordance with federal statutes which provide for Internal Revenue Service Tax-exempt plans, every member who retires under the provisions of Chapter 13, Title 59, Idaho Code, shall, prior to retirement, certify that he/she understands the contingent annuitant options and that he/she either elects one of those options or executes a waiver of the election of one (1) of those options.*~~ Except as provided in this rule, a member is required to complete and submit an approved retirement application and select either a regular or optional retirement allowance. The member's signature must be notarized. The application for retirement indicating the election made by the retiring member shall also be signed by the spouse certifying he/she understands and consents to the election made by the member. The spouse's signature must be notarized. If an inactive member reaches service retirement age, or an active member who has reached service retirement age separates from service, and has failed to complete and submit an approved retirement application and select either a regular or optional retirement allowance within ninety (90) days thereafter, the member shall be deemed to have selected a regular retirement allowance and no other selection shall be required or permitted. (Amended 1-1-94) ~~(1-1-94)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

142. RETIRED MEMBER BECOMING AN ACTIVE MEMBER (RULE 142).
A PERSI retired member employed in a position which involves service of normally twenty (20) hours or more per week for a period of five (5) or more consecutive months or longer will return

to the status of an active member. Retirement benefits will ~~*terminate*~~ suspend on reemployment and employee and employer contributions will resume to provide additional retirement credits. If a retired member is reemployed in a position which involves service of twenty (20) hours or more per week for a period of less than five (5) consecutive months, their monthly retirement benefits will continue to be paid. If the member's reemployment should equal or exceed the five (5) month period for any reason, the member will be required to repay the retirement benefits paid during the five (5) month period which they were reemployed and they will return to the status of an active member. Employee and employer contributions will be due for the five (5) consecutive month period. (Amended 1-1-94)

Statutory Reference: Section 59-1356, Idaho Code. ~~*(1-1-94)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

147. SEPARATION FROM EMPLOYMENT AFTER REEMPLOYMENT (RULE 147).
Upon subsequent separation from employment after reemployment, the member's original monthly retirement allowance will ~~*be reinstated*~~ resume with appropriate cost-of-living adjustments plus the addition of a separate allowance computed with respect to salary and service credited during the reemployment period. (Amended 1-1-94)

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, 67-5339~~*, 33-1228*~~, 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, ~~*such as teachers,*~~ 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) ~~*(3-30-01)*~~(____)

551. (RESERVED).

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 67-5339, 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 ~~*one point fifteen*~~ the percentage ~~*(1.15%)*~~ 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, 2007	July 1, 2008
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). ~~*(3-30-01)*~~( )

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)

(BREAK IN CONTINUITY OF SECTIONS)

701. TIME OF RETIREMENT (RULE 701).
Within ninety (90) days before a~~*n active*~~ member's effective date of retirement, the member may request the cost of service to be purchased. Costs provided for purchased service are valid only for the effective date requested. Purchased service will be calculated into the member's benefit only to the extent that it is paid by the effective date. In no event shall service be credited for which payment has not been made. Service may be purchased with after-tax dollars or with eligible rollover distributions. The member's service class at the time of purchase determines the class of service that may be purchased. (Amended 3-30-01) ~~*(3-30-01)*~~( )