

Dear Senators HARRIS, LODGE, Stennett, and
Representatives HARRIS, Armstrong, Smith:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Office of the Attorney General:

IDAPA 04.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking
(Docket No. 04-0000-1900F).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 07/16/2019. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 08/13/2019.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate State Affairs Committee and the House State Affairs Committee
FROM: Principal Legislative Drafting Attorney - Ryan Bush
DATE: June 26, 2019
SUBJECT: Office of the Attorney General

IDAPA 04.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking (Docket No. 04-0000-1900F)

The Office of the Attorney General has submitted temporary and proposed rules that reauthorize and republish, in full, the following previously approved chapter under IDAPA 04:

04.02.02, Idaho Rules of Telephone Solicitations and Pay-Per-Telephone-Call Services

This is a fee rule. The fees or charges reauthorized are currently existing.

These rules were previously analyzed and reviewed by the Legislative Services Office upon their initial promulgation. No substantive changes are noted.

cc: Office of the Attorney General
Brett T. DeLange

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 04 – OFFICE OF THE ATTORNEY GENERAL

DOCKET NO. 04-0000-1900F

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED FEE RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rule listed in the descriptive summary of this notice is June 30, 2019.

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 rulemaking procedures have been initiated. The action is authorized pursuant to Sections 48-1006(1) and 48-1106, Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

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

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 04, rules of the Office of the Attorney General:

IDAPA 04

- 04.02.02, *Idaho Rules of Telephone Solicitations and Pay-Per-Telephone-Call Services*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found (and the Attorney General concurs) that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

These rules govern important matters related to Idaho's marketplace as regards to telephone solicitations and pay-per-telephone-call services.

The fee or charge imposed by the rules, expressly authorized by Section 48-1006(3)(b), Idaho Code, is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget. These rules and the fees set forth therein are necessary in order to assure that laws and rules regulating the practices of telephone solicitors are enforced.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules. The fees set forth in these rules impose a fifty-dollar (\$50) registration fee upon telephone solicitors required to register with the Attorney General. For those solicitors renewing their registration, the fee is twenty-five dollars (\$25).

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to

have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brett DeLange, Chief, Consumer Protection Division, Office of the Attorney General. Mr. DeLange can be reached at (208) 334-4114 or brett.delange@ag.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Brett T. DeLange, Deputy Attorney General
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Office of the Attorney General
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**IDAPA 04
TITLE 02
CHAPTER 02**

**04.02.02 – IDAHO RULES OF TELEPHONE SOLICITATIONS AND PAY-PER-TELEPHONE-
CALL SERVICES, OFFICE OF THE ATTORNEY GENERAL**

**Subchapter A – General Provisions
(Rules 0 - 19)**

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Title 67, Chapter 52, Idaho Code, and pursuant to Sections 48-1006(1), 48-1106, and 48-604, Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules shall be entitled “Idaho Rules of Telephone Solicitations and Pay-Per-Telephone-Call Services, Office of the Attorney General,” IDAPA 04, Title 02, Chapter 02. (7-1-93)

02. Scope. This chapter has the following scope: These rules are intended to safeguard persons against deceit and financial hardship, to insure, foster, and encourage competition and fair dealings among telephone solicitors by requiring adequate disclosure, and to prohibit representations that have the capacity, tendency, or effect of misleading a purchaser acting reasonably under the circumstances. Further, these rules are intended to provide reasonable guidance to persons doing telephone solicitations and providing pay-per-telephone-call services either from or to locations in the state of Idaho. (7-1-93)

002. WRITTEN INTERPRETATIONS -- AGENCY GUIDELINES (RULE 2).

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has written statements that pertain to the interpretation of the rules of this chapter, or to the compliance with the rules of this chapter. The document is available for public inspection and copying at cost at the Office of the Attorney General, Consumer Protection Unit. (7-1-93)

003. RULES OF CONSTRUCTION (RULE 3).

Without limiting the scope of any section of the ITSA or the IPTCA, or any other rule or law, these rules shall be liberally construed and applied to promote the general purposes and policies of these Acts. (7-1-93)

004. NON-INCLUSIVE (RULE 4).

These rules are not intended to cover all trade practices that violate the provisions of the ITSA or the IPTCA. Other areas of illegal telephone solicitations or pay-per-telephone-call services not specifically encompassed by these rules are still actionable under the ITSA, the IPTCA, or the Idaho Consumer Protection Act, codified at Title 48, Chapter 6, Idaho Code. (7-1-93)

005. CUMULATIVE (RULE 5).

These rules are intended to be cumulative in effect and supplementary to each other as well as to the Idaho Consumer Protection Rules, codified at IDAPA 04.02.01. If acts or practices are governed by more than one rule under either these rules or the Idaho Consumer Protection Rules, compliance with all applicable rules is required. (7-1-93)

006. NON-EXCLUSIVE (RULE 6).

These rules are in addition to, and do not affect, any other rights or obligations that may exist by statute or judicial decision. (7-1-93)

007. EXCEPTIONS TO THESE RULES (RULE 7).

Exempted telephone solicitors are exempt from subchapters C, D, and H, and TSR 056 and TSR 057. Exempted information providers are exempt from subchapter F. (7-1-93)

008. CITATION (RULE 8).

The official citation of these rules is IDAPA 04.02.02.000. For example, this section's citation is IDAPA 04.02.02.008. In written submissions to the Attorney General or issued by the Attorney General, these rules may be cited as TSR (Telephone Solicitation Rules) and rule number less leading zeroes. For example, this rule may be cited as TSR 008. (7-1-93)

009. -- 019. (RESERVED)

Subchapter B -- Definitions
(Rules 20 -- 29)

020. DEFINITIONS (RULE 20).

The definitions set forth in Sections 48-1002 and 48-1102, Idaho Code, apply with full force and effect to all provisions and sections of these rules. Terms not defined in these rules, the Idaho Consumer Protection Rules, codified at IDAPA 04.02.01.000, or Sections 48-1002, 48-1102, or 48-602, Idaho Code, shall be construed in accordance with general principles of Idaho law. As used in this chapter: (7-1-93)

01. Advertisement (Including Words of Similar Meaning or Import). Any oral, written, graphic, or pictorial representation, statement, or public notice, however made or utilized, including, without limitation, by publication, dissemination, solicitation or circulation, in the course of trade and commerce. (7-1-92)

02. Business Days. All days of the week except Saturdays and Sundays and all other legal holidays as defined by Section 73-108, Idaho Code. (7-1-92)

03. Clear and Conspicuous Disclosure. A statement, representation, or term which is disclosed in a manner that is: (7-1-92)

a. Reasonably close to any statement, representation or term it clarifies, modifies, explains, or to which it otherwise relates; (7-1-92)

b. Reasonably noticeable; (7-1-92)

c. Reasonably understandable by the persons to whom it is directed; and (7-1-92)

d. Not contradictory to any terms it purports to clarify, modify, or explain. (7-1-92)

04. Conducting Business. Making telephone solicitations either to or from locations within the State of Idaho. (7-1-92)

05. Exempted Information Providers. Any telephone corporation that provides basic local exchange service or message telecommunication service, as defined by Section 62-603, Idaho Code, which transmits pay-per-telephone-call services but does not control the content of the information transmitted. (7-1-93)

06. Exempted Telephone Solicitors. A person: (7-1-93)

a. Engaging in telephone solicitations where: (7-1-93)

i. The solicitation is an isolated transaction and not done in the course of a pattern of repeated transactions of like nature; or (7-1-92)

ii. Less than sixty percent (60%) of such person's prior year's sales were made as a result of telephone solicitations. (7-1-92)

b. Making a telephone solicitation where the purchaser contacted has previously purchased goods or services from the person or the business entity for which the person is calling. (7-1-93)

c. Making a telephone solicitation: (7-1-93)

- i. Without the intent to make or obtain provisional acceptance of a purchase during the telephone solicitation; and (7-1-92)
- ii. Who only makes the major sales presentation or arranges for the major sales presentation to be made at a later face-to-face meeting between the person and the purchaser, and the later face-to-face meeting is not for the purpose of collecting the payment or delivering any item purchased. (7-1-92)
- d. Whose business is licensed by any federal or state of Idaho governmental agency, except the secretary of state office, which has the power to revoke any license issued by the agency. (7-1-93)
- e. Making a telephone solicitation solely for purposes of selling a subscription to or advertising in a newspaper or telephone directory of general circulation. (7-1-93)
- f. Making a telephone solicitation solely for purposes of selling a magazine, periodical, book or musical or video recordings: (7-1-93)
 - i. Under which the telephone solicitor provides the purchaser with a form which the purchaser may use to instruct the telephone solicitor not to ship the merchandise; and (7-1-92)
 - ii. Which complies with the Federal Trade Commission’s “Use of Negative Option Plans by Sellers in Commerce Rule,” 16 C.F.R. 425, or a continuity plan, subscription arrangement, series arrangement or single purchase unless the telephone solicitor ships goods to a purchaser who has consented in advance to receive such goods and the purchaser is given the opportunity to review the goods for at least seven (7) days and to receive a full refund for return of the undamaged goods. (7-1-93)
- g. Who has at least one (1) business location in the state of Idaho under the same name as that used in connection with telephone solicitations and ninety percent (90%) of the person’s business involves the purchaser’s obtaining services and products at the person’s business location. (7-1-93)
- h. Who is an issuer or subsidiary of an issuer that has a class of securities which is subject to Section 12 of the Securities Exchange Act of 1934, 15 U.S.C. Section 781, and which is either registered or exempt from registration under paragraphs (A), (B), (C), (E), (F), (G), or (H) of Subsection (g)(2) of that section. (7-1-93)
- i. Who solicits sales by periodically publishing and delivering a catalog of the person’s merchandise to purchasers if the catalog: (7-1-93)
 - i. Contains a written description or illustration of each item offered for sale; (7-1-93)
 - ii. Includes the business address or home office address of the telephone solicitor; (7-1-92)
 - iii. Includes at least twenty-four (24) pages of written material and illustration and is distributed in more than one (1) state; and (7-1-93)
 - iv. Has an annual circulation by mailing of not less than two hundred fifty thousand (250,000). (7-1-92)
- 07. Free (Including Words of Similar Meaning or Import).** Without charge or cost, monetary or otherwise, to the recipient, and includes terms of essentially identical import, such as “give away” or “complimentary.” (7-1-92)
- 08. Goods.** Any property, tangible or intangible, real, personal or mixed, and any other article, commodity, or thing of value. (7-1-92)
- 09. Information Provider.** Any person that controls the content of a pay-per-telephone-call service. (7-1-92)

10. **ITSA.** Idaho Telephone Solicitation Act, codified at Title 48, Chapter 10, Idaho Code. (7-1-93)
11. **IPTCA.** Idaho Pay-Per-Telephone-Call Act, codified at Title 48, Chapter 11, Idaho Code. (7-1-93)
12. **Newspaper of General Circulation.** A newspaper which holds a second class mailing permit from the United States Postal Service, has at least two hundred (200) subscribers, is made up of at least four (4) pages of at least five (5) columns, is not produced through any type of mimeographic process, and has been published or distributed within the State of Idaho on a weekly basis for at least seventy-eight (78) consecutive weeks, or on a daily basis, which is defined to be no less than five (5) days of any one (1) week, for at least twelve (12) months immediately preceding any telephone solicitation done by or on behalf of such newspaper. (7-1-92)
13. **Offer.** Any solicitation, invitation, or proposal by a telephone solicitor to a purchaser through which a telephone solicitor, either directly or indirectly, attempts or intends to sell, rent, or lease goods or services or to induce a purchaser to purchase, rent, or lease goods or services. (7-1-92)
14. **Pay-per-Telephone-Call Service.** Any telecommunications service which permits simultaneous calling by a number of callers to a single telephone number and for which the calling party is assessed, by virtue of completing the call, a charge that is not dependent on the existence of a presubscription relationship and for which the caller pays a per-call or per-time-interval charge that is greater than, or in addition to, the charge for transmission of the call. (7-1-92)
15. **Person.** Natural persons, partnerships, both limited and general, corporations, both foreign and domestic, companies, trusts, business entities, associations, both incorporated and unincorporated, and any other legal entity or any group associated in fact although not a legal entity, or any agent, assign, heir, servant, employee or representative thereof. (7-1-92)
16. **Preamble Message.** A statement communicated to a person at the beginning of any pay-per-telephone-call service that contains the following: (7-1-92)
- a. All per-call charges. If the call is billed on a usage sensitive basis, all rates, by minute or other unit of time, any minimum charges and the total cost for calls to that service must be disclosed if the duration of the pay-per-telephone-call service can be determined; (7-1-92)
 - b. The name of the information provider; (7-1-92)
 - c. An accurate description of the information, goods, or services that the person will receive for the charge; and (7-1-92)
 - d. A statement that billing will begin only after a specific identified event following the disclosure message, such as a signal tone. (7-1-92)
17. **Purchaser.** A person who is solicited to become or does become obligated to a telephone solicitor or information provider. (7-1-92)
18. **Services.** Any work, labor, help, assistance, or instruction wherever provided or performed. (7-1-92)
19. **Telephone Directory of General Circulation.** A directory containing telephone numbers of individual residents and/or businesses which is published on a community-wide or regional basis and which is widely available to persons residing in such community or region through free distribution or direct purchase of said directory without the requirement of other purchases or affiliations. (7-1-92)
20. **Telephone Solicitation.** A telephone solicitation is: (7-1-92)
- a. Any unsolicited telephone call or facsimile transmission to a purchaser for the purpose of asking, inducing, inviting, requesting, or encouraging the purchaser to purchase or invest in goods or services; or (7-1-92)

- b.** Any communication in which: (7-1-92)
- i.** A free gift, award, or prize is offered, or in which it is advertised or implied that goods or services are offered below the regular price of the goods or services; (7-1-92)
 - ii.** A return telephone call is invited or the communication is followed up by a call to the purchaser by the telephone solicitor; and (7-1-92)
 - iii.** It is intended during the course of the return or follow-up call with the purchaser that a purchase or an agreement to purchase is made. (7-1-92)
 - iv.** For purposes of TSR 020.20.b., “any communication” means a written or oral statement or notification or advertisement transmitted to the purchaser through any means. (7-1-93)
- 21. Telephone Solicitor.** Any person who, on his own behalf or through other persons or through use of an automatic dialing-announcing device, engages in a telephone solicitation. (7-1-92)
- 22. Verifiable Retail Value.** A price at which a telephone solicitor can demonstrate that a substantial number of goods or services have been sold at retail by a person other than the telephone solicitor. If such substantiation described herein is not available to a telephone solicitor, verifiable retail value shall be no more than one and one-half (1.5) times the amount the telephone solicitor paid for the goods or services. (7-1-93)
- 23. Written Confirmation.** A writing that includes the following information: the date of purchase, the telephone solicitor’s complete address and registration number, a listing of all goods and/or services purchased, a listing of the price of each good and service purchased, the total obligation incurred by the purchaser, and the notice of cancellation as set forth in Section 48-1004, Idaho Code, and TSR 057. (7-1-93)

021. -- 029. (RESERVED)

Subchapter C -- Registration
(Rules 30 -- 39)

030. REGISTRATION (RULE 30).

Telephone solicitors shall register with the Consumer Protection Unit of the Office of the Attorney General at least ten (10) days prior to conducting business in Idaho by filing the information required by subchapter D and a nonrefundable filing fee of fifty (\$50) dollars. The information shall be submitted on a form and pursuant to instructions provided by the Consumer Protection Unit of the Office of the Attorney General. (7-1-93)

031. VERIFICATION (RULE 31).

The information required by subchapter D shall be verified by a declaration signed by each principal of the telephone solicitor under penalty of perjury. The declaration shall specify the date and location of signing. Information submitted pursuant to TSR 040.10 and/or TSR 040.11 shall be clearly identified and appended to the filing. (7-1-93)

032. RENEWAL (RULE 32).

Registration of a telephone solicitor shall be valid for one (1) year from the effective date thereof and may be annually renewed by filing a new registration form provided by the Consumer Protection Unit of the Office of the Attorney General and paying a nonrefundable renewal fee of twenty-five (\$25) dollars to the Consumer Protection Unit of the Office of the Attorney General. (7-1-93)

033. AMENDED INFORM (RULE 33).

Whenever, prior to expiration of a telephone solicitor’s annual registration, there is a material change in the information required by subchapter D, the telephone solicitor shall, within ten (10) business days of the material change, file an addendum updating the information with the Consumer Protection Unit of the Office of the Attorney General. (7-1-93)

034. REGISTRATION (RULE 34).

Upon receipt of a properly filed registration application or registration renewal application and the filing fee pursuant to TSR 030 or TSR 032, the Consumer Protection Unit of the Office of the Attorney General shall register the telephone solicitor. If the telephone solicitor has more than one (1) business location, the registration shall be sent to the principal business location identified by the telephone solicitor in his or her registration application in sufficient number so that the telephone solicitor has one (1) for each location. (7-1-93)

035. POSTING OF REGISTRATION (RULE 35).

Upon receipt of the registration, the telephone solicitor shall post it in a conspicuous place at each of the telephone solicitor's business locations and shall have available for inspection by any governmental agency at each location a copy of the entire registration application which had been filed with the Consumer Protection Unit of the Office of the Attorney General. (7-1-93)

036. DEFECTIVE REGISTRATION (RULE 36).

Any registration form which is not properly signed under penalty of perjury and completed properly with all necessary forms attached shall be rejected and returned to the telephone solicitor, and the telephone solicitor shall be deemed not to have filed a registration form with the Consumer Protection Unit of the Office of the Attorney General. (7-1-93)

037. REGISTRATION TIME PERIOD (RULE 37).

Within twenty (20) days of the date of receipt of the registration form, the Consumer Protection Unit of the Office of the Attorney General will either register the telephone solicitor, request additional information, or deny the registration. (7-1-93)

038. -- 039. (RESERVED)

Subchapter D -- Telephone Solicitor Disclosure -- Office of the Attorney General

(Rules 40 -- 49)

040. INFORMATION DISCLOSURE (RULE 40).

Each filing pursuant to subchapter C shall contain the following information, to be provided on forms prepared by the Consumer Protection Unit of the Office of the Attorney General: (7-1-93)

01. Name. The name or names of the telephone solicitor, including the name under which the telephone solicitor is doing or intends to do business, and the name of any parent or affiliated organization that will engage in business transactions with purchasers relating to offers by the telephone solicitor or that accepts responsibility for statements made by, or acts of, the telephone solicitor relating to offers of the telephone solicitor. (7-1-92)

02. Business Status. The telephone solicitor's place of organization and, if the telephone solicitor is a corporation, a copy of its articles of incorporation and bylaws and amendments thereto; or, if a partnership, a copy of the partnership agreement; or, if operating under a fictitious business name, the location where the fictitious name has been registered. All the same information shall be included for any parent or affiliated organization disclosed pursuant to TSR 040.01. (7-1-93)

03. Location. The complete street address or addresses of all locations, designating the principal location from which the telephone solicitor will be conducting business. (7-1-92)

04. Telephone Numbers. A listing of all telephone numbers to be used by the telephone solicitor and the address where each telephone using each of these telephone numbers is located. (7-1-92)

05. Owners and Officers. The name of, and the office held by, the telephone solicitor's officers, directors, trustees, general and limited partners, sole proprietor, and owners, as the case may be, and the names of those persons who have management responsibilities in connection with the telephone solicitor's business activities. (7-1-92)

06. Owners and Officers Identification. The complete address of the principal residence, the date of

birth and the driver's license number and state of issuance of each of the persons whose names are disclosed pursuant to TSR 040.05. (7-1-93)

07. Designated Responsible Persons. The name and principal residence address of each person the telephone solicitor leaves in charge at each location from which the telephone solicitor conducts business, and the business location that each of these persons is or will be in charge of. (7-1-92)

08. Background. A statement, as to both the telephone solicitor, whether a corporation, partnership, firm, association, joint venture, or any other type of business entity (and whether identified pursuant to TSR 040.05 or TSR 040.07), and as to any person identified pursuant to TSR 040.05 or TSR 040.07 who: (7-1-93)

a. Has been convicted of a felony or misdemeanor involving fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property. For purposes of this paragraph, a plea of nolo contendere is a conviction; (7-1-92)

b. Has had entered against him or her a final judgment or order in a civil or administrative action, including a stipulated judgment or order, if the complaint or petition in the civil or administrative action alleged acts constituting a violation of the federal Trade Commission Act, or a state's consumer protection or unfair and deceptive practices act, fraud, theft, embezzlement, fraudulent conversion, or misappropriation of property, the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property, or the use of unfair, unlawful or deceptive business practices; (7-1-92)

c. Is subject to any currently effective injunction or restrictive court order relating to business activity as the result of an action brought by a federal, state, or local public agency or unit thereof; or (7-1-92)

d. Has at any time during the previous seven (7) tax years filed for bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other corporation, partnership, joint venture, or business entity, that has so filed or was so adjudicated or reorganized, during or within one (1) year after the period that the person held that position; (7-1-92)

e. For purposes of TSR 040.08.a., TSR 040.08.b., and TSR 040.08.c., the statement required by TSR 040.08 shall identify the telephone solicitor or person, the court or administrative agency rendering the judgment or order, the docket number of the matter, the date of the judgment or order, and the name of the governmental agency, if any, that brought the action resulting in the judgment or order. For purposes of TSR 040.08.d., the statement required by this rule shall include the name and location of the telephone solicitor or person filing in bankruptcy, adjudged a bankrupt, or reorganized due to insolvency, and shall include the date thereof, the court which exercised jurisdiction, and the docket number of the matter; (7-1-93)

09. Financial Information. The name of the financial institution and account number for each of the telephone solicitor's demand accounts, checking accounts, and merchant accounts used for the deposit of any credit card charge slips, including but not limited to, credit cards issued by VISA, MasterCard, Discover, American Express, Diners Club or Carte Blanche; (7-1-92)

10. Items for Sale. A description of the items the telephone solicitor is offering for sale and a copy of all sales scripts the telephone solicitor requires salespersons to use when soliciting prospective purchasers, or if no sales script is required to be used, a statement to that effect. (7-1-92)

11. Sales Literature. A copy of all sales information and literature (including but not limited to scripts, outlines, instructions, and information regarding how to conduct sales, sample introductions, sample closings, product information, and contest or premium-award information) provided by the telephone solicitor to salespersons or of which the telephone solicitor informs salespersons, and a copy of all written materials the telephone solicitor sends to any prospective or actual purchaser. (7-1-92)

12. Incentive Promotions. If the telephone solicitor represents or implies, or directs salespersons to represent or imply, to purchasers that the purchaser will receive certain specific items (including a certificate of any type which the purchaser must redeem to obtain the item described in the certificate) or one or more items from

among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or by other terms of similar meaning, the filing shall include the following: (7-1-92)

- a. A list of the items offered; (7-1-92)
- b. If the purchaser is not guaranteed of receiving any particular item: (7-1-92)
 - i. The odds a single purchaser has of receiving each item offered; (7-1-92)
 - ii. The manner in which the telephone solicitor decides which item or items a particular purchaser is to receive; and (7-1-92)
 - iii. The name and address of each recipient who has, during the preceding twelve (12) months (or if the telephone solicitor has not been in business that long, during the period the telephone solicitor has been in business), received the item having the greatest value and the item with the smallest odds of being received; (7-1-92)
- c. The verifiable retail value of each item the purchaser has been offered, awarded or may be awarded, and the basis for the valuation; (7-1-92)
- d. All rules, regulations, terms, and conditions a purchaser must meet in order to receive the item; and, (7-1-93)
- e. The price paid by the telephone solicitor to its supplier for each of these items and the name, address, and telephone number of each item's supplier. (7-1-92)

041. -- 049. (RESERVED)

Subchapter E -- Telephone Solicitor Disclosure -- Purchaser
(Rules 50 -- 59)

050. MATERIAL DISCLOSURES (RULE 50).

At the time the telephone solicitation is made and prior to consummation of any sales transaction, the telephone solicitor shall disclose material terms of the transaction to each purchaser. Subchapter E identifies information that is material for various types of telephone solicitation promotions. (7-1-93)

051. INCENTIVE PROMOTIONS (RULE 51).

If the telephone solicitor represents or implies that a purchaser will receive, without charge therefor, certain specific items or one (1) item from among designated items, whether the items are denominated as gifts, premiums, bonuses, prizes, or by other terms of similar meaning, the telephone solicitor shall provide the following: (7-1-92)

01. Odds. The information required to be filed by TSR 040.12.b.i., TSR 040.12.b.ii., TSR 040.12.c., and 040.12.d. (7-1-93)

02. Address. The complete street address of the location from which the salesperson is calling the purchaser and, if different, the complete street address of the telephone solicitor's principal location. (7-1-92)

03. Prize Winners. The total number of individuals who have actually received from the telephone solicitor, during the preceding twelve (12) months (or if the telephone solicitor has not been in business that long, during the period the telephone solicitor has been in business), the item having the greatest verified retail value, and the item with the smallest odds of being received. (7-1-92)

04. No Purchase Necessary. That no purchase is necessary in order to receive the goods or services that have been offered to the consumer as an inducement to attend the in-person sales presentation or contact the seller by telephone or by mail, but only if the seller follows up the consumer's mail contact with a telephone contact. (7-1-93)

052. PRECIOUS STONES AND MINERAL PROMOTIONS (RULE 52).

If the telephone solicitor is offering to sell any metal, stone, or mineral, the telephone solicitor shall provide the following information: (7-1-92)

01. Telephone Solicitor Address. The complete street address of the location from which the salesperson is calling the purchaser and, if different, the complete street address of the telephone solicitor's principal location. (7-1-92)

02. Precious Ore Location. The address of each location where the metal, stone, or material will be kept. If the metal, stone, or material is not kept on premises owned by the telephone solicitor or at an address or addresses set forth in compliance with TSR 040.03, the name of the owner of the business at which the metal, stone, or mineral will be kept. (7-1-93)

03. Earning Claims. If the telephone solicitor makes any representations as to the earning or profit potential of purchases of any metal, stone, or mineral, all data which substantiates the claims made. If the representation relates to previous sales made by the telephone solicitor or a related entity, substantiating data shall be based on the experiences of at least fifty percent (50%) of the persons who have purchased the particular metal, stone, or mineral from the telephone solicitor or related entity during the preceding six (6) months (or if the telephone solicitor or related entity has not been in business that long, during the period the telephone solicitor or related entity has been in business) and shall include the raw data upon which the representation is based, including, but not limited to, all of the following: (7-1-92)

a. The length of time the telephone solicitor or related entity has been selling the particular metal, stone, or mineral being offered; (7-1-92)

b. The number of purchasers thereof from the telephone solicitor or related entity known to the telephone solicitor or related entity to have made at least the same earnings or profit as those represented; and (7-1-92)

c. The percentage that the number disclosed pursuant to TSR 052.03.b., represents of the total number of purchasers from the telephone solicitor or related entity of the particular metal, stone, or mineral. (7-1-93)

053. OIL, GAS, AND MINERAL FIELD PROMOTIONS (RULE 53).

If the telephone solicitor is offering to sell an interest in oil, gas, mineral fields, wells, or exploration sites the telephone solicitor shall provide the following information: (7-1-92)

01. Telephone Solicitor Address. The complete street address of the location from which the salesperson is calling the purchaser and, if different, the complete street address of the telephone solicitor's principal location. (7-1-92)

02. Telephone Solicitor's Ownership Interest. The telephone solicitor's ownership interest, if any, in each field, well, or site being offered for sale. (7-1-92)

03. Number of Interests. The total number of interests to be sold in each field, well, or site being offered for sale. (7-1-92)

04. Earning Claims. If the telephone solicitor makes any representation as to the earning or profit potential of purchases of any interest in these fields, wells, or sites, the filing shall include data to substantiate the claims made. If the representation relates to previous sales made by the telephone solicitor or a related entity, the substantiating data shall be based on the experiences of at least fifty percent (50%) of the purchasers of the particular interests from the telephone solicitor or the related entity during the preceding six (6) months (or if the telephone solicitor has not been in business that long, during the period the telephone solicitor or related entity has been in business) and shall include the raw data upon which the representation is based, including, but not limited to, all of the following: (7-1-92)

a. The length of time the telephone solicitor or related entity has been selling the particular interests in the fields, wells, or sites being offered; (7-1-92)

b. The number of purchasers of the particular interests from the telephone solicitor or related entity known to the telephone solicitor to have made at least the same earnings as those represented; and (7-1-92)

c. The percentage which the number disclosed pursuant to TSR 053.04.b., represents of the total number of purchasers of the particular interests from the telephone solicitor or related entity. (7-1-93)

054. OFFICE SUPPLIES AND EQUIPMENT PROMOTIONS (RULE 54).

If the telephone solicitor represents that office equipment or supplies are being offered at prices below those usually charged for these items, the telephone solicitor shall provide the following information: (7-1-92)

01. Telephone Solicitor Address. The complete street address of the location from which the salesperson is calling the purchaser and, if different, the complete street address of the telephone solicitor's principal location. (7-1-92)

02. Manufacturer. The name of the manufacturer of each of the items the telephone solicitor has represented for sale and in which the purchaser expresses interest. (7-1-92)

055. COMPLIANCE WITH SECTION 48-603A, IDAHO CODE (RULE 55).

A telephone solicitor shall comply with the provisions of Section 48-603A, Idaho Code. (7-1-93)

056. ORAL NOTICE OF CANCELLATION AND TELEPHONE SOLICITOR IDENTIFICATION (RULE 56).

If a sale or purchase is completed, the telephone solicitor must orally inform the purchaser of his or her cancellation rights as provided by Section 48-1004(2), Idaho Code, state the telephone solicitor's registration number issued by the attorney general, and give the full street address, including the telephone number, of the telephone solicitor. (7-1-93)

057. NOTICE OF CANCELLATION (RULE 57).

Unless the purchaser has an unqualified right to return the goods or cancel the services and receive a full refund, the telephone solicitor shall send a written confirmation to the purchaser, which shall contain the following statement in ten (10) point bold face type, which sets forth a purchaser's right to cancel any agreement made pursuant to a telephone solicitation:

NOTICE OF CANCELLATION

You may cancel this transaction, without any penalty or obligation whatsoever, within three (3) business days of the date on which you receive this written confirmation.

If you cancel, all payments or other consideration which have already been made by you will be returned within ten (10) business days following receipt by the telephone solicitor of your cancellation notice.

If you cancel, you must return the goods to the telephone solicitor at the address listed below and at the telephone solicitor's risk and expense within twenty-one (21) days of the date you receive back from the telephone solicitor the payments or consideration you have already made.

To cancel this transaction, deposit in the mail or deliver a signed and dated copy of this cancellation notice or any other written notice to (name of telephone solicitor), at (address of seller's place of business) not later than midnight of the third business day after which you received this notice.

I hereby cancel this transaction.

(Date) (Buyer's signature) (7-1-92)

058. -- 059. (RESERVED)

Subchapter F -- Information Provider Disclosures
(Rules 60 -- 69)

060. PREAMBLE MESSAGE (RULE 60).

An information provider that offers pay-per-telephone-call services to persons in this state shall include at the beginning of its service a preamble message. The preamble message shall be clearly understandable and audible. No preamble message shall be required if the total charge for the pay-per-telephone-call service is less than two dollars (\$2). (7-1-92)

061. PAY-PER-TELEPHONE-CALL SERVICES AIMED AT CHILDREN (RULE 61).

Any pay-per-telephone-call service that is aimed at or of likely interest to children under the age of eighteen (18), must contain a statement that the caller should hang up unless he or she has parental permission. (7-1-92)

062. BYPASS (RULE 62).

A telephone caller may be provided the means to bypass the preamble message after the first call, provided that the caller has sole control of that capability, except that any bypass device or mechanism shall be disabled for a period of thirty (30) days following the effective date of a price increase for the pay-per-telephone-call service. Instructions on how to bypass the preamble message shall either be at the end of the preamble message or at the end of the pay-per-telephone-call service. (7-1-92)

063. PREAMBLE MESSAGE MODIFICATION (RULE 63).

If the pay-per-telephone-call service originates and terminates within local exchange areas served by the same telephone company within the state of Idaho, the information provider may apply to the Attorney General for permission to modify the preamble message. The Attorney General may grant such permission if he is satisfied that the modified message will adequately disclose sufficient material facts which will safeguard the public against deceit and financial hardship and does not have the capacity, tendency, or effect of misleading a person acting reasonably under the circumstances. The Attorney General's decision is final and nonreviewable. (7-1-92)

064. ADVERTISEMENT DISCLOSURES (RULE 64).

If the total charge for the pay-per-telephone-call service is more than two dollars (\$2), advertisements for pay-per-telephone-call services must clearly and conspicuously disclose in the advertisement all per-call charges, and contain the information required to be set forth in TSR 020.16.a. For purposes of TSR 064, a listing in any section of a telephone directory of general circulation or any other directory in which businesses or professions are listed alphabetically and which are not published more than twice in a consecutive twelve (12) month period of time does not constitute an advertisement. Information providers who advertise pay-per-telephone-call service in such a directory shall clearly and conspicuously disclose that the service is a pay-per-telephone-call service, but need not disclose the price or cost of the service. (7-1-93)

065. -- 069. (RESERVED)

Subchapter G -- Unlawful Acts
(Rules 70 -- 79)

070. INTIMIDATION (RULE 70).

It is an unlawful act for a telephone solicitor to intimidate or torment any person of normal and reasonable sensitivities in connection with a telephone solicitation. For purposes of TSR 070, intimidate or torment includes, but is not limited to, contacting a purchaser after the purchaser has requested that the telephone solicitor not call the purchaser again or contacting the purchaser within ninety (90) days after the purchaser has twice declined a telephone solicitation. (7-1-93)

071. REFUSAL TO HANG UP (RULE 71).

It is an unlawful act for a telephone solicitor to refuse to hang up and free a purchaser's line immediately once requested to do so by the purchaser. (7-1-92)

072. MISREPRESENTATIONS (RULE 72).

It is an unlawful act for a telephone solicitor to: (7-1-92)

01. Price, Quality, or Availability Misrepresentations. Misrepresent the price, quality, or availability of the goods or services being offered to the purchaser. (7-1-92)

02. Material Disclosures. Fail to disclose all material matters relating directly or indirectly to the goods or services. (7-1-92)

03. Idaho Registration. Advertise or imply that the telephone solicitor has a valid Idaho registration number when the solicitor does not. (7-1-92)

04. Attorney General Approval. Represent or imply that the fact that the telephone solicitor has registered with the Consumer Protection Unit of the Office of the Attorney General constitutes endorsement or approval of the telephone solicitor, the telephone solicitor's goods or services, or the promotion the telephone solicitor is offering. (7-1-92)

073. COMPLIANCE WITH RULES (RULE 73).

It is an unlawful act for a telephone solicitor or an information provider to violate any applicable provisions or requirements of the ITSA, the IPTCA, or these rules. (7-1-93)

074. -- 079. (RESERVED)

Subchapter H -- Service of Process
(Rules 80 -- 89)

080. APPOINTMENT OF ATTORNEY GENERAL AS AGENT FOR SERVICE OF PROCESS (RULE 80).

Every telephone solicitor shall, in conjunction with subchapters C and D, file with the Consumer Protection Unit of the Office of the Attorney General an irrevocable consent appointing the Attorney General as an agent to receive civil process in any action, suit, or proceeding brought under the ITSA, or these rules. The consent shall be on a form provided by the Consumer Protection Unit of the Office of the Attorney General. (7-1-93)

081. SERVICE OF PROCESS (RULE 81).

Service of process may be effected on any telephone solicitor for any action, suit, or proceeding brought under the ITSA, or these rules, by leaving a copy of the summons and complaint in the Consumer Protection Unit of the Office of the Attorney General. Service is not effective and complete, however, until five (5) days after the plaintiff, who may be the Attorney General: (7-1-93)

01. Notice. Sends notice of the summons and complaint by registered mail to the telephone solicitor at its last address on file with the Consumer Protection Unit of the Office of the Attorney General. (7-1-92)

02. Affidavit. Files an affidavit of compliance with the provisions of Section 48-1006(2)(d), Idaho Code. (7-1-93)

082. TELEPHONE SOLICITOR ADDRESS (RULE 82).

Every telephone solicitor shall keep the Consumer Protection Unit of the Office of the Attorney General apprised of its current street address at which it can be contacted. (7-1-92)

083. -- 999. (RESERVED)