

IDAHO ADMINISTRATIVE BULLETIN

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IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.01.04 - ENVIRONMENTAL AUDIT PROTECTION RULES
DOCKET NO. 02-0104-9601
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective November 22, 1995.

AUTHORITY: In compliance with Section(s) 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has proposed temporary and regular rule-making. The action is authorized pursuant to Section 9-810, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be held as follows: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996. 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 statement in nontechnical language of the substance of the proposed rule: These rules implement the Environmental Audit Protection Act, Sections 9-801 et seq., Idaho Code. These rules are intended to encourage owners and operators of facilities and other persons conducting activities regulated under applicable environmental laws to conduct voluntary internal environmental audits of their activities, operations, compliance programs and management systems and to assess and improve compliance with applicable environmental laws while protecting confidentiality of communications relating to voluntary internal environmental audits. These rules are not intended to protect those who willfully violate environmental laws.

The following is the required finding and a concise statement of the supporting reasons for temporary rule-making: These rules are promulgated pursuant to Section 67-5226, Idaho Code, in compliance with the deadlines in the governing law, Title 9, Chapter 8, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Rod Awe, Administrator, or Robert Hays, Bureau Chief, at (208) 334-3550.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before January 24, 1996.

DATED this 22nd day of November, 1995.

John L. Hatch, Director
Idaho Department of Agriculture
P.O. Box 790
Boise, ID 83701-0790
(208) 334-3240/FAX (208) 334-4623

TEXT OF DOCKET NO. 02-0104-9601

IDAPA 02
TITLE 01
CHAPTER 04

ENVIRONMENTAL AUDIT PROTECTION RULES

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Idaho Department of Agriculture the authority to promulgate these rules in Section 9-810, Idaho Code. (11-22-95)T

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 02.01.04, Rules of the Idaho Department of Agriculture, Environmental Audit Protection Rules. These rules implement the Environmental Audit Protection Act, Sections 9-801 et seq., Idaho Code. These rules are intended to encourage owners and operators of facilities and other persons conducting activities regulated under applicable environmental laws to conduct voluntary internal environmental audits of their activities, operations, compliance programs and management systems and to assess and improve compliance with applicable environmental laws while protecting confidentiality of communications relating to voluntary internal environmental audits. These rules are not intended to protect those who willfully violate environmental laws. (11-22-95)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (11-22-95)T

003. ADMINISTRATIVE APPEALS.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the Department of Agriculture under these rules. (11-22-95)T

004. DEFINITIONS.

01. Certification. For purposes of Section 015, an owner or operator of a facility shall certify in writing, based on information and belief formed after a reasonable inquiry, that all necessary and reasonable steps have been taken to achieve compliance. (11-22-95)T

02. Compliance Plan. A document which may be included in the Environmental Audit Report that describes the activities to be performed to correct a potential violation and to maintain compliance into the future. (11-22-95)T

a. A compliance plan shall include: (11-22-95)T

i. The activities to be taken to achieve and maintain compliance; (11-22-95)T

- ii. The timetable needed to complete compliance plan activities; and (11-22-95)T
- iii. An explanation supporting the timetable. (11-22-95)T
- 03. Department. The Idaho Department of Agriculture. (11-22-95)T
- 04. Document. A source from which information can be obtained or translated including, but not limited to, writings, drawings, graphs, charts, photographs, phone records, and other data compilations, including electronic. (11-22-95)T
- 05. Environmental Agency. Any department or division of the State, local government, or health board with the authority to enforce any state environmental law. (11-22-95)T
- 06. Environmental Audit. A voluntary internal evaluation conducted pursuant to a plan or protocol that is designed to identify and prevent noncompliance and to improve compliance with environmental laws. (11-22-95)T
 - a. An environmental audit may be conducted by an owner or operator, an owner's or operator's employees, or by an independent contractor. (11-22-95)T
 - b. An environmental audit may include: (11-22-95)T
 - i. One (1) or more facilities; (11-22-95)T
 - ii. Any activity at one (1) or more facilities; (11-22-95)T
 - iii. Impacts on one (1) or more environmental media at a facility or facilities; or (11-22-95)T
 - iv. Management systems related to a facility, an activity or an impact on environmental media. (11-22-95)T
 - c. An environmental audit is not voluntary for purposes of immunity if it is initiated as a result of: (11-22-95)T
 - i. The commencement of a federal or state inspection, investigation or information request; (11-22-95)T
 - ii. Notice of a citizen suit; (11-22-95)T
 - iii. Legal complaint by a third party; or (11-22-95)T
 - iv. The owner's or operator's knowledge that the discovery of the violation by a regulatory agency or third party is imminent. (11-22-95)T
- 07. Environmental Audit Plan or Protocol. A document outlining an owner's or operator's intent to perform a systematic, scheduled, and objective environmental audit.

An environmental audit plan or protocol may include or be a part of a corporate environmental policy or memoranda or other documents describing portions or all of the audit and shall include: (11-22-95)T

- a. The specific facilities, processes, and equipment audited; (11-22-95)T
- b. The inclusive dates and times of the audit; (11-22-95)T
- c. The audit procedures and protocols; (11-22-95)T
- d. The purpose of the audit; and (11-22-95)T
- e. Any circumstances identified which may constitute a violation of environmental law. (11-22-95)T

08. Environmental Audit Report. A set of documents, each labeled "Environmental Audit Report" (or a substantially equivalent label) and prepared as a result of an environmental audit. The environmental audit report may include a compliance plan, field notes, records of observations, findings, opinions, suggestions, implementation plans, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, data, charts, graphs, and surveys, provided such supporting information is collected or developed for the primary purpose and in the course of an environmental audit. An environmental audit report may include memoranda and documents analyzing portions or all of the environmental audit report. (11-22-95)T

09. Environmental Law. Any federal, state, or local law, regulation, rule, ordinance, or permit terms and conditions designed to protect or enhance the quality of land, water, or air for the protection of human health, wildlife, other biota, or the environment. (11-22-95)T

10. In Camera Review. A hearing or review in a courtroom, hearing room, or chambers to which the general public is not admitted. After such hearing or review, the content of the oral or other evidence, and statements of judge, hearing officer and counsel, shall be held in confidence by those participating in or present at the hearing or review, and any transcript of the hearing or review shall be sealed and not considered a public record until or unless its contents are disclosed by a court having jurisdiction over the matter. (11-22-95)T

11. Owner or Operator. A person subject to an environmental law. (11-22-95)T

12. Person. Any individual, firm, association, partnership, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by the law as the subject of rights and duties. (11-22-95)T

005. FINDINGS.

These rules are promulgated pursuant to Section 67-5226, Idaho Code, in compliance with the deadlines in the governing law, Title 9, Chapter 8, Idaho Code. (11-22-95)T

006. -- 009. (RESERVED).

010. PROHIBITION AGAINST COMPELLED DISCLOSURE.

Notwithstanding any other provision of law to the contrary, no State of Idaho public official, employee or environmental agency shall require to be disclosed an environmental audit report or any part thereof, prepared by or on behalf of any person, except from the State of Idaho or any political subdivision. (11-22-95)T

011. REQUIRED DISCLOSURES.

Nothing in these rules shall be construed to prohibit a request for information, investigation or disclosure of information required to be disclosed pursuant to a federal and state law, rule or regulation. Documents, communications, data, reports and other information which must be collected, developed and reported pursuant to a federal and state law, rule and regulation must be disclosed in accordance with the applicable law, rule or regulation. (11-22-95)T

012. EXCEPTIONS TO COMPEL DISCLOSURE.

01. Express Waiver. A State of Idaho public official, employee or environmental agency may compel disclosure of an environmental audit report to the extent that the protections of the Environmental Audit Protection Act, and these rules have been expressly waived in writing by the owner or operator of a facility. The waiver shall apply only to the portions of the environmental audit report which are specifically waived. (11-22-95)T

02. Fraudulent or Improper Purpose. The prohibition against compelled disclosure does not apply if the environmental agency or court after an in camera review determines that: (11-22-95)T

a. Protection for the audit report is for a fraudulent purpose; or (11-22-95)T

b. The material is not an appropriate subject for an environmental audit. (11-22-95)T

03. Burden of Proof. A party seeking disclosure of an environmental audit report has the burden of proving the disclosure is appropriate. The existence of a written environmental compliance policy or adoption of a plan of action to meet applicable environmental laws shall constitute prima facie evidence that an environmental audit report was designed to prevent noncompliance and improve compliance with environmental laws and that the environmental audit is protected from disclosure. A party seeking disclosure under Subsection 012.02.a has the burden of proving that the privilege is asserted for a fraudulent purpose. (11-22-95)T

013. EXISTING EVIDENTIARY PRIVILEGES RETAINED.

Nothing in these rules is intended to be inconsistent with the Idaho Rules of Evidence or in any way limit, waive or abrogate the scope or nature of any statutory or common law privilege, including the work-product doctrine and the attorney-client privilege. (11-22-95)T

014. IMMUNITY FOR VOLUNTARY DISCLOSURE ARISING FROM ENVIRONMENTAL AUDIT.

01. Immunity. Any person that makes a voluntary disclosure of an environmental audit report, or relevant portions thereof, which identifies circumstances which may constitute a violation of any state environmental law to the appropriate environmental agency, shall be immune from state prosecution, suit or administrative action for any civil or criminal penalties, or incarceration for such violations, subject to Section 015. (11-22-95)T

02. Presumption of Voluntary Disclosure. A disclosure is rebuttably presumed voluntary if: (11-22-95)T

a. The disclosure is made to the environmental regulatory agency having regulatory authority by the owner and operator in a timely manner after completion of the environmental audit; (11-22-95)T

b. The disclosure arises out of an environmental audit; and (11-22-95)T

c. The owner or operator making the disclosure immediately initiates appropriate efforts to achieve compliance, pursues compliance with due diligence, and expeditiously achieves compliance within a reasonable period after the completion of the environmental audit. (11-22-95)T

03. Limitations on Immunity. Immunity from administrative, civil or criminal penalties or incarceration or other type of enforcement action in this section does not apply if a person has been found by a court to have committed serious violations that constitute a pattern of continuous or repeated violations of environmental laws, regulations, permit conditions, settlement agreements, consent orders, and were due to separate distinctive events giving rise to the violations within the three (3) year period prior to date of disclosure. Such a pattern of continuous repeated violations may also be demonstrated by multiple settlement agreements related to substantially the same alleged violations concerning serious instances of noncompliance with environmental laws that occurred within the three (3) year period immediately prior to the date of the voluntary disclosure. (11-22-95)T

04. Compliance. Except as specifically provided, this section does not affect any authority of an environmental agency to require compliance through a consent order or action in district court or to abate an imminent hazard, associated with the information disclosed in any voluntary disclosure of an environmental violation. (11-22-95)T

015. COMPLIANCE TIMETABLES.

01. Timetable to Achieve Compliance. The immunity described in Section 9-809, Idaho Code, and Section 014 shall apply if: (11-22-95)T

a. Compliance is achieved within sixty (60) days after the completion of the environmental audit, and compliance is certified by the owner or operator; or (11-22-95)T

b. Compliance that cannot be achieved and certified within sixty (60) days is achieved within the timetable set forth in an approved compliance plan; or (11-22-95)T

c. An environmental audit report shows noncompliance to be failure to obtain a permit, or other governmental permission, a permit application or equivalent document is submitted to the environmental agency within sixty (60) days. If an owner or operator is unable to submit a permit application within sixty (60) days after completion of an environmental audit, compliance is achieved within the timetable set forth in an approved compliance plan; or (11-22-95)T

d. The environmental agency and the owner or operator enter into a written agreement, administrative consent order or judicial consent decree. A consent order may be appropriate in circumstances where remedial measures are complex or a lengthy schedule for obtaining and maintaining compliance is required. (11-22-95)T

02. Review of Compliance Plan. If an owner or operator submits a compliance plan under Subsection 015.02.b. or 015.02.c., the environmental agency shall approve or disapprove the plan within thirty (30) days of the submittal or within a timetable agreed upon by the owner or operator and the environmental agency. The following factors shall be considered by the environmental agency in reviewing the compliance plan for approval or disapproval: (11-22-95)T

a. The nature of the noncompliance; (11-22-95)T

b. The environmental and health consequences of the noncompliance; (11-22-95)T

c. The suitability of the timetable to achieve compliance; and (11-22-95)T

d. The adequacy of the compliance activities. (11-22-95)T

03. Modification of Approved Compliance Plan. Once approved, a compliance plan may be modified only upon written approval from the environmental agency. (11-22-95)T

016. TREATMENT OF ENVIRONMENTAL AUDIT REPORTS AND CONFIDENTIAL BUSINESS INFORMATION.

01. Definition. Confidential business information is information which is claimed to pertain to the interests of any business, which was developed or acquired by that business, and which is disclosed to the environmental agency. A voluntarily prepared environmental audit report and voluntary disclosures of information to an environmental agency which are claimed to be confidential business information are exempt from public disclosure pursuant to Section 9-340, Idaho Code. A claim for treatment as confidential business information exists if: (11-22-95)T

a. The person making the submittal has shown that it has taken, and will maintain, reasonable measures to protect the confidentiality of the information; (11-22-95)T

b. The information is not, and has not been, reasonably attainable without the consent of the person making the submittal by other persons through legitimate means; (11-22-95)T

c. No environmental law requires disclosure of the information; and (11-22-95)T

d. The person making the submittal has shown that disclosure of the information is likely to cause substantial harm to that person's competitive position. (11-22-95)T

02. Exempt From Disclosure. Any information submitted to an environmental agency which is claimed to be confidential business information must be: (1) clearly identified and labeled at the time of submittal by a cover sheet or other suitable form of notice employing language such as Environmental Audit Report, Confidential Business Information or substantially equivalent label, and (2) submitted along with a claim for protection as confidential business information. Claims of confidentiality for the name and address of any permit applicant or permittee will be denied. (11-22-95)T

03. Claim of Business Confidentiality. Any person submitting information may assert a claim of business confidentiality covering all or part of that information. If no such claim accompanies the information when submitted to the environmental agency, the information is not exempt from public disclosure. (11-22-95)T

017. ENVIRONMENTAL AGENCY PROCEDURES FOR PROTECTING CONFIDENTIAL BUSINESS INFORMATION.

01. Secured Files. The environmental agency shall secure all confidential business information in locked cabinets or rooms. Access to confidential business information shall be prohibited except to state officials acting in their official capacity. (11-22-95)T

02. Return of Environmental Audit Information. The environmental agency shall return any confidential environmental audit report one (1) year after date of receipt or upon correction of the condition reported upon the request of the owner or operator. (11-22-95)T

03. Imminent and Substantial Endangerment. In the event the Governor of the State of Idaho determines that circumstances exist which constitute an imminent and substantial danger to the public health or the environment, the Governor may disclose such confidential business information, excluding trade secrets as defined in Idaho Code Section 9-340, contained in the environmental audit as may be necessary to assure protection of the public health or environment. (11-22-95)T

018. -- 999. (RESERVED).

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.04.03 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING
ANIMAL INDUSTRY RELATING TO VESICULAR STOMATITIS

DOCKET NO. 02-0403-9501

NOTICE OF FINAL RULE

EFFECTIVE DATE: This rule has been adopted as final by the agency and is now pending review by the 1996 legislature for final adoption.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a final rule. The action is authorized pursuant to Section 25-207, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the final rules and a statement of any change between the text of the proposed rules and text for the final rules with an explanation of the reasons for any changes: The rule prevents the entry into Idaho of livestock from premises that are in an area where Vesicular Stomatitis has been diagnosed. The rule also requires permits for entry of livestock from states in which Vesicular Stomatitis has been confirmed.

Changes have been made between the text of the proposed rule and the text of the final rule in the following section:

The text of IDAPA 02.04.03.210.27 a. and b. has been changed to eliminate the reference to ten (10) miles. The ten (10) mile restriction has proven ineffective in preventing the spread of the disease. The agency will use epidemiological information to determine the threat posed by importing animals from a vesicular stomatitis infected area.

The original text was published in the September 6, 1995, Idaho Administrative Bulletin, Volume 95-9, pages 1 through 3.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this proposed rule, contact Dr. Bob Hillman or Dr. Bill Kearley at (208) 334-3256.

DATED this 21st day of November, 1995.

John L. Hatch, Director
Idaho Department of Agriculture
P.O. Box 790
Boise, ID 83701-0790
(208) 334-3240/FAX (208) 334-4623

TEXT OF DOCKET NO. 02-0403-9501

210. LAWS AND REGULATIONS GOVERNING THE ANIMALS ENTERING THE STATE OF IDAHO.

211. -- 215. (RESERVED).

216. VESICULAR STOMATITIS.

01. Livestock Entering Idaho. No livestock (equine, bovine, porcine, caprine, ovine, or cervidae) may enter Idaho from another state if Vesicular Stomatitis has been diagnosed within the area of origin within the last thirty (30) days. ()

02. Certificate of Inspection. Any livestock entering Idaho from a state where Vesicular Stomatitis has been diagnosed within the last thirty (30) days shall be accompanied by a certificate of veterinary inspection with the following statement written by the accredited veterinarian on the certificate:

"All animals identified on this certificate of veterinary inspection have been examined and found to be free from Vesicular Stomatitis. During the last thirty (30) days, these animals have neither been exposed to Vesicular Stomatitis nor located within an area where Vesicular Stomatitis has been diagnosed." ()

03. Permit for Entry. Livestock from states in which Vesicular Stomatitis has been diagnosed within the last thirty (30) days shall be accompanied by a permit for entry into Idaho as prescribed in Section 02.04.03.210.07. The permit number shall be written on the certificate of veterinary inspection. ()

04. Protection of Public Health, Safety, and Welfare. This amendment is reasonably necessary to protect the public health, safety or welfare by preventing the reintroduction into the state of Idaho of Vesicular Stomatitis, a serious viral disease of livestock. The disease can also be transmitted to humans. This disease caused serious animal health and financial problems in Idaho in 1982/1983, prior to its elimination from the state. ()

~~211~~217. - 219. (RESERVED).

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.04.03 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING
ANIMAL INDUSTRY RELATING TO THE TRICHOMONIASIS
CONTROL AND ERADICATION PROGRAM

DOCKET NO. 02-0403-9601

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective November 21, 1995.

AUTHORITY: In compliance with Section(s) 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has proposed temporary and regular rule-making. The action is authorized pursuant to Sections 25-203 and 25-207, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be held as follows: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996. 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 statement in nontechnical language of the substance of the proposed rule: These amendments will require trichomoniasis tagging of all bulls, including virgin bulls.

The following is the required finding and a concise statement of the supporting reasons for temporary rule-making: These amendments confer a benefit to the cattle industry by strengthening the trichomoniasis eradication and control program. The amendments were proposed by the Trichomoniasis Task Force in September 1994, and agreed to by the Idaho Cattle Association in November 1994.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Dr. Bob Hillman or Dr. Bill Kearley at (208) 334-3256.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before January 24, 1996.

DATED this 21st day of November, 1995.

John L. Hatch, Director
Idaho Department of Agriculture
P.O. Box 790
Boise, ID 83701-0790
(208) 334-3240/FAX (208) 334-4623

TEXT OF DOCKET NO. 02-0403-9601

220. TRICHOMONIASIS CONTROL AND ERADICATION PROGRAM.

01. Testing Requirements. (7-1-94)
- a. All bulls within the state of Idaho shall be tested annually for Trichomoniasis unless exempted as provided in Subsections 220.02.a. through d. (7-1-94)
- b. Test samples shall be collected by veterinarians registered to sample bulls for trichomoniasis. Official testing shall be performed by approved veterinarians or technicians in approved laboratories. Such tests shall be conducted annually between breeding seasons and shall be completed at least forty-five (45) days prior to public land turnout dates. (12-10-84)
- c. Bulls so tested shall be permanently identified by an official trichomoniasis bangle tag and the identification recorded on a Trichomoniasis Test and Report Form. (7-1-94)
- d. Bulls running with cows year round shall be tested between Jan. 1 and April 15 yearly, and shall meet the testing requirements in Subsections 220.01.b. and c. (7-1-94)
- e. Bulls presented for sale at Idaho saleyards, shows, special sales, or by private contract shall be accompanied by a certificate of negative herd test, or be returned to home premise for official testing, be sold directly to slaughter without test, or be tested as in Subsection 220.01.f. (7-1-94)
- f. Bulls that are not accompanied by a certificate of negative test and are diverted from non-breeding to breeding channels shall move on an official Hold Order issued by the saleyard veterinarian and shall have three (3) consecutive negative Trich culture tests or other approved tests to be eligible to receive a Certificate of Negative Test. (7-1-94)
- g. For sale purposes the negative test on breeding bulls shall be valid for up to ninety (90) days so long as the bull(s) has had no contact with female cattle from the time of test to the time of sale. Bulls that have had contact with female cattle subsequent to testing must be retested prior to sale. (7-1-94)
02. Exemptions to Testing. (12-10-84)
- a. All yearling and two (2) year old bulls who have not serviced a cow shall be exempt from testing requirements. Such bulls shall be ~~signed by the owner attesting that such bull is a virgin bull and identifying the bull by tattoo;~~ signed by the owner attesting that such bull is a virgin bull and identifying the bull by tattoo; an official trichomoniasis bangle tag ~~or metal cartag~~ and the identification recorded on a Trichomoniasis Test and Report Form. If sold, such bulls shall be accompanied by a

certificate signed by the owner attesting that the animals are virgin bulls.

~~(7-1-94)~~(11-21-95)T

b. All dairy bulls in total confinement operations shall be exempt from testing requirements. (12-10-84)

c. Testing is not required on bulls consigned directly to slaughter at an approved slaughter facility and bulls consigned directly to approved feedlots or designated trichomoniasis feedlots for finish feeding for slaughter. (7-1-94)

d. The annual test of all bulls for trichomoniasis shall not be required in the area of the state north of Riggins, Idaho. This exemption does not apply to the sale and purchase of non-virgin breeding bulls, nor does it apply to bulls imported into the state for breeding purposes. (7-1-94)

e. This amendment to section 220.02.a. will confer a benefit to the cattle industry by strengthening the trichomoniasis eradication and control program.

(11-21-95)T

03. Infected Herds. (12-10-84)

a. A herd in which one (1) or more bulls or cows are found infected with Trichomoniasis shall be considered infected and shall be issued a Hold Order by the veterinarian conducting the test who shall report to the state within forty-eight (48) hours that the test was positive. (12-10-84)

b. Bulls in infected herds shall be tested three (3) times before the hold order can be released. Bulls that have three (3) consecutive negative tests shall be considered negative to trichomoniasis and can be so certified. Any bull(s) that is positive to a trichomoniasis test shall be considered infected and shall be consigned to slaughter as provided in Subsection 220.03.e. or treated as provided in Subsection 220.03.f. (7-1-94)

c. Re-tests of bulls in infected herds shall be at least seven (7) days apart. (12-10-84)

d. It is recommended in infected herds that the cow herd be pregnancy tested or have a reproductive tract examination to help clear the disease from the herd as quickly as possible. (12-10-94)

e. Individual infected bulls being removed from ranches of origin for sale shall move to markets or packing plants on a VS 1-27 form issued by the veterinarian conducting the test or by other regulatory officials. (7-1-94)

f. Infected bulls which are being held on ranches of origin for treatment shall be issued an individual quarantine by the veterinarian conducting the test, identifying the bull by official trichomoniasis bangle tag. If the bull passes three (3) consecutive negative tests, after treatment, the quarantine shall be released and the bull shall be eligible for a certificate of negative test. (7-1-94)

g. All bulls tested in the infected herd and all purchased and home raised

additions to the bull herd, including virgin bulls, shall be individually identified with an official trichomoniasis bangle tag and the tag number and status of the bull shall be recorded on an official trichomoniasis test and report form. ~~Such identification of bull shall be continued and maintained for three years after the herd was found to be infected.~~
(7-1-94)(11-21-95)T

04. Official Tests. (12-10-84)

a. Official culture tests. An official test is one in which the sample is received in the testing laboratory, in good condition, within forty-eight (48) hours of collection and such sample is tested according to authorized testing protocol. Samples for culture shall be protected from freezing or excessive heat. Samples in transit for more than forty-eight (48) hours will not be accepted for official testing and shall be discarded. Samples which have been frozen or exposed to high temperatures shall also be discarded.
(12-10-84)

b. Other official tests. Other official tests for trichomoniasis will be approved by the Division of Animal Industries after the tests have been proved effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the tests has been established.
(12-10-84)

c. Veterinarians wishing to officially test for Trichomoniasis within the state of Idaho shall be registered with the Division of Animal Industries. (12-10-84)

d. Such veterinarian shall only utilize approved laboratories for culture of specimens and shall attend a continuing education seminar on Trichomoniasis and proper collection techniques. (12-10-84)

05. Official Laboratories. (12-10-84)

a. Laboratories wishing to be recognized by the Division of Animal Industries as approved labs shall apply for approval. In order to qualify, said laboratories shall adopt methods titled "Official Idaho Protocol for Culture of Trichomoniasis"; shall have adequate equipment and personnel; and shall pass a yearly check test administered by the Idaho Bureau of Animal Health Laboratories. (12-10-84)

b. All rules adopted to control Trichomoniasis within the state of Idaho shall be reviewed annually during the month of September by the Trichomoniasis Task Force and either reapproved or modified to fit the Trich situation existing at that time.
(12-10-84)

c. Imported bulls shall be required to meet the requirements of Subsection 220.01.a. through g. The certificate on which the bulls are imported shall contain a statement that "Trichomoniasis has not been diagnosed in the herd of origin". (7-1-94)

d. Out of state grazing cattle entering Idaho shall be required to meet the requirements of Subsections 220.01.a. through g. (12-10-84)

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE
02.04.03 - RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING
ANIMAL INDUSTRY RELATING TO DOMESTIC CERVIDAE FARMS

DOCKET NO. 02-0403-9602

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective November 22, 1995.

AUTHORITY: In compliance with Section(s) 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has proposed temporary and regular rule-making. The action is authorized pursuant to Section 25-207, 25-210, and 25-[3704] 3504, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be held as follows: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996. 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 statement in nontechnical language of the substance of the proposed rule: These rules will govern domestic cervidae farming by providing for disease prevention and control, licensing and inspection. They will also detail import requirements for domestic cervidae coming into Idaho.

The following is the required finding and a concise statement of the supporting reasons for temporary rule-making: The proposed rules will confer a public health benefit by providing for the prevention of brucellosis and tuberculosis in cervidae. Both of these diseases affect humans and animals and both diseases have been eradicated from other Idaho livestock.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Dr. Bob Hillman or Dr. Bill Kearley at (208) 334-3256.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before January 24, 1996.

DATED this 22nd day of November, 1995.

John L. Hatch, Director
Idaho Department of Agriculture
P.O. Box 790
Boise, ID 83701-0790
(208) 334-3240/FAX (208) 334-4623

TEXT OF DOCKET NO. 02-0403-9602

IDAPA 02
TITLE 04
Chapter 03

**RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING ANIMAL
INDUSTRY RELATING TO DOMESTIC CERVIDAE FARMING**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 25, Chapters 2,3,4,5 and 6, and
[37] 35, Idaho Code. ~~(1-10-94)~~(11-22-95)T

(BREAK IN CONTINUITY OF SECTIONS)

~~365. PERTAINING TO THE IMPORTATION OF CERVIDAE.~~

~~01. Compliance to Rules. Animals belonging to the family cervidae shall be
in compliance with the following rules in order to qualify for entry into the state of Idaho:~~
~~(8-6-91)~~

~~a. Be tested negative for brucellosis on an official brucellosis test within
thirty (30) days prior to entry.~~ ~~(8-6-91)~~

~~b. Be negative to a 0.1 cc SCC (Single Cervical Test) test conducted using
PPD Bovis Tuberculin within thirty (30) days prior to entry, and~~ ~~(8-6-91)~~

~~c. Be from a herd which has had a negative complete herd tuberculosis test
of all eligible animals, using the 0.1 cc SCC, PPD Bovis Tuberculin test, within the past
one hundred eighty (180) days, or~~ ~~(8-6-91)~~

~~d. Be held in isolation for ninety to one hundred twenty (90 to 120) days
after arrival in Idaho and be retested for Tuberculosis after the isolation period using the
0.1 cc SCC PPD Bovis Tuberculin test, and~~ ~~(8-6-91)~~

~~e. Be individually identified, by official identification tags, on a Certificate
of Veterinary Inspection issued by the veterinarian who conducted the tests, and~~ ~~(8-6-91)~~

~~f. Enter on an import permit issued by the Idaho Bureau of Animal Health.~~
~~(8-6-91)~~

~~02. Game Farm Permit. Such animals shall also be destined for a premise
that has a game farm permit for that species from the Department of Fish and Game.~~
~~(8-6-91)~~

365. DOMESTIC CERVIDAE FARMING.

01. Definitions. (11-22-95)T
- a. Administrator - Administrator of the division of animal industries or his designee. (11-22-95)T
- b. Cervidae farms or ranches - A location where domestic cervidae are held, raised, propagated or otherwise controlled. (11-22-95)T
- c. Department of agriculture - The Idaho Department of Agriculture (11-22-95)T
- d. Division - Division of animal industries. (11-22-95)T
- e. Domestic cervidae - Domestically raised, owned or controlled fallow deer (*Dama dama*), elk (*Cervus elaphus*) or reindeer (*Rangifer tarandus*). (11-22-95)T
- f. Domestic cervidae license - A license issued by the division of animal industries, Idaho Department of Agriculture, that allows raising of domestic cervidae on a cervidae farm. (11-22-95)T
- g. Quarantine facility - A confined area where selected domestic cervidae can be secured and isolated from all other cervidae and livestock. (11-22-95)T
- h. Ungulate - Hoofed animal. (11-22-95)T
02. License and Fees. (11-22-95)T
- a. No person shall possess, obtain, control, or propagate domestic cervidae in this state unless first securing a domestic cervidae license from the division of animal industries. A form will be provided by the division which sets forth such reasonable information as may be required by the administrator. The facility shall be inspected and approved by the division prior to issuing a license. (11-22-95)T
- b. The application for such license shall be made prior to construction of a new facility. (11-22-95)T
- c. The initial application shall be accompanied by a one hundred dollar (\$100.00) fee to cover the cost of inspections and the licensing process. An annual fifty dollar (\$50.00) renewal fee will be required each January 1. A license shall be valid from January 1 through December 31 of each year. (11-22-95)T
- d. A valid license shall be obtained for each separate location of a cervidae farm or ranch. (11-22-95)T
- e. In addition to the cervidae license, a fee, not to exceed five dollars (\$5.00) per head on elk or three dollars (\$3.00) per head on fallow deer and reindeer, is to be assessed on all domestic cervidae in the state to cover the cost of administering the

program covered in these rules. This fee is due January 1 of each year. (11-22-95)T

03. Facilities. All domestic cervidae will be held in a secure enclosure. For the purpose of this rule, a secure enclosure is one so constructed as to prevent danger to the surrounding environment, wildlife or livestock of the state, including the escape of domestic cervidae or ingress of native wildlife ungulates. (11-22-95)T

04. Fencing Requirements: (11-22-95)T

a. A perimeter fence shall be constructed of high-tensile, non-slip woven wire or other fencing material approved by the administrator. (11-22-95)T

i. For elk and fallow deer, the fence shall be a minimum of eight (8) feet in height for its entire length. (11-22-95)T

ii. For reindeer, the fence shall be six (6) feet in height for its entire length. (11-22-95)T

iii. The top two feet of each fence may be smooth, barbed or woven wire (at least twelve and one-half (12-1/2) gauge) with horizontal strands spaced not more than six (6) inches apart. Wire shall be placed on the animal side of the fence to prevent pushing the wire away from the posts. (11-22-95)T

b. Posts used in the perimeter fence constructed of high-tensile, non-slip woven wire shall be at least butt-end treated with a commercially available preservative and have a minimum of four (4) inch top for line posts and a minimum of five (5) inch top for corner posts. Posts shall be spaced no more than twenty-four (24) feet apart, with stays, supports or braces as needed, and be placed in the ground a minimum of three (3) feet. Any deviations from these specifications shall be approved by the administrator. (11-22-95)T

c. Fences shall be maintained at all times to prevent domestic cervidae from escaping or native wildlife ungulates from entering the enclosure. If such animals do pass through, under, or over the fence because of any topographic feature or other conditions, the owner of the enclosure shall immediately repair or supplement the fence to prevent continued passage. (11-22-95)T

d. Each enclosure shall have adequate gates that prohibit the escape of domestic cervidae. (11-22-95)T

e. Existing domestic cervidae producers will be given until January 1, 1997 to bring their facilities into compliance with the requirements of these rules. (11-22-95)T

05. Restraining System. Each cervidae farm shall have a system of restraining domestic cervidae for the purpose of inspection and testing of animals by division personnel. Minimum requirements include a working pen, an alley way and a restraining chute where animals can be humanely handled. The restraint facility shall be approved by the division each year as part of the relicensing process. (11-22-95)T

06. Quarantine Facility. If animals are to be imported onto the domestic cervidae farm, a quarantine facility shall be provided for holding animals until tuberculosis retesting is accomplished. (11-22-95)T

07. Identification. (11-22-95)T

a. All domestic cervidae shall be individually and uniquely identified by two (2) of the three (3) following methods: (11-22-95)T

i. Official USDA eartag or other eartag approved by the administrator. (11-22-95)T

ii. Ear tattoo using an alpha numeric tattoo sequence that has been recorded with the division of animal industries. The tattoo shall be applied in the left ear. (11-22-95)T

iii. Microchip approved by the division, in cooperation with the Idaho Brand Department, with an identifying number/frequency that has been recorded with the division. (11-22-95)T

b. It is recommended that cervidae breeders place an additional visible eartag in each animal so that identification of individual animals is possible without restraint of the animal. (11-22-95)T

c. All progeny of domestic cervidae shall be permanently identified by December 31 of the year of birth or upon leaving the cervidae farm, whichever is earlier. Official identification, once assigned to an individual animal, shall not be changed or transferred to another animal. Animals that lose identification devices shall be reidentified in accordance with Subsection 365.07.a. (11-22-95)T

08. Disease Control and Genetics. (11-22-95)T

a. Tuberculosis Eradication in Cervidae, Uniform Methods and Rules, Effective May 15, 1994, as amended, and Brucellosis Eradication, Uniform Methods and Rules, Effective May 6, 1992, as amended, both of which methods and rules are hereby incorporated by reference will be used as the standards for tuberculosis and brucellosis eradication in domestic cervidae. Copies of the methods and rules are on file at the division of animal industry offices located at 2270 Old Penitentiary Road, Boise, Idaho and through the State Auditor's Office, Division of Statewide Rules, Office of the Rules Coordinator, located at 700 West State Street, Boise, Idaho 83720. (11-22-95)T

b. The administrator may require, when sufficient risk exists, that domestic cervidae in the state be tested for brucellosis (*Brucella abortus* or *Brucella suis*), tuberculosis (*Mycobacterium bovis*), meningeal worm (*Parelaphostrongylus tenuis*) or muscle worm (*Elaphostrongylus cervus*) and/or for other diseases or parasites determined to pose a risk to other domestic cervidae, livestock or wildlife. The administrator shall determine appropriate testing procedures and methods. (11-22-95)T

c. Any animals identified as having red deer genetic influence shall be destroyed, removed from the state, or neutered. (11-22-95)T

09. Reporting. (11-22-95)T
- a. A person possessing domestic cervidae shall submit a completed annual report of all animals held, no later than December 31 of each year, on a form provided by the division. Such annual report is required for yearly license renewal. (11-22-95)T
- b. Persons possessing domestic cervidae shall notify the division of animal industries within thirty (30) days of any change of address and/or location of the domestic cervidae farm. (11-22-95)T
- c. Whenever any domestic cervidae escape from a domestic cervidae farm, the owner, manager or caretaker shall notify the division immediately. The division shall then be responsible to notify the Department of Fish and Game of such escape. The division or its designee may dispose of domestic cervidae that have escaped the owner's control in order to insure the health and genetic purity of Idaho's wild ungulate populations. (11-22-95)T
- d. The death of a domestic cervidae over one (1) year of age shall be reported to the division within twenty-four (24) hours of such death, excluding slaughter animals. (11-22-95)T
10. Inspection. (11-22-95)T
- a. All domestic cervidae located in the state and records related thereto, are subject to inspection for compliance with the provisions of this section. (11-22-95)T
- b. Such inspections shall be conducted at reasonable times and locations, with the owner or the owner's representative present. (11-22-95)T
11. Notification and Disposition of Diseased Animals. (11-22-95)T
- a. Any owner, caretaker, or dealers in domestic cervidae, and any veterinarian practicing in the state, and any lab conducting cervidae testing who has reason to believe that domestic cervidae are exposed to a dangerous or reportable disease or parasite shall notify the division immediately. The administrator may order inspection, quarantine, examination or testing of such animals by a licensed accredited veterinarian, or representative of the division. (11-22-95)T
- b. The administrator shall determine when testing, treatment, quarantine or disposal of domestic cervidae is required at any domestic cervidae farm or ranch, pursuant to Idaho Code, Title 25, Chapters 2, 3, 4, 6 and [37] 35. If the administrator determines that testing, treatment, quarantine or disposal of domestic cervidae or disinfection or sterilization of facilities is required, a written order shall be issued to the owner describing the procedure to be followed and the time period for carrying out such actions. (11-22-95)T
12. Unlawfully Possessed Cervidae. (11-22-95)T

a. The department may seize, require removal from the state or require disposal of any unlawfully possessed domestic cervidae. (11-22-95)T

b. Reindeer shall not be owned, possessed, propagated or held in the state north of the Salmon River in order to protect the wild caribou herd in northern Idaho. (11-22-95)T

13. Imported Domestic Cervidae. (11-22-95)T

a. Domestic cervidae may enter the state of Idaho provided they meet the following requirements, and are accompanied by a Certificate of Veterinary Inspection attesting to the fact that they have been inspected within thirty (30) days of date of shipment, and that they are free from evidence of infectious, contagious, or communicable diseases, or known exposure thereto during the preceding sixty (60) days: (11-22-95)T

i. Be tested negative for brucellosis if six (6) months of age or older, by at least two (2) types of official brucellosis tests, one of which shall be the rivanol, the PCFIA or the CITE test, within thirty (30) days prior to entry; and, (11-22-95)T

ii. If animals originate from an accredited herd, they may be imported without further tuberculosis testing provided that they are accompanied by a certificate stating that such domestic cervidae originated from an accredited herd; or, (11-22-95)T

iii. If animals originate from a qualified herd, they may be imported if accompanied by a certificate stating that such domestic cervidae originated from a qualified herd and have been classified negative to an official tuberculosis test that was conducted within ninety (90) days prior to the movement date. If the qualifying test was administered within ninety (90) days of movement, the animals to be moved do not require an additional test; or, (11-22-95)T

iv. If animals originate from a monitored herd, they may be imported if accompanied by a certificate stating that such domestic cervidae originated from a monitored herd and have been classified negative to an official tuberculosis test that was conducted within ninety (90) days prior to the date of movement; or, (11-22-95)T

v. If animals do not originate from an accredited, qualified or monitored herd, they may be imported if accompanied by a certificate stating that such domestic cervidae have been classified negative to two (2) official tuberculosis tests that were conducted no less than ninety (90) days apart, that the second test was conducted within ninety (90) days prior to the date of movement, and that the animals were isolated from all other members of the herd during the testing period. Test eligible age is six (6) months or older, or less than six (6) months of age if not accompanied by a negative tested dam. (11-22-95)T

vi. Elk shall be tested negative for red deer genetic factor by a lab approved by the division of animal industries, and (11-22-95)T

vii. Be from a region not known to be endemic with Parelaphostrongylus tenuis (meningeal worm), as reported by the Southeastern Cooperative Wildlife Disease Study, and (11-22-95)T

viii. Be individually identified, by an official USDA identification tag or microchip, on a Certificate of Veterinary Inspection issued by the veterinarian who conducted the tests, and (11-22-95)T

ix. Be destined for a domestic cervidae farm currently licensed by the division, and (11-22-95)T

x. Enter on an import permit issued by the Idaho division of animal industries. (11-22-95)T

b. Movement of cervidae between accredited American Association of Zoological Parks and Aquariums (AAZPA) facilities is exempt from the tuberculosis testing requirements of this rule. All other movement from AAZPA-accredited facilities shall comply with the tuberculosis requirements. (11-22-95)T

14. Intrastate Movement of Domestic Cervidae. (11-22-95)T

a. All live domestic cervidae six (6) months of age or older moving from one premise to another premise within the state of Idaho, except those consigned directly to an approved slaughter facility, shall be accompanied by an official negative test for tuberculosis conducted within the last ninety (90) days or written permission from the administrator. Animals originating from an accredited, qualified or monitored herds, as described in Tuberculosis Eradication in Cervidae, Uniform Methods and Rules, effective May 15, 1994, as amended, shall be exempted from test requirements, if they are accompanied by a certificate signed by an accredited veterinarian or the administrator stating such domestic cervidae have originated directly from such herd. (11-22-95)T

15. Penalty For Violations. Any person, firm, or corporation violating any of the provisions of chapters 2, 3, 4, 6 or [37] 35, title 25, Idaho Code, applicable to domestic cervidae, or the rules promulgated by the division of animal industries for the enforcement thereof shall be guilty of a misdemeanor, and upon conviction, shall be subject to a fine of not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000) for each offense, as authorized by [25-3706] 25-3506, Idaho Code. (11-22-95)T

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

**02.06.35 - IDAHO DEPARTMENT OF AGRICULTURE RULES CONCERNING
ROUGH BLUEGRASS, POA TRIVIALIS, QUARANTINE UNDER THE DIVISION
OF PLANT INDUSTRIES, BUREAU OF SEED ANALYSIS AND CONTROL**

DOCKET NO. 02-0635-9601

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective November 21, 1995.

AUTHORITY: In compliance with Section(s) 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has proposed temporary and regular rule-making. The action is authorized pursuant to Title 22, Chapter 20, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be held as follows: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996. 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 statement in nontechnical language of the substance of the proposed rule: These rules prohibit the planting of rough bluegrass, *Poa trivialis*, for seed production in eighteen counties in Idaho.

The following is the required finding and a concise statement of the supporting reasons for temporary rule-making: The seed of the crop known as rough bluegrass is a noxious weed pursuant to Section 22-2003, Idaho Code and is injurious to Kentucky bluegrass seed production. A rough bluegrass quarantine is established pursuant to Section 67-5226(1), Idaho Code, to confer benefits by preventing the introduction of rough bluegrass into major Kentucky bluegrass seed production areas in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Dr. Roger Vega at (208) 334-2986 or Mr. Richard Lawson at (208) 334-2368.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before January 24, 1996.

DATED this 21st day of November, 1995.

John L. Hatch, Director
Idaho Department of Agriculture
P.O. Box 790
Boise, ID 83701-0790
(208) 334-3240/FAX (208) 334-4623

TEXT OF DOCKET NO. 02-0635-9601

IDAPA 02
TITLE 06
CHAPTER 35

**IDAHO DEPARTMENT OF AGRICULTURE RULES CONCERNING
ROUGH BLUEGRASS, *Poa trivialis*, QUARANTINE UNDER THE DIVISION OF
PLANT INDUSTRIES, BUREAU OF SEED ANALYSIS AND CONTROL**

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 22, Chapter 20, Idaho Code.
(11-21-95)T

001. TITLE AND SCOPE.

The title of this chapter is Rules Concerning Rough Bluegrass, *Poa trivialis*, Quarantine Under the Division of Plant Industries, Bureau of Seed Analysis and Control. This chapter has the following scope: these rules prohibit the planting of rough bluegrass, *Poa trivialis*, for seed production in the regulated areas. The official citation of this chapter is IDAPA 02.06.35.000 through 02.06.35.999. For example, the citation for this section is IDAPA 02.06.35.001.
(11-21-95)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules.
(11-21-95)T

003. ADMINISTRATIVE APPEAL.

There is no provision for administrative appeal before the Department of Agriculture under this chapter. Hearing and appeal rights are pursuant to Title 67, Chapter 52, Idaho Code.
(11-21-95)T

004. DEFINITIONS.

The Idaho Department of Agriculture adopts the definitions set forth in Section 22-2003, Idaho Code.
(11-21-95)T

01. Director. The Director of the Idaho Department of Agriculture, or his designated agents.
(11-21-95)T

02. Person. Any person, individual, firm, partnership, corporation, company, society, or association or every officer, agent or employee thereof. (11-21-95)T

03. Rough Bluegrass. *Poa trivialis* and all related off-types or sub-species of *Poa trivialis*, hereinafter referred to as rough bluegrass.
(11-21-95)T

005. ROUGH BLUEGRASS QUARANTINE - REGULATED ARTICLES.

Rough bluegrass.
(11-21-95)T

006. FINDINGS.

The seed of the crop known as rough bluegrass is a noxious weed pursuant to Section 22-2003, Idaho Code, and is injurious to Kentucky bluegrass seed production. A rough bluegrass quarantine is established pursuant to Section 67-5226(1), Idaho Code, to confer benefits by preventing the introduction of rough bluegrass into major Kentucky bluegrass seed production areas in Idaho. (11-21-95)T

007. -- 049. (RESERVED).

050. ROUGH BLUEGRASS QUARANTINE - REGULATED AREAS.

The regulated areas are the Idaho counties of Benewah, Bingham, Blaine, Bonner, Camas, Clark, Clearwater, Elmore, Idaho, Jerome, Kootenai, Latah, Lewis, Madison, Nez Perce, Power, Shoshone and Twin Falls. (11-21-95)T

051. -- 099. (RESERVED).

100. ROUGH BLUEGRASS QUARANTINE - RESTRICTIONS.

No rough bluegrass shall be planted for seed production in the regulated areas. (11-21-95)T

101. ROUGH BLUEGRASS QUARANTINE - INSPECTIONS.

The Director shall cause inspections to be made in accordance with the provisions of Section 22-2001, Idaho Code. (11-21-95)T

01. Infested Seed Stock. Lots of turf seed stock contaminated with rough bluegrass seeds may be planted in an approved nursery of two (2) acres or less under the supervision of the Director. The nursery shall be seeded in rows spaced twenty-four (24) inches apart and it shall be the duty of the person receiving such seed stock to rogue the planting or chemically treat to eradicate the rough bluegrass. The approved nursery shall be inspected by the Department at least three (3) times during the seedling year. Any approved nursery not passing inspection shall not be harvested but shall be destroyed upon the order of the Director at the owner's expense. (11-21-95)T

02. Application For Nursery Inspection. A person shall make application for nursery inspection to the Director at least fourteen (14) days prior to planting. (11-21-95)T

102. -- 149. (RESERVED).

150. ROUGH BLUEGRASS QUARANTINE - EXEMPTION.

01. Experiments or Trial Grounds. This quarantine shall not apply to: experiments or trial grounds of the United States Department of Agriculture, experiments or trial grounds of the University of Idaho Agriculture Experiment Station, or trial grounds of any person, provided said trial ground plantings are approved by the Director and under supervision of technically-trained personnel familiar with rough bluegrass. (11-21-95)T

02. Rough Bluegrass. Rough bluegrass may be planted in the regulated areas for turf but shall not be allowed to mature to the seed producing stage. (11-21-95)T

151. ROUGH BLUEGRASS QUARANTINE - PENALTIES FOR VIOLATION.
Any person who violates the terms of this quarantine may be subject to the criminal penalties in Section 22-2004, Idaho Code. (11-21-95)T

152. -- 999. (RESERVED).

IDAPA 07 - DEPARTMENT OF LABOR AND INDUSTRIAL SERVICES

07.03.11 - MANUFACTURED/MOBILE HOME LICENSING

DOCKET NO. 07-0311-9501

NOTICE OF FINAL RULE

EFFECTIVE DATE: This rule has been adopted as final by the agency and is now pending review by the 1996 Idaho State Legislature for final adoption.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a final rule. The action is authorized pursuant to Section 44-2103, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance of the proposed rule:

Enactment of section 44-2103(4), Idaho Code (effective July 1, 1995), authorized the Director of the Department of Labor and Industrial Services (DLIS) to promulgate a rule providing for the acceptance of a money deposit in lieu of the performance bond requirement set forth at section 44-2103(3), Idaho Code.

The proposed rule, which will be promulgated at a new section to be denominated as IDAPA 07.03.11.019.03, will provide a framework for manufactured home license applicants to deposit a cash deposit with DLIS in lieu of a performance bond.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this final rule, contact Joe Hunter, Building Division Administrator, Department of Labor and Industrial Services, 277 N. 6th Street, Suite 100, P.O. Box 83720, Boise, ID 83720-4801, (208) 334-3896.

DATED this 20th day of November, 1995.

Craig G. Bledsoe
277 N. 6th, Suite 201
P.O. Box 83720
Boise, ID 83720-0048
(208) 334-3950/fax (208) 334-2683

IDAPA 07
TITLE 03
Chapter 11

Rules Governing Manufactured Mobile Home Licensing

**There are no substantive changes
from the proposed rule text**

**The original text was published in the Idaho
Administrative Bulletin, Volume 95-10, October 4, 1995
Pages 8 through 10**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1996 Idaho State Legislature
for final adoption**

IDAPA 08 - IDAHO STATE BOARD OF EDUCATION

08.01.10 - IDAHO COLLEGE WORK STUDY

DOCKET NO. 08-0110-9501

NOTICE OF FINAL RULE

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a final rule. The action is authorized pursuant to Idaho Code § 33-105(1).

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

The final rule repeals IDAPA 08.01.10.103, which was originally adopted to prevent institutions from using new Idaho College Work Study funds to replace existing programs rather than expanding work study opportunities for students. Since the work study concept has been solidified, the need for this rule no longer exists.

There were no changes in the proposed rulemaking as referenced in the November 1, 1995, Volume 95-11, Idaho Administrative Bulletin.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this final rule, contact Bill Hargrove at the office of the State Board of Education at (208) 334-2270.

Dated this 20th day of November, 1995.

Bill Hargrove, Public Affairs Officer
Office of the State Board of Education
P.O. Box 83720
Boise, Idaho 83720-0037

(208) 334-2270 (telephone)
(208) 334-2632 (fax)

TEXT OF DOCKET NO. 08-0110-9501

103. ~~(RESERVED).~~ MAINTENANCE OF EFFORT. ~~In order for an institution to participate in the Idaho College Work Study Program, the total of institutional revenues expended for state, federal, and institutional work study programs shall not be less than the three-year average of these expenditures for the three (3) fiscal years preceding the fiscal year of participation in the Idaho College Work Study Program. Institutional revenues shall be defined to exclude federal funds. The state revenues used to calculate the maintenance of effort shall exclude funds appropriated for the Idaho College Work Study Program.~~ (7-1-93)

IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT
11.07.04 - ENVIRONMENTAL AUDIT PROTECTION RULES
DOCKET NO. 11-0704-9601
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: The effective date of the temporary rule is January 3, 1996.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules and has proposed rule-making. The action is authorized pursuant to Title 25, Chapter 11, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be held as follows:

Public hearings concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than twenty-one (21) days after the first publication of this notice.

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

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the required finding and a concise statement of the supporting reasons for temporary rule-making and the substance of the proposed rule:

The Department of Law Enforcement finds that pursuant to Section 67-5226 (1), Idaho Code, these rules are necessary to protect the public health, safety, and welfare of Idaho, confers a benefit, and ensures the reasonable enforcement of the rules.

Section 9-810, Idaho Code, requires agencies with authority to enforce environmental laws to promulgate rules implementing the Environmental Audit Protection Act. These rules provide that Environmental Audit Reports submitted to the Department of Law Enforcement will be governed by the Environmental Audit Rules of the Department of Health and Welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact W. Corey Cartwright, at (208) 884-7080. Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered within twenty-one (21) days of the date of first publication of this notice.

DATED this 25th day of October, 1995.

W. Corey Cartwright
Deputy Attorney General
Department of Law Enforcement
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (fax)

TEXT OF DOCKET NO. 11-0704-9601

IDAPA 11
TITLE 07
Chapter 04

IDAHO DEPARTMENT OF LAW ENFORCEMENT
ENVIRONMENTAL AUDIT PROTECTION RULES

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Idaho Department of Law Enforcement the authority to promulgate these rules pursuant to Section 9-810, Idaho Code. (1-3-96)T

001. SUNSET PROVISION.

These rules shall automatically expire December 31, 1997, contemporaneously with the expiration of the Environmental Audit Protection Act, unless said Act is extended by act of the legislature, in which event, they shall continue during the existence of the Environmental Audit Protection Act. (1-3-96)T

002. -- 009. (RESERVED).

010. ADOPTION OF RULES OF THE DEPARTMENT OF HEALTH AND WELFARE.

Environmental Audit Reports submitted to the Idaho Department of Law Enforcement pursuant to Section 9-809, Idaho Code, shall be governed in accordance with the Environmental Audit Protection Rules of the Department of Health and Welfare, IDAPA 16.01.10, rule 010 et. seq. (1-3-96)T

011. -- 999. (RESERVED).

IDAPA 11 - DEPARTMENT OF LAW ENFORCEMENT

**11.11.01 - RULES OF THE IDAHO PEACE OFFICER
STANDARDS AND TRAINING COUNCIL**

DOCKET NO. 11-1101-9601

NOTICE OF PROPOSED AND TEMPORARY RULES

EFFECTIVE DATE: The temporary rule is effective January 1, 1996, and remains effective until rescinded or superseded by replacement rule or the approval of the final rule by the legislature or such other date specified in the concurrent resolution, or upon the conclusion of the 1997 legislative session, whichever is sooner.

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 has proposed rule-making. The action is authorized pursuant to Title 19, Chapter 51, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be held as follows:

Public hearings concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than twenty-one (21) days after the first publication of this notice.

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

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance of the proposed rule:

PROPOSED AMENDMENT TO IDAPA 11.11.01.095.03: The temporary and proposed rule changes the period of time permitted for a student who has completed the equivalent of the POST Basic academy to become employed and certified from one to three years.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Mike Becar, at (208) 884-7250. Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered within twenty-one (21) days of the date of first publication of this notice.

DATED this 1st day of November, 1995.

W. Corey Cartwright
Deputy Attorney General
Department of Law Enforcement
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050
(208) 884-7090 (fax)

TEXT OF DOCKET NO. 11-1101-9601

095. THE BASIC CERTIFICATE.

In addition to the requirements set forth in Section 092 of these Rules the following requirements are necessary for award of the basic certificate. (7-1-93)

01. Probation. The applicant must have completed at least six (6) months satisfactory probationary period (may include basic training academy time). Probationary period may be extended by the agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time must be continuous with the department the officer is employed with when applying for certification. Probationary period may not extend over one (1) year for certification purposes. (7-1-93)

02. Basic Training. The applicant shall have completed the Basic Training Course as recommended by the Council in Section 071 or be a graduate of a law enforcement vo-tech program, the curriculum of which has been approved by the Council as being equivalent to the POST Basic Training Course, and shall have passed the POST certification examination approved by the Council. The applicant shall be allowed two (2) attempts to pass the examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts, he/she must successfully completed the POST Basic Training Academy Course to be certified. (7-1-93)

03. Employed. Any peace officer presently employed by a duly constituted Idaho law enforcement agency who has within the last five (5) years, been certified or commissioned by another state or the federal government as a peace officer or a student who has satisfactorily completed a Basic Police Academy equivalent to Idaho Post Basic Training within the last three (3) years shall be eligible for certification in the state of Idaho without attending the Basic Academy, provided they comply with ~~section~~ Subsection 095.03.a. through 095.03.e. (7-1-93)(1-1-96)T

a. Provided the officer submits a POST Certification Challenge Packet, passes the POST certification examination approved by the Council, qualifies with his/her firearms on the POST Short Course, and passes the POST fitness test. These qualifications must be administered by a POST Training Specialist. (7-1-93)

b. Completes a six (6) month probationary period with one (1) Idaho law enforcement agency and meets other requirements set forth by the Council. In addition to the above requirements, the said officer shall attend and pass an approved course of study in Idaho Law. (7-1-93)

c. An officer is allowed two (2) attempts to pass the POST certification examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts, he/she must successfully complete the POST Basic Training Academy Course to be certified. (7-1-93)

d. Education and training must be supported by copies of transcripts, certificates, diplomas, or other verifying documents attached to the application. (7-1-93)

e. The officer must have completed the required probationary period required by their department when making application for higher certification. (7-1-93)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-9501

NOTICE OF VACATION OF RULE-MAKING

ACTION: The action, under Docket No. 13-0111-9501, concerns the vacation of temporary and proposed rule-making governing the Idaho Fish and Game Commission, IDAPA 13, TITLE 01, Chapter 11, Rules Governing Fish.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has vacated Rule-Making. The action is authorized pursuant to Section 36-104(b), Idaho Code. The vacation of Rule-Making is effective January 1, 1996.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance of this action:

Vacation of the temporary and proposed rule establishing the fall steelhead season to allow the adoption of an updated chapter of rules governing fishing.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this action, contact W. Dallas Burkhalter, 600 South Walnut, Boise, Idaho 83707, 208-334-3715.

Dated this 1st of December 1995.

W. Dallas Burkhalter
Deputy Attorney General
P.O. Box 25
Boise, ID 83707
(208) 334-3715
FAX (208) 334-2148

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-9601

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: This repeal of rules is effective January 1, 1996.

ACTION: The action, under Docket No. 13-0111-9601, concerns the proposed rules governing the Idaho Fish and Game Commission, IDAPA 13, Title 01 Chapter 11, Rules Governing Fish in the State of Idaho.

AUTHORITY: In compliance with Sections 67-5221(1) 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule and proposed rule-making. The action is authorized pursuant to §§36-104(b) and 36-901, Idaho code. The temporary rule is effective January 1, 1996.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance of the proposed rule:

Repeal the entire chapter in preparation to adopt updated rules for Fish.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Bill Horton, 600 South Walnut, Boise, Idaho 83707, (208) 334-3791.

DATED this 22 day of November 1995.

W. Dallas Burkhalter, Deputy Attorney General
P.O. Box 25, Boise, ID 83707
(208) 334-3715/FAX (208) 334-2148

THESE RULES ARE BEING REPEALED IN THEIR ENTIRETY.

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-9602

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These rules are effective January 1, 1996.

ACTION: The action, under Docket No. 13-0111-9602, concerns the proposed rules governing the Idaho Fish and Game Commission, IDAPA 13, Title 01 Chapter 11, Rules Governing Fish in the State of Idaho.

AUTHORITY: In compliance with Sections 67-5221(1) 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule and proposed rule-making. The action is authorized pursuant to §§36-104(b) and 36-901, Idaho code. The temporary rule is effective January 1, 1996.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the substance of the proposed rule:

These rules establish the seasons, limits, and methods for fishing in Idaho for 1996 and 1997.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Bill Horton, 600 South Walnut, Boise, Idaho 83707, (208) 334-3791.

DATED this 22 day of November 1995.

W. Dallas Burkhalter, Deputy Attorney General
P.O. Box 25, Boise, ID 83707
(208) 334-3715/FAX (208) 334-2148

TEXT OF DOCKET NO. 13-0111-9602

**IDAPA 13
TITLE 01
Chapter 11**

**RULES GOVERNING FISH
IDAHO FISH AND GAME COMMISSION**

000. LEGAL AUTHORITY.

The Idaho Fish and Game Commission is authorized under Sections 36-104(b) and 36-901, Idaho Code, to adopt rules concerning fishing, methods of take, seasons, and

possession limits. (1-1-96)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as IDAPA 13.01.11.000, et seq., Idaho Fish and Game Commission Rules IDAPA 13, Title 01, Chapter 11, "Rules Governing Fish." (1-1-96)T

02. Scope. These rules establish the methods of take, seasons, and possession limits for all non-commercial fishing. (1-1-96)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(16)(b)(vi), Idaho Code, this agency has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection and copying at cost at the headquarters office at 600 South Walnut, Boise, Idaho. (1-1-96)T

003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of IDAPA 13.01.01, Rules of Practice and Procedure. (1-1-96)T

004. DEFINITIONS.

For the purposes of this chapter, the following terms will be defined as follows: (1-1-96)T

01. Artificial Fly. Any fly made entirely of rubber, wood, metal, glass, feather, fiber, or plastic by the method known as fly tying. (1-1-96)T

02. Artificial Lure. Any device made entirely of rubber, wood, metal, glass, feather, fiber, or plastic with hook or hooks attached. No bait of any kind may be used with artificial lures when fishing artificial flies and lures-only waters. (1-1-96)T

03. Bag Limit. The maximum number of fish that may be lawfully taken by any one person in one day. The term "bag limit" shall be construed to be an individual, independent effort and shall not be interpreted in any manner as to allow one (1) individual to take more than his "bag limit" toward filling the "bag limit" of another. The bag and possession limits are equal except for salmon and steelhead. (1-1-96)T

04. Bait. Organic substances, other than rubber, wood, feather, fiber, or plastic, attached to a hook to attract fish. Bait includes insects, insect larvae, worms, dead fish, fish parts, any other animal or vegetable matter, or scented synthetic materials. (Live fish prohibited.) . . . See: NO BAIT . . . (1-1-96)T

05. Barbless Hook. A fish hook without barbs or on which barbs have been bent completely closed. (1-1-96)T

06. Catch-and-Release. A fishing restriction applied to a body of water requiring that all game fish, except whitefish and brook trout, must be released immediately, unharmed, back to the water. Only artificial flies or lures with one barbless

hook may be used in waters designated catch-and-release; bait is prohibited. It is permissible to use up to five flies or lures, each with only one barbless hook, per line. Whitefish and brook trout landed from catch-and-release waters may be retained in possession. (1-1-96)T

07. Closed to Harvest. Effort, by permitted methods, to catch or attempt to catch a fish or group of fish is lawful, with the restriction that any fish or group of fish so caught must be released immediately back to the water. (1-1-96)T

08. Confluence of a Stream or River. The point where two rivers or streams come together. (1-1-96)T

09. Electric Motors Only. When fishing waters listed "electric motors only," gas (internal combustion) motors may be attached to the boat; but use of the gas motor is prohibited. (1-1-96)T

10. Fishing. Any effort made to take, kill, injure, capture, or catch any fish, crayfish, or bullfrog. (1-1-96)T

11. Float Tube. A floating device which suspends a single occupant, with his/her body from the waist down, in the water. (1-1-96)T

12. Fly Fishing. Fishing with a fly rod, fly reel, fly line, and artificial fly. (1-1-96)T

13. Game Fish. Brook, brown, bull (Dolly Varden), cutthroat, golden, lake (Mackinaw), rainbow (including steelhead), splake and sunapee trout; trout hybrids; chinook, coho, Atlantic and kokanee (blueback) salmon; grayling; whitefish; cisco; crappie; perch; bass; catfish; bullheads; sunfish; sturgeon; northern pike; tiger muskie; walleye and sauger; and burbot (ling). Bullfrogs and crayfish are also defined as game fish. (1-1-96)T

14. Harvest. Reduce a fish to possession. (1-1-96)T

15. Hook. A bent wire device, for the catching of fish, to which one, two, or three points may be attached to a single shank. Up to five (5) hooks per line may be used, except where specifically prohibited. (1-1-96)T

16. Ice Fishing. Fishing through an opening broken or cut through the ice. (1-1-96)T

17. Length. The length between the tip of the nose or jaw and the tip of the tail fin. (1-1-96)T

18. Motor. Includes electric and internal combustion motors. (See Electric Motors Only.) (1-1-96)T

19. Mouth of River or Stream. The place where a river or stream enters a larger body of water. (1-1-96)T

20. No Bait. Requires the use of artificial flies or lures, with one barbless hook ONLY per fly or lure. (1-1-96)T

21. No Motors. Fishing from a boat with a motor attached is prohibited. (1-1-96)T

22. Possession Limit. Maximum number of fish that may be lawfully in possession of any person. "Possession limit" shall apply to fish while in the field or being transported to the final place of consumption or storage. (1-1-96)T

23. Reservoir. The flat water level existing at any time within a reservoir basin. Unless noted otherwise, a stream flowing through the drawdown portion of a reservoir is not considered part of the reservoir. (1-1-96)T

24. Season Limit. The maximum number of fish that may be lawfully taken in any declared season. (1-1-96)T

25. Snagging. Taking or attempting to take fish by hooking other than in the mouth or head. Game fish which are hooked other than in the head or mouth must be released immediately. (1-1-96)T

26. Steelhead. Rainbow trout longer than 20 inches in length in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage (excluding lakes and the Lemhi and the Pahsimeroi rivers), and the Clearwater River drainage (excluding that portion above Dworshak Dam, and lakes). Rainbow trout longer than 20 inches in length with the adipose fin missing (as evidenced by a healed scar) are defined as steelhead in the Snake River from Hells Canyon Dam upstream to Oxbow Dam, and in the Boise River from its mouth upstream to Barber Dam, and in the Payette River from its mouth upstream to Black Canyon Dam during steelhead seasons. (1-1-96)T

27. Tributary. A stream flowing into a larger stream or lake. (1-1-96)T

28. Unattended Line. A line not under the immediate surveillance by the angler. (1-1-96)T

29. Unprotected Nongame Fish. All fish species other than game fish and protected species of special concern. (1-1-96)T

005. -- 100. (RESERVED).

101. RELEASE OF FISH.

No person shall release or allow the release of any species of live fish, or eggs thereof, in the state of Idaho without the permission of the director of the Idaho Department of Fish and Game, EXCEPT no permission is required: (1-1-96)T

01. Same Location - Fish. When fish are being freed from a hook and released at the same time and place where caught. (1-1-96)T

02. Same Location - Crayfish. When crayfish are being released from a trap and released at the same time and place where caught. (1-1-96)T

102. AREAS CLOSED TO THE TAKING OF FISH.

No person shall take fish on or from any state or federal fish hatchery property in Idaho EXCEPT as posted. (1-1-96)T

103. FISHING HOURS.

No restriction except where stated otherwise in the regional exceptions. (1-1-96)T

104. IDENTIFICATION OF SPECIES AND SIZE IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

01. Length. The length of a fish shall be determined by measuring the distance between the tip of the nose and the tip of the tail fin. (1-1-96)T

02. Restrictions. No person shall have in the field or in transit any trout, tiger muskie, or bass from which the head or tail has been removed. (1-1-96)T

105. POSSESSION AND TRANSPORTATION RESTRICTIONS.

No person shall possess, transport or cause to be transported within the state of Idaho any live fish or fish eggs without having first obtained a permit from the director of the Idaho Department of Fish and Game. However, no permit is required to: (1-1-96)T

01. Game Fish. Keep game fish, that can legally be reduced to possession, alive and in possession in a live well, net, or on a stringer while at the body of water from which they were taken. However, salmon and steelhead must either be immediately killed or released. (1-1-96)T

02. Aquarium Fish. Possess ornamental or tropical aquarium fish of varieties commonly accepted for interstate shipment. (1-1-96)T

03. Private Ponds or Commercial Fish Facility. Possess fish from a private pond or commercial fish facility when accompanied by sales receipt and written permission from the director, as provided in Chapter 7, Title 36, Idaho Code. (1-1-96)T

04. Between Commercial Fish Facilities. Transport fish between commercial fish facilities licensed under Chapter 7, Title 36, Idaho Code. (1-1-96)T

106. -- 199. (RESERVED).

200. LICENSES.

Any person 14 years of age or older must have a valid license or permit to fish for fish, bullfrogs or crayfish in Idaho. Nonresident children under 14 years of age must be accompanied by the holder of a valid fishing license and their fish must be included in license holder's limit in order to fish without a license. Resident children under 14 years of age need not be accompanied by the holder of a valid fishing license and they may have their own separate possession limit. Persons 14 years of age and older who do not qualify as residents must purchase a nonresident license. A person must be a bona fide resident domiciled within Idaho for at least six months in order to qualify for a resident license. (1-1-96)T

201. FISHING METHODS AND GEAR.

Unless modified by a regional exception, the following fishing methods and restrictions are applicable in all Idaho waters. :

01. Archery and Spear Fishing. Fishing with the use of bow and arrow, crossbow, spear or mechanical device, excluding firearms, is permitted for the taking of bullfrogs and unprotected nongame fish only in all waters during the season set for the taking of game fish in those waters. (1-1-96)T

02. Bait Restricted. It is unlawful to fish with bait in waters designated as artificial flies and lures only, fly fishing only, no bait, or catch-and-release. (1-1-96)T

03. Barbed Hooks. It is unlawful to fish for sturgeon with barbed hooks. It is unlawful to fish for or take steelhead with barbed hooks in the Clearwater River drainage, Salmon River drainage, and Snake River drainage below Hells Canyon Dam. It is unlawful to fish in artificial flies and lures only waters, or catch-and-release waters with barbed hooks. (1-1-96)T

04. Fishing Gear. It is unlawful to fish in any waters of Idaho with more than one (1) handline or pole with a line attached; or with more than five (5) lines while ice fishing; or by archery, spearfishing, snagging, hands, and netting except as permitted. Not more than five (5) hooks may be attached per line. The line or lines must be attended by the person fishing. (1-1-96)T

05. Fishing Shelters. Any enclosure or shelter which is left unattended overnight on the ice of any waters of the state shall have the owner's name and current address legibly marked on the enclosure or shelter. (1-1-96)T

06. Gaff Hook. It is unlawful to land fish of any species with a gaff hook except through a hole cut or broken in the ice in waters which have no length restrictions or harvest closures for that species. (1-1-96)T

07. Molesting Fish. It is unlawful to molest any fish by shooting at it with a firearm or pellet gun, striking at it with a club, hands, rocks, or other objects, building obstructions for catching fish, or chasing fish up or downstream in any manner. (1-1-96)T

08. Snagging. It is unlawful to snag game fish, unless otherwise stated by Commission rules/exceptions. Snagging of unprotected nongame fish species is permitted. (1-1-96)T

09. Trapping and Seining Minnows or Crayfish. It is lawful to take the young of unprotected nongame fish, crayfish, and yellow perch with a minnow net, seine, or up to five (5) traps, provided the seine or net does not exceed four (4) feet in length or width, and the minnow or crayfish trap does not exceed 18 inches in length or 12 inches in diameter or width. If the trap is of irregular dimension, but its volume does not exceed the volume of an 18"x12"x12" trap, it is also lawful to use. All fish so taken must immediately be killed except where stated otherwise. All traps must have a tag attached bearing the owner's name and address. Minnows and crayfish may only be taken during the season set for the taking of game fish in those waters. (1-1-96)T

10. Use of Bait. It is unlawful to use live fish as bait, except that live crayfish and bull frogs may be used if caught on the body of water being fished.

(1-1-96)T

11. Use of Hands. It is lawful to take bull frogs and crayfish with the hands.

(1-1-96)T

202. BAG AND POSSESSION LIMITS.

01. Bag Limit. Maximum number of fish that may be lawfully taken by one person in one day. The bag and possession limits are equal, except where listed in region exceptions and for salmon and steelhead.

(1-1-96)T

02. Possession Limit. Maximum number of fish that may be lawfully in possession of any one person. Possession limit shall apply to fish while in the field or being transported. All fish that are hooked, landed and not immediately released shall be counted in the possession limit of the person hooking the fish.

(1-1-96)T

03. Transport or Gift. No person shall transport for another or accept as a gift any game fish unless a statement signed by taker accompanies the fish, showing the number and kinds, the date taken, the taker's name, address, and fishing license number.

(1-1-96)T

04. Table on Bag and Possession Limits for Specified Fish. (1-1-96)T

SPECIES	BAG AND POSSESSION LIMITS
BASS - Largemouth and Smallmouth	5 In the aggregate of both species, NONE under 12 inches.
BROOK TROUT	10 In addition to the trout limit on any water, unless specifically excepted in region exceptions.
BULLFROG	12
BULL TROUT (Dolly Varden)	NONE There is no harvest season for bull trout. Any bull trout caught may not be removed from the water and must be released immediately.
BURBOT (Ling)	NONE There is no harvest season for burbot. Any burbot caught may not be removed from the water and must be released immediately.
NORTHERN PIKE	5
SALMON (Anadromous)	See Rules 500 to 599

SPECIES	BAG AND POSSESSION LIMITS
STEELHEAD	See Rules 400 to 499
STURGEON	NONE There is no harvest season for sturgeon. Any sturgeon caught may not be removed from the water and must be released immediately. Free permit AND mandatory catch report required. Barbless hooks required.
TIGER MUSKIE	2 NONE under 30 inches.
TROUT - includes the following trout family fishes: brook, brown, cutthroat, golden, grayling, lake, (Mackinaw), rainbow, splake, sunapee; trout hybrids; and the landlocked forms of chinook, coho, Atlantic and kokanee (blueback) salmon.	6 In the aggregate of all species (see Magic Valley Southeast, Upper Snake regions for special cutthroat trout restrictions).
WALLEYE and SAUGER	5 In the aggregate of both species
WHITEFISH	50
NONGAME SPECIES OF SPECIAL CONCERN - Shoshone, Wood River and Bear Lake sculpin, sandroller, leatherside chub, Pacific lamprey.	NONE May not be taken or possessed.
All Species other than those listed above.	NO LIMIT

(1-1-96)T

05. Special Limits. No person shall fish in waters having special limits while having fish in possession in excess of the special limits. (1-1-96)T

203. -- 299. (RESERVED)

300. GENERAL FISHING SEASONS.

The following general seasons apply to all waters of the state, except as listed in "Regional Exceptions." (1-1-96)T

01. Lakes, Ponds and Reservoirs (including Alpine Lakes): Extends ONLY to the edge of flat waters, excluding small, unnamed irrigation diversion ponds, beaver ponds and mill ponds.

OPEN ALL YEAR

(1-1-96)T

02. Ditches and Canals. Man-made structures used to transport water for irrigation or hydropower purposes.

OPEN ALL YEAR

(1-1-96)T

03. Rivers and Streams. Small, unnamed irrigation diversion ponds, beaver ponds and mill ponds have the same season as the river or stream on which they are located.

Saturday of Memorial Day Weekend through November 30

1996: May 25-November 30

1997: May 24-November 30

(1-1-96)T

04. General Whitefish Season. Fishing gear or bait restrictions which apply to a river or stream section during the season open for other species apply during the whitefish season.

1996: January 1-March 31 and: May 25-December 31

1997: January 1-March 31 and: May 24-December 31

NOTE: Whitefish and brook trout may also be taken in any waters during seasons open for other species, including reduced bag limit or size restricted waters, closed to harvest, and catch-and-release waters.

(1-1-96)T

05. General Steelhead Season: See Rules 400-499.

(1-1-96)T

06. Bullfrogs, Crayfish and Nongame Fish. Bullfrogs, crayfish, and nongame fish may be taken ONLY during the season set for the taking of game fish in those waters.

(1-1-96)T

301. - 309. (RESERVED).

310. PANHANDLE REGION EXCEPTIONS.

01. Special Seasons. Whitefish: Statewide whitefish season applies ONLY in the St. Joe, North Fork Coeur d'Alene, Little North Fork Coeur d'Alene, St. Maries, and Moyie rivers. Whitefish may be taken in other waters only during seasons open for other species in those waters.

(1-1-96)T

02. Panhandle Region Exceptions Table.

(1-1-96)T

Water	Species	Open Season Dates	Possession Limits	Special Rule
ANDERSON LAKE (Includes the channel to, but does not extend into the Coeur d'Alene River)				
	BASS	Jan 1-Jun 30	0	CLOSED TO HARVEST.
		Jul 1-Dec 31	2	NONE between 12"-16".
ANTELOPE LAKE				Electric motors ONLY
AVONDALE LAKE				
	BASS			Any size bass may be kept.
BALL CREEK (Kootenai River)				
	KOKANEE			CLOSED TO HARVEST.
BEAUTY CREEK		Jul 1-Nov 30		
BEAVER CREEK and its tributaries (Priest Lake)				
		Jul 1-Aug 31		Artificial flies and lures with one barbless hook ONLY per fly or lure
	TROUT		2	
BENEWAH CREEK and its tributaries				
		CLOSED TO FISHING		
BLANCHARD CREEK DRAINAGE				
		OPEN ALL YEAR		
BLOOM LAKE				
	BROOK TROUT			Must be counted in trout limit. Bonus brook trout does not apply.
BLUE LAKE (Priest River)				Electric motors ONLY.
BLUE LAKE (Includes the channel to, but does not extend into the Coeur d'Alene River)				
	BASS		2	NONE under 20".
BONNER LAKE				Electric motors ONLY.
BRUSH LAKE				Electric motors ONLY

Water	Species	Open Season Dates	Possession Limits	Special Rule
CARIBOU CREEK and its tributaries (Thorofare River)				
		CLOSED TO FISHING		
CARLIN CREEK		Jul 1-Nov 30		
CHASE LAKE				Electric motors ONLY.
	BASS	Jan 1-Jun 30	0	CLOSED TO HARVEST.
		Jul 1-Dec 31	2	NONE between 12"-16".
CLARK FORK RIVER				
Posted area adjacent to Cabinet Gorge Hatchery				
		CLOSED TO FISHING		
From the river's mouth (mouth is defined as an imaginary line from navigational marker 7 on the south, through the marked piling, to Bearpaw Point on the north) upstream to the railroad bridge at Clark Fork				
		Saturday of Memorial Day Weekend-Sep 30		
	BULL TROUT		0	CLOSED TO HARVEST
	TROUT includes brown, cut-throat, lake (Mackinaw), rainbow and trout hybrids		4	May not include more than 2 rainbow. No rainbow trout under 20".
From railroad bridge at Clark Fork upstream				
	BULL TROUT		0	CLOSED TO HARVEST.
	ALL OTHER SPECIES	OPEN ALL YEAR		
	TROUT			All rainbow over 20" must be released immediately.
COCOLALLA SLOUGH (to the edge of slack water)				

Water	Species	Open Season Dates	Possession Limits	Special Rule
		OPEN ALL YEAR		
COEUR D'ALENE LAKE (The lake extends to State Highway 97 on the east; to the dike road on Mica Creek, to Highway 95 on Cougar Creek, and to markers on streams and the orange pilings at the Spokane River on the north and west; and includes Hidden, Round, Chatcolet and Benewah lakes, as well as the St. Joe River to State Highway 3 bridge at St. Maries on the south.) NOTE: Mouths of streams for a radius of 100 yards into the lake have the same season as the particular stream. Beauty, Benewah, Carlin, Lake, Plummer, and Wolf Lodge creeks have special trout rules.				
	TROUT EXCEPT Chinook and Kokanee		1	NOT under 14".
	KOKANEE		25	Per day, 50 in possession.
	CHINOOK		2	
COEUR D'ALENE RIVER DRAINAGE including all tributaries, EXCEPT in catch-and-release waters.				
	KOKANEE		25	Per day, 50 in possession
	CHINOOK		2	
NOTE: Tributaries do not include connecting channels to lateral lakes associated with the river.				
COEUR D'ALENE RIVER				
Mainstem from the State Highway 97 bridge near Harrison upstream to the railroad bridge on the North Fork and the Forest Highway 9 bridge on the South Fork near the confluence of the North and South Forks at Enaville				
	CUT-THROAT	Jul 1-Sep 10	1	NOT under 14", must be counted in trout limit.
	ALL OTHER SPECIES	Jul 1-Nov 30		
Tributaries from the Highway 97 bridge near Harrison upstream to the railroad bridge on the North Fork and the Forest Highway 9 bridge on the South Fork near the confluence of the South and North Forks at Enaville				
		Jul 1-Nov 30		
COEUR D'ALENE RIVER, LITTLE NORTH FORK				
Mainstem from its confluence with the North Fork upstream to Laverne Creek				

Water	Species	Open Season Dates	Possession Limits	Special Rule
	CUT-THROAT	Saturday of Memorial Day Weekend-Sep 10	1	NOT under 14", must be in trout limit.
Tributaries from the confluence with the North Fork upstream to Laverne Creek				
		Jul 1-Nov 30		
Entire drainage upstream from and including Laverne Creek				
				CATCH-AND-RELEASE.
COEUR D'ALENE RIVER, NORTH FORK				
Mainstem from the railroad bridge at Enaville upstream to Yellow Dog Creek				
	CUT-THROAT	Saturday of Memorial Day Weekend-Sep 10	1	NOT under 14" must be counted in trout limit.
Tributaries from the railroad bridge at Enaville upstream to Yellow Dog Creek, excluding the Little North Fork				
		Jul 1-Nov 30		
Entire drainage upstream from and including Yellow Dog Creek				
				CATCH-AND-RELEASE.
COEUR D'ALENE RIVER, SOUTH FORK				
Mainstem upstream from the Forest Highway 9 bridge at Enaville				
	CUT-THROAT	Saturday of Memorial Day Weekend-Sep 10	1	NOT under 14", must be counted in trout limit.
Tributaries		Jul 1-Nov 30		
DAWSON LAKE				
				Electric motors ONLY.
DAY ROCK POND				
		OPEN ALL YEAR		
DEEP CREEK - From McArthur Reservoir Dam downstream to U.S. Highway 95				
		CLOSED TO FISHING		
DENTON SLOUGH				
		OPEN ALL YEAR		
ELSIE LAKE				
				Electric motors ONLY.

Water	Species	Open Season Dates	Possession Limits	Special Rule
FERNAN LAKE				
	BASS			Any size bass may be kept
FERNAN LAKE OUTLET (downstream from the lake end of the culvert at the I-90 crossing)				
		Saturday of Memorial Day Weekend-Nov 30		
FREEMAN LAKE				Electric motors ONLY.
GAMBLE LAKE				Electric motors ONLY.
GENE DAY POND		OPEN ALL YEAR		
GILLON CREEK DIVERSION - From Gillon Creek to Robinson Lake				
		CLOSED TO FISHING		
GLIDDEN LAKES (Upper and Lower)				Electric motors ONLY.
GOLD CREEK (Pend Oreille Lake), including North and West Gold creeks and all tributaries				
		CLOSED TO FISHING		
GOLD POND (Shoshone County)				
		OPEN ALL YEAR		
GRANITE CREEK and its tributaries (Pend Oreille Lake)				
		Saturday of Memorial Day Weekend-Aug 31		
	TROUT		2	
GRANITE CREEK and its tributaries (Priest Lake)				
		Jul 1-Aug 31		Artificial flies and lures with one barbless hook ONLY per fly or lure
	TROUT		2	
GRANITE LAKE				Electric motors ONLY.
	BASS	Jan 1-Jun 30	0	CLOSED TO HARVEST

Water	Species	Open Season Dates	Possession Limits	Special Rule
		Jul 1-Dec 31	2	NONE between 12"-16".
GROUSE CREEK and its tributaries				
		Saturday of Memorial Day Weekend-Aug 31		
	TROUT		2	
100 yards upstream and downstream from Grouse Creek Falls				
		CLOSED TO FISHING		
HAUSER LAKE OUTLET				
		OPEN ALL YEAR		
	BASS			Any size bass may be kept.
HAYDEN CREEK and its tributaries				
		CLOSED TO FISHING		
HAYDEN LAKE				
	BASS	Jan 1-Jun 30	0	CLOSED TO HARVEST.
		Jul 1-Dec 31	2	NONE between 12"-16".
	CRAPPIE		15	NONE under 10".
	NORTH-ERN PIKE		No limit.	
	TROUT	Last Saturday in Apr-Nov 30	2	NONE under 14".
HAYDEN LAKE INLETS (Includes tributaries and all waters extending into the lake to markers at mouths of Hayden, Mokins, and Yellowbanks creeks)				
		CLOSED TO FISHING		
HAYDEN LAKE OUTLET		OPEN ALL YEAR		
INDIAN CREEK and its tributaries (Priest Lake)				

Water	Species	Open Season Dates	Possession Limits	Special Rule
		Jul 1-Aug 31		Artificial flies and lures with one barbless hook ONLY per fly or lure
	TROUT		2	
JEWEL LAKE				
	ALL SPECIES	Last Saturday in Apr-Nov 30		Artificial flies and lures with one barbless hook ONLY per fly or lure.
	TROUT		2	NONE under 14".
KALISPELL CREEK and its tributaries				
		Jul 1-Aug 31		Artificial flies and lures with one barbless hook ONLY per fly or lure
	TROUT		2	
KELSO LAKE				
	BASS	Jan 1-Jun 30	0	CLOSED TO HARVEST.
		Jul 1-Dec 31	2	NONE between 12"-16".
KOOTENAI RIVER				
	BURBOT	OPEN ALL YEAR	0	CLOSED TO HARVEST.
	STURGEON	CLOSED TO FISHING		
LAKE CREEK and its tributaries				
		CLOSED TO FISHING		
LIGHTNING CREEK and its tributaries, excluding Spring Creek above the State fish hatchery				
		Saturday of Memorial Day Weekend-Aug 31		
	TROUT		2	
LION CREEK and its tributaries				

Water	Species	Open Season Dates	Possession Limits	Special Rule
		Jul 1-Aug 31		Artificial flies and lures with one barbless hook ONLY per fly or lure
	TROUT		2	
LITTLE ROUND LAKE (Bonner County)				
	BASS	Jan 1-Jun 30	0	CLOSED TO HARVEST.
		Jul 1-Dec 31	2	NONE between 12-16".
LONG CANYON CREEK				
	KOKANEE		0	CLOSED TO HARVEST.
MARBLE CREEK				
Mainstem				
	CUT-THROAT	Saturday of Memorial Day Weekend-Sep 10	1	NOT under 14" and must be counted in trout limit.
Tributaries		Jul 1-Nov 30		
McARTHUR RESERVOIR				
Outlet (See Deep Creek)				
		CLOSED TO FISHING		
Posted area at dam and boat dock				
		OPEN ALL YEAR		Fishing from shoreline ONLY.
Remaining water		Jan 1-Mar 15		
		Jul 1-Dec 31		
MIRROR LAKE				Electric motors ONLY.
	BROOK TROUT			Must be counted in trout limit. Bonusbrook trout does not apply.
MISSION CREEK (Kootenai River)				
	KOKANEE		0	CLOSED TO HARVEST.
MISSION SLOUGH (Coeur d'Alene River)				
	BASS			Any size bass may be kept.

Water	Species	Open Season Dates	Possession Limits	Special Rule
MOKINS CREEK and its tributaries				
		CLOSED TO FISHING		
MOYIE RIVER				
From mouth of Meadow Creek downstream to the posted boundary at the upper end of the Moyie Dam Reservoir				
	TROUT		2	
Downstream from Moyie Dam				
		OPEN ALL YEAR		
MYRTLE CREEK				
	KOKANEE		0	CLOSED TO HARVEST.
NORTH GOLD CREEK and its tributaries (Pend Oreille Lake)				
		CLOSED TO FISHING		
PACK RIVER				
The mainstem, from the Burlington Northern Railroad bridge at its mouth, upstream				
		Saturday of Memorial Day Weekend-Aug 31		
	TROUT		2	
PARKER CREEK (Kootenai River)				
	KOKANEE		0	CLOSED TO HARVEST.
PEND OREILLE LAKE - Mouths of streams for a radius of 100 yards into the lake, or to the orange markers, have the same seasons as the streams. Clark Fork and Pack rivers, Gold, Granite, Grouse, Lightning, North and West Gold, Rapid Lightning, and Trestle creeks have special seasons and limits.				
		OPEN ALL YEAR, EXCEPT as below		
Harvest of rainbow from a boat, raft or float tube allowed only:				
		Last Saturday in Apr-Nov 30		

Water	Species	Open Season Dates	Possession Limits	Special Rule
	BULL TROUT		0	CLOSED TO HARVEST.
	TROUT includes brown, cut-throat, lake (Mackinaw), rainbow, and trout hybrids		4	May not include more than 2 rainbow. NO rainbow under 20". Recommend release of fin-clipped rainbow trout.
	KOKANEE		25	Per day, 50 in possession
PEND OREILLE RIVER - Downstream from the railroad bridge at Sandpoint				
		OPEN ALL YEAR		
PERKINS LAKE				Electric motors ONLY.
	BROOK TROUT			Must be counted in trout limit. Bonus brook trout does not apply.
PINE POND (Shoshone County)				
		OPEN ALL YEAR		
PLUMMER CREEK		Jul 1-Nov 30		
PORCUPINE LAKE				Electric motors ONLY.
PRIEST LAKE (See also: Upper Priest Lake and Thorofare River)				
	CUT-THROAT		0	CLOSED TO HARVEST.
	LAKE TROUT		3	NONE between 26" and 32", and only 1 over 32".
PRIEST RIVER downstream from the Priest Lake outlet dam				
		OPEN ALL YEAR		
RAPID LIGHTNING CREEK and its tributaries				
		Saturday of Memorial Day Weekend-Aug 31		

Water	Species	Open Season Dates	Possession Limits	Special Rule
	TROUT		2	
ROBINSON LAKE				
Diversion from Gillon Creek to Robinson Lake				
		CLOSED TO FISHING		
ROMAN NOSE LAKE #3				
ROUND LAKE (Round Lake State Park)				
ST. JOE RIVER				
From Coeur d'Alene Lake upstream to State Highway 3 bridge at St. Maries (also see Benewah Creek)				
		OPEN ALL YEAR		
	TROUT EXCEPT Chinook and Kokanee		1	NOT under 14".
	KOKANEE		25	Per day, 50 in Possession.
	CHINOOK		2	
From State Highway 3 bridge at St. Maries upstream to and including Prospector Creek				
Mainstem				
	CUT-THROAT	Saturday of Memorial Day Weekend-Sep 10	1	NOT under 14", must be counted in trout limit.
	CHINOOK		2	
Tributaries EXCEPT the North Fork of the St. Joe River, Marble Creek, and St. Maries River				
		Jul 1-Nov 30		
Entire drainage upstream from Prospector Creek, including tributaries (excluding mountain lakes)				
				CATCH-AND-RELEASE
ST. JOE RIVER, NORTH FORK				
Mainstem				

Water	Species	Open Season Dates	Possession Limits	Special Rule
	CUT-THROAT	Saturday of Memorial Day Weekend-Sep 10	1	NOT under 14", must be counted in trout limit.
Tributaries		Jul 1-Nov 30		
ST. MARIES RIVER and its tributaries				
Mainstem from its mouth upstream to the railroad bridge crossing at Lotus (about 1.5 miles above slack water)				
	ALL SPECIES EXCEPT Cutthroat	OPEN ALL YEAR		
	CUT-THROAT	Saturday of Memorial Day Weekend-Sep 10	1	Not under 14", must be counted in trout limit.
	CHINOOK		2	
Mainstem upstream from the railroad bridge crossing at Lotus				
	CUT-THROAT	Saturday of Memorial Day Weekend-Sep 10	1	NOT under 14", must be counted in trout limit.
Tributaries		Jul 1-Nov 30		
SHEPHERD LAKE				
				Electric motors ONLY.
SINCLAIR LAKE				
				Electric motors ONLY.
SMITH CREEK (Kootenai River)				
	KOKANEE		0	CLOSED TO HARVEST.
SMITH LAKE				
				Electric motors ONLY.
	BASS			Any size bass may be kept.
SPIRIT LAKE				
	KOKANEE		25	Per day, 50 in possession.
SPIRIT LAKE OUTLET		OPEN ALL YEAR		
SPOKANE RIVER				
From state line upstream to Post Falls Dam				

Water	Species	Open Season Dates	Possession Limits	Special Rule
		Saturday of Memorial Day Weekend-Feb 28		
	TROUT		2	
From Post Falls Dam upstream to the orange piling near the east end of Harbor Island				
	TROUT	Jul 1-Nov 30	1	NOT under 14".
	ALL OTHER SPECIES	OPEN ALL YEAR		
From the orange piling near the east end of Harbor Island upstream to the orange pilings at Coeur d'Alene Lake, including Blackwell Channel				
	ALL SPECIES	Jul 1-Nov 30		
	TROUT		1	NOT under 14".
THOROFARE RIVER (Priest Lake and Upper Priest lakes)				
		CLOSED TO FISHING		
TRAPPER CREEK and its tributaries (Priest Lake)				
		CLOSED TO FISHING		
TRESTLE CREEK and its tributaries				
		CLOSED TO FISHING		
TROUT CREEK (Kootenai River)				
	KOKANEE		0	CLOSED TO HARVEST
TWIN LAKES OUTLET - Downstream from the dam above Gunning Road				
		OPEN ALL YEAR		
TWO MOUTH CREEK and its tributaries				
		Jul 1-Aug 31		Artificial flies and lures with one barbless hook ONLY per fly or lure.
	TROUT		2	

Water	Species	Open Season Dates	Possession Limits	Special Rule
UPPER PRIEST LAKE. NOTE: Caribou and Trapper creeks and Thorofare and Upper Priest rivers including tributaries, CLOSED to fishing entire year.				
				CATCH-AND-RELEASE.
UPPER PRIEST RIVER and its tributaries				
		CLOSED TO FISHING		
WEST GOLD CREEK and its tributaries (Pend Oreille Lake)				
		CLOSED TO FISHING		
WOLF LODGE CREEK and its tributaries, including sloughs and connecting waters downstream to State Highway 97 bridge				
		CLOSED TO FISHING		
YELLOWBANKS CREEK and its tributaries				
		CLOSED TO FISHING		

(1-1-96)T

311. - 314. (RESERVED).

315. CLEARWATER REGION EXCEPTIONS.

- 01. Special Seasons - None. (1-1-96)T
- 02. Clearwater Region Exceptions Table. (1-1-96)T

Water	Species	Open Season Dates	Possession Limits	Special Rules
BREAKFAST CREEK and its tributaries				
	KOKANEE		0	CLOSED TO HARVEST.
	TROUT		2	
CLEAR CREEK - From its mouth to 100 yards upstream from the weir at the fish hatchery				
		CLOSED TO FISHING		

Water	Species	Open Season Dates	Possession Limits	Special Rules
CLEARWATER RIVER. NOTE: Rainbow trout over 20" are considered steelhead and may be kept ONLY during open steelhead harvest season.				
	BASS			Any size bass may be kept.
From its mouth upstream to the Clearwater River bridge at Orofino				
		OPEN ALL YEAR		Only barbless hooks may be used from Sep 1-Apr 30.
Shoreline along the perimeter of Dworshak Fish Hatchery				
		CLOSED TO FISHING		
From the Clearwater River bridge at Orofino upstream to the mouth of Clear Creek				
		OPEN ALL YEAR		No motors. Only barbless hooks may be used from Sep 1-Apr 30.
CLEARWATER RIVER, LITTLE NORTH FORK and its tributaries				
	KOKANEE		0	CLOSED TO HARVEST.
	TROUT		2	
CLEARWATER RIVER, NORTH FORK				
Shoreline along the perimeter of Dworshak Fish Hatchery				
		CLOSED TO FISHING		
Mainstem from the posted boundary, approximately 150 yards upstream from the mouth, upstream to the Ahsahka Highway bridge.				
		Jan 1-May 31 Aug 1-Dec 31		Fishing from west shoreline ONLY. Barbless hooks only may be used from Sep 1-Apr 30.
Mainstem from the Ahsahka Highway bridge upstream to Dworshak Dam				
		OPEN ALL YEAR		Only barbless hooks may be used from Sep 1-Apr 30.
Mainstem from the upper end of flat water in Dworshak Reservoir upstream				
	ALL SPECIES	Saturday of Memorial Day Weekend-Nov 30		Artificial flies and one barbless hook ONLY per fly or lure.

Water	Species	Open Season Dates	Possession Limits	Special Rules
		TROUT	2	NONE under 14".
	KOKANEE		0	CLOSED TO HARVEST.
	WHITEFISH	Dec 1-Mar 31		ONLY per fly or lure. Insects and insect larvae may be used with one barbless hook ONLY. No other bait allowed.
All tributaries				
	KOKANEE		0	CLOSED TO HARVEST.
All tributaries EXCEPT Kelly, Lake, and Steep creeks (see listings)				
	TROUT		2	
CROOKED CREEK (tributary to Salmon River)				
From mouth upstream to and including Big Creek				
	TROUT		2	
From Big Creek upstream				
	TROUT		6	
CROOKED FORK CREEK				
Mainstem from its mouth to Brushy Fork Creek				CATCH-AND-RELEASE.
	WHITEFISH	Saturday of Memorial Day Weekend-Nov 30		
Mainstem from Brushy Fork Creek upstream and all tributaries including Brushy Fork Creek				
		Jul 1-Nov 30		
	TROUT		2	
CROOKED RIVER (tributary to South Fork Clearwater River, Also see Five Mile Pond listing)				
From mouth to fish weir (approx. 400 yards)				
		CLOSED TO FISHING		
Mainstem and tributaries upstream from fish weir				
	TROUT		2	
DWORSHAK RESERVOIR from Dworshak Dam to Grandad bridge				

Water	Species	Open Season Dates	Possession Limits	Special Rules
	KOKANEE		25	Per day, 50 in possession.
	BASS			Any size bass may be kept.
From Grandad bridge upstream to end of flat water				
	ALL SPECIES	Saturday of Memorial Day Weekend-Nov 30		
	KOKANEE		25	Per day, 50 in possession.
	BASS			Any size bass may be kept.
	TROUT		6	Only 2 may be cutthroat trout.
ELK CREEK (tributary to Dworshak Reservoir) and its tributaries (above and below Elk Creek Reservoir)				
	BROOK TROUT		6	Must be counted in trout limit. Bonus brook trout does not apply.
	KOKANEE		0	CLOSED TO HARVEST.
ELK CREEK RESERVOIR				Electric motors ONLY.
	BASS	Jan 1-Jun 30	0	CLOSED TO HARVEST.
		Jul 1-Dec 31	2	NONE between 12"-16".
FISH LAKE (Cedars area)				
		Aug 1-Nov 30		No motors.
FIVE MILE POND (Crooked River drainage)				
		Saturday of Memorial Day Weekend-Nov 30		
	TROUT		6	
GRANITE CREEK (tributary to Snake River) and its tributaries				
	TROUT		2	
JOHNS CREEK (tributary to South Fork Clearwater River) and its tributaries				
	TROUT		2	
KELLY CREEK and its tributaries				CATCH-AND-RELEASE.

Water	Species	Open Season Dates	Possession Limits	Special Rules
		Saturday of Memorial Day Weekend-Nov 30		
	WHITEFISH			May be taken ONLY during seasons open for other species.
LAKE CREEK				
From Goose Creek to Fish Lake including all tributaries (Cedars area)				
		Aug 1-Nov 30		
	TROUT		2	
LOCHSA RIVER				
Mainstem from mouth upstream to Wilderness Gateway Campground Motor bridge (near Highway 12 mile post 122)				
		Saturday of Memorial Day Weekend-Nov 30		Artificial flies and lures with one barbless hook ONLY per fly or lure.
	TROUT		2	NONE under 14".
	WHITEFISH	Dec 1-Mar 31		Insects and insect larvae may be used with one barbless hook ONLY. No other bait allowed.
Mainstem upstream from Wilderness Gateway Campground Motor bridge (including Crooked Fork Creek from mouth to Brushy Fork Creek)				
		Saturday of Memorial Day Weekend-Nov 30		CATCH-AND-RELEASE
	WHITEFISH			May be taken ONLY during seasons open for other species.
From 100 yards downstream of fish weir upstream to the Twin Bridges crossing Crooked Fork and White Sands creeks				
		CLOSED all year		
All tributaries including White Sand Creek EXCEPT Crooked Fork Creek (see Crooked Fork Creek)				

Water	Species	Open Season Dates	Possession Limits	Special Rules
		Jul 1-Nov 30		
	TROUT		2	
MANN LAKE				Electric motors ONLY. NO BOATS from Oct 1- Dec 31.
MOOSE CREEK RESERVOIR				Electric motors ONLY.
	BASS		2	NONE under 20".
PALOUSE RIVER and its tributaries				
		OPEN ALL YEAR		
POTLATCH RIVER				
Mainstem from the mouth to and including Moose Creek				
		OPEN ALL YEAR		
POTLATCH RIVER, EAST FORK and its tributaries				
	TROUT		2	
RED RIVER and its tributaries				
From fish weir downstream for a distance of 100 yards				
		CLOSED TO FISHING		
SALMON RIVER (See: Southwest Region and Salmon Region for additional information)				
NOTE: Rainbow trout longer than 20" are considered steelhead and may be kept ONLY during open steelhead harvest season.				
Mainstem from its mouth to Horse Creek (approximately 15 miles downstream from the Middle Fork) EXCEPT from Riggins City Park boat ramp upstream to a posted boundary at Shorts Bar				
		OPEN ALL YEAR		Only barbless hooks may be used from Sep 1-Apr 30.
	BASS			Any size bass may be kept.
	CUT-THROAT		0	CLOSED TO HARVEST.
From Riggins City Park boat ramp upstream to a posted boundary at Shorts Bar				
		Jan 1-Apr 30 Jul 16-Dec 31		Only barbless hooks may be used from Sep 1-Apr 30

Water	Species	Open Season Dates	Possession Limits	Special Rules
	BASS			Any size bass may be kept.
	CUT-THROAT		0	CLOSED TO HARVEST.
Tributaries from the mouth of the Little Salmon River upstream to and including the Horse Creek drainage EXCEPT Crooked Creek, Little Salmon and South Fork Salmon rivers				
	TROUT		2	
SELWAY RIVER				
Mainstem from mouth upstream to Selway Falls cable car				
		Saturday of Memorial Day Weekend-Nov 30		Artificial flies and lures with one barbless hook ONLY per fly or lure.
	TROUT		2	NONE under 14".
	WHITEFISH ONLY	Dec 1-Mar 31		Insects and insect larvae may be used with one barbless hook ONLY. No other bait allowed.
Mainstem from Selway Falls cable car upstream to Selway Falls bridge at Meadow Creek				
		CLOSED TO FISHING		
Mainstem from Selway Falls bridge upstream				
		Saturday of Memorial Day Weekend-Nov 30		CATCH-AND-RELEASE.
	WHITEFISH			May be taken ONLY during seasons open for other species.
All tributaries				
		Jul 1-Nov 30		
	TROUT		2	
SHEEP CREEK (tributary to Snake River) and its tributaries				
	TROUT		2	
SNAKE RIVER (Lewiston to Hells Canyon Dam)				

Water	Species	Open Season Dates	Possession Limits	Special Rules
NOTE: Rainbow trout longer than 20" are considered steelhead and may be kept ONLY during open steelhead harvest season.				
		OPEN ALL YEAR		
	BASS			Any size bass may be kept.
SPRING VALLEY RESERVOIR				Electric motors ONLY.
STEEP CREEK (Goose Creek drainage)				
		Aug 1-Nov 30		
	TROUT		2	
STEEP LAKE, Upper and Lower (Goose Creek drainage)				
		Aug 1-Nov 30		
	TROUT		2	
TENMILE CREEK (tributary to South Fork Clearwater River) and its tributaries				
	TROUT		2	
WHITE BIRD CREEK (tributary to Salmon River) and its tributaries				
	TROUT		2	
WINCHESTER LAKE				Electric motors ONLY.

(1-1-96)T

316. - 319. (RESERVED).

320. SOUTHWEST REGION EXCEPTIONS.

01. Special Seasons - None. (1-1-96)T

02. Southwest Region Exceptions Table. (1-1-96)T

Water	Species	Open Season Dates	Possession Limits	Special Rules
ADA COUNTY				
Morrison Knudsen Nature Center				

Water	Species	Open Season Dates	Possession Limits	Special Rules
		CLOSED TO FISHING		
All Other Waters		OPEN ALL YEAR		
BEAR VALLEY CREEK and its tributaries (Valley County)				
				CATCH-AND-RELEASE
BIG CREEK and its tributaries				CATCH-AND-RELEASE
BLACKWELL LAKE (an alpine lake in the Payette Lake drainage)				
	TROUT		2	NONE under 20". Artificial flies and lures with one barbless hook ONLY per fly or lure.
BOISE RIVER				
From its mouth to Arrowrock Dam				
		OPEN ALL YEAR		
From a posted boundary approximately one-quarter mile downstream from the Warm Springs Golf Course, at the United Water Corporation water treatment plant, upstream to a posted boundary, approximately one mile downstream from Eckert Road (Barber Park) bridge where Loggers Creek is diverted from the Boise River				
	TROUT		2	NONE under 14".
BOISE RIVER, MIDDLE FORK				
From North Fork upstream to Atlanta Dam				
				Artificial flies and lures and one barbless hook ONLY per fly or lure.
	TROUT		2	NONE under 14".
BOISE RIVER, SOUTH FORK (See Magic Valley Region for information upstream from Anderson Ranch Dam)				
From Arrowrock Reservoir upstream to Neil Bridge				
		OPEN ALL YEAR		
From Neil Bridge upstream to Anderson Ranch Dam				

Water	Species	Open Season Dates	Possession Limits	Special Rules
		Saturday of Memorial Day Weekend-Nov 30		Artificial flies and lures and one barbless hook ONLY per fly or lure.
	TROUT		2	NONE between 12"-20".
		Dec 1-Mar 31		Barbless hooks required.
	TROUT		0	CLOSED TO HARVEST. For whitefish only, insects and insect larvae may be used. No other bait allowed.
BRUNDAGE RESERVOIR and its tributaries				
	ALL SPECIES	Saturday of Memorial Day Weekend-Nov 30	2	NONE between 12"-20".
BRUNEAU RIVER				
Mainstem and tributaries from its mouth to Hot Springs Bridge (approximately 8 miles)				
			OPEN ALL YEAR	
BRUSH LAKE (an alpine lake in North Fork Payette drainage)				
				Artificial flies and lures with one barbless hook ONLY per fly or lure.
	TROUT		2	NONE under 20".
CALDWELL PONDS				No motors.
CANYON COUNTY - All waters				
			OPEN ALL YEAR	
C. BEN ROSS RESERVOIR				
	BASS	Jan 1-Jun 30	0	CLOSED TO HARVEST.
		Jul 1-Dec 31	2	None between 12"-16".
CHAMBERLAIN CREEK and its tributaries				
	TROUT		2	
CORRAL CREEK RESERVOIR				No motors

Water	Species	Open Season Dates	Possession Limits	Special Rules
CRANE FALLS LAKE				
	BASS		2	Electric motors ONLY. NONE under 20".
CRYSTAL LAKE (an alpine lake in the North Fork Payette drainage)				
	TROUT		2	None under 20". Artificial flies and lures with one barbless hook ONLY per fly or lure.
DEADWOOD RESERVOIR and its tributaries				
	KOKANEE		25	Per day, 50 in possession.
DUCK VALLEY INDIAN RESERVATION				
				Check Tribal Regulations
DUFF LANE POND				
				No motors.
ELK CREEK (Bear Valley Creek Tributary) and its tributaries				
				CATCH-AND-RELEASE
FISHER CREEK				
	KOKANEE		0	CLOSED TO HARVEST.
FISH (MUD) LAKE and its tributaries (Adams County)				
		CLOSED TO FISHING		
GEM COUNTY - All waters EXCEPT the Squaw Creek drainage				
		OPEN ALL YEAR		
GOLD FORK RIVER - From Cascade Reservoir upstream to Highway 55 bridge				
		OPEN ALL YEAR		
GRIMES CREEK and its tributaries-From its mouth upstream to the bridge at New Centerville				
		OPEN ALL YEAR		
HALVERSEN LAKE				
				No motors.
HAZARD LAKE (Middle)				
				No motors
HERRICK RESERVOIR				
				No motors.
JOHNSON CREEK and tributaries				

Water	Species	Open Season Dates	Possession Limits	Special Rules
	CUTTHROAT		0	CLOSED TO HARVEST.
	WHITEFISH			May be taken ONLY during seasons open for other species.
LAKE CREEK (Secesh River Tributary)				
	CUTTHROAT		0	CLOSED TO HARVEST.
	WHITEFISH			May be taken ONLY during season open for other species.
LAKE FORK CREEK				
From Little Payette Lake upstream to Brown's Pond				
		Jul 1-Nov 30		Artificial flies and lures with one barbless hook ONLY per fly or lure.
	ALL GAME FISH EXCEPT Kokanee		2	NONE under 20".
	KOKANEE		6	
LAKE LOWELL				
	BASS		0	CLOSED TO HARVEST.
LAKE ROCK LAKE (an alpine lake in Secesh drainage)				
				Artificial flies and lures with one barbless hook ONLY per fly or lure.
	TROUT		2	NONE under 20".
LITTLE PAYETTE LAKE				
	ALL GAME FISH EXCEPT Kokanee	Saturday of Memorial Day Weekend-Nov 30	2	NONE under 20".
	KOKANEE		25	
LITTLE SALMON RIVER - From its mouth to 100 yards above the mouth of Rapid River				

Water	Species	Open Season Dates	Possession Limits	Special Rules
	ALL SPECIES EXCEPT steelhead	Jul 16-Nov 30		See steelhead rules.
LONG LAKE (an alpine lake south of Warm Lake)				
				Artificial flies and lures with one barbless hook ONLY per fly or lure.
	TROUT		2	NONE under 20".
LOUIE LAKE (an alpine lake in Boulder Creek drainage)				
				Artificial flies and lures with one barbless hook ONLY per fly or lure.
	TROUT		2	NONE under 20".
MARTIN (Little Bull Trout) LAKE				
MORES CREEK and its tributaries				
From the slack water in Lucky Peak Reservoir upstream to Forest Service Road 260 bridge				
		Jan 1-Sep 30		
From Forest Service Road 260 bridge upstream to the Granite Creek bridge above Idaho City				
		OPEN ALL YEAR		
OXBOW RESERVOIR between Brownlee Dam and Oxbow Dam				
	BASS	Jan 1-Jun 30	0	CLOSED TO HARVEST.
		Jul 1-Dec 31	2	NONE between 12"-16".
PAYETTE COUNTY All waters				
		OPEN ALL YEAR		
PAYETTE LAKE				
	LAKETROUT (MACKINAW)		1	Not less than 36".
PAYETTE RIVER - Mainstem from mouth to the confluence of the North and South Forks including connecting sloughs and impoundments				
		OPEN ALL YEAR		

Water	Species	Open Season Dates	Possession Limits	Special Rules
PAYETTE RIVER, NORTH FORK				
Mainstem from its confluence with the Payette River at Banks upstream to Hartsell (Smiley or Moore) bridge above Cascade Reservoir				
		OPEN ALL YEAR		
From Cascade Reservoir upstream, including tributaries but excluding Payette Lake				
	KOKANEE		0	CLOSED TO HARVEST.
PAYETTE RIVER, SOUTH FORK				
From the North Fork Payette River upstream to Deadwood River				
	TROUT		2	
From the Highway 21 bridge across the South Fork Payette River just east of the mouth of Eight-Mile Creek upstream				
	TROUT		2	
RAPID RIVER and its tributaries (tributary to Little Salmon River)				
	TROUT		2	
From its mouth to the fish hatchery trap area				
		Sep 1-Nov 30		
Trap Area: 50 yards upstream and downstream from the barrier dam at the fish trap and all waters within the posted boundaries of the Idaho Power Company hatchery				
				CLOSED TO FISHING
ROARING LAKES				No motors.
SALMON RIVER (See Clearwater Region and Salmon Region for information)				
SALMON RIVER, EAST FORK OF SOUTH FORK and its tributaries				
	CUTTHROAT		0	CLOSED TO HARVEST.
	WHITEFISH			May be taken ONLY during seasons open for other species.
Mainstem from its mouth upstream to the Secesh River				
				CATCH-AND-RELEASE.
SALMON RIVER, SOUTH FORK and its tributaries				
	CUTTHROAT		0	CLOSED TO HARVEST.

Water	Species	Open Season Dates	Possession Limits	Special Rules
	WHITEFISH			May be taken ONLY during seasons open for other species.
SECESH RIVER and its tributaries				
	CUTTHROAT		0	CLOSED TO HARVEST.
	WHITEFISH			May be taken ONLY during seasons open for other species.
SERENE LAKE (An alpine lake in Hazard Creek drainage)				
				Artificial flies and lures with one barbless hook only per fly or lure.
	TROUT		2	None under 20".
SHEEP CREEK (tributary to Snake River) and its tributaries (See Clearwater Region)				
SNAKE RIVER and its impoundments (See Clearwater Region and Magic Valley Region for additional information)				
		OPEN ALL YEAR		
SQUAW CREEK and its tributaries				
	TROUT		2	
Tributaries to Sagehen Reservoir				
		Jun 15-Nov 30		Artificial flies and lures with one barbless hook ONLY per fly or lure.
SULPHUR CREEK (tributary to Middle Fork Salmon River) and tributaries				
				CATCH-AND-RELEASE.
TRINITY LAKES				No motors.
TRIPOD RESERVOIR				No motors.
TULE LAKE				
	TROUT		2	NONE under 20".
WASHINGTON COUNTY - All waters				
			OPEN ALL YEAR	

Water	Species	Open Season Dates	Possession Limits	Special Rules
WEISER RIVER and tributaries within Adams County				
	ALL SPECIES	Jan 1-Mar 31 and Saturday of Memorial Day Weekend-Dec 31		
WEISER RIVER and tributaries within Washington County				
		OPEN ALL YEAR		
WILSON SPRINGS PONDS and DRAIN				
		OPEN ALL YEAR		
Wilson Drain (within Idaho Department of Fish and Game property), North and South Ponds				
	TROUT		2	
Trophy and Beach's Pond				CATCH-AND-RELEASE.

(1-1-96)T

321. - 324. (RESERVED).

325. MAGIC VALLEY REGION.

01. Special Seasons and Restrictions. (1-1-96)T

a. Statewide whitefish season applies in the Magic Valley Region only in the South Fork Boise River. Whitefish may be taken in other waters only during seasons open for other species in those waters. (1-1-96)T

b. Cutthroat: In all rivers and streams in the Snake River drainage upstream from Shoshone Falls EXCEPT as noted below, the general trout limit may include only 2 cutthroat. (1-1-96)T

02. Magic Valley Region Exceptions Table. (1-1-96)T

Water	Species	Open Season Dates	Possession Limits	Special Rules
ANDERSON RANCH RESERVOIR				
	KOKANEE		25	Per day, 50 in possession.

Water	Species	Open Season Dates	Possession Limits	Special Rules
BAKER LAKE (Blaine County)				Artificial flies and lures with one barbless hook only per fly or lure
	TROUT		2	NONE under 20".
BIG WOOD RIVER, MAINSTEM and diverted waters				
Upstream from its confluence with the Little Wood River to the Richfield Canal Diversion Dam				
		OPEN ALL YEAR		
From the Richfield Canal Diversion Dam upstream to Magic Dam				
		Saturday of Memorial Day Weekend- Mar 31		
From Magic Reservoir upstream to Glendale Diversion				
		Saturday of Memorial Day Weekend- Mar 31		Dec 1-Mar 31, CLOSED to harvest of cutthroat.
From the Glendale Diversion, approximately 3 miles below Bellevue, upstream to Highway 75 bridge at milepost 122.2				
		Saturday of Memorial Day Weekend- Mar 31		Dec 1-Mar 31, CLOSED to harvest of cutthroat.
	TROUT	General Stream Season	2	NONE between 12"-16".
From Highway 75 bridge at milepost 122.2 upstream to the mouth of the North Fork				
		Saturday of Memorial Day Weekend- Mar 31		CATCH-AND-RELEASE.
BILLINGSLEY CREEK				
From Tupper Grade upstream to Vader Grade				Fly fishing ONLY.
BOISE RIVER, SOUTH FORK (See Southwest Region for information downstream from Anderson Ranch Dam)				
From Anderson Ranch Reservoir upstream to Pine Bridge				

Water	Species	Open Season Dates	Possession Limits	Special Rules
	ALL SPECIES	General Stream Season, EXCEPT closed to fishing Aug 1-Oct 31		
From the mouth of Beaver Creek upstream to the mouth of Big Smoky Creek				
	TROUT, except Kokanee		2	NONE under 14" Artificial flies and lures with one barbless hook ONLY per fly or lure.
	KOKANEE		6	
BOX CANYON CREEK				
	TROUT		2	
BRUNEAU DUNES STATE PARK				Electric motors ONLY.
	BASS		2	NONE under 20".
CAREY LAKE				Electric motors ONLY.
CLOVER CREEK DRAINAGE				
		OPEN ALL YEAR		
DEVILS CORRAL CREEK (Jerome County)				
	TROUT		2	
DIERKES LAKE				
	BASS		2	None under 20".
FREEDOM PARK CREEK (Burley)				
		OPEN ALL YEAR		
GOODING COUNTY - All waters EXCEPT Billingsley Creek drainage, Box Canyon Creek, Malad River drainage downstream from Interstate 84, Hagerman Wildlife Management Area, and Thorn Creek Reservoir				
		OPEN ALL YEAR		
GOOSE CREEK and Canals (Cassia County)				
Downstream from Oakley Dam				
		OPEN ALL YEAR		
GUNNEL (SIX MILE) RESERVOIR				

Water	Species	Open Season Dates	Possession Limits	Special Rules
	TROUT	Saturday of Memorial Day Weekend- Nov 30	2	Barbless hooks recommended.
HAGERMAN WILDLIFE MANAGEMENT AREA				No motors.
The four Anderson ponds, the bass ponds, Big Bend Ditch, Goose Pond and the pond west of Highway 30				
		Jul 1-Oct 31		
Riley Creek upstream from state fish hatchery diversion				
		OPEN ALL YEAR		
All other waters		Mar 1-Oct 31		
HAYSPUR FISH HATCHERY PROPERTY				
Gaver's Lagoon		Saturday of Memorial Day Weekend- Nov 30		
Loving and Butte creeks (within posted boundary on Hayspur Fish Hatchery)				
	TROUT		2	NONE under 20".
JARBIDGE RIVER and its tributaries				
	TROUT		2	
LAKE CLEVELAND				No motors.
LIME CREEK and its tributaries				
	TROUT		2	
LITTLE WOOD RIVER				
From its mouth upstream to Silver Creek				
		OPEN ALL YEAR		
From the posted boundary at the downstream end of the Taylor "Bear Tracks" Williams State Recreation Area near Highway 93 milepost 190, to the posted boundary at the upstream end of the "Bear Tracks" Williams State Recreation Area near Highway 93 milepost 192.5				
		OPEN ALL YEAR		Fly fishing ONLY, CATCH-AND-RELEASE.
From Baugh Creek upstream (including all tributaries)				
	TROUT		2	

Water	Species	Open Season Dates	Possession Limits	Special Rules
MALAD RIVER				
From its mouth to the Interstate 84 bridge at Malad Gorge				
	TROUT		2	
From the Interstate 84 bridge at Malad Gorge upstream to the confluence of the Big and Little Wood rivers				
		OPEN ALL YEAR		
NIAGARA SPRINGS				
Stream section from the Niagara Springs Steelhead Hatchery intake pool (above the lowest fall) upstream to the spring sources as posted				
		CLOSED TO FISHING		
From the intake pool downstream				
		OPEN ALL YEAR		
NIAGARA SPRINGS WILDLIFE MANAGEMENT AREA except Snake River				
	TROUT		2	
RILEY CREEK (see Hagerman Wildlife Management Area listing)				
				No motors.
From Riley Creek Falls to State Fish Hatchery diversion				
		Mar 1-Oct 31		
Remainder of Riley Creek				
		OPEN ALL YEAR		
ROCK CREEK - From its mouth upstream to Highline Canal in Twin Falls County				
		OPEN ALL YEAR		
SALMON FALLS CREEK - From its mouth upstream to the Idaho-Nevada state line				
		OPEN ALL YEAR		
SILVER CREEK and its tributaries				No motors. All diversion ponds have the same rules as stream segments.
	WHITEFISH			May be taken during seasons open for other species
Downstream from Highway 93				

Water	Species	Open Season Dates	Possession Limits	Special Rules
		OPEN ALL YEAR		
From Highway 93 upstream to the county road bridge north of Picabo				
		General Stream Season		General Rules.
From the county road bridge north of Picabo upstream to the bridge at milepost 187.2 on Highway 20 west of Picabo				
	TROUT	General Stream Season	2	NONE between 12"-16".
From the bridge at milepost 187.2 on U.S. Highway 20 west of Picabo upstream to the road right-of-way fence on the west side of Kilpatrick Bridge				
				CATCH-AND-RELEASE. No fishing from rafts or boats. Float tubes permissible.
From the road right-of-way fence on the west side of Kilpatrick Bridge upstream and all waters within The Nature Conservancy Silver Creek Preserve property				
				Fly Fishing ONLY, CATCH-AND-RELEASE. No fishing from rafts or boats. Float tubes permissible.
SNAKE RIVER (See Southwest Region and Southeast Region for additional information)				
		OPEN ALL YEAR		
From Lower Salmon Falls Dam upstream (Bell Rapids area) to Upper Salmon Falls Dam (0.3 miles below Owsley Bridge)				
	TROUT		2	
	BASS	Jan 1-Jun 30	0	CLOSED TO HARVEST
		Jul 1-Dec 31	2	NONE between 12-16".
From Shoshone Falls upstream				
	CUT-THROAT		2	NONE under 16".
STALKER CREEK				
From its confluence with Grove Creek upstream to west end of The Nature Conservancy Silver Creek Preserve property				

Water	Species	Open Season Dates	Possession Limits	Special Rules
				Fly fishing ONLY CATCH-AND-RELEASE. No fishing from rafts or boats. Float tubes permissible.
SUBLETT RESERVOIR				
		Saturday of Memorial Day Weekend- Nov 30		
Tributaries				
	TROUT		2	
THORN CREEK RESERVOIR				
		Saturday of Memorial Day Weekend- Nov 30		
THOUSAND SPRINGS		OPEN ALL YEAR		
TRINITY LAKES				No motors.
TWIN FALLS COUNTY - All waters west of Murtaugh Lake, north of and including Main and Highline canals west to and including Salmon Falls Creek				
		OPEN ALL YEAR		
VINYARD CREEK				
		Saturday of Memorial Day Weekend- Oct 31		
	TROUT		2	
WILLOW CREEK (tributary of Camas Creek)				
	TROUT		2	

(1-1-96)T

326. - 329. (RESERVED).

330. SOUTHEAST REGION EXCEPTIONS.

01. Special Seasons.

(1-1-96)T

Cutthroat: In all rivers and streams, except as noted below, the general trout limit may include only 2 cutthroat.

02. Southeast Region Exceptions Table.

(1-1-96)T

Water	Species	Open Season Dates	Possession Limits	Special Rules
BEAR LAKE (Idaho side)				NOT more than 2 hooks per line. One line only when ice fishing.
From the mouth of St. Charles Creek for a radius of 300 yards into the lake				
		Jan 1-Apr 15		
		Jul 1-Dec 31		
Remainder of lake				
	ALL SPECIES	OPEN ALL YEAR		
	CISCO	Jan 1-Feb 15		May be taken with dip net so long as opening does NOT exceed 18" in any dimension. When dipnetting Cisco, any size hole may be cut through the ice.
			30	Adult License holders
			15	Juveniles, age 6-13. Cisco taken by juveniles 5 years of age and under, must be included in limit of accompanying adult.
	TROUT		2	
	WHITEFISH		10	
BEAR RIVER		OPEN ALL YEAR		
	CUTTHROAT		2	NONE less than 16".
From Highway 91 bridge upstream to Oneida Dam				
	TROUT		6	ONLY 1 trout may be greater than 14".
From Oneida Reservoir upstream to the Highway 34 bridge at Cleveland				

Water	Species	Open Season Dates	Possession Limits	Special Rules
	WALLEYE	Jan 1-Feb 28	5	
		Mar 1-Apr 30	2	
		May 1-Dec 31	5	
BLACKFOOT RESERVOIR				
	CUTTHROAT			ONLY cutthroat missing an adipose fin, as evidenced by a healed scar, may be kept.
	TROUT (except wild cutthroat)		6	May not include more than 2 trout over 16".
BLACKFOOT RIVER				
Mainstem from its mouth upstream to Cedar Creek				
		OPEN ALL YEAR		
Mainstem from its mouth upstream to Government Dam				
	CUTTHROAT		2	NONE under 16".
Mainstem and its tributaries upstream from boundary on Blackfoot Reservoir (boundary is defined as a line of buoys and shoreline markers approximately 4 miles below the Highway 34 bridge) upstream, EXCEPT Trail Creek upstream from the Caribou National Forest boundary				
		Jul 1-Nov 30		Artificial flies and lures with one barbless hook ONLY per fly or lure. Fishing may NOT continue after trout limit has been reduced to possession.
	TROUT		2	NO cutthroat under 18".
BOONE CREEK (Bingham County)				
		OPEN ALL YEAR		
CONDIE RESERVOIR				
	BASS		2	NONE under 20".
CUB RIVER				
	CUTTHROAT		2	NONE under 16".

Water	Species	Open Season Dates	Possession Limits	Special Rules
DANIELS RESERVOIR				Artificial flies and lures with one barbless hook ONLY per fly or lure. One line ONLY when ice fishing.
	TROUT		2	NONE under 20".
DEEP CREEK RESERVOIR				
	TROUT			ONLY 2 may be cutthroat.
From the mouth of First Creek for a radius of 50 yards into the reservoir				
		Jan 1-Apr 30		
		Jun 15-Dec 31		
DEVILS CREEK RESERVOIR				
	TROUT			ONLY 2 may be cutthroat.
From the mouth of Devils Creek for a radius of 50 yards into the reservoir				
		Jan 1-Apr 30		
		Jun 15-Dec 31		
DIKE LAKE				No motors.
DRY CREEK and its tributaries (Bear Lake County)				
		CLOSED TO FISHING		
FIRST CREEK (Oneida County)				
		Jun 15-Nov 30		
FORT HALL INDIAN RESERVATION				Check Tribal Regulations.
FOSTER RESERVOIR				No motors.
GIRAFFE CREEK and its tributaries				
		CLOSED TO FISHING		
GLENDALE RESERVOIR				
	BASS		2	NONE under 16".
HATCHERY CREEK (Bingham County)				
		OPEN ALL YEAR		

Water	Species	Open Season Dates	Possession Limits	Special Rules
HATCHERY CREEK (Caribou County at Soda Springs)				
		OPEN ALL YEAR		
HIGHWAY POND (Gravel pit near Pocatello)				No motors.
	TROUT		2	
LEDGE CREEK (Caribou County)				
		OPEN ALL YEAR		
LITTLE BLACKFOOT RIVER and its tributaries				
From the end of the boat docks at Cedar Bay Marina (Whitelocks) upstream				
		Jun 15-Nov 30		
MALAD RIVER - Downstream of Highway 38				
		OPEN ALL YEAR		
MARSH CREEK		OPEN ALL YEAR		
McCOY CREEK				
	CUTTHROAT		2	NONE under 16".
McTUCKER SPRING CREEK				
		OPEN ALL YEAR		
MONTPELIER RESERVOIR				Electric motors ONLY.
MONTPELIER REARING POND				
	TROUT		2	
ONEIDA RESERVOIR				
	WALLEYE	Jan 1-Feb 28	5	
		Mar 1-Apr 30	2	
		May 1-Dec 31	5	
OUTLET and RAINBOW CANALS (Bear Lake County)				
		OPEN ALL YEAR		
OVID CREEK (Bear Lake County) - Downstream of U.S. Highway 89				
		OPEN ALL YEAR		
PORTNEUF RIVER				

Water	Species	Open Season Dates	Possession Limits	Special Rules
	CUTTHROAT		2	NONE under 16".
From American Falls Reservoir upstream to the Center Street Bridge in the city of Lava Hot Springs				
		OPEN ALL YEAR		
From the Center Street Bridge upstream to the East Main Street Bridge				
		CLOSED TO FISHING		
PRUESS CREEK and its tributaries				
		CLOSED TO FISHING		
ROSE POND				No motors.
ST. CHARLES CREEK (both forks)				CATCH-AND-RELEASE
From its mouth upstream to the Caribou National Forest boundary				
		Jul 1-Nov 30		
ST. JOHNS RESERVOIR				
	BASS	Jan 1-Jun 30	0	CLOSED TO HARVEST.
		Jul 1-Dec 31	2	NONE between 12"-16".
SNAKE RIVER (See Magic Valley and Upper Snake Region for additional information)				
From the Blaine-Power County line to the Bingham-Bonneville County line				
	CUTTHROAT		2	NONE under 16".
From the upper (East) boundary of Minidoka National Wildlife Refuge upstream to Eagle Rock				
		OPEN ALL YEAR		
From Eagle Rock upstream to American Falls Dam				
		Saturday of Memorial Day Weekend-Oct 31		
From American Falls Reservoir upstream to the confluence of the North (Henry's) and South Forks				
		OPEN ALL YEAR		
SODA CREEK		OPEN ALL YEAR		
THOMAS FORK BEAR RIVER and its tributaries				

Water	Species	Open Season Dates	Possession Limits	Special Rules
		CLOSED TO FISHING		
TREASURETON RESERVOIR				Artificial flies and lures with one barbless hook ONLY per fly or lure. One line ONLY when ice fishing.
	TROUT		2	NONE between 12"-16"
TWENTY-FOUR MILE RESERVOIR				No motors. Artificial flies and lures with one barbless hook ONLY per fly or lure. One line ONLY when ice fishing.
	TROUT		2	NONE under 20".
	BROOK TROUT			Must be counted in trout limit. Bonus brook trout does not apply.
WESTON RESERVOIR				NO fishing from boats or rafts. Float tubes permissible.
WINDER RESERVOIR				No fishing from boats or rafts. Float tubes permissible.
WIREGRASS RESERVOIR				No motors.

(1-1-96)T

331. - 334. (RESERVED).

335. UPPER SNAKE REGION EXCEPTIONS.

01. Special Seasons and Restrictions. (1-1-96)T

a. WHITEFISH: Statewide whitefish season applies ONLY in the Big Lost River and its tributaries, Falls and Teton rivers. Whitefish may be taken in other waters ONLY during seasons open for other species in those waters. (1-1-96)T

b. No person shall take, have in possession, trap, seine, or use any live or dead fish or fish parts for bait while fishing in any waters of the North (Henry's) Fork Snake River drainage upstream from Lower Mesa Falls, and the Big Lost River drainage. (1-1-96)T

c. CUTTHROAT: In all rivers and streams, EXCEPT as noted below, the general trout limit may include ONLY 2 cutthroat and NONE between 8" and 16";

barbless hooks recommended. (1-1-96)T

02. Upper Snake River Exceptions Table. (1-1-96)T

Water	Species	Open Season Dates	Possession Limits	Special Rules
BEAVER CREEK (Clark County)				
Downstream from the county bridge at Spencer				
		OPEN ALL YEAR		
BIG LOST RIVER				
Mainstem Big Lost River and James Creek from INEL boundary upstream to Moore Diversion				
		OPEN ALL YEAR		
Mainstem from Bartlett Point Road upstream to the North Fork, and East Fork from its confluence with the North Fork upstream to the mouth of the West Fork (Star Hope Creek)				
	TROUT		2	NONE under 14".
BROCKMAN CREEK and its tributaries (Willow Creek drainage)				
		Jul 1-Nov 30		
BURNS CREEK and its tributaries				
		Sep 1-Nov 30		
CELLARS CREEK and its tributaries (Willow Creek drainage)				
		Jul 1-Nov 30		
DRY BEDS - Beginning at Big Feeder Irrigation Diversion				
		OPEN ALL YEAR		
From the Highway 48 bridge upstream to the Union Pacific Railroad bridge 1-1/2 miles northeast of Ririe, including canals				
				May take fish with dip nets, or by snagging or hand Apr 1-Apr 30.
FALL RIVER and its tributaries				
	TROUT		2	
FISH CREEK (Harriman State Park)				Fly fishing ONLY.
GOLDEN LAKE (Harriman State Park)				

Water	Species	Open Season Dates	Possession Limits	Special Rules
		CLOSED TO FISHING		
HATCHERY CREEK (Fremont County at Henrys Lake)				
		CLOSED TO FISHING		
HELL CREEK and its tributaries (Willow Creek drainage)				
		Jul 1-Nov 30		
HENRYS LAKE				
That portion of the lake within the posted boundaries of Staley Spring				
		CLOSED TO FISHING		
That portion of the lake within 100 yards of Hatchery Creek as posted				
		CLOSED TO FISHING		
Remainder of lake				
		Saturday of Memorial Day Weekend- Oct 31		Fishing hours: 5 a.m.-9 p.m. Fishing may NOT continue after trout limit has been reduced to possession.
	TROUT		2	Brook trout MUST be counted in trout limit. Bonus brook trout does not apply.
HENRYS LAKE OUTLET				
From Henrys Lake downstream to the foot bridge near USGS Gauge Station (approximately 400 yards)				
		CLOSED TO FISHING		
HENRYS LAKE TRIBUTARIES				
Hatchery Creek		CLOSED TO FISHING		
All others		Aug 1-Aug 31		
	TROUT		2	Brook trout MUST be counted in trout limit.

Water	Species	Open Season Dates	Possession Limits	Special Rules
HORSESHOE LAKE (Fremont County)				No motors.
JEFFERSON COUNTY - All waters				
		OPEN ALL YEAR		
LAVA CREEK and its tributaries (Willow Creek drainage)				
		Jul 1-Nov 30		
LITTLE LOST RIVER				
Mainstem and tributaries upstream from the confluence of Big Springs Creek				
	TROUT		2	
MARKET LAKE WILDLIFE MANAGEMENT AREA				NO boats, rafts, or float tubes Mar 1-Jul 15.
MEDICINE LODGE CREEK and all tributaries				
	TROUT		2	
MOOSE CREEK and its tributaries (Fremont County)				
		Saturday of Memorial Day Weekend- Aug 15		
MUD LAKE - West of the posted boundary which runs north and south from McKenzie Point				
				NO boats, rafts, or float tubes Mar 1- Jul 15.
PALISADES LAKES, UPPER AND LOWER (Palisades Creek drainage)				
		Saturday of Memorial Day Weekend-Nov 30		
PINE CREEK and its tributaries				
		Jul 1-Nov 30		
RIRIE RESERVOIR		May 1-Nov 30		EXCEPT while ice fishing
From the dam to posted boundary (approximately 1 mile upstream)				
		Dec 1-Mar 31		Ice Fishing ONLY.
ROBERTS GRAVEL POND				Motorized watercraft prohibited.

Water	Species	Open Season Dates	Possession Limits	Special Rules
SAND CREEK WILDLIFE MANAGEMENT AREA				
		Saturday of Memorial Day Weekend-Nov 30		Motorized watercraft prohibited. No boats, rafts, or float tubes before Jul 1.
SILVER LAKE (Harriman State Park)				
		CLOSED TO FISHING		
SNAKE RIVER (See Southeast Region for additional information)				
From American Falls Reservoir upstream to the confluence of the North (Henry's) and South Forks				
		OPEN ALL YEAR		
SNAKE RIVER, NORTH (HENRY'S) FORK (tributaries listed separately)				
From its mouth upstream to Vernon (Fritz) Bridge (second bridge downstream from Ashton Dam)				
		OPEN ALL YEAR		
From the steel bridge on Old Highway 20 (Del Rio Bridge approximately one mile north of St. Anthony) upstream to a posted boundary upstream from Riverside Campground, EXCEPT Ashton Reservoir				
				No motors.
	TROUT		2	NONE between 8"-16."
Ashton Reservoir from the dam upstream to the U.S. Highway 20 (Wendell) bridge				
		OPEN ALL YEAR		
From the posted boundary upstream from Riverside Campground upstream to Island Park Dam EXCEPT Harriman State Park				
				No motors. CATCH-AND-RELEASE.
Harriman State Park (including East Harriman) EXCEPT the bird sanctuary				
		Jun 15-Nov 30		No motors. CATCH-AND-RELEASE. Fly fishing only.
Harriman bird sanctuary (Osborn Bridge upstream to the ranch bridge)				
		Jun 15-Sep 30		No motors. CATCH-AND-RELEASE. Fly Fishing ONLY.
From McCrea Bridge upstream to Macks Inn Bridge				
				No motors

Water	Species	Open Season Dates	Possession Limits	Special Rules
From Henrys Lake outlet upstream to and including the head of Big Springs				
		CLOSED TO FISHING		
SNAKE RIVER, SOUTH FORK (See dry beds exception)				
	TROUT	General Stream Season	2	NONE between 8"-16".
From its mouth upstream to the water measuring cable near Heise				
		OPEN ALL YEAR	2	NONE between 8"-16".
TETON CREEK and its tributaries				
		Jul 1-Nov 30		
THURMON CREEK and its tributaries				
		CLOSED TO FISHING		
WARM RIVER				
From its mouth to railroad tunnel EXCEPT within the posted boundaries				
		Saturday of Memorial Day Weekend-Sep 30		
Within the posted boundaries from Parker (Scheuller) cabin near the mouth of Robinson Creek upstream to State Highway 47 bridge				
		CLOSED TO FISHING		
WILLOW CREEK (See also Brockman, Cellars, Hell, and Lava creeks)				
From its mouth upstream to Ririe Dam				
		OPEN ALL YEAR		

(1-1-96)T

336. - 339. (RESERVED).

340. SALMON REGION EXCEPTIONS.

01. Special Seasons. (1-1-96)T

a. All ponds, lakes, and reservoirs have no length restrictions, and are open

to fishing all year except as listed below for the Salmon Region. (1-1-96)T

b. Hatchery rainbow trout (missing an adipose fin) less than 20 inches in length may be harvested under statewide possession limits and rules. Wild rainbow trout (with an adipose fin) greater than 14 inches may be harvested in the Salmon River upstream from North Fork and in the Lemhi and Pahsimeroi rivers. (1-1-96)T

c. Cutthroat may not be harvested in Salmon Region mainstem rivers (East Fork, Lemhi, Middle Fork, North Fork, Pahsimeroi, Salmon, Yankee Fork, and West Fork of Yankee Fork). All cutthroat caught from a river must be released. Cutthroat may be harvested in Salmon Region creeks and lakes (see exceptions). (1-1-96)T

02. Salmon Region Exceptions Table. (1-1-96)T

Water	Species	Open Season Dates	Possession Limits	Special Rules
ALTURAS LAKE CREEK and tributaries, upstream from Alturas Lake				
		Saturday of Memorial Day Weekend-Aug 7		
CAMAS CREEK (Middle Fork Salmon River tributary-Lemhi County)				
Mainstem				CATCH-AND-RELEASE.
All tributaries				
	TROUT		2	
ELK LAKE (an alpine lake in the Knapp Creek Drainage)				
				CATCH-AND-RELEASE.
FISHHOOK CREEK (tributary to Redfish Lake)				
		Saturday of Memorial Day Weekend-Aug 7		
LAKE CREEK and its tributaries (Lemhi County)				
Upstream from the posted boundary at Williams Lake				
		Jul 1-Nov 30		
LEMHI RIVER				
	RAINBOW (with adipose fin)			NONE under 14".

Water	Species	Open Season Dates	Possession Limits	Special Rules
LOON CREEK (tributary to Middle Fork Salmon River)				
Mainstem				CATCH-AND-RELEASE.
All tributaries				
	TROUT		2	
MARSH CREEK and all tributaries				CATCH-AND-RELEASE.
PAHSIMEROI RIVER				
	RAINBOW (with adipose fin)			NONE under 14".
REDFISH LAKE		Jan 1-Aug 7		
SALMON RIVER - NOTE: Rainbow trout longer than 20" are considered steelhead and may be kept ONLY during open steelhead harvest season.				
Tributaries from the mouth of the Little Salmon River upstream to and including the Horse Creek drainage EXCEPT Crooked Creek, Little Salmon and South Fork Salmon rivers				
	TROUT		2	
Mainstem from Horse Creek upstream to North Fork Salmon River				
	ALL SPECIES	Saturday of Memorial Day Weekend-Aug 31		See Steelhead Rules.
	CUT-THROAT		0	CLOSED TO HARVEST.
Mainstem from North Fork upstream to headwaters, except 100 yards upstream and downstream from the Sawtooth Fish Hatchery salmon weir and trap.				
		OPEN ALL YEAR		See Steelhead Rules.
	RAINBOW (with adipose fin)			NONE under 14".
	CUT-THROAT		0	CLOSED TO HARVEST
100 yards upstream and downstream from the Sawtooth Hatchery salmon weir and trap				

Water	Species	Open Season Dates	Possession Limits	Special Rules
		CLOSED TO FISHING		
SALMON RIVER, EAST FORK				
100 yards upstream and downstream from salmon weir and trap				
		CLOSED TO FISHING		
SALMON RIVER, MIDDLE FORK MAINSTEM				
	WHITE-FISH			May be taken ONLY during seasons open for other species.
From its mouth to Roaring Creek (approximately 4 miles)				
		Saturday of Memorial Day Weekend-Aug 31		CATCH-AND-RELEASE.
From Roaring Creek upstream to Boundary Creek				CATCH-AND-RELEASE.
From Boundary Creek upstream to Dagger Creek				
		CLOSED TO FISHING		
From Dagger Creek upstream to the confluence of Bear Valley and Marsh creeks				
	TROUT		2	
SALMON RIVER, MIDDLE FORK TRIBUTARIES, EXCEPT tributaries to Camas and Loon creeks (See each listed separately)				
				CATCH-AND-RELEASE
VALLEY CREEK - From Valley Creek Road Bridge in Stanley upstream				
				CATCH-AND-RELEASE
VALLEY CREEK LAKES 1 & 2 (alpine lakes in the Valley Creek drainage)				
				CATCH-AND-RELEASE
YELLOWBELLY LAKE and inlet upstream to McDonald Lake				
				CATCH-AND-RELEASE.

(1-1-96)T

341. - 344. (RESERVED).

345. FISHING IN BOUNDARY WATERS.

01. Bear Lake. The holder of a valid Idaho or Utah fishing license may fish all of Bear Lake EXCEPT in areas CLOSED to all fishing by the respective states. Anglers are subject to the rules and regulations of the state in which they are fishing.

(1-1-96)T

02. Snake River Between Idaho and Oregon or Washington. The holder of a valid Idaho fishing license may fish the Snake River where it forms the boundary between the states of Idaho and Oregon or Washington, subject to the fish and game laws of Idaho but may not fish from the shoreline, sloughs or tributaries on the Oregon or Washington side. An Oregon or Washington license holder has the same rights and restrictions with reference to the Idaho side.

(1-1-96)T

03. Limit for One License Only. Any angler who fishes on the Snake River or any other water forming an Idaho boundary is entitled to have in possession only the limit allowed by one license regardless of the number of licenses he may possess.

(1-1-96)T

346. FISH SALVAGE.

No salvage of fish from public waters will be allowed without specific Commission order or without authorization from the Director or the Regional Supervisor. Regional authorization allows public fish salvage without regard to usual possession limits. Fish may be taken by snagging, spearing, archery, dipnet, seines, or with the hands. Use of toxic chemicals, explosives, firearms, or electric current is prohibited. A valid fishing license is required.

(1-1-96)T

347. -- 399. (RESERVED)

400. STEELHEAD TROUT.

401. STEELHEAD DEFINITION.

01. Steelhead. Rainbow trout longer than 20 inches in length in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage (excluding lakes and the Pahsimeroi and Lemhi rivers), and the Clearwater River drainage (excluding that portion above Dworshak Dam and lakes). In the Snake River from Hells Canyon Dam upstream to Oxbow Dam, and in the Boise River from its mouth upstream to Barber Dam, and in the Payette River from its mouth upstream to Black Canyon Dam, during steelhead seasons, rainbow trout longer than 20 inches in length with the adipose fin missing (as evidenced by a healed scar) are defined as steelhead.

(1-1-96)T

402. STEELHEAD LICENSES, TAGS AND PERMITS.

01. Licenses. Any person fishing for steelhead, except those expressly exempt, must have in his or her possession a valid fishing license and a steelhead permit. Any person who does not qualify as a resident must purchase either a Nonresident Three Day Fishing License with Steelhead Permit or a nonresident season fishing license and a

full season steelhead permit. (1-1-96)T

02. Permits. Any person fishing for, reducing to possession, or catching and releasing steelhead must have a valid steelhead permit in his or her possession. However, when a steelhead is immediately released unharmed, as in no harvest fishing, the angler is not required to make an entry on the permit. (1-1-96)T

403. PERMIT VALIDATION.

When a steelhead trout has been hooked, landed, and reduced to possession, the angler hooking the fish must immediately do the following: (1-1-96)T

- 01. Permit. Completely remove one numbered notch from the permit. (1-1-96)T
- 02. Number Code. Look up the number code from the location code list and write it in the space provided. (1-1-96)T
- 03. Date Entry. Enter the month and day the fish was caught. (1-1-96)T

RIVER LOCATION CODES	
SNAKE RIVER	
Snake River, below Salmon River	01
Snake River, above Salmon River	02
Snake River, Oxbow	27
CLEARWATER RIVER	
Clearwater River, below Orofino Bridge	03
Clearwater River, above Orofino Bridge	04
North Fork Clearwater River	05
South Fork Clearwater River	07
SALMON RIVER	
Salmon River, below Whitebird Creek	10
Salmon River, Whitebird Creek to Little Salmon	11
Salmon River, Little Salmon to Vinegar Creek	12
Salmon River, Vinegar Creek to South Fork	13
Salmon River, South Fork to Middle Fork	14
Salmon River, Middle Fork to North Fork	15
Salmon River, North Fork to Lemhi River	16

RIVER LOCATION CODES	
Salmon River, Lemhi River to Pahsimeroi River	17
Salmon River, Pahsimeroi River to East Fork	18
Salmon River, above the East Fork	19
OTHER	
Little Salmon River	20
Boise River	28
Payette River	29

(1-1-96)T

404. IDENTIFICATION OF SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

No person shall have in the field or in transit any steelhead trout from which the head or tail has been removed. (1-1-96)T

405. STEELHEAD METHODS OF TAKE.

01. Hooks. Steelhead may be taken only with barbless hooks in the Salmon, Clearwater, and Snake River drainages. Bending the barb down to the shank of a single, double, or treble hook will meet this requirement. Steelhead may be taken with barbed hooks in the Boise and Payette River drainages. (1-1-96)T

02. Snagging. No person shall kill or retain in possession any steelhead which has been hooked other than in the head. Any steelhead hooked other than in the head must be immediately released unharmed. (1-1-96)T

03. Legal Catch. Any steelhead caught in a legal manner must be either released or killed immediately after it is landed. (1-1-96)T

04. Restrictions and Legal Limit. Once an angler has attained his bag, possession or season limit on those waters with steelhead limits, he must cease fishing for steelhead, including catch-and-release fishing, EXCEPT in those river sections with a daily limit of one (1) steelhead per day, anglers may continue to fish on a catch-and-release basis only. (1-1-96)T

05. No Harvest or Closed to Harvest. Effort, by permitted methods, to catch or attempt to catch a steelhead is lawful with the restriction that any steelhead so caught must be released immediately, unharmed, back to the water. (1-1-96)T

06. Keeping Marked Fish. Only steelhead which have been marked by clipping the adipose fin, as evidenced by a HEALED scar may be kept in the Salmon, Clearwater, and Snake River drainage. (1-1-96)T

07. Fish Counted in Limit. All fish that are hooked, landed, and not

immediately released shall be counted in the limits of the person hooking the fish.

(1-1-96)T

08. Special Limits. No person shall fish in waters having special limits while possessing fish of those species in excess of the special limits. (1-1-96)T

406. FALL SEASONS AND LIMITS.

Daily bag, possession, and season limits are not cumulative limits. An angler may take a total of 10 steelhead during the fall season. Any person may fish for steelhead on a no harvest basis August 1 through December 31 in any water open to trout fishing EXCEPT in the Middle and South Forks of the Salmon River. (1-1-96)T

01. Salmon River From its Mouth Upstream to Redfish Lake Creek. Steelhead are the only game fish that may be kept between Horse Creek and the Pahsimeroi River during the steelhead season. (1-1-96)T

a. Season: Sep 1-Dec 31. (1-1-96)T

b. Limits: 2 per day 4 in possession 10 per season. (1-1-96)T

02. Little Salmon River from its mouth upstream to the U.S. Highway 95 bridge near Smokey Boulder Road. (1-1-96)T

a. Season: Sep 1-Dec 31. (1-1-96)T

b. Limits: 2 per day 4 in possession 10 per season. (1-1-96)T

03. Snake River From the Washington State Line at the Confluence of the Snake and Clearwater Rivers Upstream to Hells Canyon Dam. (1-1-96)T

a. Season: Sep 1-Dec 31. (1-1-96)T

b. Limits: 2 per day 4 in possession 10 per season. (1-1-96)T

c. Special Restriction: Fishing from a boat within 150 yards of Hells Canyon Dam is prohibited. (1-1-96)T

04. Clearwater River From its Mouth Upstream to the Memorial Bridge of U.S. Highway 12 at Lewiston. (1-1-96)T

a. Season: Sep 1-Dec 31. (1-1-96)T

b. Limits: 2 per day 4 in possession 10 per season. (1-1-96)T

05. Clearwater River and Middle Fork Clearwater River From the Memorial Bridge of U.S. Highway 12 at Lewiston upstream to the mouth of Clear Creek; South Fork Clearwater River from its mouth upstream to the confluence of American and Red rivers; and the North Fork of the Clearwater River from its mouth upstream to Dworshak Dam. (1-1-96)T

- a. Season: Oct 15-Dec 31. (1-1-96)T
- b. Limits: 2 per day 4 in possession 10 per season. (1-1-96)T
- c. Special Restrictions: (1-1-96)T
 - i. Fishing from the shoreline along the perimeter of Dworshak National Fish Hatchery is prohibited. (1-1-96)T
 - ii. Fishing from motorized watercraft is PROHIBITED from the Clearwater River Bridge at Orofino upstream to the mouth of Clear Creek. (1-1-96)T
 - iii. Fishing from any watercraft is PROHIBITED between a posted line approximately 150 yards upstream from the mouth of the North Fork of the Clearwater River upstream to the Ahsahka Highway Bridge. (1-1-96)T
- 06. Boise River From its Mouth Upstream to Barber Dam. (1-1-96)T
 - a. Season: Sep 1-Dec 31. (1-1-96)T
 - b. Limits: 2 per day, 4 per possession, 10 per season. (1-1-96)T
 - c. Special Restrictions: Rainbow trout longer than 20 inches which have been marked by clipping the adipose fin are classified as steelhead and MUST be entered on a steelhead permit immediately after being reduced to possession. (1-1-96)T
- 07. Payette River From its Mouth Upstream to Black Canyon Dam. (1-1-96)T
 - a. Season: Sep 1-Dec 31. (1-1-96)T
 - b. Limits: 2 per day, 4 in possession, 10 per season. (1-1-96)T
 - c. Special Restrictions: Rainbow trout longer than 20 inches which have been marked by clipping the adipose fin are classified as steelhead and MUST be entered on a steelhead permit immediately after being reduced to possession. (1-1-96)T
- 08. Snake River From Hells Canyon Dam Upstream to Oxbow Dam. (1-1-96)T
 - a. Season: Sep 1-Dec 31. (1-1-96)T
 - b. Limits: 2 per day, 4 in possession, 10 per season. (1-1-96)T
 - c. Special Restrictions: Rainbow trout longer than 20 inches which have been marked by clipping the adipose fin are classified as steelhead and MUST be entered on a steelhead permit immediately after being reduced to possession. (1-1-96)T

407. SPRING SEASONS AND LIMITS.

Daily bag, possession, and season limits are not cumulative limits. An angler may take a

total of 10 steelhead during the spring season. (1-1-96)T

01. Salmon River From its Mouth Upstream to Long Tom Creek (1/4 mile Upstream From the Middle Fork Salmon River). (1-1-96)T

a. Season: Jan 1-Mar 31. (1-1-96)T

b. Limits: 2 per day, 4 in possession, 10 per season. (1-1-96)T

02. Little Salmon River From its Mouth Upstream to the U.S. Highway 95 Bridge Near Smokey Boulder Road. (1-1-96)T

a. Season: Jan 1-Apr 30. (1-1-96)T

b. Limits: 2 per day, 4 in season, 10 per season. (1-1-96)T

03. Salmon River From Long Tom Creek (1/4 mile upstream from the Middle Fork Salmon River) Upstream to Redfish Lake Creek. (1-1-96)T

a. Season: Jan 1-Apr 30. (1-1-96)T

b. Limits: 2 per day 4 in possession 10 per season. c.Special Restrictions: Steelhead are the only game fish that may be reduced to possession between Horse Creek and Pahsimeroi River during steelhead season. (1-1-96)T

04. Snake River From the Washington State Line at the Confluence of the Snake and Clearwater Rivers Upstream to Hells Canyon Dam: (1-1-96)T

a. Season: Jan 1-Apr 30. (1-1-96)T

b. Limits: 2 per day 4 in possession 10 per season. (1-1-96)T

05. Clearwater River From its Mouth Upstream to the Memorial Bridge of U.S. Highway 12 at Lewiston. (1-1-96)T

a. Season: Jan 1-Apr 30. (1-1-96)T

b. Limits: 2 per day 4 in possession 10 per season. (1-1-96)T

06. Clearwater River and Middle Fork Clearwater River from the Memorial Bridge of U.S. Highway 12 at Lewiston upstream to the mouth of Clear Creek; North Fork Clearwater River from its mouth upstream to Dworshak Dam; South Fork Clearwater River from its mouth upstream to the confluence of American and Red rivers. (1-1-96)T

a. Season: Jan 1-Apr 30. (1-1-96)T

b. Limits: 2 per day 4 in possession 10 per season. (1-1-96)T

c. Special Restrictions: (1-1-96)T

i. Fishing from the shoreline along the perimeter of Dworshak National Fish Hatchery is prohibited. (1-1-96)T

ii. Fishing from motorized watercraft is PROHIBITED from the Clearwater River Bridge at Orofino upstream to the mouth of Clear Creek. (1-1-96)T

iii. Fishing from any watercraft is PROHIBITED between a posted line approximately 150 yards upstream from the mouth of the North Fork of the Clearwater River upstream to the Ahsahka Highway bridge. (1-1-96)T

07. Boise River From its Mouth Upstream to Barber Dam. (1-1-96)T

a. Season: Jan 1-May 30. (1-1-96)T

b. Limits: 2 per day 4 per possession 10 per season. (1-1-96)T

c. Special Restrictions: Rainbow trout longer than 20 inches which have been marked by clipping the adipose fin are classified as steelhead and MUST be entered on a steelhead permit immediately after being reduced to possession. (1-1-96)T

08. Payette River From its Mouth Upstream to Black Canyon Dam. (1-1-96)T

a. Season: Jan 1-May 30. (1-1-96)T

b. Limits: 2 per day 4 in possession 10 per season. (1-1-96)T

c. Special Restrictions: Rainbow trout longer than 20 inches which have been marked by clipping the adipose fin are classified as steelhead and MUST be entered on a steelhead permit immediately after being reduced to possession. (1-1-96)T

09. Snake River from Hells Canyon Dam Upstream to Oxbow Dam. (1-1-96)T

a. Season: Jan 1-May 30. (1-1-96)T

b. Limits: 2 per day, 4 in possession, 10 per season. (1-1-96)T

c. Special Restrictions: Rainbow trout longer than 20 inches which have been marked by clipping the adipose fin are classified as steelhead and MUST be entered on a steelhead permit immediately after being reduced to possession. (1-1-96)T

408. STEELHEAD PURCHASE REPORT.

01. Filing Purchase Report. Persons holding a wholesale or retail steelhead trout buyer's license shall report sales and purchases of steelhead on an Idaho Steelhead Purchase Report to be filed with the Administration Bureau of the Idaho Department of Fish and Game, Boise, Idaho, on or before December 31 of each year. (1-1-96)T

02. Inaccurate Reporting. Failure to provide complete and accurate

information on the report or failure to file the report on or before December 31 shall be grounds for revocation of the wholesale or retail license. (1-1-96)T

03. Procedure For Revocation of License. All such cases shall be conducted as a contested case under the Administrative Procedures Act. (1-1-96)T

409. -- 499. (RESERVED).

500. CHINOOK SALMON.

501. SALMON DEFINITIONS.

01. Chinook Salmon. Anadromous (ocean run) salmon of the species *Oncorhynchus tshawytscha* in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage, and the Clearwater River drainage, excluding lakes and the North Fork of the Clearwater River above Dworshak Dam. (1-1-96)T

02. Jack Salmon. Chinook salmon under 20 inches in total length are commonly called jack salmon. (1-1-96)T

502. SALMON LICENSES AND PERMITS.

01. Licenses. Any person fishing for salmon, except those expressly exempt, must have in his or her possession a valid fishing license. Any person who does not qualify as a resident must purchase either a Nonresident Three Day Fishing License with a Salmon Permit or a nonresident season fishing license and a full season salmon permit. (1-1-96)T

02. Permits. Any person fishing for, reducing to possession, or catching and release chinook salmon must have a valid salmon permit in his or her possession. However, when a salmon is immediately release unharmed, the angler is not required to make an entry on the permit. (1-1-96)T

503. PERMIT VALIDATION.

When a chinook salmon has been hooked, landed, and reduced to possession, the angler hooking the fish must immediately complete the following: (1-1-96)T

01. Permit. Cut out and completely remove one numbered notch from the permit. (1-1-96)T

02. Number Code. Look up the number code from the location code list and write it in the space provided. (1-1-96)T

03. Date Entry. Enter in the space provided, the month, and day the fish was caught. (1-1-96)T

504. IDENTIFICATION OF SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

No person shall have in the field or in transit any chinook salmon from which the head or tail has been removed. (1-1-96)T

505. SALMON SPECIAL RESTRICTIONS.

01. Method of Take. It is unlawful to use any hook larger than 5/8 inch measured from the point of the hook to the shank. (1-1-96)T

02. Cease Fishing. Once an angler has attained his bag, possession, or season limit on those waters with salmon limits, he must cease fishing for salmon. (1-1-96)T

506. SEASONS AND LIMITS.

The following waters are open to fishing for chinook salmon during the periods listed. Waters not specifically designated below shall remain CLOSED to fishing for chinook. (1-1-96)T

01. Little Salmon River from the Riggins water main pipeline crossing the Little Salmon River approximately 200 yards above its mouth, upstream to the U.S. Highway 95 bridge near Smokey Boulder Road. (1-1-96)T

a. Season: May 12 until further notice or July 8 which ever comes first. (1-1-96)T

b. Limits: 2 per day, 4 in possession, and 6 per season. Jack salmon must be counted in the daily, possession, and season limit, and recorded on the salmon permit. (1-1-96)T

c. Fishing hours: Fishing for salmon on the Little Salmon River is permitted only during the hours of 4:00 a.m. through 9:30 p.m. (MDT) during the open chinook salmon season. (1-1-96)T

02. Snake River From Lower Pittsburg Landing Upstream to Hells Canyon Dam. (1-1-96)T

a. Season: May 12 until further notice or August 31 which ever comes first. (1-1-96)T

b. Limits: 2 per day, 4 in possession, and 6 per season. Jack salmon must be counted in the daily, possession, and season limit, and recorded on the salmon permit. (1-1-96)T

c. Fishing hours: Fishing for salmon on the Little Salmon River is permitted only during the hours of 4:00 a.m. through 9:30 p.m. (PDT) during the open chinook salmon season. (1-1-96)T

03. Mainstem Clearwater River From the Mouth of Big Canyon Creek (at Peck) upstream to the downstream-most boat ramp at the Ahsahka boat launch on the mainstem Clearwater River; and NORTH FORK CLEARWATER RIVER from its mouth upstream to Dworshak. (1-1-96)T

a. Season: (1-1-96)T

- i. North Fork Clearwater River
Jun 1-Jun 3
Jun 8-Jun 10
Jun 15-Jun 17 (1-1-96)T
- ii. Mainstem Clearwater River
Jun 8-Jun 10
Jun 15-Jun 17 (1-1-96)T
- b. Limits: 1 per day, 2 in possession, and 3 per season. Jack salmon must be counted in the daily, possession, and season limit, and recorded on the salmon permit. (1-1-96)T
- c. Fishing hours: Fishing for salmon on the Clearwater and North Fork Clearwater is permitted only during the hours of 4:00 a.m. through 9:30 p.m. (PDT) during the open chinook salmon season. (1-1-96)T
- d. Special restrictions: (1-1-96)T
 - i. Fishing from the shoreline along the perimeter of Dworshak National Fish Hatchery is PROHIBITED. (1-1-96)T
 - ii. Fishing from any watercraft is PROHIBITED between a posted line approximately 150 yards upstream from the mouth of the North Fork Clearwater River to the Ahsahka Highway bridge. (1-1-96)T
 - iii. All salmon harvested from the Clearwater River or North Fork Clearwater River MUST be checked by Idaho Department of Fish and Game daily, not later than 10:30 p.m. at the IDFG check stations at either the Ahsahka boat ramp, east of Dworshak National Fish Hatchery, or at Peck. (1-1-96)T

507. -- 599. (RESERVED).

600. STURGEON.

01. Licenses, Tags, and Permits. Any person fishing for or catching and releasing sturgeon must have a valid sturgeon permit in his or her possession. (1-1-96)T

02. Reporting. Any person issued a sturgeon permit must file a fishing report with IDFG on a form prescribed by IDFG no later than January 15 of the year following the fishing activity. (1-1-96)T

601. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO
DOCKET NO. 16-0101-9601
NOTICE OF TEMPORARY RULE

EFFECTIVE DATE: The temporary rule is effective November 20, 1995.

AUTHORITY: In compliance with Section 67-5226(1), Idaho Code, notice is hereby given that this agency has adopted a temporary rule. The action is authorized by Sections 39-105 and 39-107, Idaho Code and mandated by the U.S. Environmental Protection Agency (EPA) for approval of the state's Title V Operating Permit Program pursuant to 40 CFR Part 70.

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

This temporary rule repeals Idaho's air rules on excess emissions found in the Tier I section of the rules (IDAPA 16.01.01.326 through 332) and revises that found in the general section of the rules (IDAPA 16.01.01.130 through 136). EPA has mandated this change in order to approve Idaho's proposed Title V Operating Permit Program. The revised rule provides the Department with the authority to excuse an excess emission violation if certain conditions are met. Several other sections of the air rules have also been revised to accommodate these revisions. The other revised sections include the general definitions, and various sections on Tier I operating permit applications.

The procedures for issuing Permits to Construct have been modified to address an additional Title V Operating Permit program approval issue. The deadline for submission of a complete Tier I application has been modified to allow additional time to develop Tier II Operating Permits for facilities that wish to opt out of the Tier I program.

The temporary rule will remain in effect beyond the conclusion of the 1996 Regular Session of the Idaho Legislature if the rule is approved, amended or modified by concurrent resolution. In the meantime, the Department is initiating regular rulemaking for promulgation of a final rule.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that a temporary rule is required to comply with the deadline set forth by the Environmental Protection Agency.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rule, contact Sue Richards at (208)373-0502.

DATED this 3rd day of January, 1996.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
Fax No. (208)373-0481

TEXT OF DOCKET NO. 16-0101-9601

006. GENERAL DEFINITIONS.

01. (RESERVED).
02. Act. The Environmental Protection and Health Act of 1972 as amended (Sections 39-101 through 39-130, Idaho Code). (5-1-94)
03. Actual Emissions. The emission rate, in mass per unit time, of an air pollutant from a stationary source or emissions unit, averaged over the two (2) year period which is representative of normal operation and which precedes a particular date or the date on which an application for a permit was filed. Actual emissions shall be calculated using actual operating hours, production rates, and types of materials processed, stored, or combusted during this time period, except that: (5-1-94)
- a. The Department may allow the use of a different time period upon a determination that it is more representative of normal operation; (5-1-94)
- b. The Department may consider emission rates specifically allowed in a permit to construct or operating permit to be equivalent to actual emissions if the State Implementation Plan demonstration of attainment and/or maintenance is explicitly based on the permitted emissions; and (5-1-94)
- c. For any stationary source or emissions unit which has not yet begun normal operations, actual emissions shall be considered to be those allowed in the applicable permit to construct or operating permit. (5-1-94)
04. Air Pollutant/Air Contaminant. Any substance, including but not limited to, dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon or particulate matter or any combination thereof, regulated under the Act, 42 U.S.C. Sections 7401 through 7671q. these rules or any federal air quality regulation. (5-1-94)
05. Air Quality. The specific measurement in the ambient air of a particular air pollutant at any given time. (5-1-94)
06. Air Quality Criterion. The information used as guidelines for decisions when establishing air quality goals and air quality standards. (5-1-94)
07. Ambient Air. That portion of the atmosphere, external to buildings, to which the general public has access. (5-1-94)
08. Ambient Air Quality Violation. Any single ambient concentration of any air pollutant that exceeds any national, state or local ambient air quality standard at any point in an area outside the source property line. (5-1-94)
09. Atmospheric Stagnation Advisory. An air pollution alert declared by the Department when air pollutant impacts have been observed and/or meteorological conditions are conducive to additional air pollutant buildup. (5-1-94)

10. Attainment Area. Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as having ambient concentrations equal to or less than national primary or secondary ambient air quality standards for a particular air pollutant or air pollutants. (5-1-94)
11. Baseline (Area, Concentration, Date). See Section 579. (5-1-94)
12. Best Available Control Technology (BACT). An emission standard (including a visible emissions standard) based on the maximum control of emissions achievable through application of production processes or available methods, systems, and techniques (including fuel cleaning or treatment or innovative fuel combination techniques) for control of such contaminants. BACT shall be determined on a case-by-case basis, taking into account energy, environmental and economic impacts, and other costs, and shall be at least as stringent as any applicable Sections of 40 CFR Part 60, 40 CFR Part 61 and 40 CFR Part 63. If an emissions standard is infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed as BACT. (5-1-94)
13. Board. Idaho Board of Health and Welfare. (5-1-94)
14. Breakdown. An unplanned and unforeseeable failure of any air pollution control equipment or emissions unit, including process equipment, which may cause excess emissions where such failure is not intentional or the result of negligence or improper maintenance. (5-1-94)
15. BTU. British thermal unit. (5-1-94)
16. Clean Air Act. The federal Clean Air Act, 42 U.S.C. Sections 7401 through 7671q. (5-1-94)
17. Collection Efficiency. The overall performance of the air cleaning device in terms of ratio of materials collected to total input to the collector unless specific size fractions of the contaminant are stated or required. (5-1-94)
18. Commence Construction or Modification. To engage in a continuous program of construction or modification, or to engage in a program of planned grading, dredging, or landfilling, specifically designed for the stationary source or facility in preparation of the fabrication, erection, or installation of the building components of the stationary source or facility. For the purpose of this definition, delays or interruptions resulting from natural disasters, strikes, litigation, and other matters beyond the control of the owner, shall be disregarded in determining whether a construction or a modification program has commenced and/or is continuous. (5-1-94)
19. Complete. A determination made by the Department that all information needed to process a permit application has been submitted for review. (5-1-94)
20. Construction. Fabrication, erection, installation, or modification of a stationary source or facility. (5-1-94)
21. Control Equipment. Any method, process or equipment which removes,

reduces or renders less noxious, air pollutants discharged into the atmosphere. (5-1-94)

22. Controlled Emission. An emission which has been treated by control equipment to remove all or part of an air pollutant before release to the atmosphere. (5-1-94)

23. Criteria Air Pollutant. Any of the following: PM-10; total suspended particulates (TSP); sulfur oxides; ozone, nitrogen dioxide; carbon monoxide; fluorides; lead. (5-1-94)

24. Department. The Department of Health and Welfare. (5-1-94)

25. Designated Facility. Any of the following facilities: (5-1-94)

a. Fossil-fuel fired steam electric plants of more than two hundred fifty (250) million BTU's per hour heat input; (5-1-94)

b. Coal cleaning plants (thermal dryers); (5-1-94)

c. Kraft pulp mills; (5-1-94)

d. Portland cement plants; (5-1-94)

e. Primary zinc smelters; (5-1-94)

f. Iron and steel mill plants; (5-1-94)

g. Primary aluminum ore reduction plants; (5-1-94)

h. Primary copper smelters; (5-1-94)

i. Municipal incinerators capable of charging more than two hundred and fifty (250) tons of refuse per day; (5-1-94)

j. Hydrofluoric, sulfuric, and nitric acid plants; (5-1-94)

k. Petroleum refineries; (5-1-94)

l. Lime plants; (5-1-94)

m. Phosphate rock processing plants; (5-1-94)

n. Coke oven batteries; (5-1-94)

o. Sulfur recovery plants; (5-1-94)

p. Carbon black plants (furnace process); (5-1-94)

q. Primary lead smelters; (5-1-94)

- r. Fuel conversion plants; (5-1-94)
- s. Sintering plants; (5-1-94)
- t. Secondary metal production facilities; (5-1-94)
- u. Chemical process plants; (5-1-94)
- v. Fossil-fuel boilers (or combination thereof) of more than two hundred and fifty (250) million BTU's per hour heat input; (5-1-94)
- w. Petroleum storage and transfer facilities with a capacity exceeding three hundred thousand (300,000) barrels; (5-1-94)
- x. Taconite ore processing facilities; (5-1-94)
- y. Glass fiber processing plants; and (5-1-94)
- z. Charcoal production facilities. (5-1-94)
26. Director. The Director of the Department of Health and Welfare or his designee. (5-1-94)
27. Effective Dose Equivalent. The sum of the products of absorbed dose and appropriate factors to account for differences in biological effectiveness due to the quality of radiation and its distribution in the body of reference man. The unit of the effective dose equivalent is the rem. It is generally calculated as an annual dose. (5-1-94)
28. Emission. Any controlled or uncontrolled release or discharge into the outdoor atmosphere of any air pollutants or combination thereof. Emission also includes any release or discharge of any air pollutant from a stack, vent, or other means into the outdoor atmosphere that originates from an emission unit. (5-1-94)
29. Emission Standard. A permit or regulatory requirement established by the Department, or a requirement contained in 40 CFR Part 60, 40 CFR Part 61, 40 CFR Part 63 or the State Implementation Plan (SIP), which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures to assure continuous emission control. (5-1-94)
30. Emission Standard Violation. Any emission rate that exceeds the applicable source-specific emission standard or any action or inaction that contravenes any source-specific opacity limit, equipment requirement, fuel specification or required operation or maintenance procedures. (5-1-94)
31. Emissions Unit. An identifiable piece of process equipment or other part of a facility which emits or may emit any air pollutant. This definition does not alter or affect the term "unit" for the purposes of 42 U.S.C. Sections 7651 through 7651o. (5-1-94)

32. EPA. The United States Environmental Protection Agency and its Administrator or designee. (5-1-94)

33. Environmental Remediation Source. A stationary source that functions to remediate or recover any release, spill, leak, discharge or disposal of any petroleum product or petroleum substance, any hazardous waste or hazardous substance from any soil, ground water or surface water, and shall have an operational life no greater than five (5) years from the inception of any operations to the cessation of actual operations. Nothing in this definition shall be construed so as to actually limit remediation projects to five years or less of total operation. (5-1-95)

34. Existing Stationary Source or Facility. Any stationary source or facility that exists, is installed, or is under construction on the original effective date of any applicable provision of this chapter. (5-1-94)

35. Facility. All of the combined sources which emit air pollutants, belong to the same industrial grouping (using the Major Groups as described in the Standard Industrial Classification Manual), are located on one or more contiguous or adjacent properties, and are owned or operated by the same person or by persons under common control. (5-1-94)

36. Federal Class I Area. Any federal land that is classified or reclassified "Class I" pursuant to Section 580. (5-1-94)

37. Federal Land Manager. The Secretary of the federal department with authority over any federal lands in the United States. (5-1-94)

38. Fire Hazard. The presence or accumulation of combustible material of such nature and in sufficient quantity that its continued existence constitutes an imminent and substantial danger to life, property, public welfare or adjacent lands. (5-1-94)

39. Fuel-Burning Equipment. Any furnace, boiler, apparatus, stack and all appurtenances thereto, used in the process of burning fuel for the primary purpose of producing heat or power by indirect heat transfer. (5-1-94)

40. Fugitive Dust. Fugitive emissions composed of particulate matter. (5-1-94)

41. Fugitive Emissions. Those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening. (5-1-94)

42. Garbage. Any waste consisting of putrescible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food including, but not limited to, waste materials from households, markets, storage facilities, handling and sale of produce and other food products. (5-1-94)

43. Grain Elevator. Any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded. (5-1-94)

44. Grain Storage Elevator. Any grain elevator located at any wheat flour

mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean extraction plant which has a permanent grain storage capacity of 35,200 cubic meters (ca. 1 million bushels). (5-1-94)

45. Grain Terminal Elevator. Any grain elevator which has a permanent storage capacity of more than 88,100 cubic meters (ca. 2.5 million bushels), except those located at animal food manufacturers, pet food manufacturers, cereal manufacturers, breweries, and livestock feedlots. (5-1-94)

46. Hazardous Air Pollutant (HAP). Any air pollutant which is regulated at its emitting source by 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63. (5-1-94)

47. Hazardous Waste. Any waste or combination of wastes of a solid, liquid, semisolid, or contained gaseous form which, because of its quantity, concentration or characteristics (physical, chemical or biological) may: (5-1-94)

a. Cause or significantly contribute to an increase in deaths or an increase in serious, irreversible, or incapacitating reversible illnesses; or (5-1-94)

b. Pose a substantial threat to human health or to the environment if improperly treated, stored, disposed of, or managed. Such wastes include, but are not limited to, materials which are toxic, corrosive, ignitable, or reactive, or materials which may have mutagenic, teratogenic, or carcinogenic properties; provided that such wastes do not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are allowed under a national pollution discharge elimination system permit, or source, special nuclear, or by-product material as defined by 42 U.S.C. Sections 2014(e),(z) or (aa). (5-1-94)

48. Hot-Mix Asphalt Plant. Those facilities conveying proportioned quantities or batch loading of cold aggregate to a drier, and heating, drying, screening, classifying, measuring and mixing the aggregate and asphalt for the purpose of paving, construction, industrial, residential or commercial use. (5-1-94)

49. Incinerator. Any source consisting of a furnace and all appurtenances thereto designed for the destruction of refuse by burning. "Open Burning" is not considered incineration. For purposes of these rules, the destruction of any combustible liquid or gaseous material by burning in a flare stack shall be considered incineration. (5-1-94)

50. Indian Governing Body. The governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government. (5-1-94)

51. Indian Reservation. Any federally recognized reservation established by treaty, agreement, executive order, or act of Congress. (5-1-94)

52. Kraft Pulping. Any pulping process which uses, for a cooking liquor, an alkaline sulfide solution containing sodium hydroxide and sodium sulfide. (5-1-94)

53. Lowest Achievable Emission Rate (LAER). The rate of emissions based on the most stringent of the following: (5-1-94)

a. The most stringent emission standard which has been demonstrated in practice by similar stationary sources, facilities, or operations; (5-1-94)

b. The most stringent emission standard in any state implementation plan for similar stationary sources, facilities or operations, unless the owner or operator of the proposed facility demonstrates that such standards are not achievable; or (5-1-94)

c. Any applicable provision in 40 CFR Part 60. (5-1-94)

54. Major Facility. (5-1-94)

a. Any facility which has actual or allowable emissions of one hundred (100) tons per year or more of any air pollutant. (5-1-94)

b. Fugitive dust shall be included in the determination of emissions only for designated facilities and those source categories regulated under 40 CFR Part 60, 40 CFR Part 61, or 40 CFR Part 63. (5-1-94)

55. Major Modification. (5-1-94)

a. Any modification of a major facility that would result in a significant net emission increase of any air pollutant; or (5-1-94)

b. Any modification of a facility that would result in a potential emissions increase of any air pollutant of one hundred (100) tons per year or more; (5-1-94)

c. Fugitive dust shall be included in the determination of emissions only for designated facilities and those source categories regulated under 40 CFR Part 60, 40 CFR Part 61 or 40 CFR Part 63. (5-1-94)

56. Member of the Public. For purposes of Section 006.878.a.xx., a person located at any off-site point where there is a residence, school, business or office.

~~(5-1-94)~~(11-20-95)T

57. Modification. Any physical change in, or change in the method of operation of, a stationary source or facility which increases the amount of any air pollutant to which an emission or ambient air quality standard applies emitted by such stationary source or facility or which results in the emission of any air pollutant to which an emission or ambient air quality standard applies not previously emitted except that routine maintenance, repair and replacement shall not be considered physical changes, and the following shall not be considered a change in the method of operation: (5-1-94)

a. An increase in the production rate if such increase does not exceed the operating design capacity of the affected stationary source, and if a more restrictive production rate is not specified in a permit; (5-1-94)

b. An increase in hours of operation if more restrictive hours of operation

are not specified in a permit; and (5-1-94)

c. Use of an alternative fuel or raw material if prior to January 6, 1975 and the date any emission or ambient air quality standard becomes applicable to such stationary source, the affected stationary source is specifically designed to accommodate such alternative use and is not specifically prohibited in a permit. (5-1-94)

58. Monitoring. Sampling and analysis, in a continuous or noncontinuous sequence, using techniques which will adequately measure emission levels and/or ambient air concentrations of air pollutants. (5-1-94)

59. Multiple Chamber Incinerator. Any article, machine, equipment, contrivance, structure or part of a structure used to dispose of combustible refuse by burning, consisting of three (3) or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts and employing adequate parameters necessary for maximum combustion of the material to be burned. (5-1-94)

60. New Stationary Source or Facility. (5-1-94)

a. Any stationary source or facility, the construction or modification of which is commenced after the original effective date of any applicable provision of this chapter; or (5-1-94)

b. The restart of a nonoperating facility shall be considered a new stationary source or facility if: (5-1-94)

i. The restart involves a modification to the facility; or (5-1-94)

ii. After the facility has been in a nonoperating status for a period of two (2) years, and the Department receives an application for a Permit to Construct in the area affected by the existing nonoperating facility, the Department will, within five (5) working days of receipt of the application notify the nonoperating facility of receipt of the application for a Permit to Construct. Upon receipt of this Departmental notification, the nonoperating facility will comply with the following restart schedule or be considered a new stationary source or facility when it does restart: Within thirty (30) working days after receipt of the Department's notification of the application for a Permit to Construct, the nonoperating facility shall provide the Department with a schedule detailing the restart of the facility. The restart must begin within sixty (60) days of the date the Department receives the restart schedule. (5-1-94)

61. Nonattainment Area. Any area which is designated, pursuant to 42 U.S.C. Section 7407(d), as not meeting (or contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant. (5-1-94)

62. Noncondensibles. Gases and vapors from processes that are not condensed at standard temperature and pressure unless otherwise specified. (5-1-94)

63. Odor. The sensation resulting from stimulation of the human sense of

smell. (5-1-94)

64. Opacity. A state which renders material partially or wholly impervious to rays of light and causes obstruction of an observer's view, expressed as percent. (5-1-94)

65. Open Burning. The burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passing through a stack, duct or chimney. (5-1-94)

66. Operating Permit. A permit issued by the Director pursuant to Sections 300 through 387 and/or 400 through 461. (5-1-94)

67. Particulate Matter. Any material, except water in uncombined form, that exists as a liquid or a solid at standard conditions. (5-1-94)

68. Particulate Matter Emissions. All particulate matter emitted to the ambient air as measured by an applicable reference method, or any equivalent or alternative method, specified in the Procedures Manual for Air Pollution Control. (5-1-94)

69. Permit to Construct. A permit issued by the Director pursuant to Sections 200 through 225. (5-1-94)

70. Person. Any individual, association, corporation, firm, partnership or any federal, state or local governmental entity. (5-1-94)

71. PM-10. All particulate matter in the ambient air with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers as measured by a reference method based on Appendix J of 40 CFR Part 50 and designated in accordance with 40 CFR Part 53 or by an equivalent method designated in accordance with 40 CFR Part 53. (5-1-94)

72. PM-10 Emissions. All particulate matter, including condensable particulates, with an aerodynamic diameter less than or equal to a nominal ten (10) micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method, specified in the Procedures Manual for Air Pollution Control. (5-1-94)

73. Potential to Emit/Potential Emissions. The maximum capacity of a facility to emit an air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit an air pollutant, provided the limitation or its effect on emissions is state and federally enforceable, shall be treated as part of its design. Limitations may include, but are not limited to, air pollution control equipment, restrictions on hours of operation and restrictions on the type or amount of material combusted, stored or processed. This definition does not alter or affect the term "capacity factor" as defined in 42 U.S.C. Sections 7651 through 7651o. (5-1-94)

74. Portable Equipment. Equipment which is designed to be dismantled and transported from one job site to another job site. (5-1-94)

75. PPM (parts per million). Parts of a gaseous contaminant per million parts of gas by volume. (5-1-94)

76. Prescribed Fire Management Burning. The controlled application of fire to wildland fuels in either their natural or modified state under such conditions of weather, fuel moisture, soil moisture, etc., as will allow the fire to be confined to a predetermined area and at the same time produce the intensity of heat and rate of spread required to accomplish planned objectives, including: (5-1-94)

- a. Fire hazard reduction; (5-1-94)
- b. The control of pests, insects, or diseases; (5-1-94)
- c. The promotion of range forage improvements; (5-1-94)
- d. The perpetuation of natural ecosystems; (5-1-94)
- e. The disposal of woody debris resulting from a logging operation, the clearing of rights of way, a land clearing operation, or a driftwood collection system; (5-1-94)
- f. The preparation of planting and seeding sites for forest regeneration; (5-1-94)
- and
- g. Other accepted natural resource management purposes. (5-1-94)

77. Primary Ambient Air Quality Standard. That ambient air quality which, allowing an adequate margin of safety, is requisite to protect the public health. (5-1-94)

78. Process or Process Equipment. Any equipment, device or contrivance for changing any materials whatever or for storage or handling of any materials, and all appurtenances thereto, including ducts, stack, etc., the use of which may cause any discharge of an air pollutant into the ambient air but not including that equipment specifically defined as fuel-burning equipment or refuse-burning equipment. (5-1-94)

79. Process Weight. The total weight of all materials introduced into any source operation which may cause any emissions of particulate matter. Process weight includes solid fuels charged, but does not include liquid and gaseous fuels charged or combustion air. Water which occurs naturally in the feed material shall be considered part of the process weight. (5-1-94)

80. Process Weight Rate. The rate established as follows: (5-1-94)

a. For continuous or long-run steady-state source operations, the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof; (5-1-94)

b. For cyclical or batch source operations, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the

hours of actual process operation during such a period. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply. (5-1-94)

81. Radionuclide. A type of atom which spontaneously undergoes radioactive decay. (5-1-94)

82. Responsible Official. One of the following: (5-1-94)

a. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either: (5-1-94)

i. The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or (5-1-94)

ii. The delegation of authority to such representative is approved in advance by the Department. (5-1-94)

b. For a partnership or sole proprietorship: a general partner or the proprietor, respectively. (5-1-94)

c. For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of Section 122, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of EPA). (5-1-94)

d. For Phase II sources: (5-1-94)

i. The designated representative in so far as actions, standards, requirements, or prohibitions under 42 U.S.C. Sections 7651 through 7651o or the regulations promulgated thereunder are concerned; and (5-1-94)

ii. The designated representative for any other purposes under 40 CFR Part 70. (5-1-94)

83. Safety Measure. Any shutdown (and related startup) or bypass of control equipment, process equipment or normal processes undertaken to prevent imminent injury or death to employees or severe damage to equipment which may cause excess emissions where such measure is not necessitated by negligence or improper maintenance. (11-20-95)T

834. Salvage Operation. Any source consisting of any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, such as, but not limited to, reprocessing of used motor oils, metals, chemicals, shipping

containers, or drums, and specifically including automobile graveyards and junkyards. (5-1-94)

845. Scheduled Maintenance. Planned upkeep, ~~and~~ repair activities and preventative maintenance on any air pollution control equipment or emissions unit, including process equipment, and including shutdown and startup of such equipment. (5-1-94)(11/20/95)T

856. Secondary Ambient Air Quality Standard. That ambient air quality which is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of air pollutants in the ambient air. (5-1-94)

867. Shutdown. The normal and customary time period required to cease operations of air pollution control equipment or an emissions unit beginning with the initiation of procedures to terminate normal operation and continuing until the termination is completed. (5-1-94)

878. Significant. A rate of air pollutant emissions that would equal or exceed any of the following: (5-1-94)

- a. Air pollutant emissions and rate: (5-1-94)
 - i. Carbon monoxide, one hundred (100) tons per year; (5-1-94)
 - ii. Nitrogen oxides, forty (40) tons per year; (5-1-94)
 - iii. Sulfur dioxide, forty (40) tons per year; (5-1-94)
 - iv. Particulate matter, twenty-five (25) tons per year; (5-1-94)
 - v. Ozone, forty (40) tons per year of volatile organic compounds as a measure of ozone; (5-1-94)
 - vi. Lead, six-tenths (0.6) of a ton per year; (5-1-94)
 - vii. Asbestos, seven-thousandths (0.007) of a ton per year; (5-1-94)
 - viii. Beryllium, four ten-thousandths (0.0004) of a ton per year; (5-1-94)
 - ix. Mercury, one-tenth (0.1) of a ton per year; (5-1-94)
 - x. Vinyl chloride, one (1) ton per year; (5-1-94)
 - xi. Fluorides, three (3) tons per year; (5-1-94)
 - xii. Sulfuric acid mist, seven (7) tons per year; (5-1-94)
 - xiii. Hydrogen sulfide (H₂S), ten (10) tons per year; (5-1-94)
 - xiv. Total reduced sulfur (including H₂S), ten (10) tons per year; (5-1-94)

- xv. Reduced sulfur compounds (including H₂S), ten (10) tons per year; (5-1-94)
 - xvi. PM-10, fifteen (15) tons per year; (5-1-94)
 - xvii. Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans), thirty-five ten-millionths (0.0000035) tons per year; (5-1-94)
 - xviii. Municipal waste combustor metals (measured as particulate matter), 15 tons per year; (5-1-94)
 - xix. Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride), forty (40) tons per year; (5-1-94)
 - xx. Radionuclides, a quantity of emissions, from source categories regulated by 40 CFR Part 61, Subpart H, that have been determined in accordance with 40 CFR Part 61, Appendix D and by Department approved methods, that would cause any member of the public to receive an annual effective dose equivalent of at least 0.1 mrem per year, if total facility-wide emissions contribute an effective dose equivalent of less than three (3) mrem per year; or any radionuclide emission rate, if total facility-wide radionuclide emissions contribute an effective dose equivalent of greater than or equal to three (3) mrem per year; (5-1-95)
 - b. In reference to a net emissions increase or the potential of a source or facility to emit an air pollutant not listed in (a) above and not a toxic air pollutant, any emission rate; or (5-1-94)
 - c. For a major facility or major modification which would be constructed within ten (10) kilometers of a Class I area, the emissions rate which would increase the ambient concentration of an emitted air pollutant in the Class I area by one (1) microgram per cubic meter, twenty-four (24) hour average, or more. (5-1-94)
889. Significant Contribution. Any increase in ambient concentrations which would exceed the following: (5-1-94)
- a. Sulfur dioxide: (5-1-94)
 - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
 - ii. Five (5) micrograms per cubic meter, twenty-four (24) hour average; (5-1-94)
 - iii. Twenty-five (25) micrograms per cubic meter, three (3) hour average; (5-1-94)
 - b. Total suspended particulates: (5-1-94)
 - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)

- ii. Five (5) micrograms per cubic meter, twenty-four (24) hour average; (5-1-94)
 - c. Nitrogen dioxide, one (1.0) microgram per cubic meter, annual average; (5-1-94)
 - d. Carbon monoxide: (5-1-94)
 - i. One-half (0.5) milligrams per cubic meter, eight (8) hour average; (5-1-94)
 - ii. Two (2) milligrams per cubic meter, one (1) hour average; (5-1-94)
 - e. PM-10: (5-1-94)
 - i. One (1.0) microgram per cubic meter, annual average; (5-1-94)
 - ii. Five (5.0) micrograms per cubic meter, twenty-four (24) hour average. (5-1-94)
890. Small Fire. A fire in which the material to be burned is not more than four (4) feet in diameter nor more than three (3) feet high. (5-1-94)
901. Smoke. Small gas-borne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon and other combustible material. (5-1-94)
942. Smoke Management Plan. A document issued by the Director to implement Sections 606 through 616, Categories of Allowable Burning. (5-1-94)
923. Smoke Management Program. A program whereby meteorological information, fuel conditions, fire behavior, smoke movement and atmospheric dispersal conditions are used as a basis for scheduling the location, amount and timing of open burning operations so as to minimize the impact of such burning on identified smoke sensitive areas. (5-1-94)
934. Source. A stationary source. (5-1-94)
945. Source Operation. The last operation preceding the emission of air pollutants, when this operation: (5-1-94)
- a. Results in the separation of the air pollutants from the process materials or in the conversion of the process materials into air pollutants, as in the case of fuel combustion; and (5-1-94)
 - b. Is not an air cleaning device. (5-1-94)
956. Stack. Any point in a source arranged to conduct emissions to the ambient air, including a chimney, flue, conduit, or duct but not including flares. (5-1-94)

967. Standard Conditions. Except as specified in Section 576.02. for ambient air quality standards, a dry gas temperature of 20C (68F) and a gas pressure of 760 millimeters of mercury (14.7 pounds per square inch) absolute. (5-1-94)

978. Startup. The normal and customary time period required to bring air pollution control equipment or an emissions unit, including process equipment, from a nonoperational status into normal operation. (5-1-94)

989. Stationary Source. Any building, structure, emissions unit, or installation which emits or may emit any air pollutant. (5-1-94)

99100. Tier I Source. Any of the following: (5-1-94)

a. Any source located at any major facility; (5-1-94)

b. Any source, including an area source, subject to a standard, limitation, or other requirement under 42 U.S.C. Section 7411 or 40 CFR Part 60; (5-1-94)

c. Any source, including an area source, subject to a standard or other requirement under 42 U.S.C. Section 7412, 40 CFR Part 61 or 40 CFR Part 63, except that a source is not required to obtain a permit solely because it is subject to requirements under 42 U.S.C. Section 7412(r); (5-1-94)

d. Any Phase II source; and (5-1-94)

e. Any source in a source category designated by the Department. (5-1-94)

1001. Time Intervals. Where applicable, time intervals are defined as follows: (5-1-94)

a. "Annual" means calendar year; (5-1-94)

b. "Year" means calendar year; (5-1-94)

c. "Month" means calendar month; (5-1-94)

d. "Week" means calendar week; (5-1-94)

e. "Twenty-four (24) hour concentration" means twenty-four (24) hour average concentration starting at midnight and continuing until the following midnight; (5-1-94)

f. "Eight (8) hour concentration" means running eight (8) hour average concentration starting at each clock hour; (5-1-94)

g. "Three (3) hour concentration" means running three (3) hour average concentration starting at each clock hour; and (5-1-94)

h. "One (1) hour concentration" means one (1) hour average concentration

starting at each clock hour. (5-1-94)

1042. Total Suspended Particulates. All particulate matter in the ambient air as measured by the method described in Appendix B of 40 CFR Part 50. (5-1-94)

1023. Toxic Air Pollutant. An air pollutant that has been determined by the Department to be by its nature, toxic to human or animal life or vegetation and listed in Section 585 or 586. (5-1-94)

1034. Toxic Air Pollutant Carcinogenic Increments. Those ambient air quality increments based on the probability of developing excess cancers over a seventy (70) year lifetime exposure to one microgram per cubic meter (1 ug/m³) of a given carcinogen and expressed in terms of a screening emission level or an acceptable ambient concentration for a carcinogenic toxic air pollutant. They are listed in Section 586. (5-1-94)

1045. Toxic Air Pollutant Non-carcinogenic Increments. Those ambient air quality increments based on occupational exposure limits for airborne toxic chemicals expressed in terms of a screening emission level or an acceptable ambient concentration for a non-carcinogenic toxic air pollutant. They are listed in Section 585. (5-1-94)

1056. Toxic Substance. Any air pollutant that is determined by the Department to be by its nature, toxic to human or animal life or vegetation. (5-1-94)

1067. Trade Waste. Any solid, liquid or gaseous material resulting from the construction or demolition of any structure, or the operation of any business, trade or industry including, but not limited to, wood product industry waste such as sawdust, bark, peelings, chips, shavings and cull wood. (5-1-94)

1078. TRS (Total Reduced Sulfur). Hydrogen sulfide, mercaptans, dimethyl sulfide, dimethyl disulfide and any other organic sulfide present. (5-1-94)

1089. Unclassifiable Area. An area which, because of a lack of adequate data, is unable to be classified pursuant to 42 U.S.C. Section 7407(d) as either an attainment or a nonattainment area. (5-1-94)

1109. Uncontrolled Emission. An emission which has not been treated by control equipment. (5-1-94)

1101. Upset. An unplanned and unforeseeable disruption in the normal operations of any air pollution control equipment or emissions unit, including process equipment, which may cause excess emissions where such disruption is not intentional or the result of negligence or improper maintenance. (5-1-94)

1142. Wigwam Burner. Wood waste burning devices commonly called teepee burners, silos, truncated cones, and other such burners commonly used by the wood product industry for the disposal by burning of wood wastes. (5-1-94)

1123. Wood Stove Curtailment Advisory. An air pollution alert issued through local authorities and/or the Department to limit wood stove emissions during air pollution

episodes.

(5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

~~130. UPSET AND BREAKDOWN. The purposes of Sections 130 through 135 are to establish procedures and requirements for upsets and breakdowns. (5-1-94)~~

~~131. EXEMPTION. Emissions exceeding any of the limits established in this chapter as a direct result of upset conditions in, or breakdown of, any air pollution control equipment, or related operating equipment, or as a direct result of the shutdown of such equipment for scheduled maintenance shall not be deemed to be in violation of the rules establishing such limits, providing all the requirements of Sections 131 through 135 are met. Sections 130 through 134 are not applicable to any source covered by an effective Tier I operating permit issued pursuant to Sections 300 through 387. (5-1-94)~~

~~132. UPSET REPORTS. Such occurrence shall be reported in writing to the Department as soon as reasonably possible; for scheduled maintenance, such reports shall be submitted at least twenty-four (24) hours prior to shutdown, and for upset conditions or breakdown such reports shall be made no later than the end of the working day following the occurrence. (5-1-94)~~

~~133. SCHEDULED MAINTENANCE. This exception from violation does not apply to scheduled maintenance on pollution control equipment, except in those cases where the maximum reasonable effort, including off-shift labor where required, has been made to accomplish such maintenance during periods of nonoperation of any related source operations or equipment. (5-1-94)~~

~~134. CORRECTION OF CONDITION. The person responsible for such emissions shall, with all practicable speed, initiate and complete appropriate reasonable action to correct the conditions causing such emissions to exceed said limits; to reduce the frequency of occurrence of such conditions; to minimize the amount by which said limits are exceeded; and shall upon request of the Department submit a full report of such occurrence, including a statement of all known causes, and of the scheduling and nature of the actions to be taken. (5-1-94)~~

~~135. AUXILIARY EQUIPMENT. Persons responsible for operating equipment that might exhaust air pollutants during maintenance shutdowns, shall provide auxiliary pollution abatement equipment approved by the Department. (5-1-94)~~

130. STARTUP, SHUTDOWN, SCHEDULED MAINTENANCE, SAFETY MEASURES, UPSET AND BREAKDOWN.

The purpose of Sections 130 through 136 is to establish procedures and requirements for excess emissions events due to startup, shutdown, scheduled maintenance, safety measures, upsets and breakdowns. (11-20-95)T

131. EXCESS EMISSIONS.

01. Applicability. Emissions exceeding any of the limits established in this

chapter or established in a preconstruction permit or operating permit (Tier I or Tier II), or modification thereof, issued pursuant to this chapter, which emissions occur as a direct result of a startup, shutdown, scheduled maintenance, upset, or breakdown of any air pollution control equipment or emissions unit, including process equipment and processes, or as a direct result of implementation of any safety measure, shall be referred to herein as "excess emissions." Except as provided in Section 131.02, excess emissions shall be a violation of the rule or permit establishing such limits unless and until the requirements in Sections 132 through 136 are met. If the requirements in Sections 132 through 136 are met to the satisfaction of the Department, the excess emissions violation shall be excused and no penalties shall be imposed. The burden shall be on the owner or operator of the facility or source seeking to excuse the excess emissions violation to demonstrate that all of the relevant requirements in Sections 132 through 136 have been met and that the excess emissions event is or was reasonably unavoidable and the result of a startup, shutdown, scheduled maintenance, upset, breakdown, or safety measure. Any excuse of violation under this Section shall not excuse the owner or operator from compliance with the emissions limit in the future. (11-20-95)T

02. Exemptions. Sections 131 through 136 shall not apply to limits established by EPA and incorporated by reference into Section 107 of this chapter or to any such limits established by EPA which are included in preconstruction or operating permits issued pursuant to this chapter. (11-20-95)T

132. CORRECTION OF CONDITION.

The person responsible for, or in charge of a facility during, an excess emissions event shall, with all practicable speed, initiate and complete appropriate reasonable action to correct the conditions causing such excess emissions event; to reduce the frequency of occurrence of such events; to minimize the amount by which regulatory or permit limits are exceeded; and shall, as provided below or upon request of the Department, submit a full report of such occurrence, including a statement of all known causes, and of the scheduling and nature of the actions to be taken. (11-20-95)T

133. STARTUP, SHUTDOWN AND SCHEDULED MAINTENANCE REQUIREMENTS.

The requirements in this section shall apply in all cases where startup, shutdown, or scheduled maintenance of air pollution control equipment or an emissions unit, including process equipment or process, may result in an excess emissions event. A demonstration of compliance with the following requirements, and adherence to any procedures developed pursuant this Section 133, shall be a prerequisite to any excuse of excess emissions violation under Section 131 for startup, shutdown or scheduled maintenance. (11-20-95)T

01. Excess Emissions Procedures. For all air pollution control equipment and emissions units, including process equipment and processes, from which excess emissions may occur during startup, shutdown, or scheduled maintenance, the facility owner or operator shall establish and file with the Department specific procedures which will be used to minimize excess emissions during such events. Specific information for each of the types of excess emissions events (i.e. startup, shutdown and scheduled maintenance) shall be established or documented for each piece of control equipment and emissions unit (including process equipment or process) and shall include all of the following (which may be based upon the facility owner or operator's knowledge of the

process or emissions where measured data is unavailable): (11-20-95)T

a. Identification of the specific air pollution control equipment or emissions unit. (11-20-95)T

b. Identification of the specific air pollutants likely to be emitted in excess of applicable standards or limits during the startup, shutdown, or scheduled maintenance period. (11-20-95)T

c. The estimated amount of excess emissions expected to be released during each event. (11-20-95)T

d. The expected duration of each excess emissions event. (11-20-95)T

e. An explanation of why the excess emissions are reasonably unavoidable for each of the types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance). (11-20-95)T

f. Specification of the frequency at which each of the types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance) are expected to occur. (11-20-95)T

g. For scheduled maintenance of control equipment, the owner or operator shall also document detailed explanations of: (11-20-95)T

i. Why the maintenance is needed. (11-20-95)T

ii. Why it is impractical to reduce or cease operation of the emissions unit(s) or other source(s) during the scheduled maintenance period. (11-20-95)T

iii. Why the excess emissions are not reasonably avoidable through better scheduling of the maintenance or through better operation and maintenance practices. (11-20-95)T

iv. Why, where applicable, it is necessary to by-pass, take off line, or operate the air pollution control equipment at reduced efficiency while the maintenance is being performed. (11-20-95)T

h. Justification to explain why the piece of control equipment or emissions unit cannot be modified or redesigned to eliminate or reduce the excess emissions which occur during startup, shutdown, and scheduled maintenance. (11-20-95)T

i. Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during startup, shutdown, and scheduled maintenance. These procedures may include such measures as preheating or otherwise conditioning the emissions unit prior to its use or the application of auxiliary air pollution control equipment to reduce the excess emissions. (11-20-95)T

02. Amendments to Procedures. The owner or operator shall amend the procedures established pursuant to Section 133 from time to time and as deemed

reasonably necessary to ensure that the procedures are and remain consistent with good pollution control practices. (11-20-95)T

03. Effect of Procedures. The preparation and filing of startup, shutdown, or scheduled maintenance procedures shall not absolve the owner or operator from an enforcement action by the Department if the procedures are not followed or the burden under Section 131 is not met. Unless otherwise required by these Rules, the failure to establish or file procedures under this Section shall not be a violation of these Rules in and of itself, but shall preclude the excuse of an excess emissions violation under Section 131 for emissions resulting from startup, shutdown, or scheduled maintenance. (11-20-95)T

04. Filing of Procedures. To the extent procedures or plans for excess emissions resulting from startup, shutdown, or scheduled maintenance are required to be or are otherwise submitted to the Department with any permit application, such submission, if deemed adequate, shall fulfill the requirement under this Section to file plans and procedures with the Department. (11-20-95)T

05. General Provisions. The following shall pertain to all startup, shutdown, and scheduled maintenance activities: (11-20-95)T

a. No scheduled startup, shutdown, or maintenance resulting in excess emissions shall occur during any period in which an Atmospheric Stagnation Advisory and/or a Wood Stove Curtailment Advisory has been declared by the Department within an area designated by the Department as a PM-10 nonattainment area, unless the permittee demonstrates that such is reasonably necessary to facility operations and cannot be reasonably avoided and the Department approves such activity in advance, to the extent advance approval by the Department is feasible. This prohibition on scheduled startup, shutdown or maintenance activities during Advisories does not apply to situations where shutdown is necessitated by urgent situations, such as imminent equipment failure, power curtailment, worker safety concerns or similar situations. (11-20-95)T

b. The owner or operator of a source of excess emissions shall notify the Department of any startup, shutdown, or scheduled maintenance event that is expected to cause an excess emissions event. Such notification shall identify the time of the excess emissions, specific location, equipment involved, and type of excess emissions event (i.e. startup, shutdown, or scheduled maintenance). The notification shall be given as soon as reasonably possible, but no later than two (2) hours prior to the start of the excess emissions event unless the owner or operator demonstrates to the Department's satisfaction that a shorter advanced notice was necessary. (11-20-95)T

c. The owner or operator of a source of excess emissions shall report and record the information required pursuant to Sections 135 and 136 for each excess emissions event due to startup, shutdown, or scheduled maintenance. (11-20-95)T

d. No excuse of excess emissions violation under Section 131 may apply to scheduled maintenance on pollution control equipment, except in those cases where the maximum reasonable effort, including off-shift labor where required, has been made to accomplish such maintenance during periods of nonoperation of any related source operations or equipment. (11-20-95)T

134. UPSET, BREAKDOWN AND SAFETY REQUIREMENTS.

The requirements in this section shall apply in all cases where upset or breakdown of air pollution control equipment or an emissions unit, including process equipment and processes, or the initiation of safety measures may result in an excess emissions event. A demonstration of compliance with the following requirements shall be a prerequisite to any excuse of an emissions standard violation under Section 131 for upset, breakdown or safety measures. (11-20-95)T

01. Routine Maintenance and Repairs. For all air pollution control equipment and emissions units, including process equipment and processes, from which excess emissions may occur during upset conditions or breakdowns or implementation of safety measures, the facility owner or operator shall: (11-20-95)T

a. Implement routine preventative maintenance and operating procedures consistent with good pollution control practices for minimizing upsets and breakdowns or events requiring implementation of safety measures, and (11-20-95)T

b. Make routine repairs in an expeditious fashion when the owner or operator knew or should have known that an excess emissions event was likely to occur. Off-shift labor and overtime shall be utilized, to the extent practicable, to ensure that such repairs are made expeditiously. (11-20-95)T

02. Foreseeable Excess Emissions Procedures. For equipment and process upsets and breakdowns and situations that require implementation of safety measures, which events can reasonably be anticipated to occur periodically but which cannot be reasonably avoided or predicted with certainty, the owner or operator shall establish and file with the Department specific procedures which will be used to minimize such events and excess emissions during such events. To the extent possible and reasonably practicable (and based upon knowledge of the process or emissions where measured data is not available), specify the following information for each type of anticipated upset/breakdown/safety event: (11-20-95)T

a. The specific air pollution control equipment or emissions unit and the type of event anticipated. (11-20-95)T

b. The specific air pollutants likely to be emitted in excess of applicable standards or limits during the event. (11-20-95)T

c. The estimated amount of excess emissions expected to be released during each event. (11-20-95)T

d. The expected duration of each excess emissions event. (11-20-95)T

e. An explanation of why the excess emissions are reasonably unavoidable. (11-20-95)T

f. The frequency of the type of event, based on historic occurrences. (11-20-95)T

g. Justification to explain why the piece of control equipment or emissions

unit cannot be modified or redesigned to eliminate or reduce the particular type of event.
(11-20-95)T

h. Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during such events, including without limitation those procedures listed under Section 134.02. (11-20-95)T

03. Effect of Procedures. The preparation and filing of procedures pursuant to Section 134.02 shall not absolve the owner or operator from an enforcement action by the Department if the procedures are not followed or the burden under Section 131 is not met. Notwithstanding the foregoing, failure to follow procedures filed with the Department shall not preclude the excuse of an excess emissions violation if the owner or operator demonstrates to the Department's satisfaction that alternate and equivalent procedures were used and necessitated by the exigency of the circumstances. Unless otherwise required by these Rules, the failure to establish or file procedures under Section 134.02 shall not be a violation of these Rules in and of itself, but shall preclude the excuse of an excess emissions violation under Section 131 for emissions resulting from foreseeable upset/breakdown/safety events. (11-20-95)T

04. Filing of Procedures. To the extent procedures or plans for excess emissions resulting from upsets, breakdowns or safety measures are required to be or are otherwise submitted to the Department with any permit application, such submission, if deemed adequate, shall fulfill the requirement under this Section to file plans and procedures with the Department. (11-20-95)T

05. Excess Emissions Minimization and Notification. For all air pollution control equipment and emissions units, including process equipment and processes, from which excess emissions may occur during upset or breakdown conditions or other situations that may necessitate the implementation of safety measures, the facility owner or operator shall establish specific procedures which will be used to minimize excess emissions during such events. Specific procedures shall include all of the following:
(11-20-95)T

a. The owner or operator shall immediately undertake appropriate measures to reduce and, to the extent possible, eliminate excess emissions resulting from the event. (11-20-95)T

b. The owner or operator shall notify the Department of any upset/breakdown/safety event resulted in excess emissions. Such notification shall identify the time, specific location, equipment involved, and (to the extent known) the cause(s) of the occurrence. The notification shall be given as soon as reasonably possible, but no later than twenty-four (24) hours after the event, unless the owner or operator demonstrates to the Department's satisfaction that the longer reporting period was necessary. (11-20-95)T

c. The owner or operator shall report and record the information required pursuant to Sections 135 and 136 for each excess emissions event caused by an upset, breakdown, or safety measure. (11-20-95)T

06. Discretionary Reduction or Cessation Provisions. During any period of excess emissions due to upset or breakdown, or for continued operation under facility

safety measures, the Department may require that the owner or operator immediately proceed to reduce or cease operation of the emissions unit(s) or facility, until such time as the condition causing the excess emissions has been corrected or brought under control. Such action by the Department will be taken upon consideration of the following factors and after consultation with the facility owner or operator: (11-20-95)T

- a. Potential risk to the public or the environment. (11-20-95)T
- b. Whether ceasing operations could result in physical damage to the equipment or facility, or cause injury to employees. (11-20-95)T
- c. If continued excess emissions were determined by the Department to be reasonably avoidable. (11-20-95)T
- d. The effect of the increase in pollution resulting from the shutdown and subsequent restart of the emission(s) or facility. (11-20-95)T
- e. The owner or operator shall not be required to reduce or cease operations at the entire facility if reducing or ceasing operations at a portion of the facility terminates the excess emissions. (11-20-95)T

135. EXCESS EMISSIONS REPORTS.

01. Deadline for Excess Emissions Reports. A written report for each excess emissions event shall be submitted to the Department by the owner or operator no later than fifteen (15) days after the beginning of each such event. (11-20-95)T

02. Contents of Excess Emissions Reports. Each report shall contain the following information: (11-20-95)T

- a. The time period during which the excess emissions occurred; (11-20-95)T
- b. Identification of the specific equipment or emissions unit which caused the excess emissions; (11-20-95)T
- c. An explanation of the cause, or causes, of the excess emissions and whether the excess emissions occurred as a result of startup, shutdown, scheduled maintenance, upset, breakdown or a safety measure; (11-20-95)T
- d. An estimate of the quantity of each air pollutant emitted in excess of any applicable standard or emission limit (based on knowledge of the process and facility where emissions data is unavailable); (11-20-95)T
- e. A description of the activities carried out to eliminate the excess emissions; and (11-20-95)T
- f. Statements demonstrating compliance with the requirements of Sections 132 through 136, as appropriate. (11-20-95)T

136. EXCESS EMISSIONS RECORDS.

01. Maintenance of Excess Emissions Records. The owner or operator shall maintain excess emissions records at the facility for the most recent five (5) calendar year period. (11-20-95)T

02. Availability of Excess Emissions Records. The excess emissions records shall be made available to the Department upon request. (11-20-95)T

03. Contents of Excess Emissions Records. The excess emissions records shall include the following: (11-20-95)T

a. An excess emissions log book for each emissions unit or piece of equipment containing copies of all reports that have been submitted to the Department pursuant to Section 135 for the particular unit or equipment; and (11-20-95)T

b. Copies of all startup, shutdown, and scheduled maintenance procedures and upset/breakdown/safety preventative maintenance plans which have been developed by the owner or operator in accordance with Sections 133 and 134, and facility records as necessary to demonstrate compliance with such procedures and plans. (11-20-95)T

04. Protections Under Section 126. The protections under Section 126 for confidential information shall be available for excess emissions reports and records upon proper request of the owner or operator in accordance with Section 126. (11-20-95)T

136Z. -- 139. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

209. PROCEDURE FOR ISSUING PERMITS.

01. General Procedures. General procedures for permits to construct. (5-1-94)

a. Within thirty (30) days after receipt of the application for a permit to construct, the Department shall determine whether the application is complete or whether more information must be submitted and shall notify the applicant of its findings in writing. (5-1-94)

b. Within sixty (60) days after the application is determined to be complete the Department shall: (5-1-94)

i. Notify the applicant in writing of the approval, conditional approval, or denial of the application if an opportunity for public comment is not required pursuant to Section 209.01.c. The Department shall set forth reasons for any denial; or (5-1-94)

ii. Issue a proposed approval, proposed conditional approval, or proposed denial. (5-1-94)

c. An opportunity for public comment shall be provided on an application for any new major facility or major modification, any new facility or modification which would cause a significant contribution to existing ambient concentrations or affect any Class I area, any application which uses fluid modeling or a field study to establish a good engineering practice stack height pursuant to Sections 510 through 516, any application which uses an interpollutant trade pursuant to Section 210.17, and any other application which the Director determines an opportunity for public comment should be provided.

(6-30-95)

i. The Department's proposed action, together with the information submitted by the applicant and the Department's analysis of the information, shall be made available to the public in at least one (1) location in the region in which the stationary source or facility is to be located.

(5-1-94)

ii. The availability of such materials shall be made known by notice published in a newspaper of general circulation in the county(ies) in which the stationary source or facility is to be located.

(5-1-94)

iii. A copy of such notice shall be sent to the applicant and to appropriate federal, state and local agencies.

(5-1-94)

iv. There shall be a thirty (30) day period after initial publication for comment on the Department's proposed action, such comment to be made in writing to the Department.

(5-1-94)

v. After consideration of comments and any additional information submitted during the comment period, and within forty-five (45) days after initial publication of the notice, or notice of public hearing if one is requested under Sections 209.02.b.iv. or 209.02.a.ii., unless the Director deems that additional time is required to evaluate comments and information received, the Department shall notify the applicant in writing of approval, conditional approval, or denial of the permit. The Department shall set forth the reasons for any denial.

(5-1-94)

vi. All comments and additional information received during the comment period, together with the Department's final determination, shall be made available to the public at the same location as the preliminary determination.

(5-1-94)

d. A copy of each permit will be sent to the U.S. Environmental Protection Agency.

(5-1-94)

02. Additional Procedures for Specified Sources. (5-1-94)

a. For any new major facility or major modification in an attainment or unclassifiable area for any air pollutant, except for those new major facilities and major modifications exempted under Sections 205.04.a and 205.04.b.

(5-1-94)

i. The public notice issued pursuant to Section 209.01.c.ii. shall indicate the degree of increment consumption that is expected from the new major facility or major modification; and

(5-1-94)

ii. The public notice issued pursuant to Section 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effects of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations.

(5-1-94)

b. For any new major facility or major modification which would affect a federal Class I area or an integral vista of a mandatory federal Class I area.

(5-1-94)

i. If the Department is notified of the intent to apply for a permit to construct, it shall notify the appropriate Federal Land Manager within thirty (30) days;

(5-1-94)

ii. A copy of the permit application and all relevant information, including an analysis of the anticipated effects on visibility in any federal Class I area, shall be sent to the Administrator of the U.S. Environmental Protection Agency and the Federal Land Manager within thirty (30) days of receipt of a complete application and at least sixty (60) days prior to any public hearing on the application;

(5-1-94)

iii. Notice of every action related to the consideration of the permit shall be sent to the Administrator of the U.S. Environmental Protection Agency;

(5-1-94)

iv. The public notice issued pursuant to Section 209.01.c.ii. shall indicate the opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality effect of the new major facility or major modification, alternatives to it, the control technology required, and other appropriate considerations.

(5-1-94)

v. The notice of public hearing, if required, shall explain any differences between the Department's preliminary determination and any visibility analysis performed by the Federal Land Manager and provided to the Department within thirty (30) days of the notification pursuant to Section 209.02.b.ii.

(5-1-94)

vi. Upon a sufficient showing by the Federal Land Manager that a proposed new major facility or major modification will have an adverse impact upon the air quality related values (including visibility) of any federal mandatory Class I area, the Director may deny the application notwithstanding the fact that the concentrations of air pollutants would not exceed the maximum allowable increases for a Class I area.

(5-1-94)

03. Establishing a Good Engineering Stack Height. The Department will notify the public of the availability of any fluid model or field study used to establish a good engineering practice stack height and provide an opportunity for a public hearing before issuing a permit or setting an emission standard based thereon.

(5-1-94)

04. Revisions of Permits to Construct. The Director may approve a revision of any permit to construct provided the stationary source or facility continues to meet all applicable requirements of Sections 200 through 225. Revised permits will be issued pursuant to procedures for issuing permits (Section 209), except that the requirements of Sections 209.01.c., 209.02.a., 209.02.b. and 209.04., shall only apply if the permit revision

results in an increase in allowable emissions or if deemed appropriate by the Director.
(5-1-94)

05. Permit to Construct Procedures for Tier I Sources. For Tier I sources that require a permit to construct, the owner or operator shall either: (5-1-94)

a. Submit only the information required by Sections 200 through 225 for a permit to construct, in which case: (5-1-94)

i. A permit to construct or denial will be issued in accordance with Sections 209.01.a and 209.01.b. (5-1-94)

ii. The owner or operator may construct the source after permit to construct issuance. (5-1-94)

iii. Within twelve (12) months after commencing operation, the owner or operator shall submit an application for a Tier I operating permit or a request for a substantive permit modification, whichever is appropriate. (5-1-94)

iv. The application or substantive permit modification request shall be processed in accordance with timelines: Sections 361 and 367.02 through 367.05. (5-1-94)

v. The final Tier I operating permit action shall supersede the permit to construct. (5-1-94)

b. Submit all information required by Sections 200 through 299 and 300 through 387 for a permit to construct and a Tier I operating permit, in which case: (5-1-94)

i. Completeness of the application shall be determined within thirty (30) days. (5-1-94)

ii. The Department shall prepare a proposed permit to construct or denial, in accordance with Sections 200 through 299 and 300 through 387, within sixty (60) days.
~~(5-1-94)~~(11-20-95)T

iii. The Department shall provide for public comment in accordance with Section 364 on the proposed permit to construct or denial. (5-1-94)

iv. Except as otherwise provided by these rules, the Department shall prepare a final permit to construct or denial within fifteen (15) days after the close of the public comment period. (5-1-94)

v. The final permit to construct will be sent to EPA as the proposed Tier I operating permit for review in accordance with Section 366. (5-1-94)

vi. The permittee shall request that the permit to construct requirements be incorporated into the Tier I operating permit through an administrative amendment in accordance with Section 384. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

220. CATEGORY I EXEMPTION.

No permit to construct is required for Category I sources. Category I sources must comply with all of the following requirements. (5-1-94)

01. Less Than One Hundred Tons. Have actual and potential emissions of less than one hundred (100) tons per year of any air pollutant. (5-1-94)

02. Significant Increases. Not significantly increase the emissions of a major facility. (5-1-94)

03. NAAQS. As demonstrated using Department approved methods, not cause or significantly contribute to a violation of an ambient air quality standard. (5-1-94)

04. BRC. Have emissions that are less than ten percent (10%) of the emission rates specified in Section 006.878.a: ~~(5-1-94)~~(11-20-95)T

05. Toxic Air Pollutants. Qualify under and comply with Section 225. (6-30-95)

06. Radionuclides. Not be regulated by any radionuclide standard in 40 CFR Part 61 or 40 CFR Part 63. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

222. CATEGORY III EXEMPTION.

No permit to construct is required for Category III sources; provided however that the owner or operator of the Category III source shall maintain documentation on-site verifying that the source is a Category III source and submit the documentation to the Department immediately upon request; provided further that this exemption shall terminate one year after the inception of any operations and shall not be renewed. Category III sources must comply with all of the following requirements. (5-1-94)

01. Less Than One Hundred Tons. Have actual and potential emissions of less than one hundred (100) tons per year of any air pollutant. (5-1-94)

02. Significant Increase. Not significantly increase the emissions of a major facility; and (5-1-94)

03. NAAQS. As demonstrated using department approved methods, not cause or significantly contribute to a violation of an ambient air quality standard. (5-1-94)

04. Pilot Plants. Be a pilot plant which uses a slip stream from an existing process stream not to exceed ten percent of that existing process stream or which complies with all of the following requirements. (5-1-94)

- a. Not have a potential to emit emissions which are significant as defined in Section 006.878. ~~(5-1-94)~~(11-20-95)T
- b. Qualify under and comply with Section 225. The owner or operator may utilize a short term adjustment factor of ten 10 by multiplying either the acceptable ambient concentration or the screening emissions level, but not both, by 10. (6-30-95)
- c. Not be regulated by any radionuclide standard in 40 CFR Part 61 or 40 CFR Part 63. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

313. TIMELY APPLICATION.

01. Original Tier I Operating Permits. (5-1-94)
- a. For Tier I sources existing on May 1, 1994, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than ~~January~~June 1, 1996, or within twelve (12) months of EPA approval of the Tier I operating program, whichever is earlier, unless:
~~(5-1-95)~~(11-20-95)T
- i. The Department provides written notification of an earlier date to the owner or operator. (5-1-94)
- ii. The Tier I source is identified in Sections 301.02.b or 301.02.c. (5-1-94)
- b. For Tier I sources identified in Sections 301.02.b.i or 301.02.b.iii existing on November 1, 1997, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit by no later than January 1, 1998, unless the Department provides written notification of an earlier date to the owner or operator. (5-1-94)
- c. For sources that become Tier I sources due to construction, reconstruction or modification after May 1, 1994, that are located at a facility not previously authorized by a Tier I operating permit, the owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after commencing operation, unless: (5-1-94)
- i. The Department provides written notification of an earlier date to the owner or operator. (5-1-94)
- ii. The Tier I source is identified in Sections 301.02.b or 301.02.c. (5-1-94)
- d. For sources that become Tier I sources identified in Sections 301.02.b.i or 301.02.b.iii due to construction, reconstruction or modification after November 1, 1997, that are located at a facility not previously authorized by a Tier I operating permit, the

owner or operator of the Tier I source shall submit to the Department a complete application for an original Tier I operating permit within twelve (12) months after commencing operation, unless the Department provides written notification of an earlier date to the owner or operator. (5-1-94)

e. For initial phase II acid rain sources identified in Section 301.02.b.ii, the owner or operator of the initial Phase II acid rain source shall submit to the Department a complete application for an original Tier I operating permit by January 1, 1996 for sulfur dioxide, and by January 1, 1998 for nitrogen oxides. (5-1-94)

02. Earlier Dates During Initial Period. Except as otherwise provided in these rules, during the initial period which begins May 1, 1994 and ends three (3) years after EPA approval of the Tier I operating program, the Department may designate Tier I sources for processing as follows: (5-1-94)

a. The Department may develop a general estimate of the total workload and benefits associated with the Tier I operating permit applications that are predicted to be submitted during the initial period including, but not limited to, original permit applications and substantive permit modification applications. (5-1-94)

b. Considering the complexity of the applications, air quality benefits of permitting and requests for early actions from owners and operators, the Department may divide the applications into three groups each representing approximately one-third of the total workload and benefits. (5-1-94)

c. The Department may prioritize the three groups and the Tier I sources within each group for processing, establish early application deadlines and notify the owners or operators of the Tier I sources in the group in writing of a required submittal date earlier than the general deadlines provided in Section 313.01. (5-1-94)

03. Renewals of Tier I Operating Permits. The owner or operator of the Tier I source shall submit a complete application to the Department for a renewal of the Tier I operating permit at least nine (9) months before the expiration date of the existing Tier I operating permit. (5-1-94)

04. Alterations to Tier I Operating Permits. Sections 380 through 387 provide the requirements and procedures for alterations at Tier I sources or to Tier I operating permits. (5-1-94)

314. REQUIRED STANDARD APPLICATION FORM AND REQUIRED INFORMATION.

01. General Requirements. (5-1-94)

a. Applications shall be submitted on a form or forms provided by the Department or by other means prescribed by these rules or the Department. The application shall be certified by the responsible official in accordance with Section 123. (5-1-94)

i. If the Tier I source is regulated under 42 U.S.C. Sections 7651 through

7651o, the owner or operator shall also submit nationally-standardized acid rain forms provided by EPA. (5-1-94)

b. All information shall be in sufficient detail so that the Department may efficiently and effectively determine the applicability of requirements and make all other necessary evaluations and determinations. (5-1-94)

02. General Information for the Facility. (5-1-94)

a. Provide identifying information, including the name, address and telephone number of: (5-1-94)

i. The owner; (5-1-94)

ii. The operator; (5-1-94)

iii. The facility where the Tier I source is located; (5-1-94)

iv. The registered agent of the owner, if any; (5-1-94)

v. The registered agent of the operator, if any; (5-1-94)

vi. The responsible official, if other than the owner or operator; and (5-1-94)

vii. The contact person. (5-1-94)

b. Provide a general description of the processes used and products produced by the facility where the Tier I source is located, including any associated with each requested alternative operating scenario and trading scenario. The description shall include narrative and applicable SIC codes. (5-1-94)

c. Provide a general description of each process line affecting a Tier I source. (5-1-94)

03. Excess Emissions Procedures. For all air pollution control equipment, emissions units, or other sources from which excess emissions may occur during startup, shutdown, and scheduled maintenance, provide detailed descriptions of the specific procedures which will be used to minimize excess emissions. Specific information for each of these three types of excess emissions events (i.e. startup, shutdown and scheduled maintenance) shall be described in full detail for each piece of control equipment, emissions unit or other source and shall include all of the following: (5-1-94)

a. Identification of the specific air pollution control equipment, emissions unit, or other source. (5-1-94)

b. Identification of the specific air pollutants likely to be emitted in excess of applicable standards or limits during the startup, shutdown, or scheduled maintenance period. (5-1-94)

- c. The estimated amount of excess emissions expected to be released during each event. (5-1-94)
- d. The expected duration of each excess emissions event. (5-1-94)
- e. An explanation of why the excess emissions are unavoidable for each of the three types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance). (5-1-94)
- f. Specification of the frequency at which each of the three types of excess emissions events (i.e. startup, shutdown, and scheduled maintenance) are expected to occur. (5-1-94)
- g. For scheduled maintenance, the owner or operator shall also provide detailed explanations of: (5-1-94)
- i. Why the maintenance is needed. (5-1-94)
- ii. Why it is impractical to reduce or cease operation of the emissions unit(s) or other source(s) during the scheduled maintenance period. (5-1-94)
- iii. Why the excess emissions are not avoidable through better scheduling of the maintenance or through better operation and maintenance practices. (5-1-94)
- iv. Why, where applicable, it is necessary to by-pass, take off line, or operate the air pollution control equipment at reduced efficiency while the maintenance is being performed. (5-1-94)
- v. Why auxiliary air pollution control equipment is not used during the scheduled maintenance period to eliminate the excess emissions. (5-1-94)
- h. Justification to explain why the piece of control equipment, emissions unit or other source can not be modified or redesigned to eliminate or reduce the excess emissions which occur during startup, shutdown, and scheduled maintenance. (5-1-94)
- i. Detailed specification of the procedures to be followed by the owner or operator which will minimize excess emissions at all times during startup, shutdown, and scheduled maintenance. These procedures may include such measures as preheating or otherwise conditioning the emissions unit prior to its use or the application of auxiliary air pollution control equipment to reduce the excess emissions. (5-1-94)
04. Specific Information for Each Emissions Unit. The owner or operator shall provide, in an itemized format, all of the information identified in Sections 314.05 through 314.12 for each emissions unit, unless the emissions unit is an insignificant activity. (3-3-95)
05. Emissions. (5-1-94)
- a. Identify and ~~quantify~~ describe all emissions of pollutants for which the source is major and all emissions of regulated air pollutants from each emissions unit.

(5-1-94)(11-20-95)T

b. Emissions rates shall be quantified in tons per year (tpy) and in such additional terms as are necessary to determine compliance ~~with all applicable requirements~~ consistent with the applicable test method. (5-1-94)(11-20-95)T

~~b.c.~~ Identify and describe all points of emissions in sufficient detail to establish the basis for fees and applicability of requirements of the Clean Air Act. (5-1-94)(11-20-95)T

~~e.d.~~ To the extent it is needed to determine or regulate emissions, identify and quantify all fuels, fuel use, raw materials, production rates, and operating schedules. (5-1-94)

~~e.e.~~ Identify and describe all air pollution control equipment and compliance monitoring devices or activities. (5-1-94)

~~e.f.~~ Identify and describe all limitations on source operation or any work practice standards affecting emissions. (5-1-94)

~~e.g.~~ Provide the calculations on which the information provided under Sections 314.05.a. through e. is based. (5-1-94)

06. Applicable Requirements. (5-1-94)

a. Cite and describe all applicable requirements affecting the emissions unit; and (5-1-94)

b. Describe or reference all methods required by each applicable requirement for determining the compliance status of the emissions unit with the applicable requirement, including any applicable monitoring, recordkeeping and reporting requirements or test methods. (5-1-94)

07. Other Requirements. Other specific information that may be necessary to determine the applicability of, implement or enforce any requirement of the Act, these rules, 42 U.S.C. Sections 7401 through 7671q or federal regulations. (5-1-94)

08. Proposed Exemptions and Determinations of Nonapplicability. (5-1-94)

a. Identify and provide an explanation of any proposed exemptions from applicable requirements. (5-1-94)

b. Identify any other requirements for which the applicant seeks a determination of nonapplicability and provide an explanation of why the requirement is not applicable to the Tier I source. (5-1-94)

09. Alternative Operating Scenarios. (5-1-94)

a. Identify all requested alternative operating scenarios. (5-1-94)

b. Provide a detailed description of all requested alternative operating scenarios. Include all the information required by Section 314 that is relevant to the alternative operating scenario. (5-1-94)

10. Compliance Certifications. (5-1-94)

a. Provide a compliance certification regarding the compliance status of each emissions unit at the time the application is submitted to the Department that: (5-1-94)

i. Identifies all applicable requirements affecting each emissions unit. (5-1-94)

ii. Certifies the compliance status of each emissions unit with each of the applicable requirements. (5-1-94)

iii. Provides a detailed description of the method(s) used for determining the compliance status of each emissions unit with each applicable requirement, including a description of any monitoring, recordkeeping, reporting and test methods that were used. Also provide a detailed description of the method(s) required for determining compliance. (5-1-94)

iv. Certifies the compliance status of the emissions unit with any applicable enhanced monitoring requirements. (5-1-94)

v. Certifies the compliance status of the emissions unit with any applicable enhanced compliance certification requirements. (5-1-94)

vi. Provides all other information necessary to determining the compliance status of the emissions unit. (5-1-94)

b. Provide a schedule for submission of compliance certifications during the term of the Tier I operating permit. The schedule shall require compliance certifications to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department. (5-1-94)

11. Compliance Plans. (5-1-94)

a. Provide a compliance description as follows: (5-1-94)

i. For each applicable requirement with which the emissions unit is in compliance, state that the emissions unit will continue to comply with the applicable requirement. (5-1-94)

ii. For each applicable requirement that will become effective during the term of the Tier I operating permit that does not contain a more detailed schedule, state that the emissions unit will meet the applicable requirement on a timely basis. (5-1-94)

iii. For each applicable requirement that will become effective during the term of the Tier I operating permit that contains a more detailed schedule, state that the

emissions unit will comply with the applicable requirement on the schedule provided in the applicable requirement. (5-1-94)

iv. For each applicable requirement with which the emission unit is not in compliance, state that the emissions unit will be in compliance with the applicable requirement by the time the Tier I operating permit is issued or provide a compliance schedule in accordance with Section 314.11.b. (5-1-94)

b. All compliance schedules shall: (5-1-94)

i. Include a schedule of remedial measures leading to compliance, including a verifiable sequence of actions and specific dates for achieving milestones and achieving compliance. (5-1-94)

ii. Include a schedule for submission to the Department of periodic progress reports no less frequently than every six (6) months or at a more frequent period if one is specified in the underlying applicable requirement or by the Department. (5-1-94)

iii. Incorporate the terms and conditions of any applicable consent order, judicial order, judicial consent decree, administrative order, settlement agreement or judgment. (5-1-94)

iv. Be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based. (5-1-94)

c. Provide a schedule for submission of compliance plans during the term of the Tier I operating permit. The schedule shall require compliance plans to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the Department. (5-1-94)

12. Trading Scenarios. (5-1-94)

a. Identify all requested trading scenarios, including alternative emissions limits (bubbles) authorized by Section 440. (5-1-94)

b. Provide a detailed description of all requested trading scenarios. Include all the information required by Section 314 that is relevant to the trading scenario and all the information required by Section 440, if applicable. (5-1-94)

13. Additional Information. Provide all additional information that the Department determines is necessary for the Department to efficiently and effectively perform its functions. Such functions include, but are not limited to, determining the applicability of requirements for all air pollutants, determining compliance with applicable requirements, developing or defining Tier I operating permit terms and conditions, defining all approved alternative operating scenarios, evaluating excess emissions procedures or making all necessary evaluations and determinations. (5-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

~~326. ADDITIONAL CONTENTS OF TIER I OPERATING PERMITS – EXCESS EMISSIONS. The purposes of Sections 326 through 332 is to establish procedures and requirements related to excess emissions from Tier I sources. (5-1-94)~~

~~327. GENERAL PROVISIONS. The following provisions regarding excess emissions shall apply to each Tier I source. (5-1-94)~~

~~01. Prohibition. Emissions of air pollutants in excess of applicable standards or emission limits are prohibited. Each Tier I operating permit shall have a provision stating that excess emissions are prohibited unless specifically exempted by the Department through an exercise of the Department's prosecutorial discretion. (5-1-94)~~

~~02. Exemption. The Department may allow a permittee to emit air pollutants in excess of applicable standards or emission limits if: (5-1-94)~~

~~a. The permittee demonstrates to the Department's satisfaction that the excess emissions were caused by an emergency, upset, breakdown, startup, shutdown, or scheduled maintenance of air pollution control equipment or an emissions unit; (5-1-94)~~

~~b. All of the requirements in Sections 326 through 332 are strictly adhered to for each type of excess emissions event; and (5-1-94)~~

~~e. The excess emissions are not attributable to a recurrent upset/breakdown. (5-1-94)~~

~~328. STARTUP, SHUTDOWN AND SCHEDULED MAINTENANCE REQUIREMENTS. The requirements in this section shall apply in all cases where startup, shutdown, or scheduled maintenance of air pollution control equipment or an emissions unit, including process equipment, at a Tier I source may result in excess emissions. (5-1-94)~~

~~01. Incorporation of Procedures Submitted by Permittee. (5-1-94)~~

~~a. Each Tier I operating permit shall incorporate by reference any and all startup, shutdown, and scheduled maintenance procedures submitted by the permittee pursuant to Section 314.03, if said procedures were deemed acceptable by the Department during the Tier I operating permit application review process. (5-1-94)~~

~~b. Acceptance of the startup, shutdown, and scheduled maintenance procedures by the Department shall be based upon determinations that said procedures are consistent with good pollution control practices, said procedures will minimize emissions during such period to the extent practicable and that no adverse health impact on the public will occur. (5-1-94)~~

~~e. Each Tier I operating permit shall have a provision stating that incorporation by reference of the startup, shutdown, and scheduled maintenance procedures into the Tier I operating permit shall not absolve the permittee from an~~

~~enforcement action by the Department if the approved procedures are not followed, or the criteria in Section 327.02 are not met. (5-1-94)~~

~~d. Each Tier I operating permit shall have a provision stating that excess emissions due to startup, shutdown, and scheduled maintenance of any Tier I source that are not specifically addressed in the Tier I operating permit or that do not meet the criteria in Section 327.02 are prohibited. (5-1-94)~~

~~02. General Provisions. Each Tier I operating permit shall have provisions stating: (5-1-94)~~

~~a. No startup, shutdown, or scheduled maintenance resulting in excess emissions shall occur during any period in which an Atmospheric Stagnation Advisory and/or a Wood Stove Curtailment Advisory has been declared by the Department within an area designated by the Department as a PM-10 nonattainment area. (5-1-94)~~

~~b. The permittee shall notify the Department of any startup, shutdown, or scheduled maintenance event which is expected to cause excess emissions. Such notification shall identify the time of the excess emissions, specific location, equipment involved, and type of excess emissions event (i.e. startup, shutdown, or scheduled maintenance). The notification shall be given as soon as reasonably possible, but no later than two (2) hours prior to the start of the excess emissions event unless the permittee demonstrates to the Department's satisfaction that a shorter advanced notice was necessary. (5-1-94)~~

~~e. The permittee shall report and record the information required pursuant to Sections 330 and 331 for each excess emissions event due to startup, shutdown, or scheduled maintenance. (5-1-94)~~

~~329. UPSET AND BREAKDOWN REQUIREMENTS. The requirements in this section shall apply in all cases where excess emissions from a Tier I source may result from an upset or breakdown of air pollution control equipment or an emissions unit, including process equipment. (5-1-94)~~

~~01. General Provisions. Each Tier I operating permit shall have provisions stating: (5-1-94)~~

~~a. The permittee shall immediately undertake appropriate measures to reduce and, to the extent possible, eliminate excess emissions resulting from an upset or breakdown. (5-1-94)~~

~~b. The permittee shall notify the Department of any occurrence of an upset or breakdown which may cause excess emissions. Such notification shall identify the time, specific location, equipment involved, and (to the extent known) the cause(s) of the occurrence. The notification shall be given as soon as reasonably possible, but no later than twenty four (24) hours after its occurrence, unless the permittee demonstrates to the Department's satisfaction that the longer reporting period was necessary. (5-1-94)~~

~~e. The permittee shall report and record the information required pursuant to Sections 330 and 331 for each excess emissions event due to an upset or breakdown.~~

(5-1-94)

d. Excess emissions due to upset or breakdown that do not meet the criteria in Section 327.02 are prohibited. (5-1-94)

02. Discretionary Reduction or Cessation Provisions. Each Tier I operating permit shall have provisions stating: (5-1-94)

a. During any period of excess emissions due to upset or breakdown, the Department may require that the permittee immediately proceed to reduce or cease operation of the emissions unit(s) or facility until such time as the condition causing the excess emissions has been corrected or brought under control. Such action by the Department will be taken upon consideration of the following factors: (5-1-94)

i. Potential risk to the public or environment. (5-1-94)

ii. Whether ceasing operations could result in physical damage to the equipment or facility, or cause injury to employees. (5-1-94)

iii. If continued excess emissions were determined by the Department to be avoidable. (5-1-94)

iv. The increase in pollution resulting from the shutdown and subsequent restart of the emission(s) or facility. (5-1-94)

b. The permittee shall not be required to reduce or cease operations at the entire facility if reducing or ceasing operations at a portion of the facility terminates the excess emissions. (5-1-94)

03. Automatic Cessation Provisions. (5-1-94)

a. Each Tier I operating permit shall have a provision stating that in the event of any on-going period of excess emissions due to an upset or breakdown, the permittee shall cease operation of the emissions unit or facility no later than forty-eight (48) hours after the beginning of the excess emissions period, unless the condition causing the excess emissions is corrected within that time period or unless the permittee obtains and retains Department approval of temporary measures in accordance with Sections 329.03.b through 329.03.e. (5-1-94)

b. The permittee need not cease operation of the emissions unit or facility if: (5-1-94)

i. In accordance with Sections 329.03.c through 329.03.e, the permittee obtains and retains Department approval of temporary procedures that will be used to minimize excess emissions until such time as the condition(s) causing the excess emissions are corrected or brought under control; and (5-1-94)

ii. The permittee complies with the approved temporary procedures. (5-1-94)

e. ~~If the permittee requests that the Department approve temporary procedures, the permittee shall submit the following information to the Department:~~ (5-1-94)

i. ~~The reasons why the condition(s) causing the excess emissions cannot be corrected or brought under control. Such reasons shall include but not be limited to equipment availability and difficulty of repair or installation.~~ (5-1-94)

ii. ~~Identification of the specific air pollution control equipment or emissions unit causing the excess emissions.~~ (5-1-94)

iii. ~~Identification of the specific air pollutants being emitted in excess of applicable standards or limits, the estimated amount of excess emissions expected to be released, and expected duration of the excess emissions.~~ (5-1-94)

iv. ~~Identification of specific procedures to be followed which will minimize the continued excess emissions.~~ (5-1-94)

d. ~~Approval by the Department of the temporary procedures shall be based upon determinations that said procedures are consistent with good pollution control practices, said procedures will minimize emissions during such period to the extent practicable and that no adverse health impact on the public will occur.~~ (5-1-94)

e. ~~The Department may revoke or withdraw the approval of the temporary procedures or require modification to previously approved temporary procedures at any time during the period of excess emissions by written notification to the permittee.~~ (5-1-94)

04. ~~Recurrent Upset/Breakdown Event Provisions. Each Tier I operating permit shall have a provision stating that more than five (5) separate excess emissions events attributable to either an upset or breakdown of the same emissions unit or air pollution control equipment which occur within any six (6) calendar month period shall constitute a recurrent upset/breakdown event and any and all excess emissions events attributable to a recurrent upset/breakdown are prohibited.~~ (5-1-94)

05. ~~Preventative Maintenance Plan Provisions. Each Tier I operating permit shall have a provision stating that if the frequency of upsets and/or breakdowns occurring at the Tier I source is excessive in number, the Department may, by written notice, require the permittee to submit for Department approval a facility wide preventative maintenance plan including the following:~~ (5-1-94)

a. ~~Detailed descriptions of all regularly scheduled preventive maintenance activities to be conducted by the permittee for the purpose of minimizing the number of upsets and/or breakdowns at the facility.~~ (5-1-94)

b. ~~Identification of planned periods during which facility operations shall be ceased in order to allow the permittee to conduct preventive maintenance activities for the purpose of minimizing the number of upsets and/or breakdowns at the facility.~~ (5-1-94)

~~330. EXCESS EMISSIONS REPORTS. (5-1-94)~~

~~01. Deadline for Excess Emissions Reports. A written report for each event of excess emissions, shall be submitted to the Department by the permittee no later than fifteen (15) days after the beginning of each such event. (5-1-94)~~

~~02. Contents of Excess Emissions Reports. Each report shall contain the following information: (5-1-94)~~

~~a. The time period during which the excess emissions occurred; (5-1-94)~~

~~b. Identification of the specific emissions unit or air pollution control equipment which caused the excess emissions; (5-1-94)~~

~~e. An explanation of the cause, or causes, of the excess emissions and whether the excess emissions occurred as a result of startup, shutdown, scheduled maintenance, upset, or breakdown; (5-1-94)~~

~~d. An estimate of the quantity of each air pollutant emitted in excess of any applicable standard or emission limit; and (5-1-94)~~

~~e. A description of the activities carried out to eliminate the excess emissions. (5-1-94)~~

~~331. EXCESS EMISSIONS RECORDS. (5-1-94)~~

~~01. Maintenance of Excess Emissions Records. The permittee shall maintain excess emissions records at the facility for the most recent five (5) calendar year period. (5-1-94)~~

~~02. Availability of Excess Emissions Records. The excess emissions records shall be made available to the Department upon request. (5-1-94)~~

~~03. Contents of Excess Emissions Records. The excess emissions records shall include the following: (5-1-94)~~

~~a. An excess emissions log book for each Tier I source containing copies of all reports that have been submitted to the Department pursuant to Section 330 for the particular source; and (5-1-94)~~

~~b. Copies of any and all startup, shutdown, and scheduled maintenance procedures which have been accepted by the Department and incorporated by reference into a Tier I operating permit. (5-1-94)~~

326. -- 331. (RESERVED).

332. EMERGENCY AS AN AFFIRMATIVE DEFENSE REGARDING EXCESS EMISSIONS.

01. General. An emergency, as defined in Section 008.08.a, constitutes an

affirmative defense to an action brought for emissions exceeding a technology-based emission limitation. (5-1-94)

02. Demonstration of Emergency. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that: (5-1-94)

a. An emergency occurred and that the permittee can identify the cause(s) of the emergency; (5-1-94)

b. The permitted facility was at the time being properly operated; (5-1-94)

c. During the period of the emergency, the permittee took all reasonable steps, as determined by the Department, to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and (5-1-94)

d. The permittee submitted written notice of the emergency to the Department within two (2) working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken. (5-1-94)

03. Burden of Proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof. (5-1-94)

04. Applicability. Section 332 is in addition to any emergency or upset provision contained in any ~~technology-based~~ applicable requirement ~~including Section 329~~. (5-1-94)(11-20-95)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO

DOCKET NO. 16-0101-9602

NOTICE OF NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, notice is hereby given that this agency intends to promulgate a rule and desires public comment prior to initiating formal rulemaking procedures. The action is authorized pursuant to Sections 39-105 and 39-107, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the purpose and substance of the negotiated rulemaking and the principle issues involved:

The purpose of the negotiated rulemaking is to amend the Rules for the Control of Air Pollution in Idaho to afford certain minor sources the discretion to begin preliminary construction activities within fifteen (15) days of permit application. The rules currently allow commencement of construction within ninety (90) days of receipt of the permit application by the Idaho Department of Health and Welfare (Department).

The principle issue is whether to allow minor sources of air pollution to begin preliminary construction within fifteen (15) days of the Department's receipt of the permit application. Certain minor sources regulated by the Rules for the Control of Air Pollution in Idaho would benefit from this rule amendment because the minor sources would be allowed to commence construction within 15 days rather than 90 days.

Interested persons may attend meetings to voice opinions on the negotiated rule. An initial meeting has been scheduled for 2:00 p.m. on January 10, 1996 at the Division of Environmental Quality, Conference Room A, 1410 North Hilton, Boise, Idaho. For information on further meetings, please contact Gary Reinbold at (208)373-0502.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the negotiated rulemaking, contact Martin Bauer at (208)373-0502.

Anyone may submit written comment regarding this negotiated rulemaking. All written comments concerning the negotiated rulemaking must be received by the undersigned on or before February 2, 1996.

DATED this 3rd day of January, 1996.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
Fax No. (208)373-0481

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 16-0105-9501

NOTICE OF FINAL AND TEMPORARY RULE

EFFECTIVE DATE: The temporary rule is effective November 17, 1995. The final rule becomes effective upon conclusion of the 1996 Regular Session of the Idaho Legislature unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the final rule is approved, amended or modified by concurrent resolution, the rule becomes 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 final/ temporary rule. The action is authorized by Section 39-4407, Idaho Code.

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

Under Idaho's Rules and Standards for Hazardous Waste, any person may petition the Department of Health and Welfare (Department) to initiate rulemaking to exclude a waste produced at a particular facility. EnviroSafe Services of Idaho, Incorporated (ESII) filed with the Department a petition to delist chemically stabilized electric arc furnace dust (CSEAFD) as a hazardous waste. ESII's petition was found to be adequate and analytical results verify that delisting levels, set by the Department, will be met under the terms of the final/temporary rule.

The final/temporary rule is different than the initial proposal. As logical outgrowth of the proposed rule, the Department has included in the final/temporary rule a time frame for notification of failed batches. In addition, a subsection was added to the final/temporary rule indicating that the delisting petition is available at the Division of Environmental Quality.

The Idaho Department of Health and Welfare, Division of Environmental Quality's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public, is included in the rulemaking record maintained by the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule confers an economic benefit to the petitioner and other affected parties.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact John Brueck or Pam Smolczynski at (208)373-0502.

DATED this 3rd day of January, 1996.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255

TEXT OF DOCKET NO. 16-0105-9501

005. IDENTIFICATION AND LISTING OF HAZARDOUS WASTE.

40 CFR Part 261 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1994. (4-26-95)

01. Excluded Wastes. Chemically Stabilized Electric Arc Furnace Dust (CSEAFD) generated by Envirosafe Services of Idaho, Inc. (ESII) at ESII's facility in Grand View, Idaho using the Super Detox(R) treatment process as modified by ESII and that is disposed of in a Subtitle D or Subtitle C landfill is excluded from the lists of hazardous waste provided ESII implements a program that meets the following conditions: (11-17-95)T

a. Verification Testing Requirements. Sample Collection and analyses, including quality control procedures, conducted pursuant to Sections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (11-17-95)T

b. Initial Verification Testing. (11-17-95)T

i. For purposes of Section 005.01.b., "new source" shall mean any generator of Electric Arc Furnace Dust (EAFD), EPA and Idaho Division of Environmental Quality Hazardous Waste No. KO61, whose waste has not previously been processed by ESII using the Super Detox(R) treatment process resulting in processed EAFD which has been subjected to initial verification testing and has demonstrated compliance with the delisting levels specified in Section 005.01.d. (11-17-95)T

ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (11-17-95)T

(1) The waste profile information; and (11-17-95)T

(2) The name and address of the generator. (11-17-95)T

iii. The first four (4) consecutive batches treated must be sampled in accordance with Section 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Section

005.01.d. (11-17-95)T

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Section 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Section 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted.

(11-17-95)T

v. CSEAFD generated by ESII from EAFD originating from a new source shall be managed as hazardous waste in accordance with Subtitle C of RCRA until:

(11-17-95)T

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Section 005.01.d.; and

(11-17-95)T

(2) The operational and analytical test data is submitted to the Department pursuant to Section 005.01.b.iv.

(11-17-95)T

vi. For purposes of Sections 005.01.b. and 005.01.c., "batch" shall mean the CSEAFD which results from a single treatment episode in a full scale mixing vessel.

(11-17-95)T

c. Subsequent Verification Testing.

(11-17-95)T

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Section 005.01.a., from each batch of CSEAFD generated by ESII. ESII may, at its discretion, conduct subsequent verification testing on composite samples. In no event shall a composite sample consist of representative samples from more than twenty (20) batches of CSEAFD.

(11-17-95)T

ii. The samples shall be analyzed prior to disposal of each batch of CSEAFD to determine if the CSEAFD meets the delisting levels specified in Section 005.01.d.

(11-17-95)T

iii. Each batch of CSEAFD generated by ESII shall be subjected to subsequent verification testing no later than thirty (30) days after it is generated by ESII.

(11-17-95)T

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Section 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Section 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill.

(11-17-95)T

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Section 005.01.d., then ESII must submit written notification of the results of the analysis to the Department within fifteen (15) days from receiving the final analytical results, and any CSEAFD which contributed to the sample must be:

(11-17-95)T

(1) Retested, and retreated if necessary, until it meets the levels set forth in Section 005.01.d.; or (11-17-95)T

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (11-17-95)T

vi. Each batch of CSEAFD shall be managed as hazardous waste in accordance with Subtitle C of RCRA until subsequent verification testing demonstrates that the CSEAFD meets the delisting levels specified in Section 005.01.d. (11-17-95)T

d. Delisting levels. (11-17-95)T

i. All leachable concentrations for these metals must not exceed the following levels (mg/l): antimony--0.06; arsenic--0.50; barium--7.6; beryllium--0.010; cadmium--0.050; chromium--0.33; lead--0.15; mercury--0.009; nickel--1; selenium--0.16; silver--0.30; thallium--0.020; vanadium--2; and zinc--70. (11-17-95)T

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (11-17-95)T

e. Modification of Treatment Process. (11-17-95)T

i. If ESII makes a decision to modify the Super Detox(R) treatment process from the description of the process as set forth in ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995, ESII shall notify the Department in writing prior to implementing the modification. (11-17-95)T

ii. After ESII's receipt of written approval from the Department, and subject to any conditions included with the approval, ESII may implement the proposed modification. (11-17-95)T

iii. If ESII modifies its treatment process without first receiving written approval from the Department, this exclusion of waste will be void from the time the process was modified. (11-17-95)T

iv. ESII's Petition for Delisting Treated K061 Dust by the Super Detox(R) Process submitted to the Department on July 14, 1995 is available at the Division of Environmental Quality, Permits and Enforcement, 1410 N. Hilton, Boise, Idaho 83706. (11-17-95)T

f. Records and Data Retention and Submittal. (11-17-95)T

i. Records of disposal site, operating conditions and analytical data from verification testing must be compiled, summarized, and maintained at ESII's Grand View facility for a minimum of five (5) years from the date the records or data are generated. (11-17-95)T

ii. The records and data maintained by ESII must be furnished upon

request to the Department or EPA.

(11-17-95)T

iii. Failure to submit requested records or data within ten (10) business days of receipt of a written request or failure to maintain the required records and data on site for the specified time, will be considered by the Department, at its discretion, sufficient basis to revoke the exclusion to the extent directed by the Department.

(11-17-95)T

iv. All records or data submitted to the Department must be accompanied by a signed copy of the following certification statement to attest to the truth and accuracy of the records or data submitted: "Under civil and/or criminal penalty of law for the making or submission of false or fraudulent statements or representations, I certify that the information contained in or accompanying this document is true, accurate, and complete. As to any identified sections of this document for which I cannot personally verify the truth and accuracy, I certify as the ESII official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete. In the event that any of this information is determined by the Department in its sole discretion to be false, inaccurate, or incomplete, and upon conveyance of this fact to ESII, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the Department and that ESII will be liable for any actions taken in contravention of ESII's RCRA and CERCLA obligations premised upon ESII's reliance on the void exclusion."

(11-17-95)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.01.07 - RULES FOR CONSTRUCTION AND
OPERATION OF SWIMMING POOLS**

DOCKET NO. 16-0107-9402

NOTICE OF FINAL RULE

EFFECTIVE DATE: This rule becomes effective upon conclusion of the 1996 Regular Session of the Idaho Legislature unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the rule is approved, amended or modified by concurrent resolution, the rule becomes 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 final rule. The action is authorized by Sections 39-101 et seq., Idaho Code.

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

The final rule affords Type B pool owners flexibility and a cost effective alternative in the construction of spas by allowing spas to be constructed at least four (4) feet or no more than twelve (12) inches from a Type B pool provided certain conditions are met. Type B pools include athletic clubs, country clubs, swimming clubs, hotels, motels, apartments, multiple housing units, and condominiums with use restricted to members, registered residents, and guests.

The Board of Health and Welfare adopted the rule as it was initially proposed in the Idaho Administrative Bulletin, Volume 95-7, July 5, 1995, pages 68-69.

The Idaho Department of Health and Welfare, Division of Environmental Quality's Rulemaking and Public Comment Summary, which contains a complete consideration of the issues raised by the public, is included in the rulemaking record maintained by the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rule, contact Jerry Yoder at (208)373-0502.

DATED this 3rd day of January, 1996.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418

IDAPA 16
TITLE 01
Chapter 07

Rules Governing Construction and Operation
of Swimming Pools

There are no substantive changes
from the proposed rule text

The original text was published in the Idaho
Administrative Bulletin, Volume 95-7, July 5, 1995
Pages 68 through 69

This rule has been adopted as Final by the Agency
and is now pending review by the
1996 Idaho State Legislature

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.10 - ENVIRONMENTAL AUDIT PROTECTION RULES

DOCKET NO. 16-0110-9601

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective November 17, 1995.

AUTHORITY: In compliance with Sections 67-5226(1) and 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a temporary rule and is commencing proposed rulemaking to promulgate a permanent rule. The temporary/proposed rule is a new complete chapter and shall be cited as IDAPA 16.01.10, Rules of the Idaho Department of Health and Welfare, Title 01, Chapter 10, Environmental Audit Protection Rules. The action is authorized by Sections 9-810, 39-105, 39-107, and 39-4405, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this proposed rulemaking will be held as follows:

Thursday, January 25, 1996, 7 p.m., Division of Environmental Quality, Conference Center, 1410 N. Hilton, Boise, Idaho.

The hearing site will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five days' notice. For arrangements, contact the undersigned at (208)373-0418.

DESCRIPTIVE SUMMARY: The following is the required finding and a concise statement of the supporting reasons for temporary adoption of the rule and a nontechnical explanation of the substance and purpose for proposing the rule for final adoption:

Voluntary environmental audit laws grant incentives to those regulated entities which voluntarily discover, disclose and correct violations of environmental laws. The Idaho Environmental Audit Protection Act (EAPA), effective July 1, 1995, prohibits the state environmental agencies, including the Division of Environmental Quality (DEQ), from disclosing, or under certain circumstances compelling disclosure of, a qualifying environmental audit, and provides for limited immunity for violations of state environmental law identified in an audit. As part of a compromise reached to prevent a Governor's veto, unless the sunset clause is subsequently removed by the legislature, the protections of the statute will not apply to submittals made after December 31, 1997.

The EAPA specifically directs the environmental agencies to promulgate rules (1) further defining environmental audits, (2) setting forth timetables for remedial actions to be performed and (3) governing the treatment of environmental audit reports and associated confidential business information. The Environmental Audit Protection Rules drafted by DEQ are designed to implement the provisions of the EAPA and closely follow the legislative intent. The rules clarify which submittals are "voluntary," set forth what information is required to be in a plan or protocol for conducting an environmental audit, set forth compliance timetables which must be followed by the owner or operator to receive the protections of the statute, further define the term "confidential business information" used in the statute, and establish some basic procedures to be followed by the agency to protect the confidentiality of submittals made pursuant to the statute.

Because the statute states that these rules must be in place by December 28, 1995, the Board of Health and Welfare has adopted the rule as temporary. The temporary rule will remain in effect beyond the conclusion of the 1996 Regular Session of the Idaho Legislature if the rule is approved, amended or modified by concurrent resolution.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that a temporary rule is required to comply with the deadline set forth by the Idaho Legislature in Section 9-810(1), Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rulemaking, contact Tim Teater at (208)373-0502.

Anyone can submit written comment regarding this proposed rule. All written comments must be received by the undersigned on or before January 31, 1996.

DATED this 3rd day of January, 1996.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
Fax No. (208)373-0481

TEXT OF DOCKET NO. 16-0110-9601

IDAPA 16
TITLE 01
Chapter 10

ENVIRONMENTAL AUDIT PROTECTION RULES

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Idaho Department of Health and Welfare the authority to promulgate these rules in Section 9-810, Idaho Code. The Idaho Legislature has given the Board of Health and Welfare the authority to adopt this chapter in Sections 39-105, 39-107, and 39-4405, Idaho Code. (11-17-95)T

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 16.01.10, Rules of the Idaho Department of Health

and Welfare, Title 01, Chapter 10, "Environmental Audit Protection Rules." These rules implement the Environmental Audit Protection Act, Sections 9-801 et seq., Idaho Code. These rules are intended to encourage owners and operators of facilities and other persons conducting activities regulated under applicable environmental laws to conduct voluntary internal environmental audits of their activities, operations, compliance programs and management systems and to assess and improve compliance with applicable environmental laws while protecting confidentiality of communications relating to voluntary internal environmental audits. These rules are not intended to protect those who willfully violate environmental laws. (11-17-95)T

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(16)(b)(iv), Idaho Code, the Department of Health and Welfare may have written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. If available, such written statements can be inspected and copied at cost at the Division of Environmental Quality, Department of Health and Welfare, 1410 N. Hilton, Boise, Idaho 83706. (11-17-95)T

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal final agency actions authorized under this chapter pursuant to IDAPA 16.05.03, Rules of the Department of Health and Welfare, Title 05, Chapter 03, Rules Governing Contested Case Proceedings and Declaratory Rulings. (11-17-95)T

004. CATCHLINE.S

Catchlines within this chapter are not to be used in the interpretation of the rules. (11-17-95)T

005. -- 009. (RESERVED).

010. DEFINITIONS.

01. Certification. For purposes of Section 016, a responsible official of the owner or operator shall certify in writing, based on information and belief formed after a reasonable inquiry, that all necessary and reasonable steps have been taken to achieve compliance. (11-17-95)T

02. Compliance Plan. A document which may be included in the Environmental Audit Report that describes the activities to be performed to correct a potential violation and to maintain compliance into the future. (11-17-95)T

a. A compliance plan shall include: (11-17-95)T

i. The activities to be taken to achieve and maintain compliance; (11-17-95)T

ii. The timetable needed to complete compliance plan activities; and (11-17-95)T

iii. An explanation supporting the timetable. (11-17-95)T

03. Department. The Idaho Department of Health and Welfare, Division of Environmental Quality. (11-17-95)T

04. Document. A source from which information can be obtained or translated including, but not limited to, writings, drawings, graphs, charts, photographs, phone records, and other data compilations, including electronic. (11-17-95)T

05. Environmental Agency. Any department or division of the State, local government, or health board with the authority to enforce any state environmental law. (11-17-95)T

06. Environmental Audit. A voluntary internal evaluation done pursuant to a plan or protocol that is designed to identify and prevent noncompliance and to improve compliance with environmental laws. (11-17-95)T

a. An environmental audit may be conducted by an owner or operator, an owner's or operator's employees, or by an independent contractor. (11-17-95)T

b. An environmental audit may include: (11-17-95)T

i. One (1) or more facilities; (11-17-95)T

ii. Any activity at one (1) or more facilities; (11-17-95)T

iii. Impacts on one (1) or more environmental media at a facility or facilities; or (11-17-95)T

iv. Management systems related to a facility, an activity or an impact on environmental media. (11-17-95)T

c. An environmental audit is not voluntary for purposes of immunity if it is initiated as a result of: (11-17-95)T

i. The commencement of a federal or state inspection, investigation or information request; (11-17-95)T

ii. Notice of a citizen suit; (11-17-95)T

iii. Legal complaint by a third party; or (11-17-95)T

iv. The owner's or operator's knowledge that the discovery of the violation by a regulatory agency or third party is imminent. (11-17-95)T

07. Environmental Audit Plan or Protocol. A document outlining an owner's or operator's intent to perform a systematic, scheduled, and objective environmental audit. An environmental audit plan or protocol may include or be a part of a corporate environmental policy or memoranda or other documents describing portions or all of the audit and shall include: (11-17-95)T

- a. The inclusive dates and times of the audit; (11-17-95)T
- b. The specific equipment, processes, and facilities audited; (11-17-95)T
- c. The audit procedures and protocols; (11-17-95)T
- d. The purpose of the audit; and (11-17-95)T
- e. Any circumstances identified which may constitute a violation of environmental law. (11-17-95)T

08. Environmental Audit Report. A set of documents, each labeled "Environmental Audit Report" (or a substantially equivalent label) and prepared as a result of an environmental audit. The environmental audit report may include a compliance plan, field notes, records of observations, findings, opinions, suggestions, implementation plans, conclusions, drafts, memoranda, drawings, photographs, computer-generated or electronically recorded information, maps, data, charts, graphs, and surveys, provided such supporting information is collected or developed for the primary purpose and in the course of an environmental audit. An environmental audit report may include memoranda and documents analyzing portions or all of the environmental audit report. (11-17-95)T

09. Environmental Law. Any federal, state, or local law, regulation, rule, ordinance, or permit terms and conditions designed to protect or enhance the quality of land, water, or air for the protection of human health, wildlife, other biota, or the environment. (11-17-95)T

10. In Camera Review. A hearing or review in a courtroom, hearing room, or chambers to which the general public is not admitted. After such hearing or review, the content of the oral or other evidence, and statements of judge, hearing officer and counsel, shall be held in confidence by those participating in or present at the hearing or review, and any transcript of the hearing or review shall be sealed and not considered a public record until or unless its contents are disclosed by a court having jurisdiction over the matter. (11-17-95)T

11. Owner or Operator. A person subject to an environmental law. (11-17-95)T

12. Person. Any individual, firm, association, partnership, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by the law as the subject of rights and duties. (11-17-95)T

011. PROHIBITION AGAINST COMPELLED DISCLOSURE.

Notwithstanding any other provision of law to the contrary, no State of Idaho public official, employee or environmental agency shall require to be disclosed an environmental audit report or any part thereof, prepared by or on behalf of any person, except from the State of Idaho or any political subdivision. (11-17-95)T

012. REQUIRED DISCLOSURES.

01. Disclosures Required to be Made. Nothing in these rules shall be construed to prohibit a request for information, investigation or disclosure of information required to be disclosed pursuant to a federal and state law, rule or regulation. Documents, communications, data, reports and other information which must be collected, developed and reported pursuant to a federal and state law, rule and regulation must be disclosed in accordance with the applicable law, rule or regulation. (11-17-95)T

02. Permitted Activities. Disclosure of an environmental audit report or any part thereof regarding permitted activities may, at the discretion of the environmental agency, be treated as a voluntary disclosure for purposes of the Environmental Audit Protection Act and these rules. (11-17-95)T

013. EXCEPTIONS TO COMPEL DISCLOSURE.

01. Express Waiver. A State of Idaho public official, employee or environmental agency may compel disclosure of an environmental audit report to the extent that the protections of the Environmental Audit Protection Act, and these rules have been expressly waived by the owner or operator of a facility. The waiver shall apply only to the portions of the environmental audit report which are specifically waived. (11-17-95)T

02. Fraudulent or Improper Purpose. The prohibition against compelled disclosure does not apply if the environmental agency or court after an in camera review determines that: (11-17-95)T

- a. Protection for the audit report is for a fraudulent purpose; or (11-17-95)T
- b. The material is not an appropriate subject for an environmental audit. (11-17-95)T

03. Burden of Proof. A party seeking disclosure of an environmental audit report has the burden of proving the disclosure is appropriate. The existence of a written environmental compliance policy or adoption of a plan of action to meet applicable environmental laws shall constitute prima facie evidence that an environmental audit report was designed to prevent noncompliance and improve compliance with environmental laws and that the environmental audit is protected from disclosure. A party seeking disclosure under Subsection 013.02.a. has the burden of proving that the privilege is asserted for a fraudulent purpose. (11-17-95)T

014. EXISTING EVIDENTIARY PRIVILEGES RETAINED.

Nothing in these rules is intended to be inconsistent with the Idaho Rules of Evidence or in any way limit, waive or abrogate the scope or nature of any statutory or common law privilege, including the work-product doctrine and the attorney-client privilege. (11-17-95)T

015. IMMUNITY FOR VOLUNTARY DISCLOSURE ARISING FROM ENVIRONMENTAL AUDIT.

- 01. Immunity. Any person that makes a voluntary disclosure of an

environmental audit report, or relevant portions thereof, which identifies circumstances which may constitute a violation of any state environmental law to the appropriate environmental agency, shall be immune from state prosecution, suit or administrative action for any civil or criminal penalties, or incarceration for such violations, subject to Section 016. (11-17-95)T

02. Presumption of Voluntary Disclosure. A disclosure is rebuttably presumed voluntary if: (11-17-95)T

a. The disclosure is made to the environmental regulatory agency having regulatory authority by the owner and operator in a timely manner after completion of the environmental audit; (11-17-95)T

b. The disclosure arises out of an environmental audit; and (11-17-95)T

c. The owner or operator making the disclosure immediately initiates appropriate efforts to achieve compliance, pursues compliance with due diligence, and expeditiously achieves compliance within a reasonable period after the completion of the environmental audit. (11-17-95)T

03. Limitations on Immunity. Immunity from administrative, civil or criminal penalties or incarceration or other type of enforcement action in this section does not apply if a person has been found by a court to have committed serious violations that constitute a pattern of continuous or repeated violations of environmental laws, regulations, permit conditions, settlement agreements, consent orders, and were due to separate distinctive events giving rise to the violations within the three (3) year period prior to date of disclosure. Such a pattern of continuous repeated violations may also be demonstrated by multiple settlement agreements related to substantially the same alleged violations concerning serious instances of noncompliance with environmental laws that occurred within the three (3) year period immediately prior to the date of the voluntary disclosure. (11-17-95)T

04. Compliance. Except as specifically provided, this section does not affect any authority of an environmental agency to require compliance through a consent order or action in district court or to abate an imminent hazard, associated with the information disclosed in any voluntary disclosure of an environmental violation. (11-17-95)T

016. COMPLIANCE TIMETABLES.

01. Timetable to Achieve Compliance. The immunity described in Section 9-809, Idaho Code, and Section 015 shall apply if: (11-17-95)T

a. Compliance is achieved within sixty (60) days after the completion of the environmental audit, and compliance is certified by the owner or operator; or (11-17-95)T

b. Compliance cannot be achieved and certified within sixty (60) days, compliance is achieved within the timetable set forth in an approved compliance plan; or (11-17-95)T

c. An environmental audit report shows noncompliance to be failure to obtain a permit, or other governmental permission, a permit application or equivalent document is submitted to the environmental agency within sixty (60) days. If an owner or operator is unable to submit a permit application within sixty (60) days after completion of an environmental audit, compliance is achieved within the timetable set forth in an approved compliance plan; or (11-17-95)T

d. The environmental agency and the owner or operator enter into a written agreement, administrative consent order or judicial consent decree. A consent order may be appropriate in circumstances where remedial measures are complex or a lengthy schedule for obtaining and maintaining compliance is required. (11-17-95)T

02. Review of Compliance Plan. If an owner or operator submits a compliance plan under Subsection 016.02.b. or 016.02.c., the environmental agency shall approve or disapprove the plan within thirty (30) days of the submittal or within a timetable agreed upon by the owner or operator and the environmental agency. The following factors shall be considered by the environmental agency in reviewing the compliance plan for approval or disapproval: (11-17-95)T

a. The nature of the noncompliance; (11-17-95)T

b. The environmental and health consequences of the noncompliance; (11-17-95)T

c. The suitability of the timetable to achieve compliance; and (11-17-95)T

d. The adequacy of the compliance activities. (11-17-95)T

03. Modification of Approved Compliance Plan. Once approved, a compliance plan may be modified only upon written approval from the environmental agency. (11-17-95)T

017. TREATMENT OF ENVIRONMENTAL AUDIT REPORTS AND CONFIDENTIAL BUSINESS INFORMATION.

01. Definition. Confidential business information is any information which is claimed to pertain to the interests of any business, which was developed or acquired by that business, and which is disclosed to the environmental agency. A voluntarily prepared environmental audit report and voluntary disclosures of information to an environmental agency which are claimed to be confidential business information are exempt from public disclosure pursuant to Section 9-340, Idaho Code. A claim for treatment as confidential business information exists if: (11-17-95)T

a. The person making the submittal has shown that it has taken, and will maintain, reasonable measures to protect the confidentiality of the information; (11-17-95)T

b. The information is not, and has not been, reasonably attainable without the consent of the person making the submittal by other persons through legitimate means;

(11-17-95)T

c. No environmental law requires disclosure of the information; and
(11-17-95)T

d. The person making the submittal has shown that disclosure of the information is likely to cause substantial harm to that person's competitive position.
(11-17-95)T

02. Exempt From Disclosure. Any information submitted to an environmental agency which is claimed to be confidential business information must be: (1) clearly identified and labeled at the time of submittal by a cover sheet or other suitable form of notice employing language such as Environmental Audit Report, Confidential Business Information or substantially equivalent label, and (2) submitted along with a claim for protection as confidential business information. Claims of confidentiality for the name and address of any permit applicant or permittee will be denied. (11-17-95)T

03. Person Submitting Information. Any person submitting information may assert a claim of business confidentiality covering all or part of that information. If no such claim accompanies the information when submitted to the environmental agency, the information is not exempt from public disclosure. (11-17-95)T

018. ENVIRONMENTAL AGENCY PROCEDURES FOR PROTECTING CONFIDENTIAL BUSINESS INFORMATION.

01. Secured Files. The environmental agency shall secure all confidential business information in locked cabinets or rooms. Access to confidential business information shall be prohibited except to state officials acting in their official capacity. (11-17-95)T

02. Return of Environmental Audit Information. The environmental agency shall return any confidential environmental audit report one (1) year after date of receipt or upon correction of the condition reported upon the request of the owner or operator. (11-17-95)T

03. Imminent and Substantial Endangerment. In the event the Governor of the State of Idaho determines that circumstances exist which constitute an imminent and substantial danger to the public health or the environment, the Governor may disclose such confidential business information, excluding trade secrets as defined in Idaho Code Section 9-340, contained in the environmental audit as may be necessary to assure protection of the public health or environment. (11-17-95)T

019. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.03.05 - RULES GOVERNING AID TO THE AGED,
BLIND AND DISABLED (AABD)**

DOCKET NO. 16-0305-9601

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective January 1, 1996.

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 rule-making procedures have been initiated. The action is authorized pursuant to Section(s) USCA 1396p(c), USCA 1396p(d), USCA 1396p(e), 56-205, Idaho Code, 20 CFR 416.1168, 42 CFR 435.225, 42 CFR 435.217, 42 CFR 435.236, 42 CFR 435.1006, and the Health Care Financing Administration Program Memorandum 95-1, Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996.

DESCRIPTIVE SUMMARY: The following is the required finding and a concise statement of the supporting reasons for temporary rule-making and a statement in nontechnical language of the substance of the proposed rule:

Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect the public health, safety or welfare, to comply with deadlines in amendments to governing laws or federal programs, and to confer a benefit.

The Department proposes the following changes for Aid to the Aged, Blind and Disabled (AABD) and AABD-related Medicaid:

1. Clarify policy on treatment of burial trusts as assets subject to the Medicaid asset transfer penalty and as trusts subject to Medicaid trust treatment.
2. Clarify policy on treatment of transfer, sale or forfeiture of the right to an inheritance as an asset transfer subject to the Medicaid asset transfer penalty.
3. Change policy on treatment of income to be consistent with other benefit programs. This includes adding policy on when benefits are increased, decreased or terminated as the result of changes in income or circumstances.
4. Clarify policy on income deeming from an essential person to an AABD client.
5. Clarify Medicaid coverage for individuals who successfully appeal denial of Social Security disability.
6. Amend a condition of Medicaid eligibility for certain disabled children to provide that appropriate noninstitutional home care can be provided in a home other than that of the child's parent.
7. Increase the income limit for Home and Community Based Services, nursing

facility and intermediate care facility/mentally retarded, to pass along the Social Security cost-of-living adjustment.

8. Clarify policy on treatment of a revocable annuity for Medicaid.
9. Clarify policy on the client's right to request a fair hearing under Idaho Department of Health and Welfare Rules, Title 5, Chapter 3, Section 350.

SUBMISSION OF WRITTEN COMMENTS, ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary or proposed rule, contact Patti Campbell at (208) 334-5819.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before January 24, 1996.

DATED this 3rd day of January, 1996.

STACI WELSH
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
PO Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0305-9601

003. DEFINITIONS.

The following definitions apply to this chapter: (1-1-93)

01. Adult Foster Care Home. An adult foster care home is a family home where an adult lives when he is not able to live in his own home. An adult foster care home client needs family care, help in daily living, protection, security, and encouragement toward independence. An adult foster care home must not serve more than two (2) adults. It must be certified under Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 19, "Rules For Adult Foster Care Homes in Idaho." An exception to the two (2) person limit is made for a 1501 home, as defined in the above-cited rules. An adult foster care home is not a room and board home, adult residential care facility serving more than two (2) adults, nursing home, or institutional facility. (1-1-95)

02. Adult Residential Care Facility. An adult residential care facility is one (1) or more buildings making up a facility or residence. It may be operated on a profit or

nonprofit basis, to provide twenty-four (24) hour nonmedical care. The facility must care for three (3) or more persons, eighteen (18) years of age or older, not related to the owner. The persons need personal care or assistance and supervision for daily living activities or for their protection. An adult residential care facility must be licensed by the Department's Facility Standards Program. (1-1-93)

03. AFDC Handbook. Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 01, "Rules Governing Eligibility for Aid to Families with Dependent Children (AFDC)". (7-1-94)

04. Applicant. A person who has applied for public assistance from the Department, and whose application has not been fully processed. (1-1-93)

05. Child. A child is under age eighteen (18), or under twenty-one (21) and attending school. If the child is at least age eighteen (18) he must regularly attend a school, college, university, or vocational or technical training designed to prepare him for gainful employment. A child is not married. A child is not the head of a household. (1-1-93)

06. Department. The Idaho Department of Health and Welfare. (1-1-93)

07. Essential Person. A person of the client's choice whose presence in the household is essential to the client's well-being. The essential person renders specific services, which must be provided for a client to live at home. (1-1-93)

08. Grant. A money payment in the form of a state warrant paid to a client, a client's guardian, or a protective payee. (1-1-93)

09. Ineligible Child. A child under age twenty-one (21) who does not receive AABD, and lives with the AABD client. (1-1-93)

10. Ineligible Parent. A natural or adoptive father or mother, or a stepparent, who does not receive AABD and lives in the same household as a child client. (1-1-93)

11. Ineligible Spouse. A client's husband or wife, living with the client, not receiving AABD is an ineligible spouse. The non-AABD husband or wife, of the parent of a child client, living with the child client and his parent, is an ineligible spouse. (1-1-93)

12. Inmate. A person living in an institution and receiving treatment or services from the institution. The treatment or services must fit the client's needs. A person is not an inmate if he is getting training in a public educational or vocational training institution. A person is not an inmate if he is temporarily in a public institution for an emergency. (1-1-93)

13. Medicaid. The Federally-aided program for medical care (Title XIX, Social Security Act). (1-1-93)

14. Medical Assistance Handbook. Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 09, "Rules Governing Medical Assistance. (7-1-94)

~~15. Public Income Maintenance Payment. AFDC payments, SSI payments, Refugee Act of 1980 payments based on need, Disaster Relief Act of 1974 payments, Bureau of Indian Affairs general assistance payments, state or local government assistance based on need, and U.S. Veterans Administration payments based on need are public income maintenance payments. (1-1-93)~~

165. Room and Board. A living arrangement in which the client purchases lodging (room) and meals (board). (7-1-94)

176. School. A grade school, junior high school, high school, junior college, college, university, or vocational or technical training, including the Job Corps Program, designed to fit the trainee for gainful employment. (1-1-93)

187. Working Day. A calendar day when regular office hours are observed by the State of Idaho. (1-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

223. BURIAL FUNDS EXCLUDED FROM RESOURCE LIMIT.

Burial funds up to one thousand, five hundred dollars (\$1,500), set aside for the burial expenses of the client, are excluded from resources. One thousand, five hundred dollars (\$1,500), set aside for the burial expenses of the client's spouse, are excluded from resources. This exclusion is separate from the burial space exclusion. The burial funds exclusion may include funds paid on burial spaces not excluded. Burial fund exclusion ends, if the client buys excluded life insurance or an irrevocable burial contract, to the extent it offsets the exclusion. An irrevocable burial trust is subject to different treatment for Medicaid than for AABD cash assistance. See Sections 691, 693, 705, and 706 for Medicaid treatment of an irrevocable burial trust. ~~(1-1-93)~~(1-1-96)T

01. Burial Funds Defined. Burial funds are used to prepare a body for burial. Burial funds are used for any services before burial. Expenses for burial include transportation of the body, embalming, cremation, flowers, clothing, and services of the funeral director and staff. (1-1-93)

02. Burial Fund Restrictions. Burial funds must be clearly designated for the client's or spouse's burial, cremation, or other burial-related expenses. Items used to bury the remains, such as the casket and burial space, do not fall under this exclusion. (1-1-93)

03. Burial Fund Exclusion Reduced By Life Insurance. The burial fund exclusion is reduced by the face value of any excluded life insurance policy on the client. Term life insurance with no cash value does not reduce the burial fund exclusion. The burial fund exclusion is reduced by any amount held in an irrevocable burial trust, burial contract, or other irrevocable plan for the client's burial expenses. The burial fund exclusion is not reduced, when the policy or contract is for an excluded burial space. (1-1-95)

04. Face Value of Burial Insurance Not Counted. Burial insurance is a

contract. The proceeds of the insurance can only be used for the insured person's burial expenses. The face value of burial insurance policies must not be counted toward the one thousand, five hundred dollar (\$1,500) limit, when computing the total face value of life insurance policies a client owns on each insured person. (1-1-93)

05. **Increases In Amount of Excluded Burial Funds.** Once the amount of designated burial funds equals one thousand, five hundred dollars (\$1,500), including any reduction, the only additions to the amount excluded under the burial funds provision are appreciation and interest. Until one thousand, five hundred dollars (\$1,500), including any reduction has been reached, additional amounts can be excluded under the burial funds provision, if the client designates them for burial expenses. Interest on excluded burial funds is not included in computing the one thousand, five hundred dollars (\$1,500) maximum. (1-1-93)

06. **Burial Funds Must Be Kept Separate From Assets Not Burial Related.** To be excluded, burial funds must be kept separate from assets not burial related. Burial funds may be commingled with burial-related assets. Burial-related assets are burial funds, excluded and not excluded, and burial spaces including burial space purchase agreements. If burial funds are commingled with assets not burial related, the exclusion does not apply. (1-1-93)

07. **Burial Funds Remain Designated.** Once a fund is designated, it remains a burial fund until eligibility ends. Burial fund exclusion ends if the burial funds are used for another purpose. (1-1-93)

08. **Penalty For Misusing Burial Funds.** If the client does not get SSI, burial funds used for another purpose lose the exclusion. An overpayment must be recovered. If the client gets SSI, and is penalized by SSA because he used excluded burial funds for another purpose, his AABD payment must not be increased to compensate the SSA penalty. (1-1-93)

09. **Deeming Factors For Burial Funds.** The burial funds exclusion applies to deemed resources, designated as set aside for the burial expenses of the client or spouse. The deemor must be the client's spouse or parent. (1-1-93)

10. **Designation of Burial Funds.** Burial funds must be designated by a burial fund document, or a signed statement. A signed statement designating resources as set aside for burial must show all information listed in this Section. (1-1-93)

- a. The value of the burial funds. (1-1-93)
- b. The owner of the burial funds. (1-1-93)
- c. The person for whom the burial the funds are set aside. (1-1-93)
- d. The form(s) in which the resources are held (burial contract, bank account, etc.). (1-1-93)
- e. The date the client first considered the funds set aside for the burial of the person specified. (1-1-93)

11. **Date of Intent to Designate Burial Funds.** The date the client claims he first set funds aside for burial will be accepted, unless there is evidence the funds were used and replaced after that date. Burial funds can be designated retroactively, back to the first day of the month the client intended the funds to be set aside. The client must confirm the designation in writing. (1-1-93)

12. **Effective Date of Exclusion of Burial Funds.** The exclusion is effective the month following the month the funds were set aside. The exclusion is effective the month of filing for the exclusion, if the funds were set aside before that month. (1-1-93)

13. **Designating Life Insurance as a Burial Fund.** The client can designate a countable life insurance policy as a burial fund. The client typically designates the policy, rather than the cash surrender value. The cash surrender value of a policy is payable only during the lifetime of the client, and cannot be used to bury the client. The cash surrender value is counted as the resource value of a life insurance policy. The cash surrender value is applied toward the burial fund limit when computing countable resources. When designating insurance as a burial fund, the client can also designate any dividends, on the life insurance policy, as a burial fund. Dividends are a separate resource and not considered as an increase in the cash surrender value. Dividends must be designated as burial funds separate from the life insurance policy. (1-1-93)

14. **Prepaid Burial Contracts.** A prepaid burial contract is an agreement. The buyer pays in advance for a burial. The seller agrees to furnish the burial upon the death of the buyer, or other designated individual. If a burial contract is revocable or salable, and any conditions for its liquidation do not present a significant hardship, it is a resource. Any portion of the contract for the purchase of burial spaces may be excluded, regardless of value. Some or all of any remaining value of the contract, may be excluded as burial funds. (1-1-93)

15. **Prepaid Burial Contract Is Not a Resource.** If a burial contract cannot be revoked, and cannot be sold without significant hardship, it is not a resource. Any burial fund portion of the contract reduces the one thousand, five hundred dollar (\$1,500) burial funds exclusion. Any burial space portion of the contract has no effect on the burial funds exclusion. (1-1-93)

16. **Burial Insurance and Burial Trusts.** Prepaid burial contracts do not include burial insurance or burial trusts. If a client contracts burial services and the provider puts the funds in trust, this is a purchase and not a transfer of funds for a burial contract. (1-1-93)

17. **Conditions For Liquidation of Burial Contract.** A prepaid burial contract, even when revocable, may have conditions on its liquidation or revocation. If significant hardship exists, the contract is not a resource. Significant hardship may result from the conditions required for selling or revoking a contract. Significant hardship is an unrealistic demand on the buyer, such as having to move out of state. The Department makes the hardship determination. The hardship determination must be documented in the case file. If a condition creating hardship, or some other obstacle to liquidation, is not evident on the face of the contract, it is revocable or salable and counted as a resource. The burden is on the client to provide evidence to the contrary. (1-1-93)

18. Value of Burial Contract as a Resource. If a burial contract is a resource, its value is the amount payable to the owner upon revocation. If the contract is not revocable but is salable, its value is the cash market value. (1-1-93)

19. Single-Purpose Contracts For Burial Expenses. A single-purpose contract for burial expenses must include only services counted as burial funds. This contract is subject to, or reduces the amount of, the burial funds exclusion. (1-1-93)

20. Life Insurance Funded Burial Contracts. A life insurance funded burial contract involves a client purchasing a life insurance policy on his own life. The client then makes a revocable or irrevocable assignment of the proceeds or ownership of the policy to a third party, generally a funeral provider. The purpose of the assignment is to fund a burial contract. The life insurance funded burial contracts are not burial funds. Proceeds of a life insurance policy are the face value of the policy, plus any additions payable at maturity or death. This does not include dividends, cash surrender value, or interest. The burial contract, without the insurance policy assigned to fund it, has no resource value. The contract is not salable. It is a part of a larger arrangement involving life insurance assigned to another party as payment for contract goods and services. The value of the burial arrangement is the value of the life insurance policy. (1-1-93)

21. Life Insurance Dividends For Burial Contract. Life insurance policy dividends, as part of the value of the policy or the burial contract, are separate, counted resources. Dividends must be designated to qualify for the burial funds exclusion. If ownership of the life insurance policy has been irrevocably assigned, the dividend accumulations are also assigned. (1-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

276. TRUST AS RESOURCE.

A trust is a right of property given by a trustor or grantor. The trustee holds legal title to trust property and manages it for the beneficiary. The beneficiary does not have legal title but does have an equitable ownership interest. See Sections 690 through 706 for treatment of trusts for Medicaid. ~~(1-1-93)~~(1-1-96)T

01. Trust Funds and Resources Rule. A trust is a resource to a client legally empowered to revoke the trust, and use the principal for his own support and maintenance. The client's ability to revoke a trust depends on the terms of the trust agreement and State law. If a trust is not revocable, the trust is not a resource. The trust is a resource to anyone who can revoke the trust and access the principal, whether or not he actually does so. Payments from the principal are not income. They are the conversion of a resource. (1-1-93)

02. Trust Components. Subsections 276.02.a. through 276.02.f. list components and terms associated with trusts. (1-1-93)

a. Trustee. A trustee is a person holding legal title to property for the use or benefit of another. In most instances, the trustee has no legal right to revoke the trust or use

the property for his own benefit. (1-1-93)

b. Trust Beneficiary. A trust beneficiary is a person for whose benefit a trust exists. A beneficiary does not hold legal title to trust property but does have an equitable ownership interest in it. (1-1-93)

c. Trustor/Grantor. A trustor or grantor is a person who creates a trust. (1-1-93)

d. Totten Trust. A Totten trust is a trust in which a trustor makes himself trustee of his own funds for the benefit of another. The trustor or trustee can revoke a Totten trust at any time. If the trustor or trustee dies without revoking the trust, the principal reverts to the beneficiary. (1-1-93)

e. Trust Principle. The trust principle is the amount placed in trust by the trustor, plus any trust earnings paid into the trust and left to accumulate. (1-1-93)

f. Trust Earnings. Trust earnings are amounts earned by trust property. They may be interest, dividends, royalties, or rents. These earnings are unearned income to the person legally able to use them for personal support and maintenance. (1-1-93)

277. RETIREMENT OR PENSION FUNDS DEFINITION.

Retirement funds are ~~payments~~ annuities or work-related plans for providing income when employment ends. ~~(1-1-93)~~(1-1-96)T

01. Retirement Funds as Resources. A retirement fund, owned by a client, is a resource if he has the option of withdrawing a lump sum, even though he is not yet eligible for periodic retirement payments. If the client is eligible for periodic retirement payments, the fund is not a countable resource. Periodic payments are income. The fund is subject to resources counting rules in the month following the month in which it first becomes available. Subsections 277.01.a. through 277.01.c. list retirement fund conditions. See Subsection 688.02 for counting annuities as asset transfers for Medicaid. ~~(1-1-93)~~(1-1-96)T

a. Termination of employment. A retirement fund is not a resource if a client must end employment in order to obtain any payment. (1-1-93)

b. Fund becomes available. A retirement fund is a resource the month following the month it becomes available for withdrawal. A delay in payment for reasons beyond the client's control does not mean the retirement fund is not a resource. The client is legally able to obtain the money. It is a nonliquid resource. (1-1-93)

c. Claim for periodic payment denied. If a client is denied a claim for periodic retirement payments, but can withdraw the funds in a lump sum, the fund's lump sum value must be counted as resources, for the month following the month the client receives the denial notice. (1-1-93)

02. Periodic Retirement Benefits. Periodic retirement benefits are payments to a client at regular intervals, resulting from a retirement fund. The benefits are counted as unearned income the month received and resources the next month. (1-1-93)

03. Value of Retirement Fund. The value of a retirement fund is the amount of money a client can currently withdraw from the fund. If there is a penalty for early withdrawal, the fund's value is the amount available to a client after penalty deduction. However, any taxes due are not deductible in determining the fund's value. (1-1-93)

04. Filing For Retirement Benefits. If a client is eligible for periodic retirement benefits, she must apply for those benefits to be eligible for AABD. If she has a choice between periodic benefits and a lump sum, he must choose the periodic benefits. (1-1-93)

05. Deeming Exclusion For Retirement Fund. If an ineligible spouse, parent, spouse of parent, or a sponsor owns a retirement fund, it is excluded from the deeming process. (1-1-93)

278. INHERITANCES AS RESOURCES.

An inheritance is cash, a right, or noncash items received as the result of someone's death. Cash or noncash items in an inheritance are income the month received and a resource the following month. A contested inheritance is not counted as a resource. An ownership interest, in an estate not probated, is a resource if a client is an heir or relative of the deceased, receives any income from the property, or has acquired rights in the property due to the death of the deceased. (1-1-93)(1-1-96)T

01. Ownership Interest In an Estate. The client has ownership interest in an estate not probated, if documents show the client is an heir to property of a deceased. The client has ownership interest in an estate not probated, if he uses a deceased's property or receives income from it. The client has ownership interest in an estate not probated, if documents show, or the client states, a relationship between himself and the deceased which, under State intestacy laws, awards the client a share in the distribution of the deceased's property. Until the inheritance can be used to meet the client's needs, it is not a resource or income. ~~A contested inheritance is not counted as a resource.~~ (1-1-93)(1-1-96)T

~~02. Estate Not Probated Is Resource. A client has equitable ownership interest in an estate not probated, if he is an heir or relative of the deceased, receives income from the property, or has rights to the property by State laws. An inheritance is income the month received. An inheritance is a resource the month following the month it is received.~~ (1-1-93)

032. Right to Sell Inheritance as a Resource. If the client is the sole owner, or if other owners give consent to sell, the property is the client's resource. If other owners withhold consent, and their consent is necessary to sell, the property is not a resource until the estate has been through probate. The property is a resource the month following the month it is received. The right to an inheritance is a resource in the month the client sells the right. If the client gives up, transfers or sells the right to an inheritance, for less than fair market value, he may be subject to the Medicaid asset transfer penalty in Section 682. (1-1-93)(1-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

~~301. APPLICANT'S INCOME. The income expected to be received by an applicant is used to determine AABD eligibility and grant amount. The Department must make an estimate of income, if the amount of income the applicant will receive cannot be proved. The estimate must be based on reasonable expectation, and knowledge of the applicant's current, past, and future circumstances. If actual income is not known, and is received more often than monthly, convert estimated income to a monthly amount using the conversion factors in Subsections 303.01 through .03 of these rules. The actual income must be verified as soon as possible. The difference between actual and estimated income must not be used to compute an overpayment or underpayment, unless the difference is fifty dollars (\$50) or more. For income estimating and converting, an applicant is a person who did not receive AABD in the month before the application month. A recipient who received AABD in the month immediately before the application month must have his income considered as for a recipient.~~

301. PROSPECTIVE ELIGIBILITY.

Eligibility for an AABD grant and Medicaid is prospective. Anticipated income for the month is compared to the client's income limit that month. See Section 612 for patient liability income rules. (7-1-95)F(1-1-96)T

~~302. RECIPIENT'S INCOME. The income of a recipient must be budgeted during the month it is received, to determine continuing eligibility and grant amount. Actual income must be used whenever possible.~~

302. PROJECTING MONTHLY INCOME.

Income is projected for each month to determine grant amount. Past income may be used to project future income. Expected changes must be considered. Section 303 lists criteria for projecting income. Income received less often than monthly is not prorated or converted. Patient liability income is not prorated or converted. (7-1-95)F(1-1-96)T

~~01. Stable Income. If the recipient's actual monthly income is stable, and ordinarily does not vary from month to month, the grant must be adjusted for income changes as soon as possible, but no later than the second calendar month following the month the income was received.~~ (7-1-95)F

~~a. If the recipient's income changes because of a change in hours, pay rate, job, or similar ongoing change, and an underpayment or overpayment results, compute the overpayment or underpayment.~~ (7-1-95)F

~~b. If an ongoing increase in stable income causes income to exceed financial need for two (2) or more months, compute an overpayment and close the grant following timely notice. If an ongoing decrease in income occurs, compute an underpayment and adjust the grant as soon as possible.~~ (7-1-95)F

~~c. If an ongoing increase causes income to exceed financial need for one (1) month only, compute an AABD and Medicaid overpayment.~~ (7-1-95)F

~~02. Varying Income. If a recipient's monthly income varies in amount from~~

~~month to month, and cannot be accurately predicted, the income must be estimated. The estimate must be based on reasonable expectation and knowledge of the recipient's current, past, and future income flow. If actual income for a month is not known, and is received more often than monthly, convert the estimated income to monthly income using the conversion factors in Subsections 303.01 through 303.03 of these rules. Actual income must be verified as soon as possible. An overpayment or underpayment must be computed, if required in Subsections 302.02.a through 302.02.d of these rules. (7-1-95)T~~

~~a. **Income Budgeted is More than Actual Income.** Compute the difference between gross income budgeted and gross income actually received. If the difference is less than fifty dollars (\$50), and the income decrease is not due to a change in hours, pay rate, job or similar ongoing change, do not compute an underpayment. If the difference is fifty dollars (\$50) or more, or the change is ongoing, compute an underpayment and adjust the grant as soon as possible. (7-1-95)T~~

~~b. **Income Budgeted is Less than Actual — Budget Deficit Continues.** Compute the difference between gross income actually received and gross income budgeted. If the difference is less than fifty dollars (\$50) and the recipient continues to have a budget deficit, do not compute an overpayment. (7-1-95)T~~

~~c. **Income Budgeted is Less than Actual — No Budget Deficit for One Month Only.** If income exceeds the budget deficit for one (1) month, and the increase does not continue into the next month, compute an AABD and Medicaid overpayment for the month the recipient did not have a budget deficit. Do not terminate assistance. (7-1-95)T~~

~~d. **Income Budgeted is Less than Actual — No Budget Deficit for More than One (1) Month.** If income exceeds or is expected to exceed the budget deficit because of a change in hours, pay rate job or similar ongoing change, terminate the grant as soon as possible following timely notice. Compute an AABD and Medicaid overpayment for each month the recipient did not have a budget deficit. (7-1-95)T~~

~~303. **INCOME CONVERSION TO MONTHLY AMOUNT.** Income received more often than once a month, must be converted to a monthly amount using Subsections 303.01 through .03 of these rules. Actual income, if known, must be used to compute the monthly amount. If the actual income is not known, an estimation must be made.~~

303. CRITERIA FOR PROJECTING MONTHLY INCOME.

~~Monthly income is projected as described in this Section. (7-1-95)T(1-1-96)T~~

~~01. **Weekly to Monthly.** Income received one (1) time each week must be multiplied by 4.3. Income Already Received. Count income already received during the month. Convert the actual income to a monthly amount if a full month's income has been received or is expected to be received. (7-1-95)T(1-1-96)T~~

~~a. If the actual amount of income from any pay period that month is known, use the actual pay period amounts to determine the total month's income. Convert the actual income to a monthly amount if a full month's income has been received or is expected to be received. (1-1-96)T~~

~~b. If no pay changes are expected, use the known actual pay period amounts for~~

the past thirty (30) days to project future income. Convert the actual income to a monthly amount if a full month's income has been received or is expected to be received.

(1-1-96)T

02. ~~Semimonthly to Monthly. Income received two (2) times each month must be multiplied by 2.~~ Anticipated Income. Count income the client and the Department believe the client will get. Convert the income to a monthly amount. ~~(7-1-95)T~~(1-1-96)T

a. If the exact income amount is uncertain or unknown, the uncertain or unknown portion must not be counted. The certain or known amount is counted. If the date of receipt of income cannot be anticipated for the month of the eligibility or grant determination, that portion must not be counted. (1-1-96)T

b. If the income has not changed and no changes are anticipated, past income can be used as an indicator of anticipated income. (1-1-96)T

c. If income changes, and income received in the past thirty (30) days does not reflect anticipated income, the Department can use income received over a longer period to anticipate income. (1-1-96)T

d. If income changes seasonally, the Department can use income from the last comparable season to anticipate income. (1-1-96)T

03. ~~Biweekly to Monthly. Income received every two (2) weeks must be multiplied by 2.15.~~ Full Month's Income Not Expected. Ongoing income is income from an ongoing source. Ongoing income has been received in the past and is expected to be received in the future. ~~(7-1-95)T~~(1-1-96)T

a. If a full month's income is not expected from an ongoing source, count the amount of income expected for the month: (1-1-96)T

i. If the actual amount of income is known, use the actual income. (1-1-96)T

ii. If the actual amount of income is unknown, project the expected income. (1-1-96)T

iii. Convert the income to a monthly amount. Use zero (0) income for any pay period in which income was not received that month. (1-1-96)T

b. If income is from a new source and a full month's income is not expected, count the actual amount of income expected for the month. Do not convert the new source of income to a monthly amount. (1-1-96)T

c. If income is from a terminated source and no additional income is expected in a future month from this source, count the actual income received during the month. Do not convert the terminated source of income. (1-1-96)T

d. If a full month's income is not expected from a new or terminated source of income, count the amount of income expected for the month. (1-1-96)T

- i. If the actual amount of income is known, use the actual known income. (1-1-96)T
- ii. If the actual amount of income is unknown, project the income. (1-1-96)T
- iii. Do not convert the income to a monthly amount if a full month's income from a new or terminated source is not expected. (1-1-96)T
- 04. Income Paid on Salary. Income paid on salary, rather than an hourly wage, is counted at the expected monthly salary rate. (1-1-96)T
- 05. Income Paid at Hourly Rate. Compute anticipated income paid on an hourly basis by multiplying the hourly pay by the expected number of hours the client will work in the pay period. Convert the pay period amount to a monthly basis. (1-1-96)T
- 06. Fluctuating Monthly Income. When monthly income fluctuates each pay period and the rate of pay remains the same, average the income from the past thirty (30) days to determine the average pay period amount. Convert the average pay period amount to a monthly amount. When income changes and income from the past thirty (30) days is not a valid indicator of future income, the Department can use a longer period of income history to anticipate income. (1-1-96)T
- 07. Converting Income to a Monthly Amount. If a full month's income is expected, but is received on other than a monthly basis, convert the income to a monthly amount using one of the formulas in this Subsection. (1-1-96)T
 - a. Multiply weekly amounts by 4.3. (1-1-96)T
 - b. Multiplying bi-weekly amounts by 2.15. (1-1-96)T
 - c. Multiplying semi-monthly amounts by 2. (1-1-96)T
 - d. Use the exact monthly income if it is expected for each month. (1-1-96)T
- 08. Income Received Less Often Than Monthly. Recurring income, such as quarterly payments or annual income, must be counted in the month received, even if the payment is for multiple months. The income is not prorated or converted. If the actual amount to be received is known, use the actual. If the actual amount is unknown, use the best information available to anticipate income. Past income can be used as an indicator of anticipated income. Income received in the last comparable payment can be used to anticipate income. (1-1-96)T

304. (RESERVED).

~~INCOME RECEIVED LESS OFTEN THAN MONTHLY. Income received less often than once a month, must be counted in the month of receipt. Recurring income, such as quarterly payments or annual income, must be counted in the month of receipt, even if the payment is for multiple months. The income is not prorated.~~ (1-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

374. INCOME DEEMING.

Income deeming counts the income of another person as available to an AABD client. Income is deemed because of relationship or legal association with the client. A husband and wife living together must share income and resources. A parent and child, related by blood, marriage, or adoption, and living together, must share income and resources. The deemed income must be used to determine the client's eligibility for and amount of AABD. (1-1-93)

01. Income Deeming Exclusions. Income excluded from deeming is listed in Table 374.01. (1-1-93)

TABLE 374.01 - INCOME DEEMING EXCLUSIONS			
Type of Income	Ineligible Spouse or Parent Ineligible Child Eligible Alien	Essential Person	Sponsor of Alien
Income excluded by Federal laws other than the Social Security Act	Excluded	Excluded	Excluded
Public Income Maintenance (PIM). <u>Public income maintenance payments include AFDC, AABD, SSI, refugee case assistance, BIA-GA, VA payments based on need, local, county and state payments based on need, and payments under the 1974 Disaster Relief Act.</u>	Excluded	Not Excluded	Not Excluded
Income used by a PIM program to determine amount of payment to someone other than an SSI recipient.	Excluded	Not Excluded	Not Excluded

TABLE 374.01 - INCOME DEEMING EXCLUSIONS			
Type of Income	Ineligible Spouse or Parent Ineligible Child Eligible Alien	Essential Person	Sponsor of Alien
Grants, scholarships, fellowships	Excluded	Not (unless excluded by Federal laws)	Not (unless excluded by Federal laws)
Foster care payments.	Excluded	Not Excluded	Not Excluded
Food Stamps and Dept. of Agriculture donated foods	Excluded	Not Excluded	Not Excluded
Home grown produce.	Excluded	Not Excluded	Not Excluded
Tax refunds on real property or food	Excluded	Not Excluded	Not Excluded
Income used in an approved plan for achieving self support (PASS).	Excluded	Not Excluded	Not Excluded
Income used to pay court ordered or Title IV-D support payments.	Excluded	Not Excluded	Not Excluded
Payments based on age and residence (Alaska residents only).	Excluded (not applicable to children)	Not Excluded	Not Excluded
Disaster Assistance.	Excluded	Excluded	Excluded
Infrequent or irregular income.	Excluded	Not Excluded	Not Excluded
Blind Work Expenses (BWE).	Excluded	Not Excluded	Not Excluded
Payments to provide in-home support.	Excluded	Not Excluded	Not Excluded
Home energy assistance and support and maintenance assistance	Excluded	Excluded	Excluded

TABLE 374.01 - INCOME DEEMING EXCLUSIONS			
Type of Income	Ineligible Spouseor Parent Ineligible Child Eligible Alien	Essential Person	Sponsor of Alien
Child's earned income, up to four hundred dollars (\$400) per month and one thousand six hundred and twenty dollars (\$1,620) per year.	Excluded (not applicable to spouses or parents)	Does not Apply	Does not Apply
Impairment-related work expenses (IRWE)	Excluded	Not Excluded	Not Excluded

~~(1-1-93)~~(1-1-96)T

02. When Deeming Starts and Stops. Deeming starts the first full calendar month the client is in a deeming situation. Deeming ends the first full calendar month the client is not in a deeming situation. (1-1-93)

03. Income Deeming Child Age Limit. Deeming to a child ends the month after the child's eighteenth (18th) birthday. Deeming to the child ends even if he lives with his ineligible parent, or the ineligible spouse of his ineligible parent. (1-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

377. DEEMING INCOME FROM ESSENTIAL PERSON TO CLIENT.

If a client and an essential person reside in the same household, the essential person's income must be deemed to the client. A household is defined by its living arrangement. Clients in a household can live in a home owned or being purchased, the private household of another, rented housing, a board and room home, or a semi-independent group residential facility. Clients living in an institution are not a household. The procedures in Subsections 377.01 through 377.05 are used to determine a client's eligibility and grant amount, when the client resides with an essential person. If essential person deeming would cause the client to be ineligible, do not use essential person deeming. Do not consider the essential person's needs, income, or resources in determining the client's eligibility and grant. If the essential person is the client's ineligible spouse, ineligible parent of a child client, or ineligible spouse of the parent of a child client, and essential person deeming procedure would cause the client to be ineligible for AABD, use the regular deeming provisions in Sections 375- and 376-~~must be used.~~ ~~(1-1-93)~~(1-1-96)T

01. Compute Income. Compute the total earned and unearned income of the essential person. Count the amount as the client's unearned income. Do not count excluded

income. (1-1-93)(1-1-96)T

02. Add Unearned Income. Add the unearned income of the essential person to the client's unearned income. (1-1-93)

03. Subtract Disregard. Subtract income disregards from the client's income. (1-1-93)

04. Count Income. Any remaining income must be counted to determine the client's eligibility for AABD and grant amount. (1-1-93)

05. Compute Needs. Compute the client's budgeted needs, as though the client and the essential person were an AABD couple. (1-1-93)

06. Subtract Income. Subtract the countable income from the client's budgeted needs. The client's AABD grant, if he is otherwise eligible, is the deficit. (1-1-93)

07. No Deficit. Essential person income is not deemed to the client if there is no budget deficit. If there is no deficit, determine the client's eligibility and grant as though he did not live with an essential person. If the essential person is the client's ineligible spouse, the ineligible parent of a child client, or ineligible spouse of the parent of a child client, use the regular deeming procedures in Sections 375 and 376.

(1-1-93)(1-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

515. (RESERVED).

~~GRANT REDUCTION. The Department recovers overpayments from clients with active cases by grant reduction, unless the Department first accepts total recovery. Any initial repayment made by the client must be sent to the collections unit. The client is given a receipt and advised any remainder of the overpayment can be recovered by grant reduction.~~ (1-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

530. CHANGES AFFECTING ELIGIBILITY.

If a client reports a change potentially affecting eligibility, the Department must request proof of the change. If proof is provided within timelines, benefits are adjusted or terminated as appropriate. If proof is not provided within timelines, the case is closed following timely notice. If the client provides the proof after the closure action but before the first day of the calendar month in which he would be ineligible, benefits are continued and adjusted, or terminated as appropriate. Whenever benefits are continued or terminated, adequate notice must be provided. (1-1-96)T

531. TIMELINES FOR ACTING ON CHANGES.

The Department has ten (10) calendar days from the date a change is reported to secure

proof and complete action on a change which causes a decrease or termination of benefits. The client must be allowed ten (10) calendar days timely notice, if the change causes a termination or decrease in benefits. If the change will cause an increase in benefits, the client has ten (10) calendar days to provide proof of the change from the date of report. If proof of the change is not provided by the tenth calendar day, the Department must decrease or terminate the benefits following timely notice. If the verification is provided, the Department completes the change. (1-1-96)T

532. EFFECTIVE DATE FOR INCREASES.

Increases are effective as shown in Subsections 532.01 through 532.06. (1-1-96)T

01. Change Reported Timely and Proof Provided Timely. Increase benefits effective the month following the date the change is reported. (1-1-96)T

02. Change Not Reported Timely, but Proof Provided Timely. Increase benefits effective the month following the month the change is reported. (1-1-96)T

03. Change Reported Timely, but Proof Not Provided Timely. Increase benefits effective the month following the month the change is reported, if good cause exists. Terminate benefits for failure to provide proof of the change, following timely notice if good cause does not exist. For a reported change that would result in an increase in, or prevent a decrease in, the amount of an income deduction used to compute patient liability or client participation, decrease benefits for failure to provide proof of the change. If the client provides proof after the closure or decrease action, but before the first day of the calendar month in which the negative action was taken, benefits are continued and increased effective the month following the month proof is provided. (1-1-96)T

04. Change Not Reported Timely, and Proof Not Provided Timely. Terminate benefits for failure to provide proof of the change, following timely notice. For a change that would result in an increase in, or prevent a decrease in, the amount of an income deduction used to compute patient liability or client participation, decrease benefits for failure to provide proof of the change. If the client provides the proof after the closure decrease action, but before the first day of the calendar month in which the action was taken, benefits are continued and increased effective the month following the month the proof is provided. (1-1-96)T

05. Failure to Report Timely with Good Cause. Increase benefits effective the month following the month the change would have been submitted, if reported timely. (1-1-96)T

06. Failure to Provide Proof Timely with Good Cause. Increase benefits effective the month following the month the proof would have been provided, if proof had been provided timely. (1-1-96)T

07. Good Cause. Good cause exists if circumstances beyond the client's control prevented him from reporting timely or providing proof timely. Good cause includes hospitalization or documented serious illness of the client or a member of the client's family, lost or stolen mail confirmed by the Postal Service, and catastrophe caused by fire, flood or a weather condition. (1-1-96)T

533. EFFECTIVE DATE FOR TERMINATION OR DECREASE.

If a reported change results in a decrease or termination of benefits, the Department must issue a Notice of Decision within ten (10) calendar days of the date of the report. The decrease or closure will be effective as soon as possible following timely notice. Adequate notice may be provided, if an exception to timely notice exists. An overpayment exists, if the AABD grant is not decreased timely. (1-1-96)T

534. -- 5439. (RESERVED).

540. REPORTING REQUIREMENTS.

The client must report and provide proof of changes in circumstances within timelines. Clients must report all changes in circumstances including those listed in Subsections 551.01 through 551.09. The Department must act timely to determine continued eligibility and adjust the grant amount. The client must report any change of circumstances verbally or in writing, within ten (10) calendar days from the date the change becomes known to the client. (1-1-96)T

541. DATE AND METHODS OF REPORT.

Date of report for verbal reports is the date the client contacts the Department and reports the change. The date of report for written reports is the date the written report is received by the field office. Changes may be reported by telephone, personal contact, or mail. Written changes may be reported on the Change Report Form (HW 0594). All written reports must be date stamped by the Department on the date received. (1-1-96)T

542. FAILURE TO REPORT.

If a client's failure to report a change results in an overpayment of benefits, the overpaid benefits must be recovered. See Section 509. (1-1-96)T

543. GOOD CAUSE WHEN CHANGE REPORT NOT RECEIVED.

If circumstances beyond the client's control prevented him from reporting the change on time, good cause exists. If good cause exists, the AABD benefit can be reinstated. Good cause includes hospitalization or documented serious illness of the client or a member of the client's family, lost or stolen mail confirmed by the Postal Service, and catastrophe caused by fire, flood, or a severe weather condition. (1-1-96)T

544. ELIGIBILITY REDETERMINATION.

The AABD redetermination process is the same as the initial determination of an applicant's AABD eligibility. All eligibility factors subject to change must be checked by the Department during the redetermination. The redetermination assures continued eligibility and correct payment. (1-1-93)

01. Redetermination Frequency. A redetermination of eligibility must be completed at least once every year. The first redetermination is due one (1) year after the case is approved. A redetermination of eligibility may be done when a change affecting eligibility occurs. (1-1-93)

02. Redetermination Procedure. Each AABD client must complete in full a redetermination form. The Department must compare the client's newly completed forms with the most recent application or redetermination forms. When a husband and wife are living together and both are recipients of AABD, one (1) redetermination form can be

completed for both. Both the husband and wife must sign the form. (7-1-94)

03. Change of Eligibility or Payment Upon Redetermination. If the redetermination finds the AABD client is ineligible, the Examiner must record the reason in the client's case record. If the redetermination results in a decrease in the grant, the Department must send advance notice to the client, ten (10) days before the decrease is effective. If the redetermination results in an increase in the grant, the Department must send notice to the client and increase the grant as soon as possible. (1-1-93)

~~531~~545. CLIENTS WHO MOVE.

If an AABD client reports a move to an area served by a different Field Office, he must be told the address and telephone number of the new Field Office. The client must be told to contact the new Field Office as soon as possible, to avoid delay or ending of benefits. The client must be told action will be taken to stop aid if the request for transfer of the case record is not received within thirty (30) days. (1-1-93)

01. Transfer of Case Record. The client must report his new address to the new Field Office as soon as possible. The new Field Office must then request the case record from the Field Office holding the case record. (1-1-93)

02. Holding AABD Payment. If the client's next AABD payment will be mailed to his old address, the Field Office must hold the payment. The receiving Field Office must release the payment to the new address. (1-1-93)

03. Termination of AABD Benefits. If the request for transfer of the case record is not received by the thirtieth (30th) day, action will be taken to stop aid. Any AABD checks due the client must be delivered if possible. (1-1-93)

~~532~~546. RECEIVING FIELD OFFICE.

When the receiving Field Office gets a client's case record, the Examiner may conduct an interview or home visit with the client. (1-1-93)

~~533~~547. SPECIAL HELP TO HANDICAPPED CLIENT.

The Department must provide interpreters or special help for clients with visual, mental, hearing, literacy, language impairments, or other communications difficulties. Help must be given to explain aid programs. Eligibility factors, benefits, rights, and responsibilities must be explained. Explanations must include the result of failing to provide proof or refusing to cooperate. (1-1-93)

548. -- 549. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

551. CLIENT RESPONSIBILITIES.

The client must provide correct and complete information, so the Department can make accurate eligibility and benefit decisions. The client must provide proof requested by the Department to determine eligibility. The client must report any change of circumstances, verbally or in writing. The client must report within ten (10) calendar days, from the date

he becomes aware of the change. The client must report changes listed in Subsections 551.01 through 551.08. ~~(1-1-94)~~(1-1-96)T

01. Change in Name or Address. The client must report any change in name or address. (1-1-93)

02. Change in Employment Status. The client must report any change in employment status. This includes any increase or decrease of earned income, change in source of earned income and change in hourly rate or salary. ~~(1-1-93)~~(1-1-96)T

03. Change in Income. The client must report any changes in income. This includes earned or unearned income. (1-1-93)

04. Change in Resources. The client must report any change in available resources. This includes getting money or goods of worth from any source. (1-1-93)

05. Change in Household Composition. The client must report any changes in the number of persons in, or the composition of, the household. (1-1-93)

06. Change in Special Needs. The client must report any changes in special needs. (1-1-93)

07. Change in Marital Status. The client must report any changes in marital status. (1-1-94)

08. Change in AABD Grant Payment. The client must report any increase in grant payment of ten dollars (\$10) or more, if prior written notice from the Department was not received. (1-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

612. PATIENT LIABILITY - INCOME AVAILABLE TO MEET COST OF LONG-TERM CARE.

The Department must count some of the Medicaid client's income toward the cost of long-term care. The client's income counted toward his cost of care is his patient liability. The client's income is counted toward his cost of care in the month the income is received. The income must not be converted or prorated. The Department must reduce Medicaid payment to the nursing facility by the patient liability income. Patient liability starts the first (1st) full calendar month the client resides in a long-term care facility. A client entering the facility on the first (1st) day of the month, and residing in the facility the full month, is charged patient liability for the month. The income computation is different for a single client, for a married client whose spouse is also in long-term care, and for a married client whose spouse is in the community. The terms in Subsections 612.01 through 612.04 apply to computing income to meet the cost of long-term care. ~~(7-1-93)~~(1-1-96)T

01. Long-Term Care Spouse. The long-term care spouse gets long-term care. A long-term care spouse must be in a medical institution or nursing facility, or be an HCBS client, for thirty (30) consecutive days, or appear likely to remain in the facility or

need HCBS thirty (30) days. The husband or wife of the long-term care spouse is not in a medical institution or nursing facility and is not an HCBS client. (1-1-93)

02. Community Spouse. The community spouse is the husband or wife of the long-term care client. The community spouse lives in the community, is not in long-term care, and is not an HCBS client. (1-1-93)

03. Community Spouse Allowance (CSA). The maximum amount a long-term care spouse may have deducted from income, if paid for the support of the community spouse. (1-1-93)

04. Community Spouse Need Standard (CSNS). The income the community spouse needs for his support. (7-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

630. APPEAL OF SSI/A DECISION BY MEDICAID APPLICANT.

An applicant denied for Medicaid because he does not meet SSI eligibility requirements, or Social Security disability requirements can appeal the SSI/A denial with SSA. He can get Medicaid if he is found eligible for SSI or Social Security disability as a result of his appeal. The effective date for Medicaid is the first day of the month of the Medicaid application denied because of the SSI/A denial. The client's eligibility for backdated Medicaid coverage must be determined. ~~(1-1-94)~~(1-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

632. CERTAIN DISABLED CHILDREN.

A disabled child eligible for Medicaid in a medical institution, but not outside a medical institution, is eligible for Medicaid outside the institution if he meets all the conditions in Subsections 632.01 through 632.07.c. The parent's income and resources are not available to the child for Medicaid eligibility. For computing AABD payment, the income and resources of a parent living with the child are available to the child. Financial eligibility of Certain Disabled Children cases must be redetermined at least once each year. Level of care and cost-effectiveness must be redetermined at least once each year by RMU. Disability must be reviewed by the review date set in the latest disability review unless the disability is permanent. (7-1-93)

01. Age. The child must be under nineteen (19) years old. (1-1-93)

02. AABD Criteria. The child must meet the AABD age, blindness, or disability criteria. (1-1-93)

03. AABD Resource Limit. The child must meet the AABD single person resource limit of two thousand dollars (\$2,000). (1-1-93)

04. Income Limit. The child's monthly income must not exceed three (3) times the Federal SSI benefit payable monthly to a single person ~~the single person long-~~

~~term care need standard.~~

~~(1-1-93)(1-1-96)T~~

05. Eligible for Long-Term Care. The child must meet the medical conditions for long-term care as specified in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 3, Chapter 9, Subsection 160.09, "Rules Governing Medical Assistance". (7-1-93)

06. ~~Home~~ Care Appropriate Outside Medical Institution. It must be appropriate to provide care for the child ~~in the home of his parent(s)~~ outside a medical institution. A physician's plan of care must identify services necessary to maintain the child ~~at home~~ outside a medical institution. ~~(1-1-93)(1-1-96)T~~

07. Cost of Care. (1-1-93)

a. The estimated cost of caring for the child at home must not exceed the cost of the child's care in a hospital, nursing facility, or ICF-MR. The estimated cost of home care is the Medicaid reimbursement rate for services required for the child's care at home, using the physician's orders. The Regional Medicaid unit will make the home care cost estimate. (1-1-93)

b. The estimated cost of care in a hospital, nursing facility, or ICF-MR is the actual monthly Medicaid cost if the child is living in the facility. (1-1-93)

c. The estimated cost of care in a hospital, nursing facility, or ICF-MR for a child not living in a facility is the rate for the level of care he requires, charged by the facility where the child would be placed if he were not living with his parent(s). (1-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

634. PERSON ENTITLED TO HOME AND COMMUNITY BASED SERVICES (HCBS).

An aged, blind or disabled person not eligible for SSI or AABD in his own home, because of income deeming or income limits, is eligible for Medicaid if he meets the conditions of this section. The waiver granted the Department, by the U.S. Department of Health and Human Services, to provide Medicaid to persons meeting HCBS criteria is in effect. (1-1-93)

01. Conditions for HCBS Medicaid. The client must meet the requirements in this Section for one of the two HCBS waiver coverage groups. The two HCBS waiver coverage groups are HCBS-NF and HCBS-DD. (7-1-95)

a. Age. The client must be at least twenty-one (21) years old. (1-1-93)

b. AABD Criteria. The client, if under age sixty-five (65), must meet the AABD blindness or disability criteria. (1-1-94)

c. AABD Resource Limit. The client must meet the AABD single person resource limit of two thousand dollars (\$2,000). The AABD resource exclusions are used

to compute countable resources. (7-1-93)

d. HCBS Income Limit. Income for HCBS-NF must not exceed ~~eight hundred and eighty-five~~ nine hundred and nine dollars (\$~~885~~909). Income for HCBS-DD must not exceed three (3) times the Federal SSI benefit payable monthly to a single person. The AABD income exclusions and disregards are used to compute countable income. (~~7-1-95~~)(1-1-96)T

e. The HCBS-NF client must meet the medical conditions for nursing facility care in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 09, Subsection 160.09-, "Rules Governing Medical Assistance". The HCBS-DD client must meet the medical conditions for ICF/MR care in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 09, Subsection 143-, "Rules Governing Medical Assistance". (~~7-1-95~~)(1-1-96)T

f. The HCBS-NF client must be capable of being maintained in his own home with Personal Care Services (PCS) furnished under the Department's HCBS waiver ("PCS under the waiver"). To qualify as receiving PCS under the waiver, the client must require and receive more than sixteen (16) hours of PCS during at least one (1) week of each month. (See Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 09, Section 146, "Rules Governing Medical Assistance".) There must be a physician's plan of care identifying services necessary to maintain the client at home. The HCBS-DD client must be capable of being maintained in the community. The community is the client's home or a living arrangement approved by the ACCESS Unit. The ACCESS Unit is defined in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 09, Section 003, "Rules Governing Medical Assistance". The community is not a hospital, nursing facility, ICF/MR, licensed Adult Residential Care Facility or Adult Foster Care home. (7-1-95)

g. The estimated cost of caring for the HCBS-NF client at home must not exceed the statewide average cost of care for the client's level of care. The estimated cost of home care is the Medicaid reimbursement rate for services required for the HCBS-NF client's care at home using the physician's orders. The Regional Medicaid Unit (RMU) will make the home care cost estimate for the HCBS-NF client. The estimated cost of caring for the HCBS-DD client in the community does not affect the client's eligibility. (7-1-95)

h. The estimated cost of care in a nursing facility for an HCBS-NF client not living in a facility is the statewide average rate for the level of care he requires, charge by the type of facility where the client would be placed if he were not living at home. (7-1-95)

02. HCBS-NF Medicaid Effective Date. Medicaid under HCBS is effective the first thirty (30) consecutive day period, the client required and received Personal Care Services (PCS) under the HCBS waiver. PCS under the waiver is described in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 09, Section 146, "Rules Governing Medical Assistance". Medicaid is effective the first (1st) day of the month, in the month the thirty (30) consecutive days start. The client must be otherwise eligible. The RMU decides if the client is likely to meet the thirty (30) consecutive days' rule. He meets the rule, even though he may not actually receive personal care services

throughout the thirty (30) day period. The thirty (30) consecutive days can be a combination of home care, and nursing facility care, so long as the client is not hospitalized at the beginning of the thirty (30) consecutive days. If the client is not likely to meet the thirty (30) consecutive days' requirement, Medicaid must be denied. (7-1-95)

03. HCBS-DD Medicaid Effective Date. Medicaid is effective the first thirty (30) consecutive day period the client required and received or is likely to receive HCBS-DD waiver services. The HCBS-DD waiver services are described in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 09, Section 143., "Rules Governing Medical Assistance". Medicaid is effective the first day of the month, in the month the thirty (30) consecutive days start. The client must be otherwise eligible. The ACCESS Unit makes the determination the client meets the thirty (30) consecutive days' rule. The client meets the rules even though he may not actually receive waiver services throughout the thirty (30) day period. If the client is not likely to meet the thirty (30) consecutive days' rule, Medicaid must be denied. (7-1-95)

04. Client Living With Spouse. A married HCBS-NF or HCBS-DD client living with his spouse can choose the method of computing his income and resources for Medicaid eligibility. If the client lives at home with his spouse, and his spouse is not an HCBS client, he can choose between the SSI method, CP method, and the FSI method. If his spouse is also an HCBS client or is living in a nursing home, the couple can choose between the SSI method and the CP method, but each must use the same method. (7-1-95)

05. Requiring and Receiving Services. As a condition of HCBS Medicaid eligibility, the HCBS-NF client must continue to require and receive waiver PCS, under the physician's plan of care. The HCBS-DD client must continue to require and receive HCBS-DD waiver services, under the physician's plan of care. Medicaid under HCBS-NF or HCBS-DD must be stopped when there is any lapse in need for or receipt of waiver services, more than thirty (30) days. (7-1-95)

a. The Bureau of Medicaid Policy-Acute/Facility Care must monitor delivery of waiver services for HCBS-NF clients to assure this requirement continues to be met. The Bureau of Medicaid Policy-Acute/Facility Care must notify the Examiner within five (5) working days if it determines a lapse in delivery of HCBS-NF waiver services will exceed thirty (30) days. (7-1-95)

b. The Bureau of Medicaid Policy-Coordinated Care and the Division of Family and Community Services must monitor delivery of waiver services for HCBS-DD clients to assure this requirement continues to be met. The Bureau of Medicaid Policy and Reimbursement or the Division of Family and Community Services must notify the Examiner within five (5) working days if either unit determines a lapse in delivery of HCBS-DD waiver services will exceed thirty (30) days. (7-1-95)

06. Limit on HCBS Clients Served. The annual limit on the number of unduplicated count Medicaid recipients eligible to receive HCBS-NF waiver services will be the limit established each calendar year by Idaho Department of Health and Welfare Rules, IDAPA 16, Title 03, Chapter 09, Section 146., "Rules Governing Medical Assistance". The annual limit on the number of unduplicated count Medicaid recipients eligible to receive HCBS-DD waiver services will be the limit established each calendar year by the Bureau of Medicaid Policy under Idaho Department of Health and Welfare

Rules, Title 03, Chapter 09, Section 143., "Rules Governing Medical Assistance". A person who applies for HCBS Medicaid, after the annual limit on HCBS-NF or HCBS-DD waiver clients is reached, must be denied Medicaid. (7-1-95)

(BREAK IN CONTINUITY OF SECTIONS)

683. MEDICAID PENALTY FOR ASSET TRANSFERS.

Restricted Medicaid coverage is the asset transfer penalty for a person receiving nursing facility services. ~~(7-1-95)F~~(1-1-96)T

01. Restricted Coverage. Restricted coverage means the person is not entitled to Medicaid participation in the cost of nursing facility services, or a level of care in a medical institution equivalent to nursing facility services. The penalty for a person receiving PCS or community services under the HCBS waiver is no Medicaid eligibility. Loss of PCS or community services under the HCBS waiver means loss of Medicaid eligibility. PCS and community services under the HCBS waiver are described in Title 3, Chapter 9, "Rules Governing Medical Assistance," Sections 143 and 146.

~~(7-1-95)F~~(1-1-96)T

02. Notice and Exemption. The client must be notified in writing at least ten (10) days before an asset transfer penalty is imposed. The notice must include the right to a hearing on the penalty, the right to make a written request for the hardship exemption in Subsection 690.12 and a description of the hardship exemption. The notice must tell the client he has ten (10) days from the date of the notice to return his written request for a hardship exemption to the Department. The Department must make a decision on the hardship exemption within thirty (30) days of receiving the written request. Notice of the Department's decision on the hardship exemption must include the right to a hearing.

(1-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

688. LIFE ESTATES AND ANNUITIES AS ASSET TRANSFERS.

Receiving a life estate in return for assets or purchasing an annuity may be transfer of assets for less than fair market value. (7-1-95)T

01. Life Estate. A life estate is an asset transfer subject to the penalty, unless the value of the life estate at least equals the value of the transferred real property. Calculate the value of the life estate using Table 688.01. To calculate the value of the life estate, multiply the fair market value of the real property at the time of transfer by the remainder factor for the client's age at the time of transfer.

TABLE 688.01 - LIFE ESTATE REMAINDER TABLE			
AGE	LIFE ESTATE REMAINDER	AGE	LIFE ESTATE REMAINDER
22	.02880	77	.51258
23	.03014	78	.52951
24	.03159	79	.54643
25	.03322	80	.56341
26	.03505	81	.58030
27	.03710	82	.59705
28	.03938	83	.61358
29	.04187	84	.63002
30	.04457	85	.64641
31	.04746	86	.66236
32	.05058	87	.67738
33	.05392	88	.69141
34	.05750	89	.70474
35	.06132	90	.71779
36	.06540	91	.73045
37	.06974	92	.74229
38	.07433	93	.75308
39	.07917	94	.76272
40	.08429	95	.77113
41	.08970	96	.77819
42	.09543	97	.78450
43	.10145	98	.79000
44	.10779	99	.79514
45	.11442	100	.19975
46	.12137	101	.19532
47	.12863	102	.19054

TABLE 688.01 - LIFE ESTATE REMAINDER TABLE			
AGE	LIFE ESTATE REMAINDER	AGE	LIFE ESTATE REMAINDER
48	.13626	103	.18437
49	.14422	104	.17856
50	.15257	105	.16962
51	.16126	106	.15488
52	.17031	107	.13409
53	.17972	108	.10068
54	.18946	109	.04545

(7-1-95)T

02. Annuity. An annuity is a contract in which an individual pays a sum of money in return for periodic payments for a fixed term of years. An annuity is a form of trust, but is evaluated using the asset transfer policy. The asset transfer penalty and sixty (60) month lookback apply if the annuity is irrevocable and does not provide fair market value. A revocable annuity is a resource in the amount for which it can be surrendered. A revocable annuity surrendered for less than fair market value is subject to the asset transfer penalty. The penalty is assessed against the difference between the original purchase price and the sum of the amount received for the surrendered annuity plus annuity payments received to date.

~~(7-1-95)T~~(1-1-96)T

a. To provide fair market value, ~~the~~ an irrevocable annuity must meet the life expectancy and interest tests. First, the client's life expectancy must equal or exceed the term of the annuity. Using Table 688.02, divide the face value of the annuity by the client's life expectancy at the time of purchase. The annuity meets the life expectancy test if the result equals the term of the annuity, or more. Second, determine if the annuity produces interest of five percent (5%) yearly, or more. The client can rebut the five percent (5%) interest test. The client must show single premium annuities were not offered by insurers rated exceptional or superior by an insurance rating firm such as A.M. Best Co. now or when the annuity was purchased. A variable rate annuity meets the interest rate test if the average yearly rate for the most recent five (5) year period is five percent (5%) or more. If the annuity meets the life expectancy and interest tests, the client received fair market value.

~~(7-1-95)T~~(1-1-96)T

b. If the irrevocable annuity does not provide fair market value, the asset transfer penalty applies. The value for calculating the asset transfer penalty is the difference between the actual rate produced by the annuity and five percent (5%) per year.

~~(7-1-95)T~~(1-1-96)T

TABLE 688.02 - LIFE EXPECTANCY TABLE. The Life Expectancy Table is as follows:

LIFE EXPECTANCY TABLE - FEMALE					
AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
0	78.79	40	40.61	80	9.11
1	78.42	41	39.66	81	8.58
2	77.48	42	38.72	82	8.06
3	76.51	43	37.78	83	7.56
4	75.54	44	36.85	84	7.08
5	74.56	45	35.92	85	6.63
6	73.57	46	35.00	86	6.20
7	72.59	47	34.08	87	5.79
8	71.60	48	33.17	88	5.41
9	70.61	49	32.27	89	5.05
10	69.82	50	31.37	90	4.71
11	68.63	51	30.48	91	4.40
12	67.64	52	29.60	92	4.11
13	66.65	53	28.72	93	3.84
14	65.67	54	27.86	94	3.59
15	64.68	55	27.00	95	3.36
16	63.71	56	26.15	96	3.16
17	62.74	57	25.31	97	2.97
18	61.77	58	24.48	98	2.80
19	60.80	59	23.67	99	2.64
20	59.83	60	22.86	100	2.48
21	58.86	61	22.06	101	2.34
22	57.59	62	21.27	102	2.20
23	56.92	63	20.49	103	2.06
24	55.95	64	19.72	104	1.93
25	54.98	65	18.96	105	1.81

LIFE EXPECTANCY TABLE - FEMALE					
AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
26	54.02	66	18.21	106	1.69
27	53.05	67	17.48	107	1.58
28	52.08	68	16.76	108	1.48
29	51.12	69	16.04	109	1.38
30	50.15	70	15.35	110	1.28
31	49.19	71	14.66	111	1.19
32	48.23	72	13.99	112	1.10
33	47.27	73	13.33	113	1.02
34	46.31	74	12.68	114	0.96
35	45.35	75	12.05	115	0.89
36	44.40	76	11.43	116	0.83
37	43.45	77	10.83	117	0.77
38	42.50	78	10.24	118	0.71
39	41.55	79	9.67	119	0.66

LIFE EXPECTANCY TABLE - MALES					
AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
0	71.80	40	35.05	80	6.98
1	71.53	41	34.15	81	6.59
2	70.58	42	33.26	82	6.21
3	69.62	43	32.37	83	5.85
4	68.65	44	31.49	84	5.51
5	67.67	45	30.61	85	5.19
6	66.69	46	29.74	86	4.89
7	65.71	47	28.88	87	4.61
8	64.73	48	28.02	88	4.34

LIFE EXPECTANCY TABLE - MALES					
AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
9	63.74	49	27.17	89	4.09
10	62.75	50	26.32	90	3.86
11	61.76	51	25.48	91	3.64
12	60.78	52	24.65	92	3.43
13	59.79	53	23.82	93	3.24
14	58.62	54	23.01	94	3.06
15	57.85	55	22.41	95	2.90
16	56.91	56	21.43	96	2.74
17	55.97	57	20.66	97	2.60
18	55.05	58	19.90	98	2.47
19	54.13	59	19.15	99	2.34
20	53.21	60	18.42	100	2.22
21	52.29	61	17.70	101	2.11
22	51.38	62	16.99	102	1.99
23	50.46	63	16.30	103	1.89
24	49.55	64	15.62	104	1.78
25	48.63	65	14.96	105	1.68
26	47.72	66	14.32	106	1.59
27	46.80	67	13.70	107	1.50
28	45.88	68	13.09	108	1.41
29	44.97	69	12.50	109	1.33
30	44.06	70	11.92	110	1.25
31	43.15	71	11.35	111	1.17
32	42.24	72	10.80	112	1.10
33	41.33	73	10.27	113	1.02
34	40.23	74	9.27	114	0.96
35	39.52	75	9.24	115	0.89
36	38.62	76	8.76	116	0.83

LIFE EXPECTANCY TABLE - MALES					
AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY	AGE	LIFE EXPECTANCY
37	37.63	77	8.29	117	0.77
38	36.83	78	7.83	118	0.71
39	35.94	79	7.40	119	0.66

(7-1-95)T

(BREAK IN CONTINUITY OF SECTIONS)

691. TREATMENT OF ASSETS TRANSFERRED TO A TRUST.

Assets transferred to a trust are treated as shown in Subsections 691.01 through 691.03 of these rules. (7-1-94)

01. Revocable Trust. The body (corpus) of a revocable trust is a resource. Payments from the trust to or for the client are income. Any other payments from the trust are considered an asset transfer, triggering an asset transfer penalty period. (1-1-94)

02. Irrevocable Trust. The part of the body of an irrevocable trust, from which corpus or income payments could be made to or for the client, is a resource. Payments made to or for the client are income. Payments from the trust for any other reason are asset transfers, triggering the asset transfer penalty. Any part of the trust from which payment cannot be made to, or for the benefit of, the client under any circumstances, is an asset transfer. The effective date of the transfer is the date the trust was established, or the date payments to the client were foreclosed. The value of the trust, for calculating the transfer penalty, includes any payments made from that portion of the trust after the date the trust was established or payments were foreclosed. (1-1-94)

03. Trust with Pension Money. Treat a trust established for the benefit of a person where all the money in the trust comes from the person's pensions, Social Security and his other income, as described in Subsection 691.01 or 691.02 of these rules, unless exempt from treatment as an asset transfer under Subsection 706.02 of these rules. The institutionalized person must be the sole beneficiary of the trust. The trust must be irrevocable. However, the trust document may include a revocability clause that will allow the trust to be revocable only for the circumstance where the client leaves the nursing facility or HCBS for a reason other than death, and is no longer eligible for Medicaid because of excess income. An income trust exempted from the asset transfer penalty under this Subsection, before July 1, 1994, and not meeting the requirements of this Subsection, as revised July 1, 1994, must be amended to keep the exemption. The client must obtain the necessary amendments within ninety (90) days of the date he was mailed a Department notice that his income trust no longer meets the exemption criteria. The trust must not provide for payments for a purpose other than for income used to calculate patient liability or client participation, unless the payments meet the hardship exemption in Subsection

693.12 of these rules. This hardship exemption is only for a trust for an HCBS client. Money paid into a pension trust is income for Medicaid eligibility the month received, unless the client lives in long-term care and is eligible for Medicaid except for excess income, or lives at home and is eligible for HCBS Medicaid except for excess income. The trust must be exempt from a trust penalty by Subsection 706.02 of these rules. Money paid into a pension trust is income for patient liability as provided in Subsection 611.07 of these rules. Income transferred to the trust as income used to calculate patient liability or client participation, and not used for that purpose, is subject to the asset transfer penalty in Section 690 of these rules, unless the income meets the hardship exemption in Subsection 693.12 of these rules. This hardship exemption is only for a trust for an HCBS client.

(7-1-95)T

04. Burial Trust. A revocable burial trust is a resource. Funds in the trust not earmarked for burial are an asset transfer, unless payable to the State of Idaho, up to the amount of Medicaid paid in the person's behalf by the State of Idaho. An irrevocable burial trust with face value of five thousand dollars (\$5000) or less is not an asset transfer and is exempt from trust treatment. An irrevocable burial trust with face value over five thousand dollars (\$5000) is subject to trust treatment in Subsection 705.02. Purchase of an irrevocable burial trust with face value over five thousand dollars (\$5000) is an asset transfer subject to the asset transfer penalty, unless the funds in the trust not earmarked for the client's burial expenses are payable to the State of Idaho, up to the amount of Medicaid paid in the person's behalf by the State of Idaho.

(1-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

693. PENALTY EXCEPTIONS FOR ASSET TRANSFERS.

A client or spouse is not subject to the asset transfer penalty due to transfer of assets August 11, 1993 or later for less than fair market value or transfer to a trust, if one (1) of the conditions in Subsections 693.01 through 693.12 of these rules is met. (7-1-95)T

01. Home to Spouse. The asset transferred was a home and title to the home was transferred to the spouse. (1-1-94)

02. Home to Minor Child or Disabled Adult Child. The asset transferred was a home and title to the home was transferred to the child of the client or spouse. The child must be under age twenty-one (21) or blind or totally disabled using the definitions of disability and blindness used in determining eligibility for Social Security and SSI benefits, as contained in 20 CFR Part 416. (1-1-94)

03. Home to Brother or Sister. The asset transferred was a home and title to the home was transferred to a brother or sister of the client or spouse. The brother or sister must have an equity interest in the transferred home, and reside in that home for at least one (1) year immediately before the month the client starts long-term care. (1-1-94)

04. Home to Adult Child. The asset transferred was a home and title to the home was transferred to a son or daughter of the client or spouse, other than a child under the age of twenty-one (21). The son or daughter must reside in the home of the client or spouse for a period of at least two (2) years immediately before the month the client

started long-term care. The son or daughter must have provided care to the client which permitted him to live at home rather than enter long-term care. (1-1-94)

05. Benefit of Spouse. The assets were transferred to the client's spouse or to another person for the sole benefit of the spouse. (1-1-94)

06. Transfer from Spouse. The assets were transferred from the client's spouse to another person for the sole benefit of the client's spouse. (1-1-94)

07. Transfer to Child. The assets were transferred to the client's child, or to a trust established solely for the benefit of the client's child. The child must be blind or totally disabled using the definitions of blindness and disability used in determining eligibility for Social Security and SSI benefits, as contained in 20 CFR Part 416. The child may be any age. (1-1-94)

08. Transfer to Trust for Person Under Sixty-Five (65). The assets were transferred to a trust for the sole benefit of a person under age sixty-five. "Sole benefit" means any remainder in the trust after the person's death must go to his estate, not to another person. The person must be blind or totally disabled using the definitions of blindness and disability used in determining eligibility for Social Security and SSI benefits, as contained in 20 CFR Part 416. (1-1-94)

09. Intent to Get Fair Market Value. The client or spouse establishes to the Department's satisfaction he intended to dispose of the assets at fair market value or for other adequate consideration. (1-1-94)

10. Assets Returned. All assets transferred for less than fair market value have been returned to the client. (1-1-94)

11. No Medicaid Purpose. The client or spouse establishes to the Department's satisfaction the assets were transferred exclusively for a purpose other than to qualify for Medicaid. (1-1-94)

12. Undue Hardship. The Department determines denial of eligibility would work an undue hardship. Undue hardship exists if: (1-1-94)

a. The client proves he is not able to pay for his nursing facility services or his HCBS services any other way and he assigns his rights to recover the asset to the state of Idaho; or (7-1-95)T

b. The client proves he did not knowingly transfer the asset and he assigns his rights to recover the asset to the state of Idaho; or (7-1-95)T

c. The HCBS client proves he would be deprived of food, clothing or shelter if all income transferred into a pension trust is protected from being used for costs other than client participation, and assigns his rights to recover the asset to the state of Idaho. Where undue hardship is established, the amount of income paid to meet the client's needs for food, clothing or shelter, is exempt from the asset transfer penalty, does not invalidate the trust, and is not income for eligibility. (7-1-95)T

13. Exception to Fair Market Value. The Department determines the amount received is adequate, even if not fair market value. This exception is for three (3) situations: (7-1-95)T

a. A forced sale was done under reasonable circumstances. (7-1-95)T

b. Little or no market demand exists for the type of asset transferred. (7-1-95)T

c. A transfer of assets, to settle a legal debt approximately equal to the fair market value of the transferred asset, is adequate consideration. The existence of a legally enforceable debt must be proven. Proof includes a legally recorded document, completed when the debt began, showing the existence of the debt. Cancelled checks, receipts, promissory notes, mortgages, or written agreements executed by the client and the creditor when the debt began prove the debt. The written statement of facts made under oath, or testimony under oath, of at least two (2) persons not parties to the transaction proves the debt. The parties must not benefit from the transaction either directly or indirectly. They must have first-hand knowledge of the arrangements between the client and the creditor at the time the debt began. The statements must agree with the sworn statements of the client and creditor. A life estate is not necessarily adequate consideration. (7-1-95)T

14. No Benefit to Client. The Department determines the client received no benefit from the asset. This exception is allowed for two (2) situations: (7-1-95)T

a. The client or spouse held title to the property only as a trustee for another person, with no beneficial interest to himself. (7-1-95)T

b. The transfer was done to clear title to property, in which the client or spouse had no beneficial interest. (7-1-95)T

15. Fraud Victim. The client or spouse is the victim of fraud, misrepresentation, or coercion, and the transfer was made on that basis. The client or spouse must take any and all possible steps to recover the assets or property, or its equivalent in damages. The client must assign recovery rights to the state of Idaho. (7-1-95)T

16. Burial Trust. The client owns an irrevocable burial trust with face value over five thousand dollars (\$5,000), or a revocable burial trust of any value, and funds in the trust not earmarked for the client's burial expenses are payable to the State of Idaho, up to the amount of Medicaid paid in the person's behalf by the State of Idaho. (1-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

705. TREATMENT OF TRUSTS.

These rules apply to all Medicaid clients. These rules apply to trusts established with the client's assets, starting August 11, 1993. These rules also apply to trusts created before August 11, 1993, but funded August 11, 1993 or later. These rules do not apply to a trust established by the testator through a will. A trust established from an estate or through the

probate process is not a trust established by the testator through a will. A trust established by a will is treated using Section 276 of these rules. An annuity is a trust, but is evaluated as an asset transfer under Section 688 of these rules. A client has established a trust if his assets were used to form part or all of the body of the trust. The trust may be established by the client, the client's spouse, by a person (including a court or administrative body), with authority to act in place of, or on behalf of, the client or the client's spouse. The trust may be established by a person (including any court or administrative body) acting at the direction of or at the request of the client or spouse. These rules apply no matter why the trust was established, what discretion the trustees have, what restrictions are placed on making distributions from the trust, or what restrictions are placed on how the distributions are used. These rules apply whether the trust is revocable or irrevocable.

(7-1-95)T

01. Revocable Trust. The body (corpus) of a revocable trust is a resource. Payments from the trust to or for the client are income. Any other payments from the trust are considered an asset transfer, triggering an asset transfer penalty period. (1-1-94)

02. Irrevocable Trust. The part of the body of an irrevocable trust, from which corpus or income payments could be made to or for the client, is a resource. Payments made to or for the client are income. Payments from the trust for any other reason are asset transfers, triggering the asset transfer penalty. Any part of the trust from which payment cannot be made to, or for the benefit of, the client under any circumstances, is an asset transfer. The effective date of the transfer is the date the trust was established, or the date payments to the client were foreclosed. The value of the trust, for calculating the transfer penalty, includes any payments made from that portion of the trust after the date the trust was established or payments were foreclosed. (1-1-94)

03. Trust with Pension Money. Treat a trust established for the benefit of a person where all the money in the trust comes from the person's pensions, Social Security and his other income, as described in Section 691.01 or 691.02 of these rules, unless exempt from treatment as an asset transfer under Subsection 706.02 of these rules. The trust must be irrevocable. However, the trust document may include a revocability clause that will allow the trust to be revocable only for the circumstance where the client leaves the nursing facility or HCBS for a reason other than death, and is no longer eligible for Medicaid because of excess income. An income trust exempted from the asset transfer penalty under Section 691 of these rules, before July 1, 1994, and not meeting the requirements of Section 691 of these rules, as revised July 1, 1994, must be amended to keep the exemption. The client must obtain the necessary amendments within ninety (90) days of the date he was mailed a Department notice that his income trust no longer meets the exemption criteria. If the trust provides for payments for a purpose other than for income used to calculate patient liability or client participation, the trust is not exempt, unless the payments meet the hardship exemption in Subsection 693.12. Money paid into the pension trust is income for Medicaid eligibility the month received, unless the client lives in long-term care and is eligible for Medicaid except for excess income, or lives at home and is eligible for HCBS Medicaid except for excess income. The trust must be exempt from a trust penalty by Subsection 706.02 of these rules. Money paid into a pension trust is income for patient liability as provided in Subsection 611.07 of these rules. Income transferred to the trust as income used to calculate patient liability or client participation, and not used for that purpose, is subject to the asset transfer penalty in Section 690 of these rules, unless the income used for another purpose meets the hardship

exemption in Subsection 693.12 of these rules.

~~(7-1-95)F~~(1-1-96)T

04. Burial Trust. Treat an irrevocable burial trust with face value over five thousand dollars (\$5000) as described in Subsection 691.02 of these rules, unless exempt from treatment as an asset transfer under Subsection 693.16 of these rules. An irrevocable burial trust with face value over five thousand (\$5,000) dollars is subject to trust treatment in Subsection 705.02, unless it meets the exemption criteria in Subsection 706.04. An irrevocable burial trust with face value of five thousand dollars (\$5000) or less is not an asset transfer and is exempt from trust treatment.

(1-1-96)T

706. EXEMPT TRUST.

A trust, beginning August 11, 1993, is exempt from trust treatment under Section 705 of these rules and does not result in an asset transfer penalty if one (1) of the conditions in Subsections 706.01 through 706.03 of these rules is met. A trust exempt under this Subsection is not exempt from treatment under Section 707.

~~(7-1-95)F~~(1-1-96)T

01. Trust for Disabled Person. The trust contains the assets of a person under age sixty-five (65). The trust must be irrevocable. The person must be blind or totally disabled using the definitions of blindness and disability used in determining eligibility for Social Security and SSI benefits, as contained in 20 CFR Part 416. The trust is established for the person's benefit by his parent, grandparent, legal guardian or a court. The amount remaining in the trust after the person's death must be payable to the State of Idaho, up to the amount of Medicaid paid in the person's behalf by the State of Idaho.

(7-1-95)T

02. Trust with Pension Money. The trust is established for the benefit of a person. The person must live in long-term care and be eligible for Medicaid except for excess income or, if not living in long-term care, must be eligible for HCBS Medicaid except for excess income. All the money in the trust comes from the person's pensions, Social Security and his other income. The trust can include income earned by the trust. The trust must be irrevocable. However, the trust document may include a revocability clause that will allow the trust to be revocable only for the circumstance where the client leaves the nursing facility or HCBS for a reason other than death, and is no longer eligible for Medicaid because of excess income. An income trust exempted from the asset transfer penalty under Section 691 of these rules, before July 1, 1994, and not meeting the requirements of Section 691- of these rules, as revised July 1, 1994, must be amended to keep the exemption. The client must obtain the necessary amendments within ninety (90) days of the date he was mailed a Department notice that his income trust no longer meets the exemption criteria. A trust is not exempt if it provides for payments for a purpose other than for income used to calculate patient liability or client participation, unless the payment meets the conditions for a hardship waiver under Subsection 693.12- of these rules. The amount remaining in the trust after the person's death must be paid to the State of Idaho, up to the amount of Medicaid paid in the person's behalf by the State of Idaho. The trust may be dissolved without penalty when the client is no longer a long-term care or HCBS Medicaid client for a reason other than death.

~~(7-1-95)F~~(1-1-96)T

03. Trust Managed by Nonprofit Association for Disabled Person. The trust must be irrevocable. The trust contains the assets of a disabled person. The person must be blind or totally disabled using the definitions of blindness and disability used in determining eligibility for Social Security or SSI benefits as contained in 20 CFR Part

416. The trust is established and managed by a nonprofit association. The nonprofit association must not be the client, his parent or his grandparent. A separate account is maintained for the person. The trust may pool accounts for investment and management purposes. Accounts in the trust are established solely for the benefit of disabled persons by the person's parent, grandparent, or legal guardian, by the person or by a court. To the extent the amount remaining in the trust is not distributed by the trust, the amount remaining in the trust after the person's death must be paid to the state of Idaho, up to the amount of Medicaid paid in the person's behalf by the state of Idaho. (7-1-95)T

04. Burial Trust Over Five Thousand Dollars (\$5000). The trust must be irrevocable. Funds in the trust not earmarked for the client's burial expenses must be payable to the State of Idaho, up to the amount of Medicaid paid in the person's behalf by the State of Idaho. (1-1-96)T

(BREAK IN CONTINUITY OF SECTIONS)

996. ADMINISTRATIVE PROVISIONS.

All contested case appeals and requests for a fair hearing shall be governed by the provisions of Idaho Department of Health and Welfare Rules ~~and Regulations~~, Title 05, Chapter 03, ~~Section 300, et. seq.,~~ "Rules Governing Contested Cases Proceedings and Declaratory Rulings." (1-1-93)(1-1-96)T

IDAPA 16 -DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE
DOCKET NO. 16-0309-9506
NOTICE OF FINAL RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1996 Idaho State Legislature for final adoption.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a final rule. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The original text of the proposed rules was published in the October 4, 1995 Administrative Bulletin, Volume 95-10, pages 106 through 117.

The final rules are being adopted as proposed.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the final rule, contact Jack Weinberg at (208) 334-5795.

DATED this 3rd day of January, 1996.

Staci Welsh
Administrative Procedures Coordinator
DHW - Legal Services Division
450 West State Street - 10th Floor
PO Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-5548 fax

IDAPA 16
TITLE 03
Chapter 09

RULES GOVERNING MEDICAL ASSISTANCE

**There are no substantive changes
from the proposed rule text**

**The original text was published in the Idaho
Administrative Bulletin, Volume 95-10, October 4, 1995
Pages 106 through 117**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1996 Idaho State Legislature
for final adoption**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE
DOCKET NO. 16-0309-9507
NOTICE OF FINAL RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1996 Idaho State Legislature for final adoption.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a final rule. The action is authorized pursuant to Section(s) 56-218 and 56-218A, Idaho Code.

DESCRIPTIVE SUMMARY: The original text of the proposed rules was published in the October 4, 1995 Administrative Bulletin, Volume 95-10, pages 120 through 129.

The final rules are being adopted as proposed.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the final rule, contact Sharron Knutson at (208) 334-5923.

DATED this 3rd day of January, 1996.

Staci Welsh
Administrative Procedures Coordinator
DHW - Legal Services Division
450 West State Street - 10th Floor
PO Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-5548 fax

IDAPA 16
TITLE 03
Chapter 09

RULES GOVERNING MEDICAL ASSISTANCE

**There are no substantive changes
from the proposed rule text.**

**The original text was published in the Idaho
Administrative Bulletin, Volume 95-10, October 4, 1995
Pages 120 through 129**

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and is now pending review by the
1996 Idaho State Legislature
for final adoptio.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE
DOCKET NO. 16-0309-9601
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective January 3, 1996.

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 rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996.

DESCRIPTIVE SUMMARY: The following is the required finding and a concise statement of the supporting reasons for temporary rule-making and a statement in nontechnical language of the substance of the proposed rule:

Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect the public health, safety, or welfare.

Three (3) references in the rules which specify that the Field Office will be responsible for authorization of medical transportation related services would be changed to "the Department or its designee". The rule change would allow the Department to designate a contractor for management of the medical transportation services. Two (2) references in Section 150 indicate that prior authorization of nonemergency ambulance service will be obtained from the Field Office. One (1) reference in Section 015 indicates the Regional Medicaid Unit(RMU) will preauthorize all nonemergency care provided out-of-state for outpatient medical services.

It is anticipated that there will be a reduction in costs by using a contractor for management of the medical transportation services. This function is currently managed by the RMU's. RMU staff used in this work will have more time available for the other programs.

SUBMISSION OF WRITTEN COMMENTS, ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary or proposed rule, contact Jack Weinberg at (208) 334-5795.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before January 24, 1996.

DATED this 3rd day of January, 1996.

STACI WELSH
Administrative Procedures Coordinator

DHW - Division of Legal Services
450 West State Street, 10th Floor
PO Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0309-9601

015. CHOICE OF PROVIDERS.

01. Service Selection. Each recipient may obtain any services available from any participating institution, agency, pharmacy, or practitioner of his choice, unless enrolled in a coordinated care plan. This, however, does not prohibit the Department from establishing the fees which will be paid to providers for furnishing medical and remedial care available under the MA Program, or from setting standards relating to the qualifications of providers of such care. (6-1-94)

02. Lock-In Option. (7-1-93)

a. The Department may implement a total or partial lock-in program for any recipient found to be misusing the MA Program according to provisions in Subsection 190.05.; but. (12-31-91)

b. In situations where the recipient has been restricted to a recipient lock-in program, that recipient may choose the physician and pharmacy of his choice. The providers chosen by the lock-in recipient will be identified on the recipient's identification card each month. (11-10-81)

03. Out-of-State Care Provided Outside The State of Idaho. All out-of-state medical care requires preauthorization by the Department or the Department's designated Peer Review Organization (PRO), with the exception of bordering counties and emergency or urgent medical care. (2-15-93)

a. MA recipients may receive medical care and services from providers located in counties bordering Idaho without preauthorization by the Department. However PRO review may be required pursuant to Subsections 070.04 and 080.02. Approval by the Bureau of Medicaid Policy and Reimbursement, or its successor, is required for all long-term care outside the state of Idaho pursuant to Subsection 015.03.e. (2-15-93)

b. Emergency/urgent out-of-state care. (2-15-93)

i. Emergency/urgent inpatient hospital care must be reviewed using the same procedures and guidelines as in-state emergency hospital admissions by the PRO. Transfers from an Idaho Hospital to an out-of-state nonadjacent county hospital must be reviewed using the same procedures and guidelines as in-state transfers by the PRO.

~~(2-15-93)~~(1-3-96)T

ii. Emergency/urgent out-of-state outpatient hospital, clinic and/or physician services do not require review by the Department or the Department's approved PRO. The provider must supply sufficient information to support a finding that the care provided was for an emergency/urgent situation. (2-15-93)

c. The ~~Regional Medicaid Unit (RMU)~~ Department or its designee will preauthorize all nonemergency care provided out-of-state for outpatient hospital services, rural health clinics, federally qualified health centers, physician services and physician extender services, dental services, podiatrists services, optometric services, chiropractor services, home health services, physical therapy services, occupational therapy services, speech and audiology services, private duty nursing, clinic services, rehabilitative services, ~~services~~, and personal care services. ~~(2-15-93)~~(1-3-96)T

i. A request for out-of-state preauthorization may be initiated by the recipient, the recipient's physician(s), and/or the treating facility. The preauthorization must be obtained prior to the scheduled date of the nonemergency service. Failure to request a timely authorization will result in denial of Medicaid payment for the out-of-state care and any associated transportation costs. (2-15-93)

ii. There will be no Medicaid payment if the service is determined to be available closer to the recipient's residence or if no preauthorization was obtained prior to the date of the service as required. ~~(2-15-93)~~(1-3-96)T

iii. The only exceptions to the preauthorization requirement are: (2-15-93)

(a) When eligibility for Medicaid is determined after the service was provided. The service still must be determined to be not available closer to the recipient's residence. (2-15-93)

(b) Out-of-state nonadjacent county lab and x-ray services when the recipient does not have to travel outside the state for the services to be provided. (2-15-93)

(c) Mail order pharmacies will not require preauthorization when the recipient is not required to travel outside the state to receive the service. (2-15-93)

(d) Services for which Medicare is the primary payer of service. (2-15-93)

d. The Department's designated Peer Review Organization (PRO) will preauthorize all nonemergency inpatient hospital care provided out-of-state in a nonadjacent county. (2-15-93)

i. A request for out-of-state preauthorization may be initiated by the recipient, the recipient's physician(s), and/or the treating facility. The preauthorization must be obtained prior to the scheduled date of the nonemergency service. Failure to request a timely authorization will result in denial of Medicaid payment for the out-of-state care and any associated transportation costs. (2-15-93)

ii. There will be no Medicaid payment if the service is determined to be

available closer to the recipient's residence or if no preauthorization was obtained prior to the date of the service as required. ~~(2-15-93)~~(1-3-96)T

iii. The treating physician and the admitting facility is responsible for assuring that the Department's designated PRO has preauthorized the out-of-state nonemergency service for inpatient care. (2-15-93)

iv. No payment for services not preauthorized by the Department's designated PRO may be obtained from the recipient, absent the Medicaid recipient's informed decision to incur the cost of services. (2-15-93)

v. The only exceptions to the preauthorization requirement are: (2-15-93)

(a) When eligibility for Medicaid is determined after the service was provided. The service still must be determined not to be available closer to the recipient's residence. (2-15-93)

(b) Services for which Medicare is the primary payer of service. (2-15-93)

vi. The PRO review will be governed by provisions of the PRO provider manual as amended. (2-15-93)

e. Long-term care outside the State may be approved by the Department on an individual basis in temporary or emergency situations. Nursing home care will be limited to the period of time required to safely transport the recipient to an Idaho facility. Out-of-state care will not be approved on a permanent basis. (11-10-81)

(BREAK IN CONTINUITY OF SECTIONS)

150. TRANSPORTATION.

"Transportation" includes expenses for transportation, cost of meals and lodging en route to and from medical care and while receiving medical care. It also includes the cost of an attendant to accompany the recipient, if necessary, and the cost of the attendant's transportation, meals, lodging and, if the attendant is not a member of the recipient's family, salary. Preapproval of all "transportation" is required to insure that only necessary and reasonable expenses are paid. An exception to preapproval can be made when the service was emergency in nature or when it is determined reasonable and would have been approved if preauthorization had been requested. (7-15-87)

01. Scope of Coverage and General Requirements. (7-1-93)

a. The Department will reimburse for necessary transportation to and from providers of Medicaid approved medical services for a Medicaid recipient. Out-of-state transportation will not be reimbursed without obtaining authorizations required in Subsection 015.03. (2-15-93)

i. The Department or its designee may authorize the cost of an attendant or one (1) immediate family member to accompany the recipient, if necessary, and the cost of

the attendant's immediate family member's transportation, meals, lodging, and salary for the attendant, if he is not a member of the recipient's family. The Department will not pay room and board costs for an attendant once the recipient being escorted is admitted to an inpatient facility. The Department will pay room and board costs to one (1) immediate family member while the recipient is inpatient in a facility. (5-4-94)

ii. For any out-of-state requests for transportation costs, the Department or its designee will only authorize transportation costs to the nearest available medical facility. (2-15-93)

b. If private car transportation is used, the Department must authorize payment for such transportation at rates established by the Department. The private carrier is responsible to provide all necessary insurance at no cost to the Department. (2-15-93)

c. If other than private transportation is used, the transportation must be the least expensive yet the most appropriate form available. (11-10-81)

d. Reimbursement is to be made by the Department for necessary transportation to any person, including but not limited to the recipient, or a relative or friend of the recipient. (1-16-80)

e. Preauthorization of transportation for a MA recipient to consult with or be treated by a provider of medical care at a distant point, either in or out-of-state, is required. For purposes of these rules, a "distant point" is defined as more than ten (10) miles from the recipient's residence. The Department or its designee must determine the following: (2-15-93)

i. That adequate and comparable medical services are not available locally. When the services are available locally and/or more than one (1) service provider is within the local area, the Department's reimbursement is limited to round trip mileage to the closest provider of the necessary service; and ~~(2-15-93)~~(1-3-96)T

ii. That an appointment has been made with a provider at the distant point; and (11-10-81)

iii. If applicable, that a referral has been made by the patient's attending physician; and (1-16-80)

iv. When lodging is required, the Department or its designee will preauthorize it insuring that the least expensive yet most appropriate lodging is provided. Receipts for lodging must be attached to the appropriate claim form submitted to the Department. (2-15-93)

v. Transportation will not be authorized unless out-of-state care authorizations have been obtained as required in Subsection 015.03. Exceptions to this requirement are: Veteran's Hospitals and specialty hospitals which do not make a charge to the general public. Therefore, no authorization for hospitalization is made by Medicaid. (2-15-93)

vi. The Department or its designee will not authorize transportation and/or

lodging when other sources are available at minimal or no cost such as Red Cross, Easter Seal Society, Cancer Society, fraternal and church organizations, Ronald McDonald Houses, and other private or social agencies which provide transportation and/or lodging.
(2-15-93)

f. The Department will only authorize meals when overnight travel to a distant point is required and cooking facilities are not available at a reasonable cost. The actual cost of the meals will be authorized up to the amount allowed by the State Board of Examiners for state employees.
(2-15-93)

02. Ambulance Service. Ambulance service is reimbursable in emergency situations or when prior authorization has been obtained from the ~~Field Office~~ Department or its designee. Payment for ambulance services is subject to the following limitations:
~~(11-10-81)(1-3-96)T~~

a. If a MA recipient is also a Medicare recipient, a provider must first bill Medicare for services rendered; and
(11-10-81)

b. If Medicare does not pay the entire bill for ambulance service, the provider is to secure an "Explanation of Benefits" (EOB) from Medicare, attach it to the appropriate claim form and submit it to the Department; and
(11-10-81)

c. For Medicare recipients, the Department will reimburse providers for deductible and co-insurance not to exceed the usual and customary fees; and
(11-10-81)

d. The Department's payment for ambulance services is not to exceed usual and customary charges as determined by Medicare; and
(11-10-81)

e. Before payment is made by the Department, a MA recipient must utilize any available insurance benefits to pay for ambulance services.
(11-10-81)

f. If an emergency does not exist, prior written authorization to use ambulance services must be secured from the ~~Field Office~~ Department or its designee.
~~(11-10-81)(1-6-96)T~~

g. Each billing invoice for ambulance service must have prior authorization attached, if appropriate, and be submitted to the Department for payment.
(11-10-81)

h. Ambulance service must be medically necessary and reasonable in order to be covered by MA. Medical necessity is established when the recipient's condition is such that use of any other method of transportation would endanger his life.
(11-10-81)

03. Destination. Only local transportation by ambulance is covered. In exceptional situations where the ambulance transportation originates beyond the locality to which the recipient was transported, full payment may be made for such services only if the evidence clearly establishes that such institution is the nearest one with appropriate facilities.
(11-10-81)

04. Air Ambulance Service. In some areas, transportation by airplane may

qualify as ambulance services. Air ambulance services are covered only when: (11-10-81)

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

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

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

d. Air ambulance must be approved in advance by the Department except in life or death situations. (11-10-81)

e. The operator of the air service must bill the air ambulance service rather than the hospital receiving the recipient. (11-10-81)

05. Reimbursement Conditions. (11-10-81)

a. Base rate for ambulance services includes customary patient care equipment including such items as stretcher, clean linens, reuseable devices, and reuseable equipment. (11-10-81)

b. Not to be included as a base rate and to be billed separately are charges for each nonreuseable item and disposable supply, such as oxygen, triangular bandage and dressing, which may be required for the care of the recipient during transport. (11-10-81)

c. Charges for extra attendants are not covered except for justified situations. (11-10-81)

i. Use of extra attendants must be supported by documentation attached to the claim form indicating the necessity and the type of specialty of the attendant(s) to receive consideration for payment; and (11-10-81)

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

d. Charges for cardiac monitor and other life saving equipment which is not customary patient care equipment will be considered for payment under the base rate for advanced life support. (11-10-81)

e. Reimbursement for waiting time will not be considered unless documentation attached to the claim form identifying the length of the waiting time establishes its medical necessity or that it was physician ordered. Limited waiting time will be allowed for round trips (see Subsection 150.05.h.). (12-31-91)

f. Oxygen will be reimbursed according to volume used by the patient during transport. The volume must appear in that portion of the claim form describing services rendered. (11-10-81)

g. If an ambulance vehicle and crew have returned to a base station and under a physician's order, the recipient must be transferred from one (1) facility to another facility because of medical need, two (2) base rate charges, in addition to the mileage, will be considered for reimbursement. If an ambulance vehicle and crew do not return to a base station and the patient is transferred from one (1) facility to another facility, charges for only one (1) base rate, waiting time, and mileage will be considered. (11-10-81)

h. Round trip charges will be allowed only in circumstances when a hospital in-patient goes to another hospital to obtain specialized services not available in the hospital in which the recipient is an in-patient and the hospital furnishing the service is the nearest one with such facilities. (11-10-81)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE
DOCKET NO. 16-0309-9602
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective January 3, 1996.

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 rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996.

DESCRIPTIVE SUMMARY: The following is the required finding and a concise statement of the supporting reasons for temporary rule-making and a statement in nontechnical language of the substance of the proposed rule:

Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect the public health, safety, or welfare.

This proposed rule change will allow Certified Registered Nurse Anesthetists (CRNA) to bill directly for services provided to Medicaid eligible consumers. This payment method will result in a savings for the Medicaid Program of approximately ten percent (10%) for anesthesia services.

SUBMISSION OF WRITTEN COMMENTS, ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary or proposed rule, contact Robbie Charlton at (208) 334-5795.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before January 24, 1996.

DATED this 3rd day of January, 1996.

STACI WELSH
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
PO Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0309-9602

003. DEFINITIONS.

For the purposes of these rules, the following terms will be used, as defined below:

(11-10-81)

01. Abortion. The medical procedure necessary for the termination of pregnancy endangering the life of the woman, or the result of rape or incest, or determined to be medically necessary in order to save the health of the woman. This Subsection is effective retroactively from October 1, 1993. (2-17-94)

02. Access Unit (ACCESS). Access to Care Coordination, Evaluation, Services and Supports. A regional multidisciplinary, transdivisional unit that has the responsibility of determining eligibility, authorizing services, and assuring quality for services and supports for individuals with developmental disabilities. (7-1-95)

03. Ambulatory Surgical Center (ASC). Any distinct entity that operates exclusively for the purpose of providing surgical services to patients not requiring hospitalization, and which is certified by the U.S. Department of Health and Human Services as an ASC. (~~9-30-84~~)(1-3-96)T

04. Bill. The itemized cost of all services provided to one (1) recipient on a single claim form. (11-10-81)

05. Bureau. The Bureau of Medicaid Policy and Reimbursement within the Division of ~~Welfare~~ Medicaid, Idaho Department of Health and Welfare, which has the responsibility for administration of the Medical Assistance Program for the state of Idaho. (~~8-1-92~~)(1-3-96)T

06. Bureau of Systems and Operations. A Bureau of the Division of ~~Welfare~~ Medicaid charged with the responsibility of investigation and seeking prosecution of cases involving Medicaid fraud. (~~8-1-92~~)(1-3-96)T

07. Buy-In Coverage. The amount the State pays for Part B of Title C XVIII on behalf of the A/R. (11-10-81)

08. Category I Sanctions. Less severe administrative sanctions, which can be employed concurrently, which neither require notification nor are subject to appeal unless specifically allowed. (11-10-81)

09. Category II Sanctions. Severe administrative sanctions which are appealable as provided for in ~~Idaho Department of Health and Welfare Rules, Title 5, Chapter 3, Sections 301, et seq., "IDAPA 16.05.03., Rules Governing Contested Case Proceedings and Declaratory Rulings."~~ (~~10-1-94~~)(1-3-96)T

10. Central Office. The administrative headquarters for the Idaho

Department of Health and Welfare which are located in the State Office Building (State Towers), 450 West State Street, Boise, Idaho 83720. (11-10-81)

11. Certified Registered Nurse Anesthetist (CRNA). A Registered Nurse qualified by advanced training in an accredited program in the specialty of nurse anesthesia to manage the care of the patient during the administration of anesthesia in selected surgical situations. (1-3-96)T

12. Claim. An itemized bill for services rendered to one (1) recipient by a provider submitted on any of the following Department claim forms: (11-10-81)

- a. DHW PH 3-80, "Physician Invoice" or such other claim form as may be prescribed by the Department; or (11-10-81)
- b. DHW 03-80, "Title XIX Pharmacy Claim"; or (11-10-81)
- c. DHW-AD78, "Adjustment Request"; or (11-10-81)
- d. DHW OP REV 4-80, "Hospital Out-patient"; or (11-10-81)
- e. DHW IP 3-80, "Hospital In-patient"; or (11-10-81)
- f. DHW 0137, "Attending Dentist's Statement"; or (11-10-81)
- g. DHW NH 3-80, "Nursing Home Statement"; or (11-10-81)
- h. HW-0034 "Consent Form" for sterilization procedures. (11-10-81)

13. Collateral Contacts. Contacts made with a parent, guardian, or other individual having a primary relationship to the patient by an appropriately qualified treatment professional. The contact must be ordered by a physician, contained in the treatment plan, directed at the medical treatment of the patient, and documented in the progress notes or continuous service record. (10-6-88)

14. Contraception. The provision of drugs or devices to prevent pregnancy. (1-16-80)

15. Department. The State of Idaho Department of Health and Welfare (DHW). (11-10-81)

16. Director. The Director of the Idaho Department of Health and Welfare. (11-10-81)

17. Durable Medical Equipment (DME). Equipment other than prosthetics or orthotics which can withstand repeated use by one or more individual, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury, is appropriate for use in the home, and is reasonable and necessary for the treatment of an illness or injury for a MA recipient. (11-1-86)

18. Educational Services. Services which are provided in buildings, rooms

or areas designated or used as a school or as educational facilities; which are provided during the specific hours and time periods in which the educational instruction takes place in the normal school day and period of time for these students; and which are included in the individual educational plan for the recipient or required by federal and state educational statutes or regulations; are not "related services" as listed in Section 120; and such services are provided to school age individuals as defined in Section 33-201, Idaho Code. (12-31-91)

~~189.~~ Eligibility Manuals. ~~Idaho Department of Health and Welfare Rules, Title 03, Chapter 01, "IDAPA 16.03.01., Rules Governing Eligibility for Aid for Families with Dependent Children," and Title 03, Chapter 05, "IDAPA 16.03.05., Rules Governing Eligibility for the Aged, Blind and Disabled."~~ (7-1-94)(1-3-96)T

~~19~~20. Emergency. Any situation arising in the medical condition of a patient, which, after applying the prevailing medical standards of judgement and practice within the community requires immediate medical intervention. All obstetrical deliveries are considered emergencies. (10-29-92)

201. Endangerment of Life. A condition where, in the opinion of two (2) licensed physicians, a pregnant woman may die or suffer severe and long lasting physical health damage if the fetus is carried to term. (1-16-80)

202. Health Authority. An authorized official of any of the seven (7) Idaho District Health Departments or their satellite centers. (1-16-80)

~~223.~~ Home Health Services. Services ordered by a physician and performed by a licensed nurse, registered physical therapist, or home health aide as defined in ~~Idaho Department of Health and Welfare Rules, Title 03, Chapter 07, IDAPA 16.03.07., Subsection 002.11, "Rules for Proprietary Home Health Agencies."~~ (7-1-94)(1-3-96)T

234. In-patient Hospital Services. Services that are ordinarily furnished in a hospital for the care and treatment of an in-patient under the direction of a physician or dentist except for those services provided in mental hospitals. (11-10-81)

245. In-State Care. Medical services provided within the Idaho border or in counties bordering Idaho are considered to be in-state, excluding long term care. (2-5-93)

256. Inspection of Care Team (IOCT). An interdisciplinary team which provides inspection of care in intermediate care facilities for the mentally retarded approved by the Department as providers of care for eligible medical assistance recipients. Such a team is composed of: (7-1-94)

- a. At least one (1) registered nurse; and (7-1-94)
- b. One (1) qualified mental retardation professional; and when required, one (1) of the following: (7-1-94)
 - i. A consultant physician; or (7-1-94)
 - ii. A consultant social worker; or (7-1-94)

iii. When appropriate, other health and human services personnel responsible to the Department as employees or consultants. (7-1-94)

~~267~~. Interested Physician. (11-10-81)

a. A physician who performs a Medicaid funded abortion for a fee; or (11-10-81)

b. A physician who is related by blood or marriage to another physician performing a Medicaid funded abortion. (11-10-81)

~~278~~. Intermediate Care Facility Services. Those services furnished in an intermediate care facility as defined in 42 CFR 440.150, but excluding services provided in a Christian Science Sanatoria. (11-10-81)

~~289~~. Law Enforcement Authority. An agency recognized by the state of Idaho in enforcement of established state and federal statutes. (11-10-81)

~~2930~~. Legend Drug. A drug that requires by federal or state regulation, the order of a licensed medical practitioner before dispensing or administration to the patient. (11-10-81)

~~301~~. Licensed Psychologist. An individual who is licensed to practice psychology under Chapter 23, Title 54, Idaho Code. (10-6-88)

~~312~~. Licensed, Qualified Professionals. Individuals licensed, registered, or certified by national certification standards in their respective discipline, or otherwise qualified within the state of Idaho. (11-10-81)

~~323~~. Lock-in Program. An administrative sanction, required of recipients found to have misused the services provided by the Medical Assistance Program, requiring the recipient to select one (1) provider in the identified area(s) of misuse to serve as the primary provider. (11-10-81)

~~334~~. Medical Care Treatment Plan. The problem list, clinical diagnosis, and treatment plan of care administered by or under the direct supervision of a physician. (11-10-81)

~~345~~. Medical Supplies. Items excluding drugs and biologicals and equipment furnished incident to a physician's professional services commonly furnished in a physician's office or items ordered by a physician for the treatment of a specific medical condition. These items are generally not useful to an individual in the absence of an illness and are consumable, nonreusable, disposable, and generally have no salvage value. Surgical dressings, ace bandages, splints and casts, and other devices used for reduction of fractures or dislocations are considered supplies. (11-1-86)

~~356~~. Non-legend Drug. Any drug the distribution of which is not subject to the ordering, dispensing, or administering by a licensed medical practitioner. (11-10-81)

367. Nurse Midwife. A registered nurse (RN) who is currently licensed to practice in Idaho, who meets applicable standards as found in the Idaho Nurse Practice Act, Rules, Regulations, and Minimum Standards promulgated by the Idaho State Board of Nursing, and who meets one of the following provisions: (11-10-81)

a. Is currently certified as a Nurse Midwife by the American College of Nurse Midwives; or (11-10-81)

b. Has satisfactorily completed a formal educational program of at least one (1) academic year that: (11-10-81)

i. Prepares a RN to furnish gynecological and obstetrical care to women during pregnancy, delivery and postpartum, and care to normal newborns; (11-10-81)

ii. Upon completion, qualifies a RN to take the certification examination offered by the American College of Nurse Midwives; (11-10-81)

iii. Includes at least four (4) months, in the aggregate, of classroom instruction and a component of supervised clinical practice; and (11-10-81)

iv. Awards a degree, diploma, or certificate to persons who successfully complete the program. (11-10-81)

378. Nurse Practitioner. A registered nurse (RN) who is currently licensed to practice in this State, who meets applicable standards as found in the Idaho Nurse Practice Act, Rules, Regulations, and Minimum Standards promulgated by the Idaho State Board of Nursing, and who meets one of the following provisions: (11-10-81)

a. Is currently certified as a Primary Care Nurse Practitioner by the American Nurses Association or by the National Board of Pediatric Nurse Practitioners and Associates, or by the Nurses Association of the American College of Obstetricians and Gynecologists; or (11-10-81)

b. Has satisfactorily completed a formal one (1) year academic year educational program that: (11-10-81)

i. Prepares a RN to perform an expanded role in the delivery of primary care; (11-10-81)

ii. Includes at least four (4) months, in the aggregate, of classroom instruction and a component of supervised clinical practice; and (11-10-81)

iii. Awards a degree, diploma, or certificate to persons who successfully complete the program. (11-10-81)

389. Nursing Facility (NF). An institution, or distinct part of an institution, which is primarily engaged in providing skilled nursing care and related services for residents. The residents must require medical or nursing care, or rehabilitation services for injuries, disabilities, or sickness. An institution must provide, on a regular basis, health-related care and services to individuals; who because of their mental or physical condition

require care and services above the level of room, board, and supervision; which are made available to them only through institutional facilities, not primarily for care and treatment of mental diseases. The institution is licensed in the state of Idaho pursuant to Section 39-1301, Idaho Code and is certified as a nursing facility pursuant to 42 CFR 405.1120 through 405.1136. (7-1-94)

~~394~~0. Orthotic. Pertaining to or promoting the straightening of a deformed or distorted part. (10-1-91)

401. Orthotic and Prosthetic Professional. An individual certified or registered by the American Board for Certification in Orthotics and/or Prosthetics. (10-1-91)

442. Otologist. A licensed physician who specializes in the diagnosis and treatment of hearing disorders and diseases of the ear. (11-10-81)

423. Out-patient Hospital Services. Preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to a patient not in need of hospital bed accommodation. (11-10-81)

434. Out-of-state Care. Medical service that is not provided in Idaho or bordering counties ~~are~~ is considered out-of-state. Bordering counties outside Idaho are considered out-of-state for the purpose of authorizing long term care. ~~(2-15-93)~~(1-3-96)T

445. Oxygen-Related Equipment. Equipment which is utilized or acquired for the routine administration of oxygen in the home. This includes oxygen tanks, regulators, humidification nebulizers, oxygen concentrators, and related equipment. Equipment which is used solely for the administration of medication into the lungs is excluded from this definition. (11-1-86)

456. Patient. The person undergoing treatment or receiving services from a provider. (11-10-81)

467. Physician. A person possessing a Doctorate of Medicine degree or a Doctor of Osteopathy degree and licensed to practice medicine by a state or United States territory. (10-1-91)

478. Physician's Assistant. A person who is licensed by the Idaho Board of Medicine and who meets at least one (1) of the following provisions: ~~(1-10-81)~~(1-3-96)T

a. Is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or (11-10-81)

b. Has satisfactorily completed a program for preparing physician's assistants that: (11-10-81)

i. Was at least one (1) academic year in length; and (11-10-81)

ii. Consisted of supervised clinical practice and at least four (4) months, in the aggregate, of classroom instruction directed toward preparing students to deliver health

care; and (11-10-81)

iii. Was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation. (11-10-81)

489. Plan of Care. A written description of medical, remedial and/or rehabilitative services to be provided to a recipient, developed by or under the direction and written approval of a physician. Medications, services and treatments are identified specifically as to amount, type and duration of service. (10-6-88)

4950. Premium or Subscription Charge. The per capita amount paid by the Department for each eligible MA recipient enrolled under a contract for the provisions of medical and rehabilitative care and services whether or not such a recipient receives care and services during the contract period. (11-10-81)

501. Property. The homestead and all personal and real property in which the recipient has a legal interest. (11-10-81)

542. Prosthetic Device. Replacement, corrective, or supportive devices prescribed by a physician or other licensed practitioner of the healing arts profession within the scope of his practice as defined by state law to: (10-1-91)

a. Artificially replace a missing portion of the body; or (10-1-91)

b. Prevent or correct physical deformities or malfunctions; or (10-1-91)

c. Support a weak or deformed portion of the body. (10-1-91)

523. Provider. Any individual, organization or business entity furnishing medical goods or services in compliance with this chapter and who has applied for and received a provider number, pursuant to Section 020, and who has entered into a written provider agreement, pursuant to Section 040. (~~12-31-91~~)(1-3-96)T

534. Provider Agreement. An agreement between the provider and the Department, entered into pursuant to Section 040. (12-31-91)

545. Provider Reimbursement Manual. ~~Idaho Department of Health and Welfare Rules, Title 03, Chapter 10, " IDAPA 16.03.10., Rules Governing Provider Reimbursement in Idaho."~~ (~~7-1-94~~)(1-3-96)T

556. Psychology Assistant. An individual who practices psychology under the supervision of a licensed psychologist when required under Chapter 23, Title 54, Idaho Code, and Section H of the "Rules of the Idaho State Board of Psychologist Examiners." (7-1-94)

567. Recipient. An individual who is receiving Medical Assistance. (11-10-81)

578. Recreational Therapy (Services). Those activities or services that are generally perceived as recreation such as, but not limited to, fishing, hunting, camping,

attendance or participation in sporting events or practices, attendance at concerts, fairs or rodeos, skiing, sightseeing, boating, bowling, swimming, training for special olympics, and special day parties (birthday, Christmas, etc.). (10-6-88)

589. Regional Nurse Reviewer (RNR). A registered nurse who reviews and makes determinations on applications for entitlement to and continued participation in Title XIX long term care for the Department. (7-1-94)

5960. Social Security Act. 42 USC 101 et seq., authorizing, in part, federal grants to the states for medical assistance to low-income persons meeting certain criteria. (11-10-81)

601. Specialized Family Home. Living situation where a maximum of two (2) waiver recipients who do not require a skilled nursing service live with a provider family of residential habilitation services. (7-1-95)

642. Subluxation. A partial or incomplete dislocation of the spine. (11-10-81)

623. Supervision. Procedural guidance by a qualified person and initial direction and periodic inspection of the actual act, at the site of service delivery. (6-21-90)

634. Title XVIII. That program established by the 1965 Social Security Act authorizing funding for the Medicare Program for the aged, blind, and disabled. The term is interchangeable with "Medicare." (11-10-81)

645. Title XIX. That program established by the 1965 Social Security Act authorizing the Medical Assistance Program, commonly referred to as "Medicaid," which is jointly financed by the federal and state governments and administered by the states. The term is interchangeable with "Medicaid." (11-10-81)

656. Third Party. Includes a person, institution, corporation, public or private agency that is liable to pay all or part of the medical cost of injury, disease, or disability of a recipient of medical assistance. (11-10-81)

667. Transportation. The physical movement of a recipient to and from a medical appointment or service by the recipient, another person, taxi or common carrier. (10-6-88)

678. Utilization Control (UC). A program of prepayment screening and annual review by at least one (1) Regional Nurse Reviewer to determine the appropriateness of medical entitlement and the need for continued medical entitlement of applicants/recipients to Title XIX benefits in a NF. (7-1-94)

689. Utilization Control Team (UCT). A team of Regional Nurse Reviewers which conducts on-site reviews of the care and services in the NFs approved by the Department as providers of care for eligible medical assistance recipients. (7-1-94)

6970. Vocational Services. Services or programs which are directly related to the preparation of individuals for paid or unpaid employment. The test of the vocational nature of the service is whether the services are provided with the expectation that the

recipient would be able to participate in a sheltered workshop or in the general work force within one (1) year.(10-6-88)

~~701.~~ Community Living Home. A licensed ICF/MR facility of eight (8) beds or less that has converted to a group home to provide residential habilitation services to developmentally disabled waiver recipients. Room and board is not included in the reimbursement rate. (7-1-95)

004. ABBREVIATIONS.

For these rules, the following abbreviations will be as defined: (7-1-93)

- | | | |
|------------------|---|------------------|
| 01. | AABD. Aid to the Aged, Blind, and Disabled. | (11-10-81) |
| 02. | AAP. American Academy of Pediatrics. | (8-1-92) |
| Code. 03. | APA. The Administrative Procedures Act, Title 67, Chapter 52, Idaho | (11-10-81) |
| 04. | A/R. Applicant/Recipient. | (11-10-81) |
| 05. | ASC. Ambulatory Surgical Center. | (9-30-84) |
| 06. | ASHA. American Speech and Hearing Association. | (11-10-81) |
| 07. | B.I.A. Bureau of Indian Affairs. | (11-10-81) |
| 08. | CFR. Code of Federal Regulations. | (11-10-81) |
| 09. | <u>CRNA. Certified Registered Nurse Anesthetist.</u> | <u>(1-3-96)T</u> |
| 0910. | CRVS. California Relative Value Studies. | (11-10-81) |
| 101. | DME. Durable Medical Equipment. | (11-1-86) |
| 142. | D.O. Doctor of Osteopathy. | (11-10-81) |
| 123. | DVR. Department of Vocational Rehabilitation. | (11-10-81) |
| 134. | EAC. Estimated Acquisition Cost. | (11-10-81) |
| 145. | EOMB. Explanation of Medical Benefits. | (11-10-81) |
| 156. | EPSDT. Early and Periodic Screening, Diagnosis, and Treatment. | (11-10-81) |
| 167. | ICF/MD. Intermediate Care Facility/Medical Disease. | (11-10-81) |
| 178. | ICF/MR. Intermediate Care Facility/Mentally Retarded. | (11-10-81) |
| 189. | IOC. Inspection of Care. | (1-1-83) |

19 <u>20</u> .	IOCT. Inspection of Care Team.	(1-1-83)
20 <u>1</u> .	IRS. Internal Revenue Service.	(11-10-81)
21 <u>2</u> .	MA. Medical Assistance.	(11-10-81)
22 <u>3</u> .	MAC. Maximum Allowable Cost.	(11-10-81)
23 <u>4</u> .	M.D. Medical Doctor.	(11-10-81)
24 <u>5</u> .	MMIS. Medicaid Management Information System.	(11-10-81)
25 <u>6</u> .	NF. Licensed Nursing Facility.	(8-1-92)
26 <u>7</u> .	PASARR. Preadmission Screening and Annual Resident Review.	(7-1-94)
27 <u>8</u> .	PSRO. Professional Services Review Organization.	(11-10-81)
28 <u>9</u> .	QMHP. Qualified Mental Health Professional.	(7-1-94)
29 <u>30</u> .	QMRP. Qualified Mental Retardation Professional.	(4-30-92)
30 <u>1</u> .	REOMB. Recipient's Explanation of Medicaid Benefits.	(11-10-81)
31 <u>2</u> .	R.N. Registered Nurse.	(4-30-92)
32 <u>3</u> .	RSDI. Retirement, Survivors, and Disability Insurance.	(11-10-81)
33 <u>4</u> .	SMA. State Maximum Allowance.	(11-10-81)
34 <u>5</u> .	SSA. Social Security Administration.	(11-10-81)
35 <u>6</u> .	SSI. Supplemental Security Income.	(11-10-81)
36 <u>7</u> .	S/UR. Surveillance and Utilization Review.	(11-10-81)
37 <u>8</u> .	TPL. Third Party Liability.	(11-10-81)
38 <u>9</u> .	UC. Utilization Control.	(7-1-94)
39 <u>40</u> .	UCT. Utilization Control Team.	(7-1-94)
40 <u>1</u> .	UR. Utilization Review.	(11-10-81)

(BREAK IN CONTINUITY OF SECTIONS)

071. PAYMENT FOR MEDICAL PROCEDURES PROVIDED BY CERTIFIED REGISTERED NURSE ANESTHETISTS, NURSE PRACTITIONERS, NURSE MIDWIVES, AND PHYSICIAN ASSISTANTS.

The Medicaid Program will pay for services provided by certified registered nurse anesthetists (CRNA), nurse practitioners (NP), nurse midwives (NM), and physician assistants (PA), as defined in Subsections 003.2911, 003.308, 003.37 and 003.3548 and under the following provisions: ~~(12-31-91)~~(1-3-96)T

01. Identification of Services. The required services shall be covered under the legal scope of practice as identified by the appropriate State rules of the CRNA, NP, NM, or PA. ~~(11-10-81)~~(1-3-96)T

02. Deliverance of Services. The services shall be delivered under physician supervision as required by each program. (11-10-81)

03. Billing of Services. Billing for the services shall be as provided by the CRNA, NP, NM, or PA, and not represented as a physician service. ~~(11-10-81)~~(1-3-96)T

04. Payments Made Directly to CRNA. Payments under the fee schedule shall be made directly to the CRNA under the individual provider number assigned to the CRNA. Hospitals, physicians and ambulatory surgical centers who employ or contract with the CRNA may no longer bill for the services of the CRNA under the hospital or physician provider numbers for dates of service on or after January 3, 1996. (1-3-96)T

~~04.05.~~ Reimbursement Limits. The Department shall establish reimbursement limits for each service to be delivered by the CRNA, NP, NM, or PA. Such services shall be reimbursed as either the billed charge or reimbursement limit established by the Department, whichever is less. ~~(11-10-81)~~(1-3-96)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
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EFFECTIVE DATE: These temporary rules are effective January 3, 1996.

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 rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996.

DESCRIPTIVE SUMMARY: The following is the required finding and a concise statement of the supporting reasons for temporary rule-making and a statement in nontechnical language of the substance of the proposed rule:

Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect the public health, safety, or welfare.

The proposed rule change will add a sentence to the rules that will allow medical doctors doing audiology exams, based on their documented judgement, to forego the impedance test required for a hearing aid authorization. This will result in savings by eliminating unnecessary procedures. There will be a savings rather than any extra costs by amending this rule.

SUBMISSION OF WRITTEN COMMENTS, ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary or proposed rule, contact Robbie Charlton at (208) 334-5795.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before January 24, 1996.

DATED this 3rd day of January, 1996.

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Administrative Procedures Coordinator
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TEXT OF DOCKET NO. 16-0309-9603

108. AUDIOLOGY SERVICES.

The Department will pay for audiometric services and supplies in accordance with the following guidelines and limitations: (10-1-91)

01. Audiology Examinations. When specifically ordered by a physician, all recipients are eligible for audiometric examination and testing once in each calendar year. Basic audiometric testing by certified audiologists and/or licensed physicians will be covered without prior approval. (10-1-91)

02. Additional Testing. Any hearing testing beyond the basic comprehensive audiometry and impedance testing must be ordered in writing before the testing is done. A copy of the physician's order must be attached to the claim for payment. (10-1-91)

03. Hearing Aids. The Department will cover the purchase of one (1) hearing aid per recipient with the following requirements and limitations: (10-1-91)

a. All hearing aid purchases require prior authorization from the Department. (10-22-93)

b. The following information shall be included with the request for preauthorization: the recipient's diagnosis, prognosis, the results of the basic comprehensive audiometric exam which includes pure tone, air and bone conduction, speech reception threshold, most comfortable loudness, discrimination and impedance testing, the brand name and model type needed. However, the Department will allow medical doctors to forego the impedance test based on their documented judgement. (~~10-22-93~~)(1-3-96)T

c. Covered services included with the purchase of the hearing aid include proper fitting and refitting of the ear mold and/or aid during the first year, instructions related to the aid's use, and extended insurance coverage for two (2) years. (10-22-93)

d. The following services may be covered in addition to the purchase of the hearing aid without prior authorization: batteries purchased on a monthly basis, follow-up testing, necessary repairs resulting from normal use after the second year and the refitting of the hearing aid or additional ear molds no more often than forty-eight (48) months from the last fitting. (~~10-22-93~~)(1-3-96)T

e. Lost, misplaced, stolen or destroyed hearing aids shall be the responsibility of the recipient. The Department shall have no responsibility for the replacement of any hearing aid. In addition, the Department shall have no responsibility for the repair of hearing aids that have been damaged as a result of neglect, abuse or use of the aid in a manner for which it was not intended. (~~10-1-91~~)(1-3-96)T

04. Payment Procedures. The following procedures shall be followed when billing the Department: (10-1-91)

a. The Department will only pay the hearing aid provider for an eligible Medicaid recipient if a properly completed claim is submitted to the Department within the one (1) year billing limitation. (10-22-93)

b. Payment will be based upon the Department's fee schedule (See Subsections 060.04. and 060.05.). (12-31-91)

05. Limitations. The following limitations shall apply to audiometric services and supplies: (10-1-91)

a. Hearing aid selection is restricted to the type and model which the Bureau has prior approved. (10-22-93)

b. Follow-up services are included in the purchase of the hearing aid for the first two (2) years including, but not limited to, repair, servicing and refitting of ear molds. ~~(10-22-93)~~(1-3-96)T

c. Providers are required to maintain warranty and insurance information on file on each hearing aid purchased from them by the Department and are responsible for exercising the use of the warranty or insurance during the first year following the purchase of the hearing aid; ~~(10-1-91)~~(1-3-96)T

d. Providers shall not bill recipients for charges in excess of the fees allowed by the Department for materials and services; ~~(10-1-91)~~(1-3-96)T

e. Audiology services will be a benefit for EPSDT eligible recipients under the age of twenty-one (21) (See Section 100.). (12-31-91)

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

DOCKET NO. 16-0309-9604

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective January 3, 1996.

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 rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996.

DESCRIPTIVE SUMMARY: The following is the required finding and a concise statement of the supporting reasons for temporary rule-making and a statement in nontechnical language of the substance of the proposed rule:

Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect the public health, safety, or welfare and to confer a benefit.

This proposed rule change will streamline costs and bring Medicaid requirements on line with Medicare requirements. It will reduce confusion for the Medicaid client and provider. Once one (1) certification established the medical necessity for continued home oxygen, subsequent recertifications will not be routinely required. The Department may require subsequent recertification in individual cases. There will be a savings in administrative costs by amending this rule.

SUBMISSION OF WRITTEN COMMENTS, ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary or proposed rule, contact Robbie Charlton at (208) 334-5795.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before January 24, 1996.

DATED this 3rd day of January, 1996.

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TEXT OF DOCKET NO. 16-0309-9604

107. OXYGEN AND RELATED EQUIPMENT.

MA will provide payment for oxygen and oxygen-related equipment based upon the Department's fee schedule. Such services are considered reasonable and necessary only with recipients with significant hypoxemia. In addition, providers must be eligible for Medicare program participation prior to the issuance of a Medicaid provider number.

(11-1-86)

01. Medical Documentation. Oxygen and related equipment are provided only upon the written order of a physician. Once received, such orders will remain in effect for one (1) year and must contain at least the following:

(11-1-86)

a. A diagnosis of the disease requiring home oxygen use; and

(11-1-86)

b. The flow rate and oxygen concentration; and

(11-1-86)

c. An estimate of the frequency and duration of use. A prescription of "oxygen PRN" or "oxygen as needed" is not acceptable.

(11-1-86)

d. Request for home use oxygen must contain the laboratory evidence prescribed in Subsection 107.02.

(5-1-92)

i. Age zero (0) to six (6) months of age require physician orders ONLY.

(10-22-93)

ii. Age seven (7) months to twenty (20) years of age require letter of authorization from the EPSDT Program Coordinator as being "medically necessary" if lab studies and MD order are not provided which meet program requirements of Subsection 107.02.

~~(10-22-93)~~(1-3-96)T

iii. Age twenty-one (21) or older require lab studies and physician orders. No preauthorization is required.

(10-22-93)

e. A portable oxygen system may be covered to complement a stationary system if necessary, or by itself, to provide oxygen for use during exercise by a recipient with exercise-induced hypoxemia. To be considered, a request for a portable oxygen system must include:

(10-22-93)

i. A description of the activities or exercise routine that a recipient undertakes on a regular basis which requires a portable oxygen system in the home; and

(11-1-86)

ii. A description of the medically therapeutic purpose to be served by the portable system that cannot be served by a stationary system; and

(11-1-86)

iii. Documentation that the use of the portable system results in clinical improvement in the recipient's condition.

(11-1-86)

02. Laboratory Evidence. Initial claims for oxygen therapy must include: (11-1-86)
- a. The results of a blood gas study as evidence of the need of administration of oxygen in the home. This may be either a measurement of the partial pressure of oxygen (PO₂) in arterial blood or a measurement of arterial oxygen saturation obtained by oximetry. Because of the potential for conflict of interest, the results of arterial blood gas and/or oxygen saturation tests conducted by the oxygen supplier cannot be used to establish the recipients need for home oxygen. This restriction applies to the suppliers' employee, its corporated officers, or any associated or related organization. The results must come from tests conducted by a provider who will not benefit financially from a finding of coverage for home oxygen services; and(10-22-93)
- b. The condition under which the studies are performed must be stated, i.e., at rest, while sleeping, while exercising, on room air, or if while on oxygen the amount, body position during testing, and similar information necessary for interpreting the evidence; and (11-1-86)
- c. Laboratory evidence of the need for oxygen therapy due to significant hypoxemia will be considered to exist in the following circumstances; (5-1-92)
- i. An arterial PO₂ at or below fifty-five (55) mmHg or an arterial oxygen saturation at or below eighty-eight percent (88%), taken at rest, breathing room air; or ~~(5-1-92)(1-3-96)T~~
- ii. An arterial PO₂ at or below fifty-five (55) mmHg or an arterial oxygen saturation at or below eighty-eight percent (88%) taken during sleep for a patient who demonstrates an arterial PO₂ at or above fifty-six (56) mmHg, or an arterial oxygen saturation at or above eighty-nine percent (89%) while awake or greater than normal fall in oxygen level during sleep (a decrease in arterial PO₂ more than ten (10) mmHg or a decrease in arterial oxygen saturation more than five percent (5%)) associated with symptoms or signs reasonably attributable to hypoxemia, i.e., impairment of cognitive processes and nocturnal restlessness or insomnia. In either of these cases, coverage is provided only for nocturnal use of oxygen; or ~~(5-1-92)(1-3-96)T~~
- iii. If during exercise it is demonstrated that the oxygen saturation level falls below eighty-eight percent (88%), supplemental oxygen will be provided during exercise if there is evidence that the use of oxygen improves the hypoxemia that was demonstrated during exercise when the patient was breathing room air. (5-1-92)
- d. Coverage is provided for patients whose arterial PO₂ is at or above fifty-six (56) mmHg or whose arterial blood oxygen saturation is at or above eighty-nine percent (89%) if there is: ~~(10-22-93)(1-3-96)T~~
- i. Dependent edema suggesting congestive heart failure; or (11-1-86)
- ii. "P" pulmonale on EKG (P wave greater than three (3) mm in standard leads II, III, or AVF); or ~~(11-1-86)(1-3-96)T~~

- iii. Erthrocythemia with a hematocrit greater than fifty-six percent (56%). (11-1-86)
03. Service Exclusions. Payment is excluded in the following circumstances: (11-1-86)
- a. Recipients with angina pectoris in the absence of hypoxemia; and (11-1-86)
- b. Recipients who experience breathlessness without corpulmonale or evidence of hypoxemia; and (11-1-86)
- c. Recipients with severe peripheral vascular disease resulting in clinically evident desaturation in one (1) or more extremities; and ~~(11-1-86)~~(1-3-96)T
- d. Recipients with terminal illnesses that do not affect the lungs. (11-1-86)
04. Recipients Currently Receiving Home Oxygen. ~~The Department will continue to pay for existing oxygen services for no more than twelve (12) months after the effective date of this Section. Continuation of such oxygen and supplies after that time period will be dependent upon the receipt of documentation of the need for oxygen as specified in Subsections 107.01. and 107.02.~~ Below are the recertification requirements for recipients currently receiving home oxygen: ~~(12-31-94)~~(1-3-96)T
- a. Recertification is required three (3) months after initial certification (i.e., with the fourth month's claim) in patients: (1-3-96)T
- i. whose arterial PO₂ was fifty-six (56) mmHg or greater, or whose oxygen saturation was eighty-nine percent (89%) or greater on the initial certification, or (1-3-96)T
- ii. in whom the physician's initial estimate of length of need for oxygen was one (1) to three (3) months. (1-3-96)T
- b. For those patients for whom recertification at three (3) months is not required, recertification will be required by twelve (12) months after initial certification (i.e. by the thirteenth month's claim). (1-3-96)T
- c. Once one (1) certification establishes the medical necessity for continued use of home oxygen, subsequent recertification will not be routinely required. (1-3-96)T
- d. Initial certification and three (3) month recertification required because of initial PO₂ of fifty-six (56) mmHg or greater or oxygen saturation of eighty-nine percent (89%) or greater must include the results of a recently performed arterial blood gas (ABG) or oximetry test. For other recertification, retesting is not required, but the results of the most recent ABG or oximetry test representing the patient's chronic stable state must be included on the form. (1-3-96)T
- e. The Department may require subsequent recertification in individual cases. (1-3-96)T

05. Cost Considerations. The Department will work with the physician, provider, and recipient to provide payment for the most cost-effective oxygen system that will meet the recipient's medical needs. (11-1-86)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE
DOCKET NO. 16-0309-9605
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective July 1, 1995.

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 rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996.

DESCRIPTIVE SUMMARY: The following is the required finding and a concise statement of the supporting reasons for temporary rule-making and a statement in nontechnical language of the substance of the proposed rule:

Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect the public health, safety, or welfare; to comply with deadlines in amendments to governing law or federal programs; and to confer a benefit.

In Sections 143 and 149, the rules are being changed to incorporate recent changes from IDAPA 16.03.05., Rules Governing Aid to the Aged, Blind & Disabled (AABD), in the calculation of client participation. The proposed rule change would also incorporate the AABD rules by reference, rather than citation, to avoid the need for future changes in these Sections. Section 143 refers to the calculation of participation for the HCBS Waiver for developmentally disabled adult clients, whereas Section 149 applies to the HCBS Waiver for aged and disabled clients. The proposed change would combine client participation rules for both waivers into Section 149.

Certain text was changed to eliminate repetitive language.

In Section 148, only the dollar amount, for the four cited in the rules, will be changed to show the increase maximum payment levels effective July 1, 1995.

The changes to Sections 143 and 148, regarding the client participation, will have no fiscal impact. The changes to Section 148 regarding changes in reimbursement to Personal Care Service Providers will have no additional impact. The reimbursement increases went into effect July 1, 1995.

SUBMISSION OF WRITTEN COMMENTS, ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary or proposed rule, contact Jack Weinberg at (208) 334-5795.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before January 24, 1996.

DATED this 3rd day of January, 1996.

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TEXT OF DOCKET NO. 16-0309-9605

143. WAIVER SERVICES FOR ADULT DEVELOPMENTALLY DISABLED RECIPIENTS.

Pursuant to 42 CFR section 440.180, it is the intention of the Department to provide waiver services to eligible recipients in order to prevent unnecessary institutional placement, to provide for the greatest degree of independence possible, to enhance the quality of life, to encourage individual choice, and to achieve and maintain community integration. For a recipient to be eligible, the Department must find that the recipient requires services due to a developmental disability which impairs their mental or physical function or independence, be capable of being maintained safely and effectively in a non-institutional setting and would, in the absence of such services, need to reside in an ICF/MR. (7-1-95)

01. Services Provided. (7-1-95)

a. Residential habilitation services which consist of an integrated array of individually-tailored services and supports furnished to an eligible recipients which are designed to assist them to reside successfully in their own homes, with their families, or alternate family homes. The services and supports that may be furnished consist of the following: ~~(7-1-95)~~(7-1-95)T

i. Habilitation services aimed at assisting the individual to acquire, retain or improve his ability to reside as independently as possible in the community or maintain family unity. Habilitation services include training in one (1) or more of the following areas: ~~(7-1-95)~~(7-1-95)T

(a) Self-direction, including the identification of and response to dangerous or threatening situations, making decisions and choices affecting the individual's life, and initiating changes in living arrangements or life activities; (7-1-95)

(b) Money management including training or assistance in handling

personal finances, making purchases, and meeting personal financial obligations; (7-1-95)

(c) Daily living skills including training in accomplishing routine housekeeping tasks, meal preparation, dressing, personal hygiene, self administration of medications, and other areas of daily living including proper use of adaptive and assistive devices, appliances, home safety, first aid, and emergency procedures; (7-1-95)

(d) Socialization including training or assistance in participation in general community activities and establishing relationships with peers with an emphasis on connecting the recipient to their community. (Socialization training associated with participation in community activities includes assisting the recipient to identify activities of interest, working out arrangements to participate in such activities and identifying specific training activities necessary to assist the recipient to continue to participate in such activities on an on-going basis. Socialization training does not include participation in nontherapeutic activities which are merely diversional or recreational in nature); (7-1-95)

(e) Mobility, including training or assistance aimed at enhancing movement within the person's living arrangement, mastering the use of adaptive aids and equipment, accessing and using public transportation, independent travel, or movement within the community; (7-1-95)

(f) Behavior shaping and management includes training and assistance in appropriate expressions of emotions or desires, assertiveness, acquisition of socially appropriate behaviors; or extension of therapeutic services, which consist of reinforcing physical, occupational, speech and other therapeutic programs. (7-1-95)

ii. Personal Assistance Services necessary to assist the individual in daily living activities, household tasks, and such other routine activities as the recipient or the recipient's primary caregiver(s) are unable to accomplish on his own behalf. (7-1-95)

iii. Skills training to teach waiver recipients, family members, alternative family caregiver(s), or a recipient's roommate or neighbor to perform activities with greater independence and to carry out or reinforce habilitation training. Services are focused on training and are not designed to provide substitute task performance. Skills training is provided to encourage and accelerate development in independent daily living skills, self direction, money management, socialization, mobility and other therapeutic programs. (7-1-95)

b. Chore services which are heavy household maintenance and minor home repairs necessary to maintain the functional use of the home and to provide a clean, sanitary and safe environment. Chore activities include washing windows; moving heavy furniture and shoveling snow to provide safe access inside and outside the home; chopping wood when wood is the recipient's primary source of heat; and tacking down loose rugs and flooring. These services are only available when neither the recipient, nor anyone else in the household is capable of performing or financially providing for them, and where no other relative, caretaker, landlord, community volunteer/agency or third party payor is capable of or responsible for their provision. In the case of rental property, the responsibility of the landlord, pursuant to the lease agreement, will be examined prior to any authorization of service. Chore services are limited to the services provided in a home

rented or owned by the recipient. (7-1-95)

c. Respite care services which are those services provided, on a short term basis, in the home of either the waiver recipient or respite provider, to relieve the person's family or other primary caregiver(s) from daily stress and care demands. While receiving respite care services, the waiver recipient cannot receive other waiver services which are duplicative in nature. Respite care services provided under this waiver will not include room and board payments. Respite care services are limited to recipients who reside with non-paid caregivers. (7-1-95)

d. Supported employment which is competitive work in integrated work settings for individuals with the most severe disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a severe disability; and who, because of the nature and severity of their disability, need intensive supported employment services or extended services in order to perform such work. (7-1-95)

i. Supported employment services rendered under the waiver are not available under a program funded by either the Rehabilitation Act of 1973, as amended, or the Individuals with Disabilities Education Act (IDEA). Documentation will be maintained in the file of each individual receiving this service verifying that the service is not otherwise available/funded under the Rehabilitation Act of 1973 as amended, or IDEA; and the waiver participant has been deinstitutionalized from an NF or ICF/MR at some prior period. (7-1-95)

ii. Federal Financial Participation (FFP) will not be claimed for incentive payments, subsidies, or unrelated vocational training expenses such as the following: incentive payments made to an employer of waiver recipients to encourage or subsidize employers' participation in a supported employment program; payments that are passed through to beneficiaries of supported employment programs; or payments for vocational training that is not directly related to a waiver participant's supported employment program. (7-1-95)

e. Transportation services which are services offered in order to enable waiver recipients to gain access to waiver and other community services and resources required by the individual support plan. This service is offered in addition to medical transportation required under 42 CFR 440.431.53 and transportation services offered under the State plan, defined at 42 CFR 440.170(a), and shall not replace them. Whenever possible, family, neighbors, friends, or community agencies which can provide this service without charge or public transit providers will be utilized. (7-1-95)

f. Environmental modifications which are those interior or exterior physical adaptations to the home, required by the waiver recipient's support plan, which are necessary to ensure the health, welfare, safety of the individual, or which enable the individual to function with greater independence in the home and without which, the waiver recipient would require institutionalization. Such adaptations may include the installation of ramps and lifts, widening of doorways, modification of bathroom facilities, or installation of electric and plumbing systems which are necessary to accommodate the medical equipment and supplies necessary for the welfare of the waiver recipient, but shall exclude those adaptations or improvements to the home which are not of direct medical or

remedial benefit to the recipient, such as carpeting, roof repair, or central air conditioning. All services shall be provided in accordance with applicable State or local building codes. Permanent environmental modifications are limited to modifications to a home rented or owned by the recipient or the recipient's family when the home is the recipient's principal residence. Portable or non-stationary modifications may be made when such modifications can follow the recipient to his next place of residence or be returned to the Department.

(7-1-95)

g. Specialized medical equipment and supplies which include devices, controls, or appliances, specified in the Individual Support Plan which enable recipients to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. They also include items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and non-durable medical equipment not available under the Medicaid State plan. Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the State plan and shall exclude those items which are not of direct medical or remedial benefit to the recipient. All items shall meet applicable standards of manufacture, design and installation.

(7-1-95)

h. Personal Emergency Response Systems (PERS) which may be provided to monitor waiver recipient safety and/or provide access to emergency crisis intervention for emotional, medical or environmental emergencies through the provision of communication connection systems. PERS are limited to recipients who rent or own their home, who are alone for significant parts of the day, have no regular caretaker for extended periods of time and who would otherwise require extensive routine supervision.

(7-1-95)

i. Home delivered meals which are designed to promote adequate waiver recipient nutrition through the provision and home delivery of one (1) to two (2) meals per day. Home delivered meals are limited to recipients who rent or own their own home, who are alone for significant parts of the day and have no regular caretaker for extended periods of time.

~~(7-1-95)~~(7-1-95)T

j. Therapy services under the waiver include physical therapy services; occupational therapy services; and speech, hearing and language services. These services are to be available through the waiver when the need for such services exceeds the therapy limitations under the State plan. Under the waiver, therapy services will include:

~~(7-1-95)~~(7-1-95)T

i. Services provided in the waiver recipient's residence, day habilitation site, or supported employment site;

(7-1-95)

ii. Consultation with other service providers and family members;

(7-1-95)

iii. Participation on the recipient's Individual Support Plan team.

~~(7-1-95)~~(7-1-95)T

k. Nursing services are those intermittent nursing services or private duty nursing services which provide individual and continuous care listed in the Individual Support Plan which are within the scope of the Nurse Practice Act and are provided by a licensed registered nurse or licensed practical nurse under the supervision of a registered

nurse, licensed to practice in Idaho. (7-1-95)

1. Behavior Consultation/Crisis Management services which provide direct consultation and clinical evaluation of recipients who are currently experiencing or may be expected to experience, a psychological, behavioral, or emotional crisis. This service may provide training and staff development related to the needs of a recipient. These services also provide emergency back-up involving the direct support of the recipient in crisis. ~~(7-1-95)~~(7-1-95)T

02. Place of Service Delivery. Waiver services for developmentally disabled recipients may be provided in the recipient's personal residence, specialized family home, waiver facilities, day habilitation/supported employment program or community. The following living situations are specifically excluded as a personal residence for the purpose of these rules: (7-1-95)

a. Licensed skilled, or intermediate care facilities, certified nursing facility (NF) or hospital; and (7-1-95)

b. Licensed Intermediate Care Facility for the Mentally Retarded (ICF/MR); and (7-1-95)

c. Licensed Residential Care Facility; and (7-1-95)

d. Adult foster homes. (7-1-95)

e. Additional limitations to specific services are listed under that service definition. (7-1-95)

03. Services Delivered Following a Written Plan. All waiver services must be authorized by the ACCESS Unit in the Region where the recipient will be residing and provided based on a written Individual Support Plan (ISP). (7-1-95)

a. The ISP is developed by the ISP team which includes: (7-1-95)

i. The waiver recipient. Efforts must be made to maximize the recipient's participation on the team by providing him with information and education regarding his rights; and (7-1-95)

ii. The service coordinator chosen by the recipient; and (7-1-95)

iii. The guardian when appropriate; and (7-1-95)

iv. May include others identified by the waiver recipient. (7-1-95)

b. The ISP must be based on a person centered planning and assessment process approved by the Department. (7-1-95)

c. The ISP must include the following: (7-1-95)

i. The specific types, amounts, frequency and duration of Medicaid

reimbursed waiver services to be provided; and (7-1-95)

ii. Supports and service needs that are to be met by the recipient's family, friends and other community services; and (7-1-95)

iii. The providers of waiver services when known; and (7-1-95)

iv. Documentation that the recipient has been given a choice between waiver services and institutional placement; and (7-1-95)

v. The signature of the recipient or his legal representative and the service coordinator. (7-1-95)

d. The plan must be revised and updated by the ISP team based upon treatment results or a change in the recipient's needs, but at least semi-annually. A new plan must be developed and approved annually. (7-1-95)

04. Authorization of Services. All services reimbursed under the Home and Community Based Waiver for Developmentally Disabled must be authorized prior to the payment of services by the Regional ACCESS Unit. (7-1-95)

05. Service Supervision. The Individual Support Plan which includes all waiver services is monitored by the service coordinator. (7-1-95)

06. Provider Qualifications. All providers of waiver services must have a valid provider agreement/performance contract with the Department. Performance under this agreement/contract will be monitored by the ACCESS Unit in each region. (7-1-95)

a. Residential Habilitation services must be provided by an agency that is certified as a Residential Habilitation Agency under IDAPA 16.04.17, Rules Governing Residential Habilitation Agencies that has been certified by the Department and capable of supervising the direct services provided. Independent providers of personal care services that are transferred to providers of residential habilitation services under this waiver shall either work for an agency or affiliate with an agency to provide oversight, training and quality assurance. If there is no agency available in a geographic location, providers of residential habilitation services under this waiver will not be required to work for or affiliate with an agency until one becomes available. Providers of residential habilitation services must meet the following requirements: ~~(7-1-95)~~(7-1-95)T

i. Direct service staff must meet the following minimum qualifications: be at least eighteen (18) years of age; be a high school graduate or have a GED or demonstrate the ability to provide services according to an Individual Support Plan; have current CPR and First Aid certifications; be free from communicable diseases; pass a criminal background check (when residential habilitation services are provided in a specialized family home, all adults living in the home must pass a criminal background check); participate in an orientation program, including the purpose and philosophy of services, service rules, policies and procedures, proper conduct in relating to waiver participants, and handling of confidential and emergency situations that involve the waiver participant, provided by the agency prior to performing services; have appropriate certification or licensure if required to perform tasks which require certification or

licensure. (7-1-95)

ii. The provider agency will be responsible for providing training specific to the needs of the recipient. Skill training must be provided by a Qualified Mental Retardation Professional who has demonstrated experience in writing skill training programs. Additional training requirements must include at a minimum: instructional technology; behavior technology; feeding; communication/sign language; mobility; assistance with medications (training in assistance with medications must be provided by a licensed nurse); activities of daily living; body mechanics and lifting techniques; housekeeping techniques and maintenance of a clean, safe, and healthy environment. (7-1-95)

iii. Residential habilitation providers who are unable to join or affiliate with an agency because one is not available in their geographic area, must receive program development, implementation and oversight of service delivery services by a Qualified Mental Retardation Professional (QMRP) who has a valid provider agreement with the Department. (7-1-95)

iv. When residential habilitation services are provided in the provider's home, the agency or independent provider must meet the environmental sanitation standards; fire and life safety standards; and building, construction and physical home standards for certification as an Adult Foster Home. Non-compliance with the above standards will be cause for termination of the provider's provider agreement/contract. (7-1-95)

b. Providers of chore services must meet the following minimum qualifications: (7-1-95)

i. Be skilled in the type of service to be provided; and (7-1-95)

ii. Demonstrate the ability to provide services according to an individual support plan. (7-1-95)

c. Providers of respite care services must meet the following minimum qualifications: (7-1-95)

i. Meet the qualifications prescribed for the type of services to be rendered, for instance Residential Habilitation providers, or must be an individual selected by the waiver participant and/or the family or guardian; and (7-1-95)

ii. Have received caregiving instructions in the needs of the person who will be provided the service; and (7-1-95)

iii. Demonstrate the ability to provide services according to an individual support plan; and (7-1-95)

iv. Have good communication and interpersonal skills and the ability to deal effectively, assertively and cooperatively with a variety of people; and (7-1-95)

v. Be willing to accept training and supervision by a provider agency or the

- primary caregiver of services; and (7-1-95)
- vi. Be free of communicable diseases. (7-1-95)
 - d. Supported Employment services must be provided by an agency capable of supervising the direct service and be accredited by the Commission on Accreditation of Rehabilitation Facilities; or other comparable standards; or meet State requirements to be a State approved provider. (7-1-95)
 - e. Providers of transportation services must: (7-1-95)
 - i. Possess a valid driver's license; and (7-1-95)
 - ii. Possess valid vehicle insurance. (7-1-95)
 - f. Environmental Modifications services must: (7-1-95)
 - i. Be done under a permit, if required; and (7-1-95)
 - ii. Demonstrate that all modifications, improvements, or repairs are made in accordance with local and state housing and building codes. (7-1-95)
 - g. Specialized Equipment and Supplies purchased under this service must: (7-1-95)
 - i. Meet Underwriter's Laboratory, FDA, or Federal Communication Commission standards where applicable; and (7-1-95)
 - ii. Be obtained or provided by authorized dealers of the specific product where applicable. For instance, medical supply businesses or organizations that specialize in the design of the equipment. (7-1-95)
 - h. Personal Emergency Response Systems must demonstrate that the devices installed in waiver participants' homes meet Federal Communications Standards or Underwriter's Laboratory standards or equivalent standards. (7-1-95)
 - i. Services of Home Delivered Meals under this section may only be provided by an agency capable of supervising the direct service and must: (7-1-95)
 - i. Provide assurances that each meal meets one third (1/3) of the Recommended Dietary Allowance as defined by the Food and Nutrition Board of National Research Council or meet physician ordered individualized therapeutic diet requirement; and ~~(7-1-95)~~(7-1-95)T
 - ii. Maintain Registered Dietitian documented review and approval of menus, menu cycles and any changes or substitutes; and (7-1-95)
 - iii. Must provide assurances that the meals are delivered on time and demonstrate the ability to deliver meals at a minimum of three (3) days per week; and ~~(7-1-95)~~(7-1-95)T

iv. Maintain documentation reflecting the meals delivered are nutritionally balanced and made from the highest U.S.D.A. Grade for each specific food served; and (7-1-95)

v. Provide documentation of current driver's license for each driver; and (7-1-95)

vi. Must be inspected and licensed as a food establishment by the District Health Department. (7-1-95)

j. All therapy services, with the exception of physical therapy, must be provided by a provider agency capable of supervising the direct service. Providers of services must meet the provider qualifications listed in the State Plan. (7-1-95)

k. Nursing Service Providers must provide documentation of current Idaho licensure as a RN or LPN in good standing. (7-1-95)

l. Behavior Consultation/Crisis Management Providers must meet the following: (7-1-95)

i. Work for a provider agency capable of supervising the direct service or work under the direct supervision of a licensed psychologist or Ph.D. in Special Education, with training and experience in treating severe behavior problems and training and experience in applied behavior analysis; and (7-1-95)

ii. Must have a Master's Degree in a behavioral science such as social work, psychology, psychosocial rehabilitation counseling, psychiatric nursing, special education or a closely related course of study; or (7-1-95)

iii. Be a licensed pharmacist; or (7-1-95)

iv. Be a Qualified Mental Retardation Professional. ~~(7-1-95)~~(7-1-95)T

v. Emergency back-up providers must meet the minimum provider qualifications under Residential Habilitation services. (7-1-95)

07. Recipient Eligibility Determination. Waiver eligibility will be determined by the Regional ACCESS Unit. The recipient must be financially eligible for MA as described in ~~Idaho Department of Health and Welfare Rules, Title 03, Chapter 05, Section 634, "IDAPA 16.03.05.634, Rules Governing Eligibility for the Aged, Blind, and Disabled (AABD)."~~ The cited chapter implements and is in accordance with the Financial Eligibility Section of the Idaho State Plan. In addition, waiver recipients must meet the following requirements: ~~(7-1-95)~~(7-1-95)T

a. The Regional ACCESS Unit must determine that: (7-1-95)

i. The recipient would qualify for ICF/MR level of care as set forth in Section 180 of these rules, if the waiver services listed in Section 143 of these rules were not made available; and (7-1-95)

ii. The recipient could be safely and effectively maintained in the requested/chosen community residence with appropriate waiver services. This determination must: be made by a team of individuals with input from the ISP team; and prior to any denial of services on this basis, be determined by the Service Coordinator that services to correct the concerns of the team are not available. (7-1-95)

iii. The average daily cost of waiver services and other medical services to the recipient would not exceed the average daily cost to Medicaid of ICF/MR care and other medical costs. Individual recipients whose cost of services exceeds this average may be approved on a case by case basis that assures that the average per capita expenditures under the waiver do not exceed 100 percent (100%) of the average per capita expenditures for ICF/MR care under the State plan that would have been made in that fiscal year had the waiver not been granted. This approval will be made by a team identified by the Administrators of the Divisions of Medicaid and Family and Community Services. (7-1-95)(7-1-95)T

iv. Following the approval by the ACCESS Unit for services under the waiver, the recipient must receive and continue to receive a waiver service as described in these rules. A recipient who does not use a waiver service for thirty (30) consecutive days will be terminated from the waiver program. (7-1-95)

b. A recipient who is determined by the ACCESS Unit to be eligible for services under the Home and Community Based Services Waiver for developmentally disabled may elect to not utilize waiver services but may choose admission to an ICF/MR. (7-1-95)

c. The recipient's eligibility examiner will process the application in accordance with ~~Idaho Department of Health and Welfare Rules, Title 03, Chapter 05, "IDAPA 16.03.05., Rules Governing Eligibility for the Aged, Blind and Disabled (AABD),"~~ as if the application was for admission to an ICF/MR, except that the eligibility examiner will forward potentially eligible applications immediately to the ACCESS Unit for review. The Medicaid application process cited above conforms to all statutory and regulatory requirements relating to the Medicaid application process. (7-1-95)(7-1-95)T

d. The decisions of the ACCESS Unit regarding the acceptance of the recipients into the waiver program will be transmitted to the eligibility examiner. (7-1-95)

08. Case Redetermination. (7-1-95)

a. Financial redetermination will be conducted pursuant to ~~Idaho Department of Health and Welfare Rules, Title 03, Chapter 01, "IDAPA 16.03.01., Rules Governing Eligibility for Aid to Families with Dependent Children (AFDC),"~~ and ~~Title 03, Chapter 05, "IDAPA 16.03.05., Rules Governing Eligibility for the Aged, Blind and Disabled (AABD)."~~ Medical redetermination will be made at least annually by the ACCESS Unit, or sooner at the request of the recipient, the eligibility examiner, provider agency or physician. The sections cited implement and are in accordance with Idaho's approved state plan with the exception of deeming of income provisions. (7-1-95)(7-1-95)T

- b. The redetermination process will assess the following factors: (7-1-95)
 - i. The recipient's continued need for waiver services; and (7-1-95)
 - ii. Discharge from the waiver services program; and, ~~(7-1-95)~~(7-1-95)T
- 09. Provider Reimbursement. (7-1-95)
 - a. Waiver service providers will be paid on a fee for service basis based on the type of service provided as established by the Department. (7-1-95)
 - b. Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. (7-1-95)
 - c. The fees calculated for waiver services include both services and mileage. No separate charges for mileage will be paid by the Department for provider transportation to and from the recipient's home or other service delivery location when the recipient is not being provided transportation. (7-1-95)

~~10. Client Participation. A recipient will not be required to participate in the cost of waiver services unless his entitlement to MA is based on his approval for and receipt of a waiver service and income limitations contained in Idaho Department of Health and Welfare Rules, Title 03, Chapter 05, Section 634, "Rules Governing Eligibility for the Aged, Blind and Disabled (AABD)." Income excluded under the provisions of Idaho Department of Health and Welfare Rules, Title 03, Chapter 05, Sections 613 and 615, "Rules Governing Eligibility for the Aged, Blind and Disabled (AABD)," is excluded in determining client participation. (7-1-95)~~

- a. The following definitions apply to determining client participation: (7-1-95)
 - i. ~~Community Spouse is defined as the spouse of an HCBS recipient who is not an HCBS client and is not institutionalized. (7-1-95)~~
 - ii. ~~Community Spouse Allowance (CSA) is the maximum amount deducted from a recipient's income for support of his community spouse. (7-1-95)~~
 - iii. ~~Community Spouse Need Standard (CSNS) is the total income the community spouse needs for his support. This amount must not exceed one thousand eight hundred and seventy dollars and fifty cents. (\$1,870.50). (7-1-95)~~
- b. ~~For individuals with no community spouse, the amount of client participation for an individual who is not exempt from the client participation requirement and who has no community spouse is determined by deducting certain amounts from the client's income, after the AABD income exclusions are deducted. A veteran with no spouse or other dependents or the surviving spouse of a veteran with no dependents, receives a protected VA pension, which amount will not be counted as income for client participation. This protected amount is ninety dollars (\$90). The following amounts are deducted in the following order from the individual's own income, including income~~

disregarded in determining his MA eligibility: (7-1-95)

i. First, determine the individual's standard of need. The standard of need is three (3) times the federal SSI benefit amount to an individual in his own home; and (7-1-95)

ii. Second, an employed client or client engaged in sheltered workshop or work activity center activities, is also budgeted the lower of an additional personal needs deduction of eighty dollars (\$80) or his earned income. The client's total personal needs allowance must not exceed the sum of his AABD standard of need plus up to eighty dollars (\$80). This is a deduction only. No actual payment can be made to provide for personal needs. (7-1-95)

iii. Third, a Family Member Allowance (FMA) for each person who is, or could be claimed on the client's federal income tax and who is the client's minor or dependent child, dependent sibling, or dependent parent who lives in the client's home. The FMA is computed by deducting the family member's gross income from one thousand two hundred and fifty four dollars (\$1,254) and dividing the result by three (3). Any remainder with cents is rounded to the next higher dollar and is the FMA for that family member; and the family member's gross income is used; the FMA is deducted from the client's income whether or not it is actually contributed by the client; if the client contributes an amount less than the FMA, only the actual amount contributed is deducted. If more, only the FMA is deducted. (7-1-95)

iv. Fourth, amounts for the individual's incurred expenses for Medicare and other health insurance premiums, deductibles or coinsurance charges not paid by a third party. Deduction of incurred expenses for the Medicare Part B premium is limited to the first two (2) months of Medicaid eligibility. If the individual received SSI or an AABD payment for the month prior to the month for which client participation is being calculated, Medicare Part B premiums must not be deducted. The client must report such expenses to the field office and provide verification in order for an expense to be considered for deduction. (7-1-95)

v. Fifth, amounts incurred for certain limited medical or remedial services not covered by the State's Medicaid Plan and not paid by a third party. The Department must determine whether an individual's incurred expenses for such limited services meet the criteria for deduction. The client must report such expenses to the ACCESS Unit and provide verification in order for an expense to be considered for deduction. Deductions for necessary medical or remedial expenses approved by the Department will be applied at the time of application, and as necessary, based on changes reported to the field office by the recipient. (7-1-95)

e. For individuals with community spouse, after income of the HCBS spouse and the community spouse has been attributed according to the provisions of Idaho Department of Health and Welfare Rules, Title 03, Chapter 05, Section 615, "Rules Governing Eligibility for the Aged, Blind and Disabled (AABD)", the amount of client participation for an individual who is not exempt from the participation requirement is determined. Income excluded under AABD is not counted. Income disregarded under AABD is not counted. Deduct the following amounts in the following order from the income attributed to the recipient. (7-1-95)

i. First, a personal need allowance of thirty dollars (\$30). A client who is unable to live with his community spouse because of his medical condition or other similar circumstances beyond his control is allowed a personal needs allowance equal to the AABD payment standard he would be budgeted for his living situation, if he was a AABD client. An employed client or client engaged in sheltered workshop or work activity center activities is also allowed the lower of eighty dollars (\$80) or his earned income, for his personal needs. The total personal needs allowance must not exceed one hundred ten dollars (\$110); and (7-1-95)

ii. Second, the Community Spouse Allowance (CSA) is determined by: computing the Shelter Adjustment by subtracting three hundred and seventy six (\$376) dollars from the sum of total shelter costs (rent, mortgage principle and interest, homeowner's taxes, insurance, condominium or cooperative maintenance charges) and the Standard Utility Allowance of one hundred and sixty two dollars (\$162). The Standard Utility Allowance is reduced by the value of any utilities which are included in maintenance charges for a condominium or cooperative. The Shelter Adjustment equals the positive balance remaining from the calculation in Subsection 143.11.e.ii.(1); computing the Community Spouse Needs (CSN) by adding one thousand two hundred and fifty four (\$1,254) dollars to the Shelter Adjustment. The total CSNS must not exceed the maximum of one thousand eight hundred and seventy dollars and fifty cents (\$1,870.50). If a hearing or court order establishes the community spouse needs a larger amount of income than established above, such amount will not be subject to the maximum; computing the Community Spouse Allowance (CSA) by subtracting the community spouse's gross income from the CSNS and rounding any remaining cents to the next higher dollar. Any positive balance remaining is the CSA except if a court orders the institutional spouse to contribute a larger amount for the support of the community spouse, then the amount of support ordered by the court will be used instead of the CSA. Any amount ordered by the court will not be subject to the limit on the CSNS. The CSA will only be deducted to the extent contributed by the institutional spouse. If the institutional spouse contributes an amount less than the CSA, only the actual amount contributed will be deducted from the institutional spouse's gross income. (7-1-95)

iii. Third, a Family Member Allowance (FMA) for each family member. A family member is a person who is, or could be claimed as a dependent on either a spouse's federal income tax and who is a minor or dependent child, dependent sibling or dependent parent of either spouse who lives in the community spouse's home. The FMA is computed by deducting the family member's gross income from one thousand two hundred fifty four (\$1,254) dollars and dividing the result by three (3). Any remainder with cents rounded to the next higher dollar is the FMA for that family member; and the family member's gross income is used; the FMA is deducted from the institutional spouse's income whether or not it is actually contributed by the institutional spouse; if the institutional spouse contributes an amount less than the FMA, only the actual amount contributed is deducted from the institutional spouse's gross income. If more, only the FMA is deducted. (7-1-95)

iv. Fourth, the amounts for incurred expenses for Medicare and other health insurance premiums, deductibles or coinsurance charges not subject to payment by a third party. Deduction of incurred expenses for the Medicare Part B premium is limited to the first two (2) months of Medicaid eligibility. If the individual received SSI or an AABD

payment for the month client participation is being calculated, Medicare Part B premiums must not be deducted. The client must report such expenses to the field office and provide verification in order for an expense to be considered for deduction. (7-1-95)

v. Fifth, amounts incurred for certain limited medical or remedial services not covered by the State Medicaid Plan and not paid by a third party. The Department's Regional ACCESS Units must determine whether an individual's incurred expenses for such limited services meet the criteria for deduction. The client must report such expenses to the ACCESS Unit and provide verification in order for an expense to be considered for deduction. Deductions for necessary medical or remedial expenses by the Department will be applied at the time of application, and as necessary, based on changes reported to the field office by the recipient. (7-1-95)

d. Any remainder after the calculation in subsection 143.11.b. or c. is to be deducted from the recipient's provider payments to offset the cost of waiver services. The contribution will be collected from the recipient by the provider agency or independent provider. The provider and the recipient will be notified of the amount to be collected. (7-1-95)

e. The client participation amount is to be recalculated annually at redetermination or whenever a change in income or deductions is reported to the ACCESS Unit by the recipient. (7-1-95)

140. Provider Records. Three (3) types of record information will be maintained on all recipients receiving waiver services: (7-1-95)(7-1-95)T

a. Direct Service Provider Information which includes written documentation of each visit made or service provided to the recipient, and will record at a minimum the following information: (7-1-95)

i. Date and time of visit; and (7-1-95)

ii. Services provided during the visit; and (7-1-95)

iii. A statement of the recipient's response to the service, if appropriate to the service provided, including any changes in the recipient's condition; and (7-1-95)

iv. Length of visit, including time in and time out, if appropriate to the service provided. Unless the recipient is determined by the Service Coordinator to be unable to do so, the delivery will be verified by the recipient as evidenced by their signature on the service record. (7-1-95)

v. A copy of the above information will be maintained in the recipient's home unless authorized to be kept elsewhere by the ACCESS Unit. Failure to maintain such documentation will result in the recoupment of funds paid for undocumented services. (7-1-95)(7-1-95)T

b. The individual support plan which is initiated by the ACCESS Unit and developed by the Service Coordinator and the ISP team must specify which waiver

services are required by the recipient. The plan will contain all elements required by Subsection 143.03. and a copy of the most current individual support plan will be maintained in the recipient's home and will be available to all service providers and the Department. (7-1-95)

c. In addition to the individual support plan, at least monthly the service coordinator will verify in writing, that the services provided were consistent with the individual support plan. Any changes in the plan will be documented and include the signature of the service coordinator and when possible, the recipient. (7-1-95)

121. **Provider Responsibility for Notification.** It is the responsibility of the service provider to notify the service coordinator when any significant changes in the recipient's condition are noted during service delivery. Such notification will be documented in the service record. (7-1-95)

132. **Records Maintenance.** In order to provide continuity of services, when a recipient is transferred among service providers, or when a recipient changes service coordinators, all of the foregoing recipient records will be delivered to and held by the Regional ACCESS Unit until a replacement service provider or service coordinator assumes the case. When a recipient leaves the waiver services program, the records will be retained by the Regional ACCESS Unit as part of the recipient's closed case record. Provider agencies will be responsible to retain their client's records for three (3) years following the date of service. ~~(7-1-95)~~(7-1-95)T

143. **Home and Community-Based Waiver Recipient Limitations.** The number of Medicaid recipients to receive waiver services under the home and community based waiver for developmentally disabled recipients will be limited to the projected number of users contained in the Department's approved waiver. Individuals who apply for waiver services after the waiver maximum has been reached will be placed on a waiting list and will have their applications processed after September 30; of each new waiver year. The earliest effective date of waiver service delivery for these recipients will be October 1 of each new waiver year. ~~(7-1-95)~~(7-1-95)T

(BREAK IN CONTINUITY OF SECTIONS)

148. PROVIDER REIMBURSEMENT FOR PERSONAL CARE SERVICES.

01. **Reimbursement Rate.** Personal care providers will be paid a uniform reimbursement rate for service as established by the Department pursuant to Section 39-5606, Idaho Code, on an annual basis. Provider claims for payment will be submitted on claim forms provided or approved by the Department. Billing instructions will be provided by the Department. (1-1-91)

02. **Calculated Fee.** The fee calculated for personal care provider reimbursement includes a basic rate for services and mileage. No separate charges for mileage will be paid by the Department for nonmedical client transportation or provider transportation to and from the recipient's home. Fees will be calculated as follows: (1-1-91)

a. Annually the Bureau of Medicaid Policy and Reimbursement will conduct a poll of all Idaho nursing facilities and establish the weighted average hourly rates (WAHR) for nursing facility industry employees in comparable positions (i.e. RN, QMRP, and Nurse's aide) in Idaho to be used for the reimbursement rate to be effective on July 1 of that year. (1-30-94)

b. The Bureau of Medicaid Policy and Reimbursement will then establish three (3) payment levels for both provider agencies and independent providers for PCS attendant services as follows: (1-30-94)

i. Weekly service needs of 0-16 hours or waiver recipients 0-8 hours/day:

Provider agencies:
WAHR x 1.55 = \$ amount/hour

Independent providers:
WAHR x 1.22 (which is a supplemental component to cover training, social security and liability insurance)
= \$ amount/hour (1-30-94)

ii. Extended visit, one (1) recipient (eight and one-quarter hour (8.25) up to twenty-four (24) hours):

Provider agencies:
(WAHR x actual hours of care up to 5 hours x 1.55)
plus (\$.65 x 1.55 hours on site on-call) = \$ amount
(Maximum ~~\$48.51~~)\$53.33)

Independent providers:
(WAHR x actual hours of care up to 5 hours x 1.22)
plus (\$.65 x 1.22 x actual hours on site on-call) =
\$ amount (Maximum ~~\$46.00~~)\$50.57) (~~1-30-94~~)(7-1-95)T

iii. Extended visit, two (2) recipients (six and one-quarter (6.25) up to twenty-four (24) hours):

Provider agencies:
(WAHR x actual hours of care up to 4 hours) x (1.55)
plus \$.65 x 1.55 x hours on site on-call) = \$ amount
(Maximum ~~\$41.36~~)\$45.46)

Independent providers:
(WAHR x hours actual care up to 4 hours x 1.22) plus
(\$.65 x 1.22 x hours on site on-call) = \$ amount
(Maximum ~~\$33.79~~)\$37.14) (~~1-30-94~~)(7-1-95)T

c. The attending physician will be reimbursed for services provided using current payment levels and methodologies for other physician services provided to eligible recipients. (1-1-91)

d. The supervisory RN and QMRP will be reimbursed at a per visit amount established by the Department for supervisory visits. Client evaluations and Care Plan Development will be reimbursed at a rate established by the Department, following authorization by the RMU. (1-1-91)

i. The number of supervisory visits by the RN and QMRP to be conducted per calendar quarter will be approved as part of the PCS care plan by the RMU. (1-1-91)

ii. Additional evaluations or emergency visits in excess of those contained in the approved care plan will be authorized when needed by the RMU. (1-1-91)

~~149. CLIENT PARTICIPATION IN THE COST OF WAIVER SERVICES. A recipient will not be required to participate in the cost of PCS unless his entitlement to MA is based on his approval for and receipt of a waiver service and income limitations contained in Idaho Department of Health and Welfare Rules, Title 03, Chapter 05, Section 634., "Rules Governing Eligibility for the Aged, Blind and Disabled (AABD)." Income excluded under the provisions of Idaho Department of Health and Welfare Rules, Title 03, Chapter 05, Sections 613. and 615., "Rules Governing Eligibility for the Aged, Blind and Disabled (AABD)," is excluded in determining client participation. (10-1-94)~~

~~01. Definitions. The following definitions apply to determining client participation: (1-29-90)~~

~~a. Community Spouse. The spouse of an HCBS recipient who is not an HCBS client and is not institutionalized. (7-1-93)~~

~~b. Community Spouse Allowance (CSA). The maximum amount deducted from a recipient's income for support of his community spouse. (1-29-90)~~

~~c. Community Spouse Need Standard (CSNS). The total income the community spouse needs for his support. This amount must not exceed one thousand eight hundred and seventy dollars(\$1,870). (7-1-94)~~

~~02. Individual With No Community Spouse. The amount of client participation for an individual who is not exempt from the client participation requirement and who has no community spouse is determined by deducting certain amounts from the client's income, after the AABD income exclusions are deducted. A veteran with no spouse or other dependents or the surviving spouse of a veteran with no dependents receives a protected VA pension, which amount will not be counted as income for client participation. This protected amount is ninety dollars (\$90). The following amounts are deducted in the following order from the individual's own income, including income disregarded in determining his MA eligibility: (7-1-93)~~

~~a. First, the individual's AABD standard of need determined as though he were living alone in his own home. In the case of an individual in room and board or adult foster care, use the maximum special needs allowance as specified in Idaho Department of Health and Welfare Rules, Title 03, Chapter 05, Sections 407 and 408. "Rules Governing Eligibility for the Aged, Blind and Disabled (AABD);" and (7-1-93)~~

~~b. Second, an employed client or client engaged in sheltered workshop or activity center activities, is also budgeted the lower of an additional personal needs deduction of eighty (\$80) or his earned income. The client's total personal needs allowance must not exceed the sum of his AABD standard of need plus up to eighty (\$80). This is a deduction only. No actual payment can be made to provide for personal needs.~~

~~(7-1-94)~~

~~e. Third, a Family Member Allowance (FMA) for each family member. A family member is a person who is, or could be claimed on the client's federal income tax and who is the client's minor or dependent child, dependent sibling, or dependent parent who lives in the client's home. The FMA is computed by deducting the family member's gross income from one thousand two hundred and fifty-four (\$1,254) and dividing the result by three (3). Any remainder with cents is rounded to the next higher dollar and is the FMA for that family member; and~~

~~(7-1-95)~~

~~i. The family member's gross income is used.~~

~~(7-1-93)~~

~~ii. The FMA is deducted from the client's income whether or not it is actually contributed by the client.~~

~~(7-1-93)~~

~~iii. If the client contributes an amount less than the FMA, only the actual amount contributed is deducted. If more, only the FMA is deducted.~~

~~(7-1-93)~~

~~d. Fourth, amounts for the individual's incurred expenses for Medicare and other health insurance premiums, deductibles or coinsurance charges not paid by a third party.~~

~~(6-1-91)~~

~~i. Deduction of incurred expenses for the Medicare Part B premium is limited to the first two (2) months of Medicaid eligibility. If the individual received SSI or an AABD payment for the month prior to the month for which client participation is being calculated, Medicare Part B premiums must not be deducted.~~

~~(6-1-91)~~

~~ii. The client must report such expenses to the field office and provide verification in order for an expense to be considered for deduction.~~

~~(6-1-91)~~

~~e. Fifth, amounts incurred for certain limited medical or remedial services not covered by the State's Medicaid Plan and not paid by a third party.~~

~~(6-1-86)~~

~~i. The Department must determine whether an individual's incurred expenses for such limited services meet the criteria for deduction.~~

~~(1-1-91)~~

~~ii. The client must report such expenses to the RMU and provide verification in order for an expense to be considered for deduction.~~

~~(1-1-91)~~

~~iii. Deductions for necessary medical or remedial expenses approved by the Department will be applied at the time of application, and as necessary, based on changes reported to the field office by the recipient.~~

~~(6-1-86)~~

~~03. Individual With Community Spouse. After income of the HCBS spouse and the community spouse has been attributed according to the provisions of Idaho~~

~~Department of Health and Welfare Rules, Title 03, Chapter 05, Section 615., "Rules Governing Eligibility for the Aged, Blind and Disabled (AABD)," the amount of client participation for an individual who is not exempt from the participation requirement is determined. Income excluded under AABD is not counted. Income disregarded under AABD is counted. Deduct the following amounts in the following order from the income attributed to the recipient:~~ (10-1-94)

~~a. First, a personal need allowance of thirty dollars (\$30). A client who is unable to live with his community spouse because of his medical condition or other similar circumstances beyond his control is allowed a personal needs standard equal to the AABD payment standard he would be budgeted for his living situation, if he was an AABD client. An employed client or a client engaged in sheltered workshop or work activity center activities is also allowed the lower of eighty dollars (\$80) or his earned income, for his personal needs. The total personal needs allowance must not exceed one hundred ten dollars (\$110); and~~ (7-1-93)

~~b. Second, the Community Spouse Allowance (CSA). The CSA is determined by:~~ (1-29-90)

~~i. Computing the Shelter Adjustment by subtracting three hundred seventy-six (\$376) dollars from the sum of total shelter costs (rent, mortgage principal and interest, homeowner's taxes, insurance, condominium or cooperative maintenance charges) and the Standard Utility Allowance of one hundred and sixty-two (\$162). The Standard Utility Allowance is reduced by the value of any utilities which are included in maintenance charges for a condominium or cooperative. The Shelter Adjustment equals the positive balance remaining from the calculation in this Subsection.~~ (10-1-94)

~~ii. Computing the Community Spouse Needs (CSN) by adding one thousand two hundred and fifty-four (\$1,254) dollars to the Shelter Adjustment. The total CSNS, effective January, 1, 1994, may not exceed the maximum of one thousand eight hundred and seventy dollars and fifty cents (\$1,870.50). If a hearing or court order establishes that the community spouse needs a larger amount of income than established above, such amount will not be subject to the maximum.~~ (10-1-94)

~~iii. Computing the Community Spouse Allowance (CSA) by subtracting the community spouse's gross income from the CSNS and rounding any remaining cents to the next higher dollar. Any positive balance remaining is the CSA except if a court orders the institutional spouse to contribute a larger amount for the support of the community spouse, then the amount of support ordered by the court will be used instead of the CSA. Any amount ordered by a court will not be subject to the limit on the CSNS. The CSA will only be deducted to the extent contributed by the institutional spouse. If the institutional spouse contributes an amount less than the CSA, only the actual amount contributed will be deducted from the institutional spouse's gross income.~~ (7-1-93)

~~e. Third, a Family Member Allowance (FMA) for each family member. A family member is defined as a person who is, or could be, claimed as a dependent on either spouse's federal income tax and who is a minor or dependent child, or dependent sibling or dependent parent of either spouse who lives in the community spouse's home. The FMA is computed by deducting the family member's gross income from one thousand two hundred and fifty-four dollars (\$1,254) and dividing the result by three (3). Any~~

~~remainder with cents rounded to the next higher dollar is the FMA for that family member.~~
~~(7-1-94)~~

~~i. The family member's gross income is used.— (1-29-90)~~

~~ii. The FMA is to be deducted from the institutional spouse's income whether or not it is actually contributed by the institutional spouse. (7-1-93)~~

~~iii. If the institutional spouse contributes an amount less than the FMA, only the actual amount contributed is deducted from the institutional spouse's gross income. If more, only the FMA is deducted. (7-1-93)~~

~~d. Fourth, the amounts for incurred expenses for Medicare and other health insurance premiums, deductibles or coinsurance charges not subject to payment by a third party.— (6-1-91)~~

~~i. Deduction of incurred expenses for the Medicare Part B premium is limited to the first two (2) months of Medicaid eligibility. If the individual received SSI or an AABD payment for the month prior to the month for which client participation is being calculated, Medicare Part B premiums must not be deducted.— (6-1-91)~~

~~ii. The client must report such expenses to the field office and provide verification in order for an expense to be considered for deduction. (6-1-91)~~

~~e. Fifth, amounts incurred for certain limited medical or remedial services not covered by the State Medicaid Plan and not paid by a third party. (1-29-90)~~

~~i. The Department's Regional Medicaid Units must determine whether an individual's incurred expenses for such limited services meet the criteria for deduction. (1-1-91)~~

~~ii. The client must report such expenses to the RMU and provide verification in order for an expense to be considered for deduction. (1-1-91)~~

~~iii. Deductions for necessary medical or remedial expenses approved by the Department will be applied at the time of application, and as necessary, based on changes reported to the field office by the recipient. (1-29-90)~~

~~04. Remainder After Calculation. Any remainder after the calculation in Subsection 146.10.b. or c., whichever is appropriate, is to be deducted from the recipient's provider payments to offset the cost of personal care services. The contribution will be collected from the recipient by the provider agency or independent provider. The provider and the recipient will be notified of the amount to be collected. (12-31-91)~~

~~05. Recalculation of Client Participation Amount. The client participation amount is to be recalculated annually at redetermination or whenever a change in income or deductions is reported to the field office by the recipient. (1-1-91)~~

149. CLIENT PARTICIPATION IN THE COST OF WAIVER SERVICES.

A recipient will not be required to participate in the cost of waiver services unless the

recipient's entitlement to MA is based on approval for, and receipt of, a waiver service and income limitations contained in IDAPA 16.03.05.634. Income excluded under the provisions of IDAPA 16.03.05.613 and 615 is excluded in determining client participation.
(7-1-95)T

01. Base Participation. Base participation is income available for client participation after subtracting all allowable deductions, except for the incurred medical expense deduction in Subsection 149.04. Base participation is calculated by the recipient's Eligibility Examiner. The incurred medical expense deduction is calculated by the RMU or ACCESS unit.
(7-1-95)T

02. Community Spouse. Base participation for a recipient with a community spouse is calculated under IDAPA 16.03.05.615. A community spouse is the spouse of an HCBS recipient who is not an HCBS recipient and is not institutionalized.
(7-1-95)T

03. No Community Spouse. Base participation for a recipient with no community spouse is calculated under IDAPA 16.03.05.613, using the appropriate HCBS personal needs allowance. The HCBS personal needs allowance is equal to the AABD allowances for a recipient living alone in his own home. The HCBS personal needs allowance for a recipient living in room and board, or in an adult foster care home at the recipient's level of care, is equal to the AABD allowances for a recipient in room and board, or in an adult foster care home at that level of care. These allowances are specified in IDAPA 16.03.05.407, 408, and 410. The HCBS personal needs allowance for the clients receiving Waiver Services for Adult Developmentally Disabled Recipients is three (3) times the federal SSI benefit amount to an individual in his own home.
(7-1-95)T

04. Incurred Medical Expenses. Amounts for certain limited medical or remedial services not covered by the Idaho Medicaid Plan and not paid by a third party may be deducted from the base participation amount. The Department must determine whether an individual's incurred expenses for such limited services meet the criteria for deduction. The recipient must report such expenses and provide verification in order for an expense to be considered for deduction. Deductions for necessary medical or remedial expenses approved by the Department will be deducted at application, and changed, as necessary, based on changes reported to the Department by the recipient.
(7-1-95)T

05. Remainder After Calculation. Any remainder after the calculation in Subsection 149.04 is the maximum participation to be deducted from the recipient's provider payments to offset the cost of personal care services. The participation will be collected from the recipient by the provider agency or independent provider. The provider and the recipient will be notified by the Department of the amount to be collected.
(7-1-95)T

06. Recalculation of Client Participation. The client participation amount must be recalculated annually at redetermination or whenever a change in income or deductions becomes known to the Department.
(7-1-95)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE
DOCKET NO. 16-0309-9606
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective January 3, 1996.

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 rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996.

DESCRIPTIVE SUMMARY: The following is the required finding and a concise statement of the supporting reasons for temporary rule-making and a statement in nontechnical language of the substance of the proposed rule: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect the public health, safety, or welfare. It has been determined that it would be more cost effective and efficient to contract out to a single contractor for the procurement of eyeglass frames and lenses for Medicaid recipients. This proposed rule will amend Section 122 to state that all vendors dispensing frames and lenses to Medicaid recipients must purchase these frames and lenses from a state designated contractor.

SUBMISSION OF WRITTEN COMMENTS, ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary or proposed rule, contact Robbie Charlton or Cindy Taylor at (208) 334-5795.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before January 24, 1996.

DATED this 3rd day of January, 1996.

STACI WELSH
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
PO Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0309-9606

122. VISION SERVICES.

The Department will pay for vision services and supplies in accordance with the following guidelines and limitations listed below. All eyeglass frames and lenses provided to Medicaid recipients and paid for by the Medicaid Program will be purchased from the supplier designated by the Department. ~~(10-1-91)~~(1-3-96)T

01. Eye Examinations. The Department will pay participating physicians and optometrists for one (1) eye examination during any twelve (12) month period for each eligible recipient to determine the need for glasses to correct a refractive error. Each eligible MA recipient, following a diagnosis of visual defects and a recommendation that eyeglasses are needed for correction of a refractive error, can receive eyeglasses within Department guidelines (See Section 100). (12-31-91)

02. Lenses. Lenses, single vision or bifocal will be provided when there is documentation that the correction need is equal to or greater than plus or minus one-half (.50) diopters. (10-29-92)

a. Plastic or polycarbonate lenses will be purchased only when there is clear documented evidence that the thickness of the glass lenses precludes their use (prescriptions above plus or minus two (2) diopters of correction); (10-1-91)

b. When plastic or polycarbonate lenses are required, scratch resistant coating shall be purchased; (10-1-91)

c. Payment for tinted lenses will only be made when there is a diagnosis of albinism; (10-22-93)

d. Contact lenses will be covered only with documentation that an extreme myopic condition requiring a correction equal to or greater than minus four (-4) diopters, cataract surgery, or keratoconus preclude the use of conventional lenses. (10-22-93)

03. Replacement Lenses. Replacement lenses shall be purchased from qualified providers only with documentation of a major visual change as defined by the Department. Statements of major visual change shall include documentation of a visual refraction change of at least one-half (.50) diopter plus or minus. (10-1-91)

04. Frames. Frames will be purchased from qualified providers according to the following guidelines: (10-1-91)

a. One (1) set of frames will be purchased by the Department not more often than once every four (4) years for eligible recipients; (10-1-91)

b. Except when it is documented by the physician that there has been a major change in visual acuity that cannot be accommodated in lenses that will fit in the existing frames, new frames also may be authorized. (10-22-93)

05. Glasses. Broken, lost, or missing glasses shall be the responsibility of the recipient. (10-22-93)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.04.14 - RULES GOVERNING LOW INCOME HOME
ENERGY ASSISTANCE PROGRAM**

DOCKET NO. 16-0414-9601

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective December 1, 1995.

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 rule-making procedures have been initiated. The action is authorized pursuant to Section(s) 56-202 and 56-203, Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996.

DESCRIPTIVE SUMMARY: The following is the required finding and a concise statement of the supporting reasons for temporary rule-making and a statement in nontechnical language of the substance of the proposed rule:

Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to be in compliance with deadlines in amendments to governing law or federal programs, to protect the public health, safety, or welfare, and to confer a benefit.

The existing rules for the Low Income Home Energy Assistance Program (LIHEAP) need to be revised to comply with Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97035) as amended by the Human Services Amendment of 1994 (Public Law 103-252), to include eligibility criteria to target assistance to eligible households with the greatest energy burden and highest energy needs, name new application for assistance forms, and provide further rule clarification and correction.

SUBMISSION OF WRITTEN COMMENTS, ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary or proposed rule, contact Neva Kaufman at (208) 334-5732.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before January 24, 1996.

DATED this 3rd day of January, 1996.

STACI WELSH
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
PO Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0414-9601

005. FORMS - BY NUMBER AND NAME.

For the purposes of implementing LIHEAP, the following forms will be used: (3-1-85)

01. HW0406. The form entitled "Appeal." (9-24-81)
02. HW0478. The form entitled "Client Assessment Application".
(~~11-1-93~~)(12-1-95)T
03. HW0478A. The form entitled "Client Assessment Application".
(11-1-93)
- ~~04. HW0479. The form entitled "Income Certification Form." (3-12-86)~~
- ~~05.~~ HW0480. The form entitled "Notice of Returned Energy Assistance Warrant." (3-5-91)
- ~~06.~~ HW0481. The form entitled "Instructions for LIHEAP Application."
(3-1-85)
- ~~07.~~ HW0482. The form entitled "Referral for LIHEAP Application."
(3-1-85)
- ~~08.~~ HW452-201. The form entitled "Batch Cover Sheet." (3-12-86)
- ~~09.~~ HW0485. The form entitled "Batch Control Log." (3-12-86)
- ~~10.~~ HW0486. The form entitled "LIHEAP Notice of Denial." (3-1-85)
- ~~11.~~ HW0487. The form entitled "LIHEAP Notice of Award." (3-1-85)
- ~~12.~~ HW0487A. The form entitled "LIHEAP Notice of Award." (3-5-91)
- ~~13.~~ HW0476. The form entitled "Self-Employment Verification for LIHEAP Applicants."
(3-17-92)
- ~~14.~~ HW0679. The form entitled "Privacy Act Information and Resident Status Certification".
(11-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

101. ELIGIBLE ACTIVITIES.

Funds made available through this grant for Low Income Home Energy Assistance will be used for: (9-24-81)

01. Utility Costs. These costs include electricity and natural gas but do not include telephone, water and/or sewer costs. (4-5-82)

02. Fuel Costs. These costs include those incurred for purchase of fuels used for home heating purposes. (9-24-81)

03. Emergency Reserve. Funds reserved for weather related and supply shortage emergencies will be used as follows: (9-24-81)

a. Weather-Related or Supply Emergency. When an energy supply shortage or a weather-related emergency occurs which threatens the health or lives of an area's inhabitants such that the Governor of the state of Idaho declares a state of emergency, emergency reserve funds may be expended for the items listed below, contingent upon availability of sufficient funds. (9-24-81)

i. Alternative fuel supplies; and (9-24-81)

ii. Clothing; and (9-24-81)

iii. Blankets; and (9-24-81)

iv. Temporary shelter; and (9-24-81)

v. Minor repair to homes and/or heating equipment not including replacement of capital outlay proportion; and (9-24-81)

b. Crisis Intervention Emergency. Additional assistance is available after March 15th of each year when regular program benefit is insufficient or assistance in the form of cash assistance is needed to avoid a health threatening energy related emergency situation to the household that may or may not have applied during the regular program period. Contingent upon the availability of sufficient emergency funds, the additional benefit assistance amount will not exceed ~~five hundred dollars (\$500)~~ three hundred and fifty dollars (\$350). The additional assistance will be provided as follows: (11-1-93)(12-1-95)T

i. Cash assistance to maintain or reestablish heat for the household; and/or (3-2-93)

ii. Minor repair to home and/or heating equipment including repair or replacement of doors, windows, hot water unit or furnace/stove heater. (3-2-93)

c. Households Eligible for Crisis Intervention Emergency. Such households include but are not limited to: (3-2-93)

i. Migrant households who move to Idaho after the end of the regular program; and (3-12-86)

ii. Individuals who move from an ineligible living situation to an eligible living situation after the end of the regular program. (3-12-86)

iii. Households that experience a catastrophic illness and whose household income exceeds the eligibility guidelines may be eligible when the household's previous

twelve (12) month's unreimbursed medical expenses are deducted from the same twelve (12) month's gross income. If, after deducting the unreimbursed medical expenses from the gross income the established income guidelines are met, the household may be eligible for assistance. The Department will make final determination for eligibility. (11-1-93)

vi. Household who, to the extent permitted by law, allow weatherization services be installed to their home residence. (12-1-95)T

04. Households Residing in Subsidized Housing. Eligible households residing in eligible subsidized housing are entitled to LIHEAP benefits. Households residing in ineligible subsidized housing are not entitled to LIHEAP benefits. (3-1-85)

05. Low-cost Residential Weatherization. Funds reserved for weatherization services to low-income households pursuant to Department of Energy, Weatherization Assistance Program Regulations when in accordance with federal LIHEAP Regulations. (11-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

151. INCOME ELIGIBILITY REQUIREMENTS.

The LIHEAP income eligibility requirements are as follows: (3-1-85)

01. Income Eligibility. Assistance under this program is limited to households income which for the three (3) month period prior to application is less than one hundred thirty percent (130%) of the current OMB Poverty Guidelines in effect at the start of the program year. (11-1-94)

02. Available Income. Gross monthly income from all sources, for the three (3) month period prior to the date of the application which is not excluded, must be considered available for determining eligibility. When actual receipts for three (3) month income are not available the following procedures will be used: (11-1-93)

a. For household income which is received less frequently than three (3) month increments, the income must be converted to a three (3) month amount by: (11-1-93)

i. Multiplying income received weekly by 12.9; and (11-1-93)

ii. Multiplying income received every two (2) weeks by 6.45; and (11-1-93)

iii. Multiplying income received twice each month by 6. (11-1-93)

b. For household income which is received less frequently than monthly, or which is received in a particular work season or seasons of a calendar year, the annual amount must be divided by four (4) to arrive at a three (3) month amount. (11-1-93)

03. When Income Considered. For purposes of determining LIHEAP

eligibility and benefit amount, household income must be considered as follows: (3-1-85)

a. For household income which is received monthly or more frequently, income received in the ninety (90) days or three (3) months prior to the date of application is to be used. (11-1-93)

b. For household income which is received less frequently than monthly, including seasonal and self-employment income, the annual amount of income will be converted to a three (3) month amount pursuant to Subsection 151.02.b. is to be used. (11-1-94)

04. Treatment of Alien Resident Income. If a household includes both eligible and persons ineligible by virtue of their resident alien status, and one (1) or more of the ineligible persons had income during the period being reported, the ineligible persons' income will be included in the household's gross income to determine the household's eligibility. The ineligible person(s) will be excluded from the total number of eligible household members. ~~(11-1-93)~~(12-1-95)T

05. Income Verification. For purposes of LIHEAP applicants applying through a Community Action Agency, income which is not otherwise excluded must be verified and the household must provide proof of income, upon request. Proof of income includes, but is not limited to, the following: (3-9-89)

a. Award letters from public or private agencies or institutions; (9-24-81)

b. Actual wage stubs from employment; (9-24-81)

c. Written statements provided by a wage earner's supervisor, employer, or his designee; (9-24-81)

d. Monetary determinations issued by the Department of Employment to show the dates and amounts of unemployment benefits; (9-24-81)

e. Households engaged in self-employment may use the current completed IRS tax forms for verifying employment income. Business, farm, and real estate deductions (excluding depreciation, depletion and losses from the sale of real estate, stocks and securities) will be subtracted prior to dividing the amount by four (4) to arrive at the three (3) month self-employment income. Households newly engaged in self-employment (less than one (1) year) or when IRS tax forms are not available, may use the profit and loss statement or cash receipt ledger reflecting the net receipts for the prior three (3) months of employment. Additional income (other than self-employed) to the household will need separate verification for the ~~ninety (90) days~~ three (3) months prior to application. ~~(11-1-93)~~(12-1-95)T

f. Other documentary evidence which can be relied upon to accurately reflect income. (9-24-81)

06. Households Claiming No Income. (11-1-94)

a. A household claiming no income must document on Form ~~HW0479~~,

~~Income Certification~~ HW0478 or HW0478A, Client Assessment Application how their basic needs i.e. shelter, food, and utilities are being met. ~~(11-1-93)~~(12-1-95)T

b. Households claiming no income for prior two (2) program fiscal years, must provide additional written information from someone, other than a household member, who has knowledge of how household basic needs have been met during the time period of current program. (11-1-94)

07. Income Statement. Households initiating application through a CAA office must complete an ~~HW0479, "Low Income Certification Form"~~ HW0478 or HW0478A, Client Assessment Application. ~~(4-5-82)~~(12-1-95)T

(BREAK IN CONTINUITY OF SECTIONS)

204. BENEFIT DETERMINATION.

Eligible households will have their benefit amount determined according to the household's county of residence, source of home ~~heating, energy, income, and highest energy needs based upon the household's unique situation i.e. children under six (6) years of age, individuals with disabilities and frail individuals sixty (60) years of age or older.~~ ~~(9-24-81)~~(12-1-95)T

01. Area of Residence. For purposes of LIHEAP benefits, the state has been partitioned into five (5) heating areas and each county with like numbers of heating degree days has been assigned to a particular area as shown in the table below: (3-1-85)

COUNTY BREAKDOWNS IN HEATING AREAS		
AREA I	Payette	5723
	Canyon	5727
	Ada	5840
	Owyhee	5842
	Gem	5886
	Gooding	5987
AREA II	Nez Perce	6206
	Washington	6240
	Twin Falls	6262
	Jerome	6346
	Elmore	6399

COUNTY BREAKDOWNS IN HEATING AREAS		
AREA III	Kootenai	6664
	Benewah	6689
	Latah	6727
	Lewis	6729
	Minidoka	6782
	Idaho	6860
	Cassia	6876
	Lincoln	6927
	Boise	6979
	Shoshone	7010
	Power	7038
AREA IV	Boundary	7179
	Bingham	7271
	Bonner	7330
	Franklin	7344
	Adams	7396
	Oneida	7413
	Clearwater	7439
	Bannock	7465
	Caribou	7505
	Lemhi	7703

COUNTY BREAKDOWNS IN HEATING AREAS		
AREA V	Blaine	7932
	Bonneville	8040
	Custer	8184
	Jefferson	8291
	Madison	8320
	Clark	8372
	Bear Lake	8413
	Teton	8498
	Butte	8617
	Camas	8701
	Fremont	8919
	Valley	9064

(3-1-90)

02. Heating Source. For purposes of LIHEAP benefits, annual heating costs are fixed as of November 1, and benefits will be calculated according to type of energy used, energy needs, family size, method of payment for home ~~heat~~ energy, and area of residence. ~~(3-5-91)(12-1-95)T~~

03. Household Income. ~~The household's income for the application as determined by Subsection 151.02 is used to determine the percentage of the household's heating needs to be covered by the benefit amount. The households' energy burden, unique energy needs and their income for the application as determined by Subsection 151.02 will be used to determine the percentage of their energy burden to be covered by the benefit amount. All other households not having unique energy needs will have the percentage of their energy burden to be covered determined by the lowest percentage of benefit amount.~~ ~~(11-1-93)(12-1-95)T~~

205. METHOD OF PAYMENT.

The method of paying LIHEAP benefits to eligible households depends on the household's source of home heat and whether the cost of home heating is incurred directly or indirectly as an undesignated portion of the household's rent or reimbursement for costs of cutting its own wood. (3-1-85)

01. Energy Supplier. If a household incurs a direct cost for heat from an energy supplier, other than the major vendors participating in a direct payment system, benefits must be awarded in the form of a two (2) party warrant. (3-17-92)

a. A two (2) party warrant payable to the household and the energy supplier the household has designated as the source from which it buys its primary fuel.

(3-17-92)

b. The two (2) party warrant must be endorsed by the energy supplier and the household. (3-17-92)
9-24-81)

02. One-Party Warrant. Benefits will be provided in the form of a one (1) party warrant when the following situations exist: (3-12-86)

a. If a household incurs an indirect cost for heat because it pays for heat as an undesignated portion of rent; (3-12-86)

b. If a household designates wood as its primary heat source; or (3-17-92)

c. If a household designates one (1) of the major vendors as its primary energy supplier; or (3-17-92)

d. If a vendor refuses to accept a household's energy check and no comparable energy supplier can be found. (3-12-86)

03. Eligible Subsidized Housing Residents. Subsidized housing residents who are paying a vendor directly for heat will receive a benefit calculated at the lowest percentage of the annual heating costs for their heat source for the county of residence, as shown in the chart, ~~Subsections 204.02 and 204.03.~~ as specified in Subsections 204.01, 204.02 and 204.03. (11-1-94)(12-1-95)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.01 - RULES GOVERNING SOCIAL SERVICES

DOCKET NO. 16-0601-9601

NOTICE OF TEMPORARY RULES

EFFECTIVE DATE: These temporary rules are effective November 16, 1995.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted temporary rules. The action is authorized pursuant to Section(s) 16-1624, 16-1822, 16-1827, 16-2001, 16-2102, 39-105, 39-106, 39-7501, 56-202, 56-203B, 56-204, 56-204A, 56-803, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be held as follows:

Public and negotiated rule making hearings will be scheduled throughout the spring of 1996. Hearing dates and locations will be advertised locally. When proposed rules are developed, opportunity for comment and public hearings will again be provided.

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

Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect the public health, safety or welfare.

This chapter of rules is being repealed in its entirety. It is being replaced with updated rules under docket no. 16-0601-9602.

SUBMISSION OF WRITTEN COMMENTS, ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rules, contact Kathryn Morris at (208) 334-5706.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before May 1, 1996.

DATED this 3rd day of January, 1996.

STACI WELSH
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
PO Box 83720
Boise, Idaho 83720-0036
(208) 334-5564, phone;(208) 334-5548, fax

THESE RULES ARE REPEALED IN THEIR ENTIRETY.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES

DOCKET NO. 16-0601-9602

NOTICE OF TEMPORARY RULES

EFFECTIVE DATE: These temporary rules are effective November 16, 1995.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted temporary rules. The action is authorized pursuant to Section(s) 16-1624, 16-1822, 16-1827, 16-2001, 16-2102, 39-105, 39-106, 39-7501, 56-202, 56-203B, 56-204, 56-204A, 56-803, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule making will be held as follows:

Public and negotiated rule making hearings will be scheduled throughout the spring of 1996. Hearing dates and locations will be advertised locally. When proposed rules are developed, opportunity for comment and public hearings will again be provided.

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

Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to protect public health, safety or welfare. New rules reflect current practice in child welfare including alternate care, termination of parental rights, adoption services, priority response standards and dispositional codes for child protection. Requirements of the Indian Child Welfare Act are incorporated into the temporary rules. These requirements include active efforts to avoid removal of the Indian child from the Indian home, tribal notification, intervention and/or transfer of jurisdiction to the child's tribe, Indian status and adoption of Indian children. Also included are the specific requirements regarding the necessity and qualifications of expert witnesses and placement preferences for Indian children. This chapter of rules was previously referred to as "Social Services" and now covers all child welfare services.

SUBMISSION OF WRITTEN COMMENTS, ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rules, contact Kathryn Morris at (208) 334-5706. Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before May 1, 1996.

DATED this 3rd day of January, 1996.

STACI WELSH
Administrative Procedures Coordinator
DHW - Division of Legal Services
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IDAPA 16
TITLE 06
Chapter 01

RULES GOVERNING FAMILY AND CHILDREN'S SERVICES

000. LEGAL AUTHORITY.

Pursuant to Sections 16-1624, 16-2001, 39-105(1), 39-106(1)(a), 56-202(b), 56-203b, 56-204(a) and 56-204A, Idaho Code, the Idaho Legislature has delegated to the Department the responsibility to establish and enforce such rules and methods of administration as may be necessary or proper to administer social services to people who are in need. These services include but are not limited to provisions for child protection services, termination of parental rights, foster care, adoption services, institutional and group care, services for unwed parents, and payments for foster care and day care. In addition, pursuant to Sections 39-105(1), 39-119, 56-803, 16-1822, and 16-1827, the Idaho Legislature has delegated to the Board of Health and Welfare the responsibility to establish and enforce rules governing licensing, fees for services, and adoption of "hard-to-place" children. Authority to establish and enforce rules governing and implementing the Interstate Compact on Placement of Children and Interstate Compact on Adoption and Medical Assistance is vested in the Compact Administrators, pursuant to Sections 16-2102, Article VII, and 39-7501, Idaho Code, respectively. (11-16-95)T

001. TITLE AND SCOPE.

01. Title. These rules are to be cited in full as Idaho Department of Health and Welfare Rules, Title 06, Chapter 01, Rules Governing Family and Children's Services. (11-16-95)T

02. Scope. These rules are established to govern the statewide provision of: (11-16-95)T

a. Family services associated with child protection, behavioral and emotional disorders, substance abuse, alternate care and adoptions; (11-16-95)T

b. As resources are available, services aimed at preventing child protective, and severe behavioral and emotional problems from impinging upon families and communities; and (11-16-95)T

c. Family services to support the education, training and employment programs being provided for public assistance and Food Stamp recipients. (11-16-95)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(1609b)(IV), Idaho Code, this agency has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. The document is available for public inspection and copying at cost in the main office of this agency. (11-16-95)T

003. ADMINISTRATIVE APPEALS.

Contested case appeals shall be governed by the Idaho Department of Health and Welfare Rules, Title 05, Chapter 03, Rules Governing Contested Case Proceedings and Declaratory Rulings. (11-16-95)T

004. CONFIDENTIALITY OF RECORDS.

Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, Title 05, Chapter 01, Rules Governing the Protection and Disclosure of Department Records. (11-16-95)T

005. MANDATORY CRIMINAL HISTORY CHECKS.

The following persons shall participate in a criminal history check in accordance with Idaho Department of Health and Welfare Rules, Title 05, Chapter 06, Rules Governing Mandatory Criminal History Checks: All current Department employees, applicants, transfers, reinstated former employees, student interns, promotees, contract employees, volunteers, and others assigned to programs that involve direct contact with children. Programs within the Department that involve direct contact with children include, but are not limited to, the following: State Hospital South, Adolescent Program; all regionally operated day treatment programming staffed by personnel of the Family and Children's Services Programs and/or Mental Health Programs and Child Development Center Programs and others; and all other programs that include provision of services to children as an alternative to parental care for all or any portion of the day. "Others assigned" specifically refers to employees of the Department of Education or local school districts assigned to regional day treatment programming or institutional settings. (11-16-95)T

006. -- 009. (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS.

For the purposes of the rules contained in Idaho Department of Health and Welfare Rules, Title 06, Chapter 01, Rules Governing Family and Children's Services, the following terms and abbreviations are used as defined herein: (11-16-95)T

01. AFDC (Aid to Families with Dependent Children). Federal/state-supported income maintenance program for persons with limited income and assets who are determined to be eligible by the Department's local offices. Federal funds are allocated under Title IV-A of the Social Security Act. When used with regard to eligibility for social services, this term includes recipients of AFDC and those persons whose needs are taken into account when determining their eligibility. (11-16-95)T

02. AFDC-FC (Aid to Families with Dependent Children-Foster Care). Child care provided in lieu of parental care in a foster home, children's agency or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (11-16-95)T

03. A/R. Applicant for or recipient of services. (11-16-95)T

04. Adoption Assistance. Funds provided to adoptive parents of children who have special needs and/or could not be adopted without financial or medical assistance. (11-16-95)T

05. Adoption Services. Protective service through which children are provided with permanent homes, under new legal parentage, including transfer of the mutual rights and responsibilities that prevail in the birth parent-child relationship.

(11-16-95)T

06. Alternate Care. Temporary living arrangements, when necessary for a child to leave his own home, through a variety of foster care, respite care, residential treatment and institutional resources, in accordance with the protections established in public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980" as amended, the Child Protective Act, Section 16-1601 et seq., Idaho Code, and the Indian Child Welfare Act.

(11-16-95)T

07. Board. The Idaho State Board of Health and Welfare. (11-16-95)T

08. Case Management. A change oriented service to families that assures and coordinates the provision of family assessment, case planning, treatment and other services, protection, advocacy, review and reassessment, documentation and timely closure of a case.

(11-16-95)T

09. Case Plan. See "Family Plan". (11-16-95)T

10. Central Office. The state level administrative office of the Department of Health and Welfare located in Boise, Idaho.

(11-16-95)T

11. Child Protection. All children under eighteen (18) who have been harmed or threatened with harm by a person responsible for their health or welfare, including runaways who are harmed or threatened with harm by virtue of their status, through non-accidental physical or mental injury, sexual abuse (as defined by state law) or negligent treatment or maltreatment, including the failure to provide adequate food, clothing or shelter shall be served without regard to income. Developmentally disabled or emotionally disturbed children who are committed to the Department for out-of-home placement shall be served without regard to income.

(11-16-95)T

12. Child Protective Services. Services provided in response to potential, alleged or actual abuse, abandonment or neglect of individuals under the age of eighteen (18) in accordance with the provisions of Section 16-1601 et seq., Idaho Code, the "Child Protective Act."

(11-16-95)T

13. Compact Administrator. The individual designated to coordinate interstate transfers of persons requiring special services in accordance with the provisions of Section 16-21-1 et seq., Idaho Code; "Interstate Compact on the Placement of Children," Section 16-1901 et seq., Idaho Code; or the "Interstate Compact on Mental Health," Section 66-1201 et seq., Idaho Code; or the "Interstate Compact on Adoption and Medical Assistance," Section 39-7501 et seq. Idaho Code.

(11-16-95)T

14. DHW Regions. Seven (7) geographically defined regions which serve as administrative units for the delivery of social services through local Department local offices.

(11-16-95)T

15. Day Care for Children. Direct care and/or protection for children within

or outside of the home when the custodial or developmental needs of the child are not being met by the family for any portion of a twenty-four (24) hour day. (11-16-95)T

16. Day Treatment Services. Intensive nonresidential services that include an integrated set of educational, clinical, social, vocational and family interventions provided on a regularly scheduled, typically daily, basis. (11-16-95)T

17. Department. The Idaho Department of Health and Welfare. (11-16-95)T

18. Director. The Director of the Department of Health and Welfare or designee. (11-16-95)T

19. Emergency Assistance To Families. Social services, emergency payments and placement services authorized by FACS social workers for Title IV-A Emergency Assistance eligible families to meet emergency need. (11-16-95)T

20. Extended Family Member. As defined by the law, or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (11-16-95)T

21. FFP. Federal Financial Participation. (11-16-95)T

22. Family. Related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (11-16-95)T

23. Family and Children's Services (FACS). Those programs and services directed to families and children, administered by the Department and provided in accordance with these rules. (11-16-95)T

24. Family Assessment. An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and/or safety issues that threaten family integrity, unity or the ability to care for their members. (11-16-95)T

25. Family Case Record. Compilation of all documents relating to a family's case. (11-16-95)T

26. Family Centered Services. An approach to the delivery of social services that focuses on families rather than individuals. Services are based on assessment of the entire family and a negotiated family plan designed to strengthen and maintain the family, while ensuring the protection of children and the safety of their communities. (11-16-95)T

27. Family Plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when,

how and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders and/or leaders should be consulted early in the plan development. (11-16-95)T

28. Family Services Worker. Any of the direct service personnel, including social workers, psychologists, counselors and family therapists, working in regional Family and Children's Services Programs. For purposes of pre-placement home studies, adoption home studies, reports to the court under the Termination and Adoption Acts, and Placement Supervision Reports, "family services workers" also include licensed counselors or psychologists, or individuals who have at least bachelor's degrees in social work, marriage and family therapy, or other social sciences. (11-16-95)T

29. Field Office. A Department of Health and Welfare service delivery site. (11-16-95)T

30. Goal. A long-range statement of what is to be accomplished to succeed in the direction of the mission of the program. (11-16-95)T

31. Indian. Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (11-16-95)T

32. Indian Child. Any unmarried person who is under the age of eighteen (18) who is: (11-16-95)T

a. A member of an Indian tribe, or (11-16-95)T

b. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (11-16-95)T

33. Indian Child Welfare Act (ICWA). The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (11-16-95)T

34. Indian Child's Tribe. (11-16-95)T

a. The Indian tribe in which an Indian child is a member or eligible for membership, or (11-16-95)T

b. In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant contacts. (11-16-95)T

35. Indian Tribe. Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (11-16-95)T

36. Information and Referral Services. A service which enables individuals to gain access to human services through providing accurate, current information on community and Department resources. While information and referral is not a separate

service of the Department it is provided as a component of most social service programs. Information and referral services will be provided without regard to income. (11-16-95)T

37. Job Opportunities and Basic Skills Training Program (JOBS). The training and employment program established for recipients of aid to dependent children by the Family Support Act of 1988 and provided in Idaho Department of Health and Welfare Rules. (11-16-95)T

38. Job Search Assistance Program (JSAP). The training and employment program established for food stamp recipients by the Hunger Prevention Act of 1988 and provided in accordance with Idaho Department of Health and Welfare Rules. (11-16-95)T

39. Licensed. Facilities or programs being licensed in accordance with the provisions of Idaho Department of Health and Welfare Rules, Title 06, Chapter 02, Rules and Standards for Child Care Licensing. (11-16-95)T

40. Licensing. See Idaho Department of Health and Welfare Rules, Title 06, Chapter 02, Rules and Standards for Child Care Licensing, Section 100. (11-16-95)T

41. Medicaid. See "Title XIX," defined in Subsection [004.38]. (11-16-95)T

42. Medicare. See "Title XVIII," defined in Subsection [004.39]. (11-16-95)T

43. Multiethnic Placement Act of 1994 (MEPA). MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color or national origin. (11-16-95)T

44. Needs Assessment. First step in the planning process which results in systematic documentation of existing conditions in relationship to desired conditions taking into consideration the number of individuals or families who are receiving services and the number who remain unserved. (11-16-95)T

45. Objective. Statement of measured and specific progress toward a goal to be achieved during a stated period of time. (11-16-95)T

46. Permanency Planning. A primary function of family services initiated in all cases to identify programs, services and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (11-16-95)T

47. P.L. 96-272. Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980." Section 422 requires states to implement a case review system to protect children in alternate care under the supervision of the state. (11-16-95)T

48. Planning. An orderly rational process which results in identification of needs and formulation of strategies to fulfill such needs, within resource constraints. (11-16-95)T

49. Prevention. Programs, services and activities aimed at preventing child protective and severe behavioral and emotional problems. Prevention services are developed and provided by FACS in coordination with other statewide and community organizations as resources are available. (11-16-95)T

50. Protective Services. To provide assistance in response to potential, actual or alleged neglect, abuse or exploitation of children. (11-16-95)T

51. Purchase of Services. Provision of services to clients by local agencies or individuals who contract with DHW. (11-16-95)T

52. Qualified Expert Witness--ICWA. A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (11-16-95)T

a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; (11-16-95)T

b. An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; (11-16-95)T

c. A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community; or (11-16-95)T

d. An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs. (11-16-95)T

53. Regional Office. Department office located in one (1) of seven (7) areas of the state which comprises a geographically defined service area for the administration and delivery of the Department's services. (11-16-95)T

54. Reservation. Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. (11-16-95)T

55. Risk Assessment. Direct contact of a family services worker with a family to objectively determine if safety issues or immediate service needs exist, which require further Family and Children's Services response. (11-16-95)T

56. SSI (Supplemental Security Income). Income maintenance grants for eligible persons who are aged, blind or disabled. Grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local

Social Security Offices. (11-16-95)T

57. Self-Support Services. Supportive social services provided to an individual and their family to increase their ability to obtain employment. (11-16-95)T

58. Severe Behavioral and Emotional Disorders. Serious emotional disability of an individual under the age of eighteen (18) years, which requires sustained mental health treatment interventions from two (2) or more components of the service system. (11-16-95)T

59. Sheltered Workshop Services. Work activities and extended sheltered employment services for adults age eighteen (18) and over who are developmentally disabled as defined by the Idaho Developmental Disabilities Services and Facilities Act. Sheltered workshop services are established to assist individuals in acquiring skills which promote opportunities for independent daily living and/or employment. Activities include therapeutic and prevocational activities, skills for self-care and management of daily living and recreational and work skills training. (11-16-95)T

60. Social Service Block Grant. The social service block grant funds are federal funds provided to states to assist in the development of comprehensive social service programs to help those with special needs to achieve and maintain a greater degree of economic self support and self sufficiency, to prevent neglect, abuse, or exploitation of children and adults who are unable to protect their own interests, to prevent or reduce inappropriate institutional care, and to secure referral or admission for institutional care when other forms of care are not appropriate. (11-16-95)T

61. Target Population. Group of persons, residing within a defined geographical area, who are identified as being at risk for an adverse social or health condition or combination of conditions and whom the program is designed to serve. (11-16-95)T

62. Title IV-A. Title under the Social Security Act which provides public assistance to families with dependent children and is commonly identified as Aid to Families with Dependent Children (AFDC) and emergency assistance. (11-16-95)T

63. Title IV-B. Title under the Social Security Act which provides Child Welfare Services. This categorical service program is aimed at improving the general welfare of children regardless of income. (11-16-95)T

64. Title IV-E. Title under the Social Security Act which provides funding for foster care maintenance (formerly provided for under Title IV-A of the Social Security Act) and adoption assistance payments for certain eligible children. (11-16-95)T

65. Title XVIII (Medicare). Title of the Social Security Act which provides funding for medical services for persons over age sixty-five (65). (11-16-95)T

66. Title XIX (Medicaid). Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs". (11-16-95)T

67. Tribal Court. A court with jurisdiction over child custody proceedings

and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (11-16-95)T

68. Unmarried Parents' Services. Unmarried parents' services are aimed at achieving or maintaining self-sufficiency or self-support for unmarried parents. These services include counseling for all unmarried parents who need such service in relation to their plans for their children and arranging for and/or paying for prenatal and confinement care for the well-being of the parent and infant. (11-16-95)T

011. -- 019. (RESERVED).

020. GENERAL REQUIREMENTS APPLICABLE TO ALL FAMILY AND CHILDREN'S SERVICES PROGRAMS.

01. Information, Referral and Screening. All residents of the State of Idaho, regardless of the duration of their residency shall be entitled to receive, upon referral or request: (11-16-95)T

a. Accurate and current information about services to children and families provided through the Department. (11-16-95)T

b. Referral to other appropriate public or private services available in the community; and (11-16-95)T

c. A screening to determine service needs and safety issues that can be addressed through Family and Children's Services. (11-16-95)T

02. Initiating Family and Children's Services. Family and children's services are initiated upon referral for services that the program is legally mandated to provide or after completion of a voluntary request for services. Efforts shall be made to identify any Indian children in the family and all possible tribes in which a child may be a member or eligible for membership. (11-16-95)T

03. Individual Authorized to Request Voluntary Services. Requests for voluntary services shall be made by a family member or by an authorized representative, or by someone acting on behalf of an incompetent or incapacitated person. (11-16-95)T

04. Record of Request for Services. The date of referral or request for services shall be documented in the records of the field office. (11-16-95)T

05. Information to be Provided to Family. Upon referral or application for services, the family services worker shall inform the family that: (11-16-95)T

a. They have the right to accept or reject services offered by the Department, except those services imposed by law or by a court order; (11-16-95)T

b. Fees may be charged for certain services, and that the parent has financial responsibility for the child in care; (11-16-95)T

c. They have the right to pursue an administrative appeal of any decision of Family and Children's Services relating to them, including but not limited to any decision not to provide services or to discontinue planned services; the Department's failure to act upon a referral or request for services within thirty (30) days; or an decision to remove a child from an alternate care placement unless court-ordered or court-authorized.

(11-16-95)T

021. ASSESSMENT OF NEED.

Upon referral for protective or other legally-mandated services or upon voluntary request for services, assessment of need shall be determined by the Department or by contractors based upon the following:

(11-16-95)T

01. Risk Assessment. A risk assessment shall be conducted to determine the safety of the child, the family, and the community.

(11-16-95)T

02. Family Assessment. If the referral is for legally-mandated services or if the risk assessment indicates a need, a family assessment shall be conducted.

(11-16-95)T

03. Other Evaluations. When a family assessment indicates a need, other professional diagnostic evaluations of the family or individual involved shall be arranged.

(11-16-95)T

022. -- 029. (RESERVED).

030. FAMILY SERVICES PROVIDED.

The services and treatment provided by Family and Children's Services shall be based upon regional needs and resources, and include at least the following elements:

(11-16-95)T

01. Crisis Response. Family and Children's Services shall have the capacity to respond, on a twenty-four (24) hour per day seven (7) day per week basis, to family crises associated with child protective and severe emotional disturbances in children.

(11-16-95)T

02. Case Management. Family services shall include case management to assure and coordinate family assessment, case planning, treatment and other services, protection, permanency planning, advocacy, review and reassessment, documentation and timely closure of cases.

(11-16-95)T

03. Multi-disciplinary Family Services. Family services shall be multi-disciplinary and shall be oriented toward resolution of issues associated with child protective, substance abuse and adoptive situations; duration, training and employment issues; and severe behavioral and emotional disorders.

(11-16-95)T

04. Education, Training and Employment Programs. Family services shall be available to support the education, training and employment programs of the Job Opportunities and Basic Skills Training Program (JOBS) for public assistance recipients and the Job Search Assistance Program (JSAP) for Food Stamp recipients.

(11-16-95)T

05. Community Based. Family services shall be aimed at bringing the

family to the minimum level of functioning acceptable in the community and make maximum use of normal environments such as the home, other home-like settings, and other community services and resources. (11-16-95)T

031. -- 039. (RESERVED).

040. FAMILY SERVICES PRACTICE.

Through social work and the use of other appropriate and available resources, the Department provides services for children with the goal of preventing or eliminating the need to remove children from their homes; providing for children's safe return home as soon as possible; and promoting the stability and security of Indian tribes and families by compliance with the Indian Child Welfare Act. (11-16-95)T

01. Service Capacity Management. The Department shall manage service capacity within each region of the state to ensure that family service workers respond within a reasonable period of time to referrals, requests for services and ongoing family case needs. (11-16-95)T

02. Permanency Planning. Permanency is the primary goal of family services in all cases by: (11-16-95)T

a. Establishing a plan for programs, services and activities that move toward the goal of permanency for family members within a reasonable amount of time as identified in the family plan; (11-16-95)T

b. Identifying temporary and permanent living arrangements for children who are unable to remain in their own homes; (11-16-95)T

c. Providing counseling to children, families and alternate care providers toward the goal of family reunification or toward other permanent arrangements for the children when family reunification is not feasible within a reasonable amount of time; and (11-16-95)T

d. Providing services and assistance to facilitate independent living when that is the goal of the permanency plan for a child. (11-16-95)T

03. Family Plan Development. The family plan shall be completed within thirty (30) days of the date the case was opened. (11-16-95)T

a. Families shall be involved in planning their own service and treatment goals, objectives and processes. The family plan and any changes to it shall be signed and dated by the family, or the reason for their refusal to sign shall be documented in the plan. (11-16-95)T

b. The duration and frequency of services shall be determined based on the needs of the family and individuals involved and shall be identified in the family plan. (11-16-95)T

c. All parties shall receive a copy of the family plan and all parties, including the parents and the child if of appropriate age, shall sign a statement indicating

they have read and understood the plan. (11-16-95)T

d. At least every six (6) months, the assigned family services worker shall reassess the need for continued services and if appropriate, update the plan based on the changing needs of the family or individual family members. (11-16-95)T

e. Administrative or judicial review shall be held at least every six months for each child placed by the Department under the Child Protective Act and at least annually for children in guardianship of the Department and who are placed in adoptive homes, from the date guardianship is granted until a final court order of adoption is issued and placed in the family plan. (11-16-95)T

f. Planning for closure shall begin at the time the family plan is developed and the ending date for services shall be projected. (11-16-95)T

041. NOTICE REQUIRED FOR ICWA.

Wherever these rules require notice to the parent or custodian and tribe of an Indian child, notice shall also be provided to the Secretary of the Interior by certified mail with return receipt requested to Department of the Interior, Bureau of Indian Services, Division of Social Services, Code 450, Mail Stop 310-SIB, 1849 C Street, N.W., Washington, DC 20240. In addition, pursuant to 25 CFR Section 23.11, copies of such notices shall be sent by certified mail with return receipt requested to the Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice of the proceeding shall be given to the Secretary, who shall provide notice to the parent or Indian custodian and tribe. (11-16-95)T

042. -- 049. (RESERVED).

050. SERVICES TO BE PROVIDED.

The role of the family services worker is to assure that the following services are provided and documented in the case record: (11-16-95)T

01. Reasonable Efforts/Active Efforts. Services offered or provided to the family that were intended to prevent removal of the child from the family, or to obtain another permanent placement; or, for an Indian child, a description of the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; that these efforts have proved unsuccessful; and that based on qualified expert information, continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child; (11-16-95)T

02. ICWA Preferences. If appropriate, application of the placement preference for placement in accordance with the Indian Child Welfare Act, or a detailed explanation of good cause for not applying the preferences; (11-16-95)T

03. Least Restrictive Setting. Placement in the least restrictive setting and in close proximity to the parents or if not, justification that the placement is in the best interest of the child; or, for an Indian child, placement in the least restrictive setting that most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child; (11-16-95)T

04. Legal Requirements. Compliance with all the requirements of the court at the time of the judicial determination; and in the case of an Indian child, notice of the pending proceeding to the parent or Indian custodian and the Indian child's tribe, including notice of their right to intervene; the right to twenty (20) days' additional time to prepare for the proceeding; the right to appointment of counsel if the parent or Indian custodian is indigent; the right to examine all documents filed with the court upon which placement may be based; and the right to withdraw consent to a voluntary foster placement;

(11-16-95)T

05. Analysis of Cause for Placement. An analysis of the circumstances that necessitated the placement and improvements required for the child's return home;

(11-16-95)T

06. Planning for Foster Care. Formulation of the Department's plan for assuring that the child receives necessary care while in the foster home or treatment setting, including services to the foster parents;

(11-16-95)T

07. Date for Permanent Placement. Determination of the anticipated date the child will be returned to the parents or to an alternate permanent placement;

(11-16-95)T

08. Consideration of Long-Term Foster Care. Use of long-term care shall be utilized only when circumstances will not allow the child with special needs to be returned home or placed with an adoptive family, after reasonable efforts to replace the child with the parents or another family or an adoptive family. There must be active agreement of the caretaker and child. Such agreement shall be in writing and signed by the foster parent(s), child, designated FACS staff and where appropriate, the child's family;

(11-16-95)T

09. Visitation for Birth Parents. Arrangements for visitation arrangements provided to the birth parents;

(11-16-95)T

10. Notification of Change in Placement. Written notification to the natural parents within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting, or similar notice to the parent or Indian custodian of an Indian child, and the Indian child's tribe, which includes the information described in Subsection 040.e.;

(11-16-95)T

11. Notification of Change in Visitation. Written notification that natural parents shall be notified in writing if there is to be a change in their visitation schedule with their child in foster care;

(11-16-95)T

12. Notification of Right to Participate and Appeal. A written statement that birth parents shall be notified in writing of their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation;

(11-16-95)T

13. ICWA Placement Preferences. Compliance with the foster care placement preferences of the Indian Child Welfare Act;

(11-16-95)T

14. Compliance with requirements of the Multiethnic Placement Act. (11-16-95)T

051. -- 059. (RESERVED).

060. FAMILY CASE RECORDS.

The Department shall maintain a family case record on every family that is provided services, which shall provide complete, accurate written documentation of activities as follows: (11-16-95)T

01. Services Provided. Identification of a child as Indian and appropriate ICWA notices; services requested or offered and subsequent disposition including referrals for services outside the Department; (11-16-95)T

02. Assessment. Reports from the assessment of need for services; (11-16-95)T

03. Family Plans. Any plans made with the family including goals and objectives; time frames for meeting goals and objectives; revisions to goals, objectives and time frames, and the projected ending date for service; (11-16-95)T

04. Record of Hearing. Dates and results of any court actions, administrative reviews, administrative hearings or other significant actions involving the family; and (11-16-95)T

05. Closure of Plan. Reasons for terminating services, based upon: (11-16-95)T

a. Attainment of goals; (11-16-95)T

b. Services are no longer desired by the family, except when they are legally mandated; (11-16-95)T

c. Services are no longer legally mandated; (11-16-95)T

d. Services are no longer beneficial or appropriate for the family; or (11-16-95)T

e. Service capacity has been exceeded. (11-16-95)T

06. Other Requirements. All entries in the family case record shall be legible, specify the date the service was provided, and shall be signed and dated by the worker providing services at the time the entry is made. (11-16-95)T

07. Storage of Records. All family case records shall be stored in a secure file storage area, away from public access and retained not less than five (5) years after the case is closed, after which they may be destroyed, except complete family case records involving adoptive placements shall be forwarded to the Department's central adoption unit. Case records involving Indian children shall be available at any time at the request of an Indian child's tribe or the Secretary of the Interior. The confidentiality of family case

records is to be maintained in accordance with the provisions of Idaho Department of Health and Welfare Rules, Title 05, Chapter 01, Rules Governing the Protection and Disclosure of Department Records. (11-16-95)T

061. -- 069. (RESERVED).

070. STANDARDS FOR SAFEGUARDING INFORMATION CONCERNING APPLICANTS AND RECIPIENTS OF SERVICES.

Protection and disclosure of Department records is governed by Idaho Department of Health and Welfare Rules, Title 05, Chapter 01, Rules Governing the Protection and Disclosure of Department Records. (11-16-95)T

071. -- 099. (RESERVED).

100. EMERGENCY ASSISTANCE TO FAMILIES.

A family is eligible for Emergency Assistance in Idaho if a licensed social worker within the Department of Health and Welfare, Family and Children's Services receives a report or referral indicating an emergency condition and determines that all of the eligibility requirements provided are met. (11-16-95)T

101. ELIGIBILITY REQUIREMENTS.

01. Application. An application is filed by a parent. If both parents are absent, refuse to cooperate in supporting the child or are unwilling to apply on behalf of the child, another adult relative or the Family and Children's Services social worker may file the application on behalf of the child. If the child is in the legal custody of the Department, the social worker may file the application on behalf of the child. (11-16-95)T

02. Eligible Child. The family contains a needy child under the age of twenty-one (21); (11-16-95)T

03. Residence with Relative. The child is living with one (1) or both parents, or within six (6) months prior to the month in which such assistance is requested, has been living with a relative (parent, grandparent, adoptive parent, stepparent, sibling, aunt, uncle, or cousin); (11-16-95)T

04. Income. The applicant family has a monthly income below the AFDC Gross Income Limit and does not have the ability to meet the emergent need or, if the family is above the AFDC Gross Income Limit, the family is unable to meet the emergent need because of circumstances beyond their control. In the case where both parents are absent, refuse to cooperate in supporting the child or are unwilling to apply on behalf of the child, the child's income alone is considered; (11-16-95)T

05. Necessity for Assistance. The emergency assistance is necessary to avoid destitution of such child or to provide living arrangements for him/her in a home; and (11-16-95)T

06. Parent's Refusal of Employment or Training. The child's destitution or need for living arrangements did not arise because the child or such relative refused

without good cause to accept employment or training for employment. (11-16-95)T

102. EMERGENCY CONDITIONS - IMMEDIATE DANGER.

A child is considered to be in immediate danger involving a life-threatening situation when Family and Children's Services receives a report of one of the following circumstances: (11-16-95)T

01. Death of a Child. Minor siblings remaining in the family home, when death of a child is alleged to be due to physical abuse or neglect by the child's parents, guardian, or caretaker. (11-16-95)T

02. Dangerousness or Risk of Physical Harm due to Mental Illness and/or Grave Disability. Referrals involving immediate life threatening danger of children to self or others due to mental illness and/or grave disability. (11-16-95)T

03. Life-Threatening Physical Abuse. Severely physically abused children with observable injuries, or symptoms that are or could be life threatening. (11-16-95)T

04. Life-Threatening Medical Neglect. Physically ill children who are medically neglected in a way that is life-threatening, including abrupt and significant (of ten percent (10%) or more of the body weight of a child under three (3) years of age). (11-16-95)T

05. Life Threatening Physical Neglect. Children who appear to be in imminent danger because the caretakers are physically absent and/or are unable or unwilling to provide adequate care. (11-16-95)T

06. Withholding Medically Indicated Treatment in Severely Disabled Infants with Life Threatening Conditions. An infant less than two (2) years of age who has been continuously hospitalized since birth, who was born prematurely, or who has a long-term disability. (11-16-95)T

07. Preservation of Information/Risk of Family Leaving Area. Abuse or neglect cases in which critical information is likely to be lost if not gathered immediately. (11-16-95)T

103. SITUATIONS OF DANGER BUT LESS THAN IMMEDIATE HARM.

Allegations of abuse, suicide, or serious physical/medical neglect, or new critical incidents are clearly defined in the referral. (11-16-95)T

01. Non Life-Threatening Physical Abuse. Physical abuse of a child over the age of five (5) with observable, non life-threatening injuries. (11-16-95)T

02. Non Life-Threatening Physical or Medical Neglect. Physical or medical neglect that is dangerous and poses health hazards to the child, and that may result in physical injury or impairment of bodily function, including growth rate below the third percentile or chronic untreated infections. (11-16-95)T

03. Sexual Abuse. Children who are sexually abused by parents, guardians, relatives or other caretakers, or situations in which abuse occurred because of possible

lack of protection on the part of the caretakers. (11-16-95)T

04. Infants Testing Positive for Drugs at Birth. Family's ability to care for the needs of the infant and risk to the infant will be assessed in situations where infants test positive for drugs at birth. (11-16-95)T

104. SITUATIONS WITH POTENTIAL FOR DANGER.

A child is without quality parental care necessary for safety, health, and well being. (11-16-95)T

01. Inadequate Supervision. Any child who is receiving inadequate care to assure his well being or is unsupervised. Factors to consider in the evaluation of the level of danger include whether the child is less than nine (9) years old; whether the child is developmentally delayed or physically or mentally disabled; how long the child has been alone and what has happened as a result; and what prior arrangements have been made for an emergency. (11-16-95)T

02. Home Health and Safety. A physical environment that is unsanitary or a safety hazard that may directly affect the health and welfare of a child. (11-16-95)T

105. SITUATIONS WHERE SERVICE NEEDS, IF LEFT UNMET, MAY RESULT IN HARM.

01. Recurring Non-Attendance at School. Recurring non-attendance at school, risk of suspension or expulsion from school when there is reasonable cause to believe that these issues are a direct result of abuse or neglect. (11-16-95)T

02. Children Under Age Twelve (12). Children under age twelve (12) and in need of behavior management, counseling or treatment. Staff may assist parents in referral to appropriate resources. (11-16-95)T

03. Third Party Abuse. Third party sexual and/or physical abuse where third party is not a family member or primary caretaker. Parents are being protective of the child(ren) and were not involved in the abuse. An exception is when the third party is a day care provider and/or their staff and there are allegations of abuse/neglect occurring in the day care. (11-16-95)T

04. Moderate Medical Neglect. Infrequent physical examinations, questionable diet, failure to receive immunizations, or similar neglect, that has an identified risk to the child. (11-16-95)T

05. Public Health and Housekeeping Concerns. If there are no health and safety factors as they relate to the children in the home, the Department will not be directly involved. Staff may assist with referrals to other community agencies. (11-16-95)T

06. High Risk Indicators of Abuse and Neglect that May Result in Out of Home Placement. If the child is under the age of fourteen (14) and there are indicators of high risk of abuse, neglect, and possible removal to out of home placement. Indicators of such high risk are parental stresses which include inability to provide basic needs such as food, utilities, shelter, medical and clothing, or school failure due to family stress or

neglect.

(11-16-95)T

106. -- 109. (RESERVED).

110. EMERGENCY SERVICES.

As determined appropriate and necessary by Family and Children's Services personnel and services not being available through other community resources, services may be provided to families in need and may include: information and referral, case management, court-related activities, intensive in-home services, day treatment, counseling, youth/family companion services, non-residential substance abuse treatment, community-based assessment, respite care, shelter care, and other community-based services provided to meet needs attributable to the emergency or crisis situation and to avoid out-of-home placement or expedite family reunification for the child at risk. (11-16-95)T

01. Emergency Payments. Money payments, payments in kind, or other payments such as vendor payments made on behalf of the eligible family for the purchase of goods and services not available through other community resources to meet needs attributable to the emergency or crisis situation. (11-16-95)T

02. Placement Services. Shelter care, foster family care, or residential group care for children separated from their parents, including food, clothing, and supervision unless the child has such assistance provided under Title IV-E. Needed medical care is also included unless the child is eligible for such care under Title XIX. (11-16-95)T

111. AUTHORIZATION AND DURATION OF SERVICES AND ASSISTANCE.

Emergency services and assistance are limited to a maximum duration of ninety (90) days or less as necessary to alleviate the emergency condition, and must be authorized during a single thirty- (30) day period no less than twelve (12) months after the beginning of the family's last emergency assistance authorization period. (11-16-95)T

112. PROGRAM ADMINISTRATION.

In addition to the assistance and services described in this section, the Department shall engage in activities incidental to and necessary for the proper and efficient administration of the emergency assistance program. Family and Children's Services personnel shall complete the eligibility process including receiving reports and referrals indicating emergency conditions, completing risk assessments, stabilizing families, court-related activities, developing family plans and authorizing services, as well as completing documentation, payment and reporting processes, staff and provider training and other related administrative activities. (11-16-95)T

113. -- 149. (RESERVED).

150. CHILD PROTECTION SERVICES.

Sections 56-204A, 56-204B, 16-1601, 16-1623 and 16-2001, Idaho Code, make the Department an official child protection agency of state government with a duty to intervene in situations of child neglect, abuse, or abandonment. The Department is the state agency to which a citizen shall report circumstances of harm or threatened harm of children, with a right to expect appropriate action. They authorize and direct the Department to undertake activities to eliminate the causes of such neglect, abuse or abandonment, and they enable the Department to invoke the authority of the courts in

those situations where other efforts have failed.

(11-16-95)T

151. REPORTING ABUSE, ABANDONMENT OR NEGLECT.

Professionals and other persons identified in Section 16-1619, Idaho Code, have a responsibility to report abuse, abandonment or neglect and are provided protection for reporters. Duly ordained ministers of religion are exempt from reporting of child abuse and neglect if: 1) the church qualifies as tax-exempt under 26. U.S.C. 501(c)(3); 2) the confession or confidential communication was made directly to the duly ordained minister of religion; and 3) the confession was made in the manner and context which places the duly ordained minister of religion specifically and strictly under a level of confidentiality that is considered inviolate by canon law or church doctrine. All Department of Health and Welfare personnel are responsible for recognizing and immediately reporting to Family and Children's Services or to law enforcement any concern regarding abuse, abandonment or neglect of a child or children. Failure to report as required by Section 16-1619(b), Idaho Code, is a misdemeanor.

(11-16-95)T

152. REPORTING SYSTEM.

Each region of the Department shall maintain a system for receiving and responding to reports or complaints on a twenty four (24) hour per day, seven (7) day per week basis throughout the entire region. The region shall advertise the system to the public throughout the region and ensure the accurate recording of as many facts as possible at the time of the report.

(11-16-95)T

153. ASSIGNING REPORTS FOR RISK ASSESSMENT.

The Department shall assign all reports of possible abuse, abandonment and neglect of children received from agencies, institutions or professional personnel for risk assessment. Other reports shall be assigned for risk assessment, unless the field office has knowledge or information that discredits the report beyond a reasonable doubt.

(11-16-95)T

154. RESPONSE PRIORITIES.

The Department shall use the following statewide standards for responding to allegations of abuse, neglect or abandonment, using the determination of risk to the child as the primary criterion. Any variance from these response standards shall be documents in the family's case file with a description of action taken, which shall be reviewed and signed by the Child Protective supervisor.

(11-16-95)T

01. Priority I. A child is in immediate danger involving a life-threatening or emergency situation; the Department shall respond immediately. Law enforcement shall be notified and requested to respond or to accompany a family services worker. Every attempt should be made to coordinate the Department's assessment with law enforcement's investigation. The child must be seen by a Department family services worker, law enforcement, and medical personnel if applicable, immediately unless written regional protocol agreements direct otherwise. All allegations of physical abuse of a child age five (5) and under should be considered under Priority I unless there is reason to believe that the child is not in immediate danger.

(11-16-95)T

02. Priority II. A child is not in immediate danger but allegations of abuse, or serious physical or medical neglect are clearly defined in the referral. Law enforcement shall be notified within twenty-four (24) hours. The child shall be seen by the family services worker within two (2) working days of the Department's receipt of the referral.

Law enforcement must be notified within twenty-four (24) hours of receipt of all Priority II referrals which involve issues of abuse or neglect. (11-16-95)T

03. Priority III. A child is without parental care necessary for safety, health and well being. A family services worker shall respond within five (5) working days and the child must be seen by the worker within ten (10) working days of the Department's receipt of the referral. (11-16-95)T

04. Priority IV. A child may be in a vulnerable situation because of service needs, which if left unmet, may result in harm. The child and parents may be interviewed for substantiation of the facts, and to assure that there is no parental abuse or neglect. The Department may provide information and referral to community resources or may offer preventive services to the family as capacity allows. (11-16-95)T

155. SUPERVISORY REVIEW - CERTAIN PRIORITY I AND II CASES.

In all Priority I and II cases where the alleged victim of neglect, abuse or abandonment is age five (5) and under, review by supervisory staff or team of all case documentation and other facts shall be conducted within forty-eight (48) hours of initiation of the risk assessment. Such review shall be documented in the file with the signature of the supervisor or team leader, time and date, whether additional risk related issues will be pursued and by whom, and any planning for initiation of services. (11-16-95)T

156. REPORTS INVOLVING INDIAN CHILDREN.

Reports of possible abuse, abandonment or neglect of a child known or suspected to be Indian, shall be handled in compliance with the Indian Child Welfare Act. If jurisdiction of the report is within any Indian reservation or the child is a ward of a tribal court, the appropriate tribal authorities shall be immediately notified and no further investigation shall be done by the Department. A record of any response from the tribe shall be maintained in the case record and written documentation of any action taken shall be provided to the appropriate tribal authorities. (11-16-95)T

157. REPORTS INVOLVING MILITARY FAMILIES.

Reports of possible child abuse, abandonment or neglect involving a military family shall be reported in accordance with the provisions of any agreement with the appropriate military family advocacy representative, in accordance with the provisions of Section 811 of Public Law 99-145. Child abuse, abandonment or neglect of a child on a military reservation falls under federal jurisdiction. (11-16-95)T

158. -- 169. (RESERVED).

170. RISK ASSESSMENT OF REPORTS.

The Department's risk assessment shall be conducted in the format of a risk assessment and shall utilize multi-disciplinary team protocols. (11-16-95)T

171. ASSESSMENT.

The assessment shall include contact with the child or children involved and the immediate family. (11-16-95)T

01. Interview of a Child. The interview of a child concerning a child protective report shall be conducted: (11-16-95)T

a. In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including but not limited to multiple interviews; (11-16-95)T

b. By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (11-16-95)T

c. In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (11-16-95)T

02. Interview of Family. Interview of the child's immediate family is mandatory in every case and may require the participation of law enforcement. The family services worker conducting the interview shall: (11-16-95)T

a. Immediately notify the parents being interviewed of the purpose and nature of the assessment; (11-16-95)T

b. Interview siblings who are identified as being at risk; and (11-16-95)T

c. Not divulge the name of the person making the report during the course of the assessment. (11-16-95)T

03. Collateral Interviews. Any assessment of an abuse or neglect report shall include at least one (1) collateral interview with a person who is familiar with the circumstances of the child or children involved. Collateral interviews shall be conducted with discretion and preferably with the parents' permission. (11-16-95)T

04. Role of Law Enforcement. Section 16-1625, Idaho Code, specifies that the Department may enlist the cooperation of peace officers for phases of the risk assessment for which they have the expertise and responsibility. Such areas include but are not limited to: (11-16-95)T

a. Interviewing the alleged perpetrator; (11-16-95)T

b. Removing the alleged perpetrator from the child's home in accordance with Section 39-6301, Idaho Code, the "Domestic Violence Act"; and (11-16-95)T

c. Taking a child into custody in accordance with Section 16-1612, Idaho Code, where a child is endangered and prompt removal from his or her surroundings is necessary to prevent serious physical or mental injury. (11-16-95)T

172. DISPOSITION OF REPORTS.

Within five (5) days after completion of risk assessments, the Department shall determine whether the reports are substantiated or unsubstantiated. The validity of reports shall be determined using the following definitions: (11-16-95)T

01. Valid. Child abuse and neglect reports are confirmed when the allegations are confirmed, witnessed by a worker, determined or evaluated by a court,

involve a confession, or are substantiated through the presence of significant evidence that establishes a clear factual foundation for the determination of "valid". (11-16-95)T

02. Indicated. Child abuse and neglect reports are indicated when the allegations cannot be confirmed or refuted; however, the worker has a reasonable belief the abuse or neglect occurred. (11-16-95)T

03. Unable to Determine. A determination of child abuse and neglect cannot be made and the worker has no firm belief that abuse or neglect occurred. This category includes reports relating to families the worker is unable to locate. (11-16-95)T

04. Invalid. Child abuse and neglect reports that are clearly unfounded, erroneous or otherwise incorrect. The worker is reasonably sure that the abuse or neglect did not occur. (11-16-95)T

173. SUBSTANTIATED REPORTS.

Reports determined to be "valid" or "indicated" shall be considered substantiated and the information shall be entered into the Department's Central Registry for the reporting of child abuse, abandonment and neglect, and the families so advised in writing. Notification will include how the individual can appeal to have his name removed from the list. (11-16-95)T

174. UNSUBSTANTIATED REPORTS.

If it is determined through the risk assessment that reports are "unable to determine" or "invalid", the reports shall be considered unsubstantiated and the families so advised. (11-16-95)T

01. Request for Statement. Upon the alleged perpetrator's request, the field office shall issue written statements indicating that: (11-16-95)T

a. The Department has not obtained sufficient information to warrant further assessment of or action on that specific report; and (11-16-95)T

b. The Department shall fulfill its legal responsibility to investigate and take appropriate action on any further reports that elaborate on the previous allegations or relate new allegations. (11-16-95)T

02. Removal of Identifying Information. Upon written request of the alleged perpetrator, the Department shall remove identifying information relevant to that alleged perpetrator regarding an unsubstantiated report from the Department's Central Registry. (11-16-95)T

175. -- 199. (RESERVED).

200. COURT-ORDERED CHILD PROTECTION RISK ASSESSMENT.

When, in any divorce proceeding or upon request for modification of a divorce decree, an allegation of child abuse or child sexual abuse is made, implicating either party, the court shall order that an investigation/risk assessment be conducted by the Department of Health and Welfare. Court orders for preliminary child protective risk assessment and for any subsequent assessment the court may deem necessary shall be served on the supervisor for

child protection services in the field office in which the court has geographical jurisdiction. The child protection supervisor shall immediately initiate the risk assessment and consult with the court promptly if there are any obstacles proceeding its completion. Immediately upon completing the report, the Department shall make a written report to the court. (11-16-95)T

201. CHILD PROTECTIVE ACT PETITION.

If any incidence of child abuse, neglect of abandonment is substantiated through the risk assessment or during the provision of services, and cannot be resolved through informal processes or voluntary agreement that is adequate for protection of the child, the Department shall request the prosecuting attorney to file a Child Protective Act petition. (11-16-95)T

202. COOPERATION WITH LAW ENFORCEMENT.

The Department shall cooperate with law enforcement personnel in their handling of criminal investigations and the filing of criminal proceedings. (11-16-95)T

203. -- 229. (RESERVED).

230. CHILD CUSTODY INVESTIGATIONS FOR DISTRICT COURT.

Where no other community resources are available and when ordered by district courts, the Department shall, for a fee, conduct risk assessments and provide social information to assist the court in child custody actions, to assist the court to determine the most therapeutic placement for the child. Before the family services worker sends the report to the court, it must be reviewed and approved by the supervisor. (11-16-95)T

01. Requests from Private Attorney. If a parent's attorney requests an risk assessment and report of findings regarding the fitness of a parent, the attorney shall be advised that such service is provided on behalf of a child but not on behalf of a litigant, and that any such assessment and report would be provided to the court pursuant to a court order. (11-16-95)T

02. Conduct of the Assessment. In conducting the assessment, the family services worker shall explain to the family the purpose for which the information is being obtained. If the judge intends to treat the report as evidence, the family shall be informed that any information they provide will be brought out at the court hearing. If the family refuses to give information to the family services worker, the Department has no authority to require cooperation. However, the judge may issue an order directing the family to provide information to the family services worker for the purpose of making a report to the court. (11-16-95)T

03. Report to Court. The family services worker shall provide a report only to the Magistrate judge who ordered the assessment, and shall use the Department's format for the assessment of need. The report shall describe what was observed about the home conditions and the care of the child(ren). (11-16-95)T

04. Department Clients. If the family is or has been a client of the Department, disclosure of information shall comply with Idaho Department of Health and Welfare Rules, Title 05, Chapter 01, Rules Governing the Disclosure and Protection of Department Records. (11-16-95)T

05. Fee. The Department shall bill the court a fee for the child custody assessment and report at the rate of thirty-five dollars (\$35) per hour. (11-16-95)T

231. -- 239. (RESERVED).

240. ADMINISTRATIVE REVIEW.

Unless a judicial review occurs at the end of a six (6) month period in a Child Protective Act placement or other out of home placement, the Department shall conduct an individual family case review to assure compliance with all applicable state and federal laws, and to ensure good social work practice. (11-16-95)T

01. Notice of Administrative Review. The administrative review shall include: (11-16-95)T

a. Advance written notice to all parties, including an Indian child's tribe if appropriate, and including at least two weeks' notice to adoptive parents; (11-16-95)T

b. Action being considered; (11-16-95)T

c. The right to be represented by the individual of their choice. (11-16-95)T

02. Procedure in Administrative Review. The parties shall be given the opportunity for face-to-face discussion including attending, asking questions and making statements. (11-16-95)T

03. Members of Administrative Review Panel. The administrative review team shall include a Department employee who is not in the direct line of supervision in the delivery of services to the child or parents being reviewed. The review panel may include agency staff, staff of other agencies, officers of the court, members of Indian tribes and citizens qualified by experience, professional background or training. Members of the administrative review panel shall be chosen by the regional director and receive instructions from the program manager to enable them to understand the review process and their roles as participants. (11-16-95)T

04. Issues Considered in Administrative Review. The review panel shall: (11-16-95)T

a. Review the extent to which all parties have complied with the family plan, their progress toward alleviating the circumstances necessitating the placement and the extent to which the goals described in the plan have been achieved. (11-16-95)T

b. Review compliance with the Indian Child Welfare Act, if appropriate; (11-16-95)T

c. Make a determination of the continuing necessity for and appropriateness of the child's placement; and (11-16-95)T

d. A target date by which the child may be returned home or placed for

adoption, legal guardianship or other permanent placement. (11-16-95)T

05. Recommendations and Conclusions of Administrative Review Panel. Following the review, written conclusions and recommendations shall be provided to all participants, subject to Department safeguards for confidentiality. The decision shall also provide appeal rights. (11-16-95)T

241. -- 399. (RESERVED).

400. AUTHORITY FOR ALTERNATE CARE SERVICES.

Upon approval of the Regional Family and Children's Services Manager or designee, the Department may provide or purchase alternative care under the following conditions: (11-16-95)T

01. Department Custody. When the child is in the legal custody or guardianship of the Department; or (11-16-95)T

02. Voluntary Agreement. Upon agreement with the parents when circumstances interfere with their provision of proper care and they can benefit from social work services. (11-16-95)T

401. CONSIDERATIONS FOR PLACEMENT IN ALTERNATIVE CARE.

The Department shall place children in the least restrictive (most family like) setting available and in close proximity to the parent's home consistent with the best interests and special needs of the child as required by P.L.96-272, Section 475(5). Alternate care placement shall in all cases include consideration of: (11-16-95)T

01. Family Assessment. The family assessment conducted in accordance with the provisions of Section 022. (11-16-95)T

02. Ability of Providers. The ability of potential alternate care providers to address the varied race, color, or national origin needs of the child; (11-16-95)T

03. Family Involvement. The involvement of the family in planning and selecting the placement; and (11-16-95)T

04. ICWA. All requirements of the Indian Child Welfare Act. (11-16-95)T

05. MEPA. All requirements of the Multiethnic Placement Act. (11-16-95)T

402. INVOLUNTARY PLACEMENT OF INDIAN CHILDREN.

Involuntary placement of an Indian child in foster care must be based upon clear and convincing evidence, including information from qualified expert witnesses, that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Foster care placement shall be in the least restrictive setting that most approximates a family and in which any special needs may be met. In the absence of good cause to the contrary, a preference shall be given to placement with: (11-16-95)T

01. Extended Family. A member of the Indian child's extended family; (11-16-95)T
02. Foster Home Approved by Tribe. A foster home licensed, approved, or specified by the Indian child's tribe; (11-16-95)T
03. Licensed Indian Foster Home. An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or (11-16-95)T
04. Indian Institution. An institution for children approved by an Indian tribe or operated by an Indian organization that has a program suitable to meet the child's needs. (11-16-95)T

403. OUT-OF-STATE PLACEMENTS (INTERSTATE COMPACTS).

Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho shall be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement shall be coordinated with the respective interstate compact administrator in Central Office according to the provisions of Section 16-2101 et seq., Idaho Code, the "Interstate Compact on the Placement of Children" and Section 66-1201 et seq., Idaho Code, the "Interstate Compact on Mental Health." Placements shall be in compliance with all state and federal laws. (11-16-95)T

404. ALTERNATE CARE CASE MANAGEMENT.

Case management shall continue while the child is in alternate care and shall ensure the following: (11-16-95)T

01. Preparation for Placement. Preparing a child for placement in alternate care shall be the joint responsibility of the child's family, the family services worker and the alternate care provider. (11-16-95)T
02. Information for Provider. The Department and the family shall inform the alternate care provider of: (11-16-95)T
- a. Any medical, health and dental needs of the child; (11-16-95)T
 - b. The name of the child's doctor; (11-16-95)T
 - c. The child's current functioning and behaviors; (11-16-95)T
 - d. The child's history and past experiences; (11-16-95)T
 - e. The child's cultural and racial identity needs; (11-16-95)T
 - f. Any educational, developmental, or special needs of the child; (11-16-95)T
 - g. The child's interest and talents; (11-16-95)T

- h. The child's attachment to current caretakers; (11-16-95)T
- i. Procedures to follow in case of emergency; (11-16-95)T
- j. Any additional information that may be required by the terms of the contract with the alternate care provider. (11-16-95)T

03. Parental responsibilities. Parents shall sign a Departmental form of consent for medical care and keep the family services worker advised of where they can be reached in case of an emergency. Any refusal to give medical consent shall be documented in the family case record. (11-16-95)T

04. Financial Arrangements. The family services worker shall assure that the alternate care provider understands the financial and payment arrangements and that necessary Department forms are completed and submitted. (11-16-95)T

05. Contact with Child. The family, the family services worker, the alternate care provider and the child, if of appropriate developmental age, shall establish a schedule for regular visits to the child by the family and by the family services worker or designee. (11-16-95)T

a. Face-to-face contact with the child by the family services worker must occur at least monthly. (11-16-95)T

b. For children in group homes, the family services workers or designees must initiate contact at least monthly with each child on their case loads; and must assure face-to-face contact at least once every three (3) months with each child on their case loads. (11-16-95)T

c. Regular contact with children placed in intensive treatment facilities, in or out-of-state, shall occur in accordance with Idaho Department of Health and Welfare policy on "Placement in Intensive Treatment Facilities". (11-16-95)T

d. Regular contact between the child and parents and other family members shall be encouraged and facilitated unless it is specifically determined not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures and the use of video and other technology as may be relevant and available. (11-16-95)T

06. Discharge Planning. Planning for discharge from alternate care into family services that follow alternate care shall be developed with all concerned parties. Discharge planning shall be initiated at the time of placement and completed prior to the child's return home or to the community. (11-16-95)T

07. Transition Planning. Planning for discharge from alternate care into a permanent placement shall be developed with all concerned parties. Discharge planning shall be initiated at the time of placement and completed prior to the child's return home or to the community. (11-16-95)T

405. -- 419. (RESERVED).

420. ALTERNATE CARE - CASEY FAMILY PROGRAM, BOISE DIVISION.

Children may be referred to the Casey Family Program, Boise Division for placement when it is determined that reunification of the birth family is not anticipated to be possible. Once the child has been accepted into the Casey Family Program, Boise Division, the Program will provide direct case management services pursuant to a contract with the Division of Family and Community Services with final responsibility for decision-making continuing to rest with the Department. Children placed with the Casey Family Program shall continue to be eligible for all Department programs, and regional and Casey Family staff shall combine resources to the extent possible to serve these children in the most effective manner. (11-16-95)T

421. ALTERNATE CARE - FAMILY PRESERVATION SERVICES.

Referral may be made of families who may benefit from intensive family preservation services to individual contractors of the Department who provide these services. Some of these contracted services may include brief respite care. (11-16-95)T

422. ALTERNATE CARE - PLACEMENT OF UNWED MOTHERS AT BOOTH MEMORIAL HOME.

Referrals may be made to Booth Memorial Home for both outpatient and residential services for unwed pregnant women under the age of twenty-one (21), whose determined needs for outpatient or alternate care placement cannot be met by less restrictive means. (11-16-95)T

01. Referral Criteria. For referral to this program, the mother must: (11-16-95)T
 - a. Be unmarried; (11-16-95)T
 - b. Have a high-risk pregnancy; (11-16-95)T
 - c. Be under the age of eighteen (18) at the time of referral for residential services, and up to the age of twenty-one (21) for outpatient referrals, as long as such outpatient clients are enrolled in the educational component of the program; (11-16-95)T
 - d. Be a resident of the State of Idaho; (11-16-95)T
 - e. Lack other community resources that would meet her needs in the most home-like environment; and (11-16-95)T
 - f. Be willing to enroll in the educational program provided by Booth if the mother has not completed high school or a GED. (11-16-95)T
02. Exclusions from Referral. Individuals not appropriate for referral to Booth include: (11-16-95)T
 - a. Those who are a danger to self or others; (11-16-95)T
 - b. Those who could be better served by other levels of care, such as foster

care or local board and room care; or (11-16-95)T

c. Those whose problems are of such levels that they need the structure of an institutional placement. (11-16-95)T

423. ALTERNATE CARE PLANNING.

Alternate care planning is mandated by the provisions of Sections 417(a)(15) and 475, P.L. 96-272. (11-16-95)T

01. Alternate Care Plan Required. Each child receiving alternate care under the supervision of the state shall have a written alternate care plan. (11-16-95)T

a. The purpose of plan shall be to facilitate the return of the child to his or her own home as expeditiously as possible or to make other permanent arrangements for the child if such return is not feasible. (11-16-95)T

b. The alternate care plan shall be included in the family plan required by Section 070. (11-16-95)T

02. Development of the Alternate Care Plan. The alternate care plan shall be developed within thirty (30) days after a decision has been made to place a child in alternate care. (11-16-95)T

a. The parents and the child, to the extent possible, shall be involved in planning, selecting, and arranging the alternate care placement and any subsequent changes in placement. (11-16-95)T

b. The plan shall include documentation that the parents have been provided written notification of: (11-16-95)T

i. Visitation arrangements made with the alternate care provider, including any changes in their visitation schedule; (11-16-95)T

ii. Any change of placement immediately, and at the latest within seven (7) days, when the child is relocated to another alternate care or institutional setting; and (11-16-95)T

iii. Their right to discuss any changes and to seek recourse, in accordance with the provisions of Section 040, if they disagree with any changes in visitation or other alternate care arrangements. (11-16-95)T

c. All parties involved in the alternate care plan, including the parents and the child if of appropriate developmental age: (11-16-95)T

i. Will be required to sign a statement indicating that they have read and understood the alternate care plan; and (11-16-95)T

ii. Will receive a copy of the alternate care plan. (11-16-95)T

424. REQUIREMENTS FOR THE ALTERNATE CARE PLAN (SECTION 422 COMPLIANCE).

Section 422 of P.L. 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980," requires states to implement a case review system to protect children who are in alternate care under the supervision of the state. The system must meet certain requirements for the contents of the alternate care plan, for periodic case review and for dispositional hearings. (11-16-95)T

01. Contents. The alternate care plan shall include the following eight (8) requirements (seven (7) requirements of P.L. 96-272 and one (1) requirement subsequently added by P.L. 101-239): (11-16-95)T

a. A description of the type of home or institution in which the child is to be placed; (11-16-95)T

b. A discussion of the appropriateness of the placement; (11-16-95)T

c. A statement of how the plan is designed to achieve placement in the least restrictive (most family-like) setting available, consistent with the best interest and special needs of the child; (11-16-95)T

d. A statement of how the plan is designed to achieve placement in close proximity to the parents' home, consistent with the best interest and special needs of the child; (11-16-95)T

e. Discussion of how the family and the Department plan to carry out the judicial determination made (court order) with respect to the child in accordance with Section 472(a)(1), P.L. 96-272; (11-16-95)T

f. A plan for assuring that the child receives proper care; (11-16-95)T

g. A plan for assuring that services are provided to the child and parents to improve the conditions in the parents' home, in order to facilitate return of the child to that home or to arrange for other permanent placement for the child; (11-16-95)T

h. A plan for assuring that services are provided to the child and foster parents to address the needs of the child while in foster care; (11-16-95)T

i. A discussion of the appropriateness of the services provided to the child under the plan; and (11-16-95)T

j. To the extent available and accessible, current health and education records, including: (11-16-95)T

i. The names and addresses of the child's health and educational providers; (11-16-95)T

ii. The child's grade level performance; (11-16-95)T

iii. The child's school record; (11-16-95)T

iv. Assurances that the child's alternate care arrangements take into account proximity to the school in which the child is enrolled at the time the alternate care plan is developed; (11-16-95)T

v. A record of the child's immunizations; (11-16-95)T

vi. The child's known medical problems; (11-16-95)T

vii. Any other pertinent health and education information concerning the child. (11-16-95)T

k. A statement explaining why the child has been placed in a foster family home or child-care institution a substantial distance from the home of the parents of the child, or in a state different from the state in which such home is located, and why such placement is in the best interests of the child; (11-16-95)T

l. A plan for assuring that if a child has been placed in foster care outside the state in which the home of the parents of the child is located, periodically but not less frequently than every twelve (12) months, a caseworker on the staff of the state agency of the state in which the home of the parents of the child is located, or of the state in which the child has been placed, visit such child in such home or institution and submit a report on such visit to the state agency of the state in which the home of the parents of the child is located. (11-16-95)T

02. Period Review. By the provision of Section 475(5)(b), P.L. 96-272, the status of each child placed in alternate care must be reviewed periodically, but no less frequently than every six (6) months from the date of the original alternate care placement and every six (6) months thereafter until the child has been in placement for eighteen (18) months (see Subsection 424.03.c.), by either a court or an administrative review. The periodic reviews shall meet the following six (6) requirements: (11-16-95)T

a. The periodic reviews have determined the continuing necessity for an appropriateness of the placement. (11-16-95)T

b. The periodic reviews have determined the extent of compliance with the alternate care plan. (11-16-95)T

c. The periodic reviews have determined the extent of progress which has been made toward alleviating or mitigating the causes necessitating the placement. (11-16-95)T

d. The periodic reviews have projected a likely date by which the child may be returned to his or her own home or placed for adoption or in legal guardianship. (11-16-95)T

e. The periodic reviews are open to the participation of the parents and the children involved. (11-16-95)T

f. The periodic reviews are conducted by a panel of appropriate persons, at

least one (1) of whom is not responsible for the case management of, or delivery of, services to either the child or the parents who are the subject of the review. (11-16-95)T

03. Dispositional Hearings. By the provisions of Section 475(5)(b), P.L. 96-272, every child in alternate care under state supervision must be afforded a permanency planning dispositional hearing. (11-16-95)T

a. Dispositional hearings shall meet the following three (3) requirements: (11-16-95)T

i. Procedural safeguards were applied with respect to parental rights pertaining to the removal of the child from the home of his or her parents. (11-16-95)T

ii. Procedural safeguards were applied with respect to parental rights pertaining to a change in the child's placement. (11-16-95)T

iii. Procedural safeguards were applied with respect to parental rights pertaining to any determination affecting visitation rights. (11-16-95)T

b. Procedural safeguards shall assure fundamental fairness to the family including the following: (11-16-95)T

i. Opportunity for a hearing prior to any change of disposition or of the status quo; (11-16-95)T

ii. Adequate notice of such hearings, with time to prepare and right to be present; (11-16-95)T

iii. Their right to know the allegations against them and to confront those allegations; and (11-16-95)T

iv. Their right to have legal counsel appointed if requested and eligible. (11-16-95)T

c. Permanency planning dispositional hearings shall be held no later than eighteen (18) months after the date of the original alternate care placement and no later than every twelve (12) months thereafter. Some hearings, not dispositional hearings, are required more frequently according to the following guidelines: (11-16-95)T

i. Hearings are required each time any child is moved to a more restrictive alternate care setting; (11-16-95)T

ii. Every twelve (12) months for any child in the care of the Department under Section 16-1610, Idaho Code, the "Child Protective Act" a renewal of custody hearing is needed. This hearing shall meet dispositional hearing requirements if the judge makes, and the resulting court order contains, required findings. (11-16-95)T

iii. Hearings are required in accordance with Section 16-2010(c), Idaho Code at least each eighteen (18) months from the date guardianship was granted, until a final court order of adoption is issued and placed in the adoptive family's case record.

(11-16-95)T

d. The administrative or judicial hearing for permanency planning disposition must include, at a minimum: (11-16-95)T

i. Written notice to all parties at least two (2) weeks in advance specifying: (11-16-95)T

(a) The date, time, and place of the review; (11-16-95)T

(b) Action to be taken; (11-16-95)T

(c) Opportunity for face-to-face discussion including attending, asking questions, and making statements; (11-16-95)T

(d) Opportunity for recourse in the form of a petition for review by the magistrate division of the District Court or, more generally, by the request for a review hearing in underlying court action under the appropriate Act. (11-16-95)T

ii. Determination of: (11-16-95)T

(a) Continuing necessity for, and appropriateness of, the child's placement; and (11-16-95)T

(b) Future status of the child (whether the child should be returned to the family, should continue in foster care for specified period, should be placed for adoption or should continue in foster care on a permanent, long term basis, and in the case of a child in care out of state, whether the out-of-state placement continues to be appropriate and in the best interest of the child). (11-16-95)T

e. The eighteen (18) month permanency planning dispositional hearing may be held by the court having jurisdiction in the underlying case if that is the preference of the court. If the court does not wish to conduct this hearing it may be held administratively by a hearing officer appointed by the regional director. (11-16-95)T

i. The hearing officer shall not be an employee of the Division of Family and Community Services or a regional Family and Children's Services Program. (11-16-95)T

ii. The hearing officer shall be certified as having completed the training program provided by the Deputy Attorney General assigned to the region or the Division that will enable him to understand the review process and his role as participant and hearing officer. This requirement of certification does not include hearing officers with legal background or judges, although both are encouraged to attend training sessions. (11-16-95)T

f. A written record of the administrative or judicial hearing shall be maintained: (11-16-95)T

i. Indicating the time, date, and place of the review and all the participants;

(11-16-95)T

- ii. Stating the recommendations and conclusions and the reasons therefor; (11-16-95)T
- iii. Filed in the family's case record; and (11-16-95)T
- iv. Provided to all participants, subject to the safeguards regarding confidentiality in accordance with the provisions of Idaho Department of Health and Welfare, Title 05, Chapter 01, Rules Governing the Protection and Disclosure of Department Records. (11-16-95)T

425. -- 434. (RESERVED).

435. DETERMINATION OF ELIGIBILITY FOR ADC-FC.

The family services workers shall initiate an application to ensure that eligibility for ADC-FC is made, or that the child is clearly ineligible because of family resources. The worker shall maintain documentation of the eligibility determination or ineligibility in the case record of the child, and arrangements for parental support. (11-16-95)T

436. FINANCIAL SUPPORT FOR CHILDREN IN ALTERNATE CARE.

In accordance with Section 56-203B, Idaho Code, parents are responsible for costs associated with the care of their child or children. Upon consideration of any alternate care for a child: (11-16-95)T

01. Notice of Parental Responsibility. The Department shall provide the parents written notification of their responsibility to contribute toward the cost of their child's support, treatment and care, including but not limited to clothing, medical, incidental and educational costs. (11-16-95)T

02. Financial Arrangements with the Parents. When children are placed in alternate care pursuant to court order or voluntary agreement, the parents shall be expected to reimburse the Department for the costs of care. (11-16-95)T

a. The amount of support shall be based on the parent's income, the costs of care for the child and any unique circumstances affecting the parent's ability to pay. (11-16-95)T

b. Every family shall be expected to contribute to the cost of their child's care, but no family shall be asked to pay more than the actual cost of care, including clothing, medical, incidental and educational costs. The cost of room and board shall be paid by the parents to the Department, and the Department shall in turn pay the foster parents. (11-16-95)T

437. SUPPORT AGREEMENT FOR VOLUNTARY PLACEMENTS.

If the placement is voluntary, the parents shall sign an agreement that specifies the amount of support to be paid, when it is to be paid the payee and the address to which it is to be paid. (11-16-95)T

438. SUPPORT IN COURT-ORDERED PLACEMENT.

In the case of a court-ordered placement, if no support agreement has been reached with the parents prior to the custody or commitment hearing, the Department's report to the Court shall indicate the necessity to hold a support hearing. (11-16-95)T

439. INSURANCE COVERAGE.

The parents shall inform the Department of the all insurance policies covering the child, including names of carriers, and policy or subscriber numbers. If medical, health and/or dental insurance coverage is available for the child, the parents shall acquire and maintain such insurance. (11-16-95)T

440. REFERRAL TO CHILD SUPPORT SERVICES.

The family shall be referred to the State Title IV-D Agency for support payment arrangements. (11-16-95)T

01. Assignment of Child Support. The Department through the Bureau of Child Support Services shall secure assignment of any support due to the child while in alternate care. Social Security and Supplemental Security Income benefits are specifically aimed at meeting the child's needs and therefore will follow the child in placement and the Department shall request to be named payee for all funds for placements extending over thirty (30) days. (11-16-95)T

02. Collection of Child Support. The Department shall take action to collect any child support ordered in a divorce decree. (11-16-95)T

441. -- 499. (RESERVED).

500. HEALTH AND DENTAL CARE FOR CHILDREN IN ALTERNATE CARE.

Every child placed in alternate care shall receive a medical card each month. Those children eligible for Medicaid will receive a medical card. (11-16-95)T

551. EPSDT SCREENING.

Children in alternate care shall receive the Early Periodic Screening, Diagnosis and Treatment (EPSDT) services allowable under Title XIX. Those children already receiving Medicaid at the time of placement shall be screened within thirty (30) days after placement. Children not receiving Medicaid at the time of placement shall receive a screening within thirty (30) days from the date Medicaid eligibility is established. (11-16-95)T

552. MEDICAL EMERGENCIES.

In case of serious illness, the alternate care provider shall notify the child's doctor and the Department immediately. The parents or the court in an emergency, or the Department if it is the guardian of the child, have the authority to consent to major medical care or hospitalization. (11-16-95)T

553. DENTAL CARE.

Every child age two (2) who is placed in alternate care shall receive a dental examination as soon as possible after placement but not later than ninety (90) days, and thereafter according to a schedule prescribed by the dentist. (11-16-95)T

01. Costs Paid by Medicaid. If dental care not included in the state medical assistance program is recommended, a request for payment shall be submitted to the state Medicaid dental consultant. (11-16-95)T

02. Emergencies. For children in shelter care, emergency dental services shall be provided for and paid for by the Department, if there are no other financial resources available. (11-16-95)T

554. COSTS OF PRESCRIPTION DRUGS.

The Department shall purchase prescribed drugs for a child in alternate care through participating pharmacists, in excess of the Medicaid monthly maximum at the Medicaid rate. (11-16-95)T

555. -- 559. (RESERVED).

560. INCOME, BENEFITS AND SAVINGS OF CHILDREN IN FOSTER CARE.

Family services workers shall identify and, if necessary, apply on behalf of the child for income or benefits from one (1) or every available sources including Social Security, veterans' benefits, tribal benefits, or estates of deceased parents. The address of the payee shall be the regional Child Support Services office. (11-16-95)T

561. ACCOUNTING AND REPORTING.

Regional Child Support Services shall account for the receipt of funds and develop reports showing how much money has been received and how it has been utilized. (11-16-95)T

562. FORWARDING OF BENEFITS.

If the Department is receiving benefits and the child is returned to the home of the parents or relatives for a trial visit, Child Support Services shall be notified by memo from a family services worker giving the name and address of the person to whom these benefits shall be forwarded. (11-16-95)T

01. Return to Alternate Care. If the child returns to alternate care, the Department shall be notified immediately of the correct payee. (11-16-95)T

02. Review After Six (6) Months. If an alternative care placement continues for a period of six (6) months, a careful review must be initiated to determine if a change of payee must be accomplished. (11-16-95)T

563. PERIODIC REVIEW OF BENEFITS FROM BUREAU OF INDIAN AFFAIRS (BIA).

Field offices must contact the Bureau of Indian Affairs and review periodically benefits that may be available to children in foster care. (11-16-95)T

564. -- 569. (RESERVED).

570. DRIVERS' LICENSES FOR CHILDREN IN ALTERNATE CARE.

Foster parents shall be discouraged to sign for a foster child's driver's license. Insurance purchased by the Department does not provide coverage. No departmental employee shall

sign for any foster child's driver's license or permit without written authorization from the Regional Director. Any Department employee signing for a child's driver's license or permit without the Regional Director's approval assumes full personal responsibility and liability for any damages that may be assessed against the child and shall not be covered by the Department's insurance. (11-16-95)T

01. Payment by Department. The Department shall make payments for driver's training, licenses and permits for children in the Department's guardianship when provided for in the family case plan for older teens for whom emancipation is the goal. (11-16-95)T

02. Payment by Parents. The natural parents of children in foster care must authorize drivers' training, provide payment and sign for drivers' licenses. (11-16-95)T

571. -- 579. (RESERVED).

580. LICENSURE.

All private homes and facilities providing care for children pursuant to these rules shall be licensed in accordance with Idaho Department of Health and Welfare Rules, Title 06, Chapter 02, Rules and Standards for Child Care Licensing, unless foster care placement of an Indian child is made by the court with a foster home licensed, approved or specified by the Indian child's tribe, or an institution for children approved by an Indian tribe or operated by an Indian organization. (11-16-95)T

581. FACILITIES OPERATED BY THE STATE.

Facilities operated by the State and providing care for children pursuant to these rules shall meet the standards for child care licensure. (11-16-95)T

582. -- 599. (RESERVED).

600. PAYMENT FOR SHELTER CARE.

Payment for placement of children requiring temporary, emergency alternate care is twenty dollars (\$20) per day for children from birth through age seventeen (17), for a maximum of thirty (30) days of shelter care for each uninterrupted placement. (11-16-95)T

601. PAYMENT TO FAMILY FOSTER CARE PROVIDERS.

Monthly payments for care provided by foster care families are:

Family Foster Care Payments - TABLE 601			
Ages	0-5	6-12	13-18
Monthly Room and Board	\$228	\$250	\$358

(11-16-95)T

01. Gifts. An additional thirty dollars (\$30) for Christmas gifts and twenty

dollars (\$20) for birthday gifts shall be paid in the appropriate months. (11-16-95)T

02. Clothing. Costs for clothing shall be paid, based upon the Department's determination of each child's needs. All clothing purchased for a child in alternate care becomes the property of the child. (11-16-95)T

03. School Fees. School fees due upon enrollment shall be paid, based upon the Department's determination of the child's needs. (11-16-95)T

602. SPECIALIZED FOSTER CARE.

Families providing specialized foster care because of a child's diagnosed emotional, behavioral and/or physical problems shall be paid at the family foster care rate applicable to the child's age as follows: (11-16-95)T

01. Lowest Level of Need for Specialized Care. Ninety dollars (\$90) per month for children requiring a mild degree of specialized care for documented conditions including but not limited to: (11-16-95)T

- a. Chronic medical problems; (11-16-95)T
- b. Frequent, time-consuming transportation needs; (11-16-95)T
- c. Behaviors requiring extra supervision and control; or (11-16-95)T
- d. Need for preparation for independent living. (11-16-95)T

02. Moderate Level of Need for Specialized Care. One hundred fifty dollars (\$150) per month for children requiring a moderate degree of specialized care for documented conditions including but not limited to: (11-16-95)T

- a. Ongoing major medical problems; (11-16-95)T
- b. Behaviors that require immediate action or control; or (11-16-95)T
- c. Alcohol or drug abuse. (11-16-95)T

03. Highest Level of Need for Specialized Care. Two hundred forty dollars (\$240) per month for children requiring an extraordinary degree of specialized care for documented conditions including but not limited to: (11-16-95)T

- a. Serious emotional disturbance; (11-16-95)T
- b. Severe developmental disability; or (11-16-95)T
- c. Severe physical disability such as quadriplegia. (11-16-95)T

04. Reportable Income. Specialized care payments for more than ten (10) qualified foster children received during any calendar year must be reported as income to the Internal Revenue Service. (11-16-95)T

603. -- 609. (RESERVED).

610. PROFESSIONAL FOSTER CARE.

Placement in professional foster care for children who require professional care for clinically diagnosed emotional, behavioral and/or physical problems shall be based upon the documented needs of each child, including the inability of less restrictive settings to meet the child's needs and a determination that the child would require a more restrictive setting if professional foster care were not available. (11-16-95)T

01. Qualifications. At least one (1) parent shall possess a master's or higher degree in a human service field or a bachelor's degree with three (3) years of experience in a human service delivery setting, and neither parent shall be a Department employee. (11-16-95)T

02. Payment. Payment shall be made through a professional services contract with the Department for a basic rate and cost for social services total of one thousand dollars (\$1,000) per month per child. (11-16-95)T

03. Treatment Plan. The professional foster parents shall implement a treatment plan, developed in conjunction with the child's family services worker, for each child in their care. (11-16-95)T

611. GROUP FOSTER CARE.

Group foster care is for children who generally require more structured activities and discipline than found in a family setting. Examples are intermediate residential treatment, short-term group care, and emancipation homes. (11-16-95)T

01. Referral - Group Foster Care. Referral of a child to a group foster care facility shall be authorized by the Family and Children's Services Manager or designee. (11-16-95)T

02. Placement. Placement shall be based on the documented service needs of each child and the ability of the group care provider to meet those needs. (11-16-95)T

03. Payment - Group Foster Care. Payment shall be pursuant to contract authorized by the regional director or division administrator, based on the needs of the children being placed and the services to be provided. (11-16-95)T

612. -- 619. (RESERVED).

620. INTENSIVE TREATMENT FACILITIES.

Children with serious emotional and/or behavior disturbance may be placed in individualized day treatment or residential care. (11-16-95)T

01. Referral - Intensive Treatment. Referral of a child to an intensive treatment facility shall be authorized by the regional director or designee. (11-16-95)T

02. Payment - Intensive Care. When care is purchased by private providers, payment shall be made pursuant to contract authorized by the regional director or division administrator, based on the needs of each child being placed and the services to be

provided. When care is provided in facilities operated by the Department, payment shall be arranged in cooperation with Department fiscal officers. (11-16-95)T

621. -- 629. (RESERVED).

630. FOSTER CARE MAINTENANCE PAYMENTS.

Foster care maintenance payments shall be made only on behalf of an eligible child who is in a licensed family foster home of an individual, in a private nonprofit child care institution, in a home licensed, approved or specified by the Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals, to a public or private nonprofit child placement of child care agency. For Title IV-E purposes, payments for foster care maintenance, whether at regular or specialized rates, are limited to the following:

(11-16-95)T

01. Maintenance of Child. The cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, personal incidentals, liability insurance for the child, and reasonable travel to the child's home for visitation.

(11-16-95)T

02. Administrative Costs. Reasonable costs of administration and operation of an institution necessarily required to provide the maintenance of the child. (11-16-95)T

03. Exclusions. No Title IV-E reimbursement is available for children placed in detention facilities, forestry camps, training schools or any other facility operated primarily for the detention of delinquent children.

(11-16-95)T

631. -- 639. (RESERVED).

640. PAYMENT IN THE HOME OF A RELATIVE.

A child living with a relative may be eligible for an AFDC grant and Title XIX benefits. This will be considered first. No additional room and board payment or foster care payment may be made if the child is receiving AFDC. A foster care payment may be made if the relative is not legally responsible for the support of the child and the child is in the legal custody of the Department.

(11-16-95)T

641. -- 699. (RESERVED).

700. ADOPTION SERVICES POLICY.

Where reasonable efforts to reunite or preserve a family are unsuccessful, or where relinquishment is requested by the parents, the Department shall consider whether termination of parental rights is appropriate. The Department shall ensure that any child legally free for adoption is placed in an appropriate adoptive home, with a family that can support the racial, ethnic or cultural identity of the child, and to cope with any forms of discrimination the child may experience.

(11-16-95)T

701. SERVICES TO BE PROVIDED IN ADOPTIONS.

In addition to the family services provided in accordance with these rules, the Department shall provide the following:

(11-16-95)T

01. Response to Inquiries. Written or personal inquiries from prospective adoptive families shall be answered within two (2) weeks. (11-16-95)T

02. Pre-placement Child/Family Assessment. An assessment of the child's family of origin history, needs as an individual and as part of a family, and completion of a life story book for each child preparing for adoptive placement. (11-16-95)T

03. Compliance with Multi-Ethnic Placement Act. Selection of the most appropriate adoptive family consistent with the Multi-Ethnic Placement Act, if the child is not an Indian. (11-16-95)T

04. (Pre-placement) Home Study. An adoptive home study to ensure selection of an appropriate adoptive home. (11-16-95)T

05. Preparation for Placement. Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from his birth parents and assisting the child with the transition into an adoptive home. (11-16-95)T

06. Technical Assistance. Assistance in completing the legal adoption, including compliance with the Indian Child Welfare Act. (11-16-95)T

07. Adoption Assistance. Each child placed for adoption through the Department shall complete a determination of eligibility for adoption assistance prior to the finalization of his adoption. Eligibility for adoption assistance is determined solely on the child's need. No means test shall be applied to the adoptive family's income or resources. Once eligibility is established, the Division shall negotiate a written agreement with the adoptive family. The agreement must be fully executed by all parties prior to the finalization of the adoption in order to be valid. (11-16-95)T

08. Period of Support Supervision. Once a child is placed with an adoptive family, a period of support and supervision by the Department of at least six (6) months shall occur prior to the finalization of the adoption. This supervisory time shall be to assist the child and the adoptive parents in their adjustment to each other, to assure the adoptive family is knowledgeable regarding needed services in their community, and to educate the family regarding the child's eligibility for adoption assistance benefits. If the child has been a foster child placed with the family for a period of at least one (1) year, the family (in conjunction with their social worker) may submit a written request to the Adoptions Central Office to waive the standard support period. (11-16-95)T

09. Post Adoption Services. Services after an adoption is final are provided within available resources. Children with negotiated adoption assistance agreements (whether from Idaho or from another state) are eligible for any services available to Idaho children. Children whose adoption assistance agreement include IV-E eligibility are also eligible for Medicaid in Idaho. Applications for Medicaid are made through Central Office. (11-16-95)T

702. -- 709. (RESERVED).

710. FAMILY HISTORY.

In order to plan successfully for the future of any child in the legal custody or guardianship of the Department, the Department needs to elicit as much information as possible about the child's family and history. This will involve obtaining all social, medical and genetic information available and interviewing the parents and any extended family for this purpose. If the family case plan proceeds to termination and adoption is considered a part of the total planning for the child, the following information shall be obtained with a copy submitted to Central Office: (11-16-95)T

01. Informational Forms. Informational background forms regarding the birth mother, birth father, and the child. (11-16-95)T
02. Hospital Records. Hospital birth records on child. (11-16-95)T
03. Evaluations/Assessments. Evaluations/Assessments previously completed on child. (11-16-95)T
04. Current Picture. Current picture of child. (11-16-95)T
05. Narrative Social History. Family and Child's Narrative Social History that addresses: (11-16-95)T
 - a. Family dynamics and history; (11-16-95)T
 - b. Child's current functioning and behaviors; (11-16-95)T
 - c. Interests, talents, abilities, strengths; (11-16-95)T
 - d. Child's cultural and racial identity needs; (11-16-95)T
 - e. Life story, moves, reasons, key people; (11-16-95)T
 - f. Child's attachments to current caretakers, siblings and significant others; i.e., special friends, teachers, etc.; (11-16-95)T
 - g. Medical, developmental and educational needs; (11-16-95)T
 - h. Child's history, past experiences, and previous trauma; (11-16-95)T
 - i. Indian child's membership or eligibility for membership in tribe(s); (11-16-95)T
 - j. Membership or eligibility for membership in, and social and cultural contacts with, tribe(s) of parent(s), if any, including names and addresses of extended family and membership in tribe(s); (11-16-95)T
 - k. Indian child's contacts with tribe(s); (11-16-95)T
 - l. Individualized recommendations regarding each child's need for permanency; (11-16-95)T

- m. Reasons for requesting termination of parental rights. (11-16-95)T

711. APPROVAL PROCESS.

The social history is to be prepared in triplicate, with one (1) copy retained in the Field Office. The original and one (1) copy, together with the certified birth certificate, picture and other pertinent documents are to be forwarded to the Divisions's Regional Social Service Program Manager or designee for approval. One (1) copy of the history and all the supporting documents will be forwarded by the Social Services Program Manager to the State Adoption Program Specialist if termination procedures are authorized.

(11-16-95)T

712. DECISION ON PROPOSED TERMINATION.

The Department's Regional Social Services Program Manager or designee, shall notify the Field Office in writing of the decision regarding the proposed termination. If the Field Office is authorized to file a petition, a copy of all pleadings, reports to the court and related documents and the court order shall be sent to the State Adoption Program Specialist.

(11-16-95)T

713. TERMINATION OF PARENT-CHILD RELATIONSHIP.

The severing of the parent and child relationship is of such vital importance that it requires a judicial determination separate and apart from other issues. No petition may be filed under the Termination Act by the Department without prior written authorization from the regional staff person delegated this authority. Once authorization is given, a copy of the approval shall be sent to the Central Office adoptions unit. Under the Act, the Magistrate's Division of the District Court has jurisdiction in proceedings to terminate the parent-child relationship involuntarily (upon due process without the consent of the parents), or voluntarily (with the consent of the parents). Conditions under which termination may be granted are set forth in Idaho Code Section 16-2005.

(11-16-95)T

714. VOLUNTARY TERMINATION.

The Termination Act provides a method for the voluntary relinquishment of a child by the birth parent(s). The Act sets forth in Idaho Code 16-2005 (f) the manner and form of the consent. The Department becomes involved in voluntary terminations when a parent or parents request the Department to place their special needs child or children for adoption and when voluntary termination is a goal in the family case plan. Parents requesting placement of an unborn or healthy newborn child should be referred to the licensed private adoption agencies.

(11-16-95)T

715. VOLUNTARY CONSENT.

In obtaining a parent's consent to terminate their parental rights through the Department, the form: "Consent for Termination of Parent-Child Relationship" (HW 0777) and "Approval of Consent for Termination and Waiver of Hearing" (HW 0778) must be signed before the Magistrate Judge. Once the parent's consent has been given before the court, a corresponding petition under the Termination Act must be filed by legal counsel representing the Department.

(11-16-95)T

716. VOLUNTARY TERMINATION OF PARENTAL RIGHTS TO AN INDIAN CHILD.

Consent to voluntary termination of parental rights by the parent or Indian custodian of an

Indian child shall not be valid unless executed in writing and recorded before a court of competent jurisdiction, which may be a tribal court. The written consent must be accompanied by the presiding judge's certificate that: (11-16-95)T

01. Explanation of Consent. The terms and consequences of the consent were fully explained in detail and were fully understood by the parent or Indian custodian; and (11-16-95)T

02. Interpretation if Necessary. The parent or Indian custodian fully understood the explanation in English or it was interpreted into a language the parent or Indian custodian understood. (11-16-95)T

717. FILING OF PETITION FOR VOLUNTARY TERMINATION.

The petition for a voluntary termination of parental rights shall be filed by an authorized agency, by the guardian of the person or the legal custodian of the child or the person standing in loco parentis to the child, or by any other person having a legitimate interest in the matter. (11-16-95)T

718. REPORT TO COURT - VOLUNTARY TERMINATION.

If a voluntary consent to termination has been signed by the parents before the Magistrate Court, an investigation or report to the court is at the court's discretion. If the petition has been filed by the Department of Health and Welfare, Division of Family and Community Services, a report is required to accompany the petition, pursuant to Idaho Code 16-2008(b). (11-16-95)T

719. INVESTIGATION.

An investigation of the allegations in the petition and a report recommending disposition of the petition shall be completed and submitted to the court within thirty (30) days, unless an extension of time is granted. The purpose of this investigation is not to repeat the allegations in the petition but to verify them from all available sources, including the petitioner, birth parents and possibly the extended birth family of the child. The Report to the Court under the Termination Act, is to serve as an aid to the court in determining a disposition that complies with the Indian Child Welfare Act where applicable, or will be in the best interest of the child. If a petition is filed by a party other than the Department, the court may order such an investigation by the Department. The law also allows completion of an investigation by an authorized agency or a qualified individual, prior to adjudication and disposition. If the Department is the petitioner, the report shall accompany the petition. Reports submitted under the Termination Act based on the birth parents voluntary consent shall include: (11-16-95)T

01. Description of Investigation. The circumstances of the petition and the facts determined from the investigation; and (11-16-95)T

02. Child-Related Factors. Child related factors, including: (11-16-95)T

a. Child's current functioning and behaviors; (11-16-95)T

b. Medical, educational and developmental needs of the child; (11-16-95)T

- c. Child's history and past experiences; (11-16-95)T
- d. Child's cultural and racial identity needs; (11-16-95)T
- e. Child's interests and talents; (11-16-95)T
- f. Child's attachments to current caretakers and any absent parent;
(11-16-95)T
- g. Child's current living situation; (11-16-95)T
- h. Indian child's membership or eligibility for membership in tribe(s);
(11-16-95)T
- i. Indian child's contacts with tribe(s); (11-16-95)T
- j. The present circumstances, history, condition and desire of the parent
whose rights are being terminated regarding plans for the child; (11-16-95)T
- k. Such other facts as may be pertinent to the parent and child relationship
and this particular case; i.e., compliance with Interstate Compact Placement on Children;
and (11-16-95)T
- l. A recommendation and reasons as to whether or not the termination of
the parent and child relationship should be granted. (11-16-95)T

720. REPORT TO THE COURT - INVOLUNTARY TERMINATION.

If a petition for an involuntary termination of parental rights has been brought before the Magistrate Court, an investigation or report to the court under the Termination Act is required. If the petition has been filed by the Department of Health and Welfare, Division of Family and Community Services, a report is required pursuant to Idaho Code 16-2008(b). Reports submitted under the Termination Act based on an involuntary termination of parental rights shall include: (11-16-95)T

- 01. Allegations. The allegations contained in the petition; (11-16-95)T
- 02. Investigation. The process of the assessment and investigation; and
(11-16-95)T
- 03. Family Circumstances. The present condition of the child and parents,
especially the circumstances of the parent whose rights are being terminated and contact
with the parents of a minor parent, unless lack of contact is explained; (11-16-95)T
- 04. Medical Information. The information forms regarding the child, birth
mother, and birth father shall be submitted with the Report to the Court. Reasonably
known or available medical and genetic information regarding both birth parents and
source of such information, as well as reasonably known or available providers of medical
care and services to the birth parents; (11-16-95)T
- 05. Efforts to Maintain Family. Other facts that pertain to the parent and

child relationship including what reasonable efforts have been made to keep the child with the birth family; (11-16-95)T

06. Absent Parent. Reasonable efforts made by the petitioner to locate the absent parent and provision of notification to an unmarried father of the paternity registry requirement pursuant to Idaho Code 16-1513. (11-16-95)T

07. Planning. Proposed plans for the child consistent with 1) the Indian Child Welfare Act; including potential for placement with the Indian child's extended family, other members of the Indian child's tribe, or other Indian families; and 2) the Multi Ethnic Placement Act; which shall include individualized documentation regarding this child's needs in permanent placement; (11-16-95)T

08. Compliance with the Indian Child Welfare Act. Documentation of compliance with the Indian Child Welfare Act, including identification of whether the child is Indian and if so; (11-16-95)T

a. Notification of the pending proceedings by registered mail with return receipt requested, to the parent or Indian custodian and the Indian child's tribe, or to the Secretary of the Interior if their identity or location cannot be determined; (11-16-95)T

b. Notification of the right of the parent or Indian custodian, and the Indian child's tribe, to intervene in the proceeding and their right to be granted up to twenty (20) additional days to prepare for the proceeding; (11-16-95)T

c. Notification that if the court determines indigency, the parent or Indian custodian shall have the right to court-appointed counsel; (11-16-95)T

d. Evidence, including identity and qualifications of expert witnesses, that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child; (11-16-95)T

e. Recommendation. A recommendation and the reasons therefor as to whether or not termination of the parent and child relationship is in the best interest of the child; and (11-16-95)T

f. Upon the court's finding to terminate parental rights, the attorney representing the Department must file the "Findings of Fact, Conclusions of Law and Decree." Two certified copies of this document are to be forwarded to the Adoptions Unit at Central Office. (11-16-95)T

721. -- 749. (RESERVED).

750. APPLICATION TO BE ADOPTIVE PARENTS.

Each field office shall be responsible for compiling the names and addresses of adoptive applicants, along with the dates of inquiry and membership in an Indian tribe, if any. A card file or register must be maintained in order to assure the orderly completion of home studies. (11-16-95)T

01. Interviews with Potential Applicants. Initial interviews with groups of

applicants or with individual families shall be scheduled promptly and shall be used to explain Department policies and procedures regarding adoptive placement, the kinds of children available, and the nature of the home study. The overall purpose of these interviews is to provide prospective adoptive parents with sufficient educational information to enable them to determine whether they wish to make application for a child and to provide the Department with sufficient information to determine whether they appear to meet general characteristics necessary to successfully parent a special needs child(ren). (11-16-95)T

02. Screening of Adoptive Applicants. Screening of the adoptive applicants will assist the agency or family services worker, in assessing on an individualized basis, the prospective adoptive parent's suitability to care for a specific child, or general description of children through: (11-16-95)T

a. The family's ability to form relationships and to bond with a specific child, or general description of children; (11-16-95)T

b. The family's ability to help the child integrate into the family; (11-16-95)T

c. The family's ability to accept the child's background and help the child cope with his or her past; (11-16-95)T

d. The family's ability to accept the behavior and personality of a specific child or general description of children; (11-16-95)T

e. The family's ability to nurture and validate a child's particular cultural, racial, and ethnic background; (11-16-95)T

f. The family's ability to meet the child's particular educational, developmental or psychological needs. (11-16-95)T

751. -- 759. (RESERVED).

760. PSYCHOLOGICAL EVALUATION.

A psychological evaluation by a psychologist or a psychiatrist can be required by the family services worker. When either parent has received or is currently receiving treatment for psychological problems or mental illness or when the family services worker feels that there are emotional problems in the family that merit evaluation. (11-16-95)T

761. DENIAL OF APPLICATION.

Following an initial interview, applicants who do not appear to meet the eligibility requirements at the time of initial application may be denied a full home study. The family services worker shall advise the applicants as to factors that would lead to eligibility to file an application and receive a home study at a later date. (11-16-95)T

762. APPLICATION AND DATA COLLECTION.

Following the initial interview, the application, medical forms, list of items to be verified and other pertinent information needed to complete the adoptive home study shall be given to the potential adoptive parents. (11-16-95)T

01. Interviews. Family assessment interviews as well as individual interviews must be held with the potential adoptive parents. (11-16-95)T

02. Home Study of Applicant. A full home study must then be made to determine the ability of the applicants to meet the needs of children available for adoption, and to determine the kind of child for whom they would be most suitable. For an Indian child, the study shall also determine the prevailing social and cultural standards of the Indian community in which the parent or extended family resides or maintains social and cultural ties. (11-16-95)T

03. Submission of Completed Home Study. Once the adoptive home study has been initiated, the original and one (1) copy of the completed home study must be submitted to the State Adoption Program Specialist within a three (3) month period. (11-16-95)T

763. APPLICANT RESPONSIBILITIES.

It shall be the responsibility of adoptive applicants to keep the field office informed of any changes of circumstances, or of any subsequent decision against adoption. Applicants are to maintain contact with the Department on an annual basis. In the absence of contact from the adoptive applicants, the Department shall initiate contact on an annual basis to confirm the currency and accuracy of information in the files and the status of the application. The contact shall be verified by a written annual update to the adoption home study. (11-16-95)T

764. PRE-PLACEMENT ADOPTIVE HOME STUDY.

Upon application by a potential adoptive family, the family services worker shall conduct the pre-placement adoptive home study and issue the verification of positive recommendation where appropriate. The home study shall be completed prior to placement of any child for adoption in that home. (11-16-95)T

765. -- 769. (RESERVED).

770. ADOPTIVE HOME STUDIES.

Pre-placement home studies for Department adoption and for independent, relative and step parent adoptions shall document the following: (11-16-95)T

01. Residence. References who can verify that the family has resided and maintained a dwelling within the State of Idaho for at least six (6) consecutive months prior to the filing of the petition. (11-16-95)T

02. Verification of Ages of Adopting Parents. Legal verification that the person adopting is at least fifteen (15) years older than the child or twenty-five (25) years of age or older, except in cases where the adopting person is a spouse of a birth parent, shall be accomplished by: (11-16-95)T

a. Viewing a certified copy of the birth certificate filed with the Bureau of Vital Statistics; or (11-16-95)T

b. Viewing one (1) of the following documents for which a birth certificate

was presumable required prior to its issuance, such as armed services or other governmental identification, passport, visa, alien identification cards or naturalization papers. (11-16-95)T

c. If verifying documentation is not available, the report shall indicate the date and place of birth and reason for lack of verification. (11-16-95)T

03. Medical Examination. A medical examination, with the medical report form signed and dated by the examining physician. (11-16-95)T

04. Photograph. A photograph of the adopting family. (11-16-95)T

771. -- 779. (RESERVED).

780. FACTORS TO BE CONSIDERED IN DETERMINING SUITABILITY OF ADOPTIVE PARENTS.

01. Indian Child. For an Indian child, absent good cause to the contrary, the following preferences for placement under the Indian Child Welfare Act shall be followed: a) extended family; b) other members of the child's tribe; c) other Indian families. (11-16-95)T

02. Needs of Adoptive Child. The primary eligibility factor in the review of adoptive parent eligibility is the applicant(s)' ability to protect and promote the best interests of a child to be placed in their home. (11-16-95)T

781. -- 789. (RESERVED).

790. FOSTER PARENT ADOPTIONS.

Foster parents are required to sign an agreement that they will not pursue adoption of a foster child unless adoption is recommended by the Department. If a child has been in a foster home for a length of one (1) year or longer, and the foster parents want to be considered as adoptive parents, the same procedure will be followed and the same requirements will apply as with other adoptive applicants, including compliance with the Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994. (11-16-95)T

791. -- 799. (RESERVED).

800. PLACEMENT OF THE CHILD.

The field office shall provide full confidential background information and discuss the child's history fully with the adopting parents prior to the placement. The disclosure of background information shall be confirmed at the time of placement by a written statement from the family services worker to the adoptive family which they will be asked to acknowledge and sign. A copy of this statement shall be provided to them, one (1) will be kept in the child's case record and one (1) shall be sent to the State Adoption Program Specialist. The child's record shall be reviewed by the placing region's Program Manager or designee prior to being forwarded to the supervising family services worker. The child's case record must be complete and transferred to the supervising family services worker at the time of placement. (11-16-95)T

801. -- 829. (RESERVED).

830. FEES FOR ADOPTIONS THROUGH THE DEPARTMENT.

The application fee covers the costs of processing the adoptive application and does not guarantee that the family will receive a child for adoption. The application fee is non-refundable. Money collected through the Department's adoption program may be utilized to pay state adoption assistance payments for special needs children, purchase of service fees, recruitment costs and placement fees for private agencies serving children who have special needs. Families who are not able to pay the costs associated with the Pre-placement home study, Supervisory reports, or the Report to the Court, may apply to the Regional Family and Children's Program Manager for waiver of the fees. (11-16-95)T

831. FEE SCHEDULE - ADOPTIONS THROUGH DEPARTMENT.

TABLE 831	
Service	Fee
General Information/Adoption Inquiries	No Charge
Health and Welfare Application	
Couple	\$25
Single Parent	\$25
Second Placement or Reapplication	\$25
Criminal History Check for each adult in the home	\$33
Pre-placement Home Study Payment due at time of study or per agreement	\$300
Second Placement	\$100
Placement Supervision Fee Charged at the time of placement	\$300
Closed Adoption Home Study/Court Report Retrieval Fee	\$50

(11-16-95)T

832. PLACEMENT SUPERVISION - TRANSFER FROM OTHER PUBLIC AGENCY.

If a couple moves to Idaho after a child has been placed with them by the public agency in their former state of residence, courtesy supervision shall be provided at no charge.

(11-16-95)T

833. PLACEMENT SUPERVISION - TRANSFER FROM OUT OF STATE PRIVATE AGENCY.

If a couple moves to Idaho after a child has been placed with them by a private agency in their former state of residence, the sending state agency shall arrange through the Interstate Compact for the Placement of Children, services through one (1) of Idaho's

private, licensed adoption agencies, or a qualified individual approved for termination and adoption services. (11-16-95)T

834. -- 839. (RESERVED).

840. FEES FOR INDEPENDENT, RELATIVE OR STEP PARENT ADOPTION SERVICES.

When conducted by the Department, fees for completing home studies and reports to the court for independent, relative and step parent adoptions shall be paid directly to the Department according to the following table. (11-16-95)T

Independent, Relative or Step Parent Adoption Services - TABLE 840	
Service	Fee
Home Study	\$240
Criminal History Check for Each Adult in the Home	\$33

(11-16-95)T

01. Waiver of Fees - Independent, Relative or Step Parent Adoptions. Fees may be waived by the Regional Family and Children's Services Manager, when payment of the fees would pose a financial hardship on the family, or for a child with special needs. (11-16-95)T

02. Other Costs. These fees do not cover any charges made by the agency having guardianship of the child for any placement, transportation, passport or medical costs. (11-16-95)T

03. Placement Supervision - Transfer from Private Agency. If a family moves to Idaho after a child has been placed with them by a private agency, the family shall be referred to the licensed, private adoption agencies for support and supervisory services. (11-16-95)T

841. -- 849. (RESERVED).

850. INDEPENDENT, RELATIVE AND STEPPARENT ADOPTIONS.

Independent adoptive placements shall be handled in accordance with Section 16-1506, Idaho Code. Persons petitioning to adopt a child should have initially completed a pre-placement home study that includes a positive recommendation for adoption. Proceedings to adopt a child shall be commenced by the filing of a petition by the person or persons proposing to adopt the child. Within five (5) days of receiving a petition to adopt a minor child by a person unrelated to the child or not married to a birth parent of the child, the court shall serve a copy of the petition on the Director. The court may also request the Department to conduct an investigation in the case of a relative or step parent adoption. The pre-placement investigation home study and the adoption investigation report to the court shall be completed by licensed staff of the Department, licensed staff of a qualified child-placing children's adoption agency, or a qualified individual. (11-16-95)T

01. Adoptive Parent is Spouse of Birth Parent. Where the adoptive parent is married to the birth parent of the adoptive child, the pre-placement home study shall be completed for the adoptive parent upon order of the court. (11-16-95)T

02. Exigent Circumstances. In exigent circumstances where the prospective adoptive parents are determined by the court to have been unable to complete the pre-placement study with a positive recommendation prior to the time the child is placed in the home, the child shall remain in the home unless the court determines that another placement is appropriate. When exigent circumstances exist, the pre-placement home study, combined with the adoption report under the Adoption Act, shall be initiated within five (5) days of placement. (11-16-95)T

03. Time Frame for Assessment. Once initiated, adoption studies/reports that meet the court's determination of exigent circumstances, shall be completed within sixty (60) days. (11-16-95)T

851. -- 859. (RESERVED).

860. PROCEDURES FOLLOWING THE ADOPTIVE PLACEMENT.

Following the placement there shall be a supervisory period of at least six (6) months before the initiation of legal adoption proceedings. The family services worker shall make scheduled monthly visits to the home during this period to assist the child and the family in their adjustment to each other and will keep the State Adoption Program Specialist informed by means of monthly progress reports. When completion of the adoption is recommended by the field office and approved by the State Adoption Program Specialist, the Department shall request the adoptive parents to contact their attorney. The State Adoption Program Specialist shall provide the attorney with the necessary documentation to file the petition for adoption. (11-16-95)T

861. PROGRESS REPORTS.

Progress reports shall be prepared regularly and shall be based on the family services worker's findings. (11-16-95)T

01. Initial and Subsequent Reports. The first progress report must be made within two (2) weeks after placement, and subsequent progress reports must be made at intervals not to exceed thirty (30) days. These reports shall include: (11-16-95)T

a. The family services worker's observation of the child and the prospective adopting parents, with emphasis on: (11-16-95)T

b. Special needs/circumstances of child(ren) at time of placement; (11-16-95)T

c. Services provided to child(ren) and family during report period; (11-16-95)T

d. Services to be provided to child(ren) and family; (11-16-95)T

e. General appearance and adjustment of child(ren) during report period

(may include eating, sleep patterns, responsiveness, bonding); (11-16-95)T

f. School/day care/day treatment program adjustment; (11-16-95)T

g. Health/developmental progress, medical practitioner information;
(11-16-95)T

h. Has the child(ren) been accepted for coverage on family's medical insurance? When can coverage begin? Will there be any limitations/exclusions?;
(11-16-95)T

i. Family's adjustment to adoptive placement; (11-16-95)T

j. Is respite care a need for the family; (11-16-95)T

k. Changes in family situation or circumstances; (11-16-95)T

l. Areas of concern during report period as addressed by both child(ren) and adoptive parents; (11-16-95)T

m. Date of next required six (6) month review or eighteen (18) month permanent planning hearing; (11-16-95)T

02. Monthly Foster Care Payments - Pre-Adoptive Placement. That during the period pending completion of adoption, the adoptive parents can be approved through the adoptive home study or licensed as foster parents to cover on-going medical expenses or in some cases monthly foster care payments for a special needs child until an adoption support payment is approved and the adoption finalized. (11-16-95)T

03. Adoptive Study Sufficient. An approved adoption study completed by the Department of Health and Welfare or a licensed children's adoption agency is sufficient to meet the requirements of a foster home license. (11-16-95)T

04. Final Report. The final report shall include pertinent information about the readiness of the child and the family for completion of the adoption. The family's decision to apply for adoption assistance benefits for the child should be documented. Identification of the family's attorney should be made regarding the finalization of the adoption. The family's health insurance carrier should be identified, along with the date the child's medical coverage will begin. An up-to-date medical report on the child must be obtained from the child's physician, so that the Department will have current information about the health of the child. Any problem in placement will be brought to the attention of the State Adoption Program Specialist. (11-16-95)T

862. REPORT TO THE COURT - ADOPTION ACT.

When the family and the child who was placed for adoption in that home are ready to finalize the adoption, the family's attorney shall file a petition to adopt with the court. A copy of that petition shall be served upon the director of the Department. Upon receipt of a copy of the petition to adopt, family services worker or qualified individual shall verify the allegations set forth in the petition and make a thorough investigation of the matter and report the findings in writing to the court within thirty (30) days. (11-16-95)T

01. Registration and Acknowledgement. Upon receipt of the petition to adopt, the field office shall register it and acknowledge receipt to the court and to the petitioners or private adoption agency. If the licensed adoption agency or qualified individual which completed the pre-placement home study is not identified, that information should be obtained from the attorney. The register shall indicate the date the petition was received, the date the study is due in court, the date the completed study was sent to the court, whether an Indian child is involved, and other pertinent data.

(11-16-95)T

02. Initial Interview. Upon receipt of the petition, the family services worker or qualified individual shall arrange an initial interview with the adopting family.

(11-16-95)T

03. Time Frame for Investigation. If the family services worker or qualified individual is unable to complete the study within thirty (30) days, an extension of time shall be requested in writing of the court, stating the reasons for the request. If the family services worker suspects that the child is of Indian heritage and the child's tribe or the Secretary has not been notified, the family services worker shall inform the court and the independent agency of the need to comply with the Indian Child Welfare Act.

(11-16-95)T

04. Medical Information. A copy of medical and genetic information compiled in the investigation shall be made available to the adopting family by the family services worker or qualified individual prior to the final order of adoption.

(11-16-95)T

863. ADOPTION REPORT TO THE COURT.

The completed report to the court shall be filed along with the pre-placement home study. The adoption report to the court shall contain the following:

(11-16-95)T

01. Verification of Allegations. The family services worker shall review the documentary evidence presented by the petitioners to verify the allegations contained in the petition. The family services worker shall record the information and source in the report to the court, noting any discrepancies found. Such documentary evidence shall include but not limited to, birth or death certificates from the Bureau of Vital Statistics, consents of both birth parents, termination decrees and divorce decrees, compliance with the Indian Child Welfare Act and/or the Interstate Compact on the Placement of Children. Where necessary documentation is not made available to the family services worker, this fact shall be recorded, including the reason.

(11-16-95)T

02. Availability of the Child. It is the responsibility of the petitioners, through their attorney, to present documentary evidence to the court so the judge can examine it and be satisfied that the identify, birthdate, and parentage of the child are as represented in the petition; that an Indian child's parent or Indian custodian, and tribe have received notice of their right to intervene; and that consent has been secured for all persons from whom it is required, to make the child legally available for adoption.

(11-16-95)T

03. Confidentiality of Information. The family services worker shall exercise caution in discussing identifying information and avoid revealing that information in the petition while attempting to secure the necessary facts for the study.

(11-16-95)T

04. Degree of Relationship of the Child to Petitioners. In those cases where the court has ordered an investigation of petitions to adopt by relatives or step parents, the study shall record such alleged relationship and specify the documentary evidence the petitioners have of that relationship. (11-16-95)T

05. Needs of the Child. The study shall address the needs of the child in regards to the proposed adoption, including but not limited to: (11-16-95)T

a. The history of the child and the child's birth family; (11-16-95)T

b. The circumstances of the placement; and (11-16-95)T

c. The State of Idaho Social, Medical and Genetic History forms shall be completed and submitted to the court, showing reasonably known or available medical and genetic information regarding both birth parents and the child, as well as reasonably known or available providers of medical care and services to birth parents and child. (11-16-95)T

06. Appropriateness of the Adoptive Family. The study shall address the appropriateness of the family for the particular child or children who are the subject of the petition. (11-16-95)T

07. Evaluation and Recommendation. The family services worker shall provide a brief summary of data presented in prior sections and/or the pre-placement home study, supporting the recommendation regarding the adoption. (11-16-95)T

864. -- 869. (RESERVED).

870. REMOVAL OF A CHILD FROM AN ADOPTIVE HOME.

Despite careful assessment of the child and the family prior to placement, circumstances may arise which make it necessary to remove the child from the home prior to adoption. The child may manifest problems that the family is unable to accept or to handle constructively; or changed circumstances may develop that make it inadvisable for the placement to continue. The decision to remove a child from an adoptive home may result due to the request of the adoptive parents, or upon the decision of the Department as the legal guardian of the child. (11-16-95)T

01. Decision for Removal. The decision for removal may be made by the Department, the family or in some cases jointly. (11-16-95)T

02. Consultation. Consultation shall be requested promptly by the field office and a Department decision for removal against the parents' wishes must be approved and authorized in advance by the State Adoption Program Specialist. If a family services worker feels there is some question regarding an adoptive placement the family services worker is supervising, these questions must be discussed with the family services worker's supervisor and reported to the State Adoption Program Specialist. (11-16-95)T

03. Temporary Replacement After Disruption. When a disruption occurs and it becomes necessary to remove a child from an adoptive home, the field office where

the child has been placed shall be responsible for finding a temporary arrangement for the child until another permanent placement can be arranged. In the case of the adoption of an Indian child, the consent of the parent may be withdrawn for any reason at any time prior to the entry of a final decree of adoption, and the child returned to the parent.

(11-16-95)T

871. PREFERENCES FOR TEMPORARY PLACEMENT - INDIAN CHILD.

Preferences for placement of an Indian child shall be observed in the temporary and permanent placement unless the child is being returned to the parent or Indian custodian from whose custody the child was originally removed.

(11-16-95)T

872. -- 879. (RESERVED).

880. APPLICATIONS FOR SECOND PLACEMENT.

When adoptive applicants who are on the Department's waiting list receive a child, whether through the Department or as an independent placement, the study will be closed; and the applicants can reapply following the six (6) months' supervisory period if they so desire.

(11-16-95)T

01. Reapplication Process. When an adoption has been successfully completed by the Department and the adoptive parents wish to reapply, they shall complete an adoption application and financial statement, and submit medical reports and four (4) references.

(11-16-95)T

02. Update of Adoption Study. The prospective adoptive family shall assist in updating the original adoption study to include information concerning the acceptance and adjustment of the child previously placed in the home, a photograph of the family, including the child previously placed in the home, and their special request for second placement.

(11-16-95)T

881. CLOSURE OF CASE.

The State Adoption Program Specialist shall request from the adopting parents' attorney, a certified copy of the final order of adoption, and a copy of the family service worker's executed consent to adoption taken at the time of the adoption finalization. These documents are necessary to close the adoption file and initiate the child's adoption assistance benefits.

(11-16-95)T

882. RECORDS OF PLACEMENT.

Upon finalization of the adoption, the complete record from the local field office, regarding the child and family will be requested by the State Adoption Program Specialist for permanent storage in Central Office. Records of adoption involving Indian children shall be forwarded by the State Adoption Program Specialist to the Secretary of the Interior.

(11-16-95)T

883. POST-LEGAL ADOPTION SERVICES.

Upon finalization of the adoption, the Department can offer post-legal adoption services upon request, including but not limited to, case management services, referrals for counseling or other supportive services.

(11-16-95)T

884. OPENING SEALED RECORDS OF ADOPTIONS.

Pursuant to Section 16-1511, Idaho Code, upon the motion of petitioners, or upon its own motion the probate court will order that the record of its proceedings in any adoption proceeding must be sealed. When such order has been made and entered the court must seal such record and thereafter the seal will not be broken except 1) upon the motion of petitioners or the person adopted; or 2) upon motion of an Indian individual who has reached the age of eighteen (18) and was the subject of an adoption, the court shall provide tribal affiliation, if any, of the individual's biological parents and other information necessary to protect any rights flowing from the individual's tribal relationship; or 3) upon request of the Secretary of the Interior or the Indian child's tribe, evidence of efforts to comply with the Indian Child Welfare Act shall be made available. Such record can be sealed again. (11-16-95)T

885. -- 889. (RESERVED).

890. QUALIFIED INDIVIDUAL REQUIREMENTS.

Qualified individuals are family services workers as defined in these rules, who have completed a minimum of twenty (20) hours of training in adoption related services within the last four (4) years. Individuals designated by the Indian child's tribe to perform these duties are not subject to these provisions. (11-16-95)T

891. QUALIFIED INDIVIDUALS' CLIENT RELATIONSHIP.

Qualified individuals shall not assume a legal relationship with any child for whom they have been contracted to perform services. (11-16-95)T

892. MINIMUM STANDARDS FOR SERVICE.

Standards for home studies, court reports, and supervisory services must, at a minimum, meet the standards for adoption services provided through the Department. (11-16-95)T

893. RECORDS OF THE QUALIFIED INDIVIDUAL.

Records of the home studies, court reports, and supervisory reports provided by the qualified individual must be made available to the regional Family and Children's Services program manager or designee one (1) week prior to the required court filing date. The regional designee will be responsible for monitoring of quality of the services provided. (11-16-95)T

894. FEES CHARGED BY THE DEPARTMENT.

Monitoring fees shall be paid directly to the Department through the Family and Children's Services' regional office and shall accompany the submission of the report. (11-16-95)T

895. DEPARTMENT RESPONSIBILITY TO QUALIFIED INDIVIDUAL.

The regional Family and Children's Services designee will review the reports provided within a timely manner to insure filing of documentation by required court date by the qualified individual. (11-16-95)T

896. -- 899. (RESERVED).

900. ADOPTION ASSISTANCE.

The purpose of the adoption assistance program is to encourage the legal adoption of

children with special needs who would not be able to have the security of a permanent home without support payments. Applications are made through the Division of Family and Community Services, Adoptions Unit. Once an application for adoption assistance is submitted to the Division of Family and Community Service's Central Office, the Division shall respond with a determination of the child's eligibility within forty-five (45) days.

(11-16-95)T

01. Determination of Need for Assistance. The Bureau of Children's Services shall determine whether a child is a child with special needs. A child must be eligible for Aid to Families with Dependent Children (AFDC), Title IV-E Foster Care or Supplemental Security Income (SSI), and meet the definition of a child with special needs according to section 473 (c) of P.L. 96-272 (The Adoption Assistance and Child Welfare Act of 1980).

(11-16-95)T

02. Factors Considered. The definition of special needs includes the following factors:

(11-16-95)T

a. The child cannot or should not be returned to the home of the parents;

and

(11-16-95)T

b. The child has a physical, mental, emotional or medical disability, or is at risk of developing such disability based on known information regarding the birth family and child's history, or

(11-16-95)T

c. The child's ethnic background, race, color, mixed parentage or age make it difficult to find an adoptive home; or

(11-16-95)T

d. The child is a member of a sibling group that must not be placed apart;

or

(11-16-95)T

e. The child has established such close emotional ties with a foster family that replacement is likely to be as traumatic to the child as removal from a natural family;

and

(11-16-95)T

f. Except in cases of foster parent adoption the child must have been listed with a state, regional or national adoption exchange.

(11-16-95)T

901. ATTEMPT TO PLACE WITHOUT ADOPTION ASSISTANCE.

Because of those factors it is reasonable to conclude that the child cannot be placed for adoption without providing adoption assistance, and except where it would be against the best interests of the child, a reasonable, but unsuccessful, effort has been made to place the child without adoption assistance.

(11-16-95)T

902. -- 909. (RESERVED).

910. TYPES AND AMOUNTS OF ASSISTANCE.

The needs of the child and the family, including any other children in the family, shall be considered in determining the amount and type of support to be provided. Assistance may include the following:

(11-16-95)T

01. Nonrecurring Adoption Costs. Payment for certain one (1) time expenses necessary to finalize the adoption may be paid when a family adopts a special needs child. They are defined as "reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs and which are not incurred in violation of State or Federal law. They may include mileage and lodging involved in visiting the child before placement occurs. These expenses cannot be reimbursed if they are paid for the adoptive parents by other sources such as an employer. Documentation of expenses must be submitted. Costs are reimbursable up to two thousand dollars (\$2,000) per child and are entered on the Adoption Assistance Program Agreement. (11-16-95)T

02. Monthly Maintenance Payment. Financial assistance in the form of a monthly payment may be established to assist the adoptive family in meeting the additional expense of the child's special needs. The amount of the payment must be negotiated with the family by the adoption worker and shall not exceed the alternate care maintenance payment that would have been paid if the child had been in a foster family home in Idaho. Payments shall continue until the child reaches eighteen (18) years, based upon an annual determination of continuing need. (11-16-95)T

03. Title XIX - Medicaid Coverage. Children eligible for IV-E adoption assistance or Idaho adoption subsidy program are also eligible for Medical coverage under Medicaid. Medicaid provides secondary coverage after the family's health insurance and other resources have been exhausted. Coverage may begin while the family meets the child's yearly deductible under the family's health care policy. Coverage may include routine medical costs or may be limited to costs related to specific medical problems of the child, and may be made until the child reaches the age of eighteen (18), based upon an annual determination of continuing need. (11-16-95)T

911. ADOPTION ASSISTANCE PROGRAM AGREEMENT.

A written agreement shall be negotiated and fully executed between the Department and adopting family prior to the finalization of adoption and implementation of benefits.

(11-16-95)T

01. Agreement Specifications. The agreement shall specify the type and amount of assistance to be provided; the date for annual renewal and earlier renewal at the family's request; that renewal depends on availability of funds; and that payments shall begin after the final order of adoption is received by the Department. (11-16-95)T

02. Suspension or Termination of Adoption Assistance. Adoption assistance may be suspended or terminated if the adoptive family fails to compete the annual recertification process, the adoptive parents no longer have responsibility for the child, the child is no longer receiving any support from the parents, or the child has reached the age of eighteen (18) years. (11-16-95)T

03. Adoption Assistance Follows the Child. If the adoptive parents are located in a state other than Idaho, or move out of Idaho with the child, the adoption assistance payments initiated by Idaho will continue for the child. If the child is IV-E adoption assistance eligible, referral for Medicaid and social service benefits will be forwarded to the new state of residence through the Interstate Compact on Adoption and Medical Assistance. Children who are not eligible for IV-E adoption assistance but qualify

for the Idaho adoption subsidy program will remain eligible for their monthly payments, however they will continue to receive Medicaid benefits from the state of Idaho only.

(11-16-95)T

912. -- 919. (RESERVED).

920. REQUEST FOR RECONSIDERATION FOR ADOPTION ASSISTANCE.

After the finalization of an adoption, adoptive parents may contact the agency with information regarding circumstances relevant to a previous denial of benefits, or other extenuating circumstances as to why adoption benefits were not offered to the family at the time of legalization. If adoptive families believe they have been wrongly denied adoption assistance benefits, they have the right to request a fair hearing. It is the responsibility of the fair hearing officer to determine whether extenuating circumstance exist and whether the family was wrongly denied eligibility. The Division of Family and Community Services may not change its eligibility determination for a child eligible for IV-E adoption assistance benefits and provide adoption assistance based on extenuating circumstances without obtaining a favorable ruling from a fair hearing officer.

(11-16-95)T

921. BURDEN OF PROOF - EXTENUATING CIRCUMSTANCES.

The family has the burden of proving extenuating circumstances at the fair hearing, although if the state agency is in agreement that the family had erroneously been denied benefits, the agency may provide such facts to the family or present corroborating facts on behalf of the family to the fair hearing officer. Once the hearing officer rules in favor of a family that extenuating circumstance exist and that the child is eligible for IV-E adoption assistance benefits, the agency must negotiate an agreement with the adoptive family.

(11-16-95)T

922. -- 999. (RESERVED).

**IDAPA 18- DEPARTMENT OF INSURANCE
18.01.09 - CERTIFICATE TO ACCOMPANY ALL
SUBMITTED POLICY FORMS**

DOCKET NO. 18-0109-9501

NOTICE OF FINAL RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1996 Idaho Legislature for final adoption.

AUTHORITY: These rules are promulgated and adopted pursuant to the authority vested in the Director of the Department of Insurance under title 41, chapter 2, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the final rules:

In 1995 the statute was amended to remove the approval requirement. Therefore these rules are no longer needed and are being repealed in their entirety.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact John Michael Brassey, at (208) 334-4250.

DATED this 22nd day of November, 1995.

JOHN MICHAEL BRASSEY, Director
Idaho Department of Insurance
700 West State Street- 3rd Floor
P.O. BOX 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250

THIS RULE IS REPEALED IN ITS ENTIRETY.

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.75 - CREDIT FOR REINSURANCE PROVISION RULES
DOCKET NO. 18-0175-9501
NOTICE OF FINAL RULE

AUTHORITY: These rules are promulgated and adopted pursuant to the authority vested in the Director of the Department of Insurance under title 41, chapter 2, Idaho Code and are now pending review by the 1996 Idaho Legislature for final adoption.

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

The purpose of this rule is to set forth rules and procedural requirements which the director deems necessary to carry out the Credit for Reinsurance provision, Section 41-514, Idaho Code, relating to reinsurance agreements in general and specifically to trust funds, the credit for reinsurance ceded to an unauthorized assuming insurer, trust agreements, letters of credit, and the insolvency provision of the reinsurance contract. As a result of public comment, the proposed rule was amended to incorporate the following changes:

Section 041.02.b. was amended to include incorporated underwriters;

Section 081.05 and 081.06 were amended to update the document number references;

Section 101.01 was amended to clarify that inclusion of an insolvency clause is mandated, but that specific contract language is not required, that the provision only applies in liquidations and that payment after insolvency goes to the domiciliary liquidator, not an ancillary liquidator or guaranty fund, and to provide two generally recognized exceptions to the mandated payment procedure.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact John Michael Brassey, at (208) 334-4250.

DATED this 1st day of November, 1995.

JOHN MICHAEL BRASSEY, Director
Idaho Department of Insurance
700 West State Street- 3rd Floor
P.O. BOX 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250

TEXT OF DOCKET NO. 18-0175-9501

IDAPA 18
TITLE 01
Chapter 75

CREDIT FOR REINSURANCE PROVISION RULES

000. LEGAL AUTHORITY.

In accordance with Section 41-211, Idaho Code, the Director of the Idaho Department of Insurance shall promulgate rules implementing the provisions of title 41, Idaho Code.

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001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 18.01.75, Credit for Reinsurance Provisions Rules of the Idaho Department of Insurance, IDAPA 18, Title 01, Chapter 75. The purpose of this rule is to set forth rules and procedural requirements which the director deems necessary to carry out the Credit for Reinsurance provision, Section 41-514, Idaho Code. The actions and information required by this rule are hereby declared to be necessary and appropriate in the public interest and for the protection of the ceding insurers in this state.

()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, this agency has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. The document is available for public inspection and copying at cost at the Office of the State Auditor, 700 West State -- 4th Floor, P.O. Box 83720, Boise, Idaho, 83720.

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003. ADMINISTRATIVE APPEALS.

All contested cases shall be governed by the provisions of IDAPA 04.11.01, Model Rules of Procedure of the Office of the Attorney General.

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004. - 010. (RESERVED).

011. CREDIT FOR REINSURANCE - REINSURER LICENSED IN THIS STATE.

Pursuant to Idaho Code, Section 41-514(1)(a), the director shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers which were licensed in this state as of the date of the ceding insurer's statutory financial statement.

()

012. - 020. (RESERVED).

021. CREDIT FOR REINSURANCE - ACCREDITED REINSURERS.

01. Accredited Reinsurers. Pursuant to Idaho Code, Section 41-514(1)(b), the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming

insurer which is accredited as a reinsurer in this state as of the date of the ceding insurer's statutory financial statement. An accredited reinsurer is one which: ()

a. Files a properly executed Form AR-1 (attached as an exhibit to this rule) as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records; ()

b. Files with the director a certified copy of a letter or a certificate of authority or of compliance as evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state; ()

c. Files annually with the director a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and ()

d. Maintains a surplus as regards policyholders in an amount not less than \$20,000,000 and whose accreditation has not been denied by the director within ninety (90) days of its submission or, in the case of companies with a surplus as regards policyholders of less than \$20,000,000, whose accreditation has been approved by the director. ()

02. Denial of Accreditation. If the director determines that the assuming insurer has failed to meet or maintain any of these qualifications, he may upon written notice and hearing revoke the accreditation. No credit shall be allowed a domestic ceding insurer with respect to reinsurance ceded after 9/1/97 if the assuming insurer's accreditation has been denied or revoked by the director after notice and hearing. ()

022. - 030. (RESERVED).

031. CREDIT FOR REINSURANCE - REINSURER DOMICILED AND LICENSED IN ANOTHER STATE.

Pursuant to Idaho Code, Section 41-514(1)(c) the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement: ()

01. Applicable Domicile and License. Is domiciled and licensed in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state which employs standards regarding credit for reinsurance substantially similar to those applicable under the Act and this regulation; ()

02. Maintains Surplus. Maintains a surplus as regards policyholders in an amount not less than \$20,000,000; and ()

03. Proper AR-1 Form Filed. Files a properly executed Form AR-1 with the director as evidence of its submission to this state's authority to examine its books and records. ()

04. Provisions. The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards which the director determines equal or exceed the standards of Idaho Code, Section 41-514 and this rule. ()

032. - 040. (RESERVED).

041. CREDIT FOR REINSURANCE - REINSURERS MAINTAINING TRUST FUNDS.

01. Trust Fund. Pursuant to Idaho Code, Section 41-514(1)(d), the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement maintains a trust fund in an amount prescribed below in a qualified United States financial institution as defined in Idaho Code, Section 41-514(4), for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interest. The assuming insurer shall report annually to the director substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the director to determine the sufficiency of the trust fund. ()

02. Requirements. The following requirements apply to the following categories of assuming insurer: ()

a. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States, and in addition, a trustee surplus of not less than \$20,000,000. ()

b. The trust fund for a group which includes incorporated and individual unincorporated underwriters shall consist of funds in trust in an amount not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which \$100,000,000 shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulator as are the unincorporated members. The group shall make available to the director annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group. ()

c. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of \$10,000,000,000 (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners) and which has continuously transacted an insurance business outside the United States for at least three (3) years immediately prior to making application for accreditation, shall consist of funds in trust in

an amount not less than the assuming insurers' liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group and, in addition, the group shall maintain a joint trusteed surplus of which \$100,000,000 shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall file a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination. The group shall make available to the director annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of each member of the group. ()

03. Acceptable Form. The trust shall be established in a form approved by the director and complying with Idaho Code, Section 41-514(1) and this section. The trust instrument shall provide that: ()

a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied thirty (30) days after entry of the final order of any court of competent jurisdiction in the United States. ()

b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest. ()

c. The trust shall be subject to examination as determined by the director. ()

d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust. ()

e. No later than February 28 of each year the trustees of the trust shall report to the director in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31. ()

f. No amendment to the trust shall be effective unless reviewed and approved in advance by the director. ()

042. - 050. (RESERVED).

051. CREDIT FOR REINSURANCE REQUIRED BY LAW.

Pursuant to Idaho Code, Section 41-514(1)(e), the director shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Idaho Code, Section 41-514(1)(a), (b), (c) or (d), but only with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this section, "jurisdiction" means any state, district or territory of the United States and any lawful national government. ()

052. - 060. (RESERVED).

061. REDUCTION FROM LIABILITY FOR REINSURANCE CEDED TO AN UNAUTHORIZED ASSUMING INSURER.

Pursuant to Idaho Code, Section 41-514(2), the director shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of Idaho Code, Section 41-514(1) in an amount not exceeding the liabilities carried by the ceding insurer. Such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder. Such security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in Idaho Code, Section 41-514(4). This security may be in the form of any of the following: ()

01. Cash. ()

02. Securities. Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets. ()

03. Letters of Credit. Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in Idaho Code, Section 41-514(3), effective no later than December 31 of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs. ()

04. Any Other Form Of Security Acceptable To The Director. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to Section 061.01., 061.02., and 061.03. shall be allowed only when the requirements of Sections 071., 081., or 091. of this rule are met. ()

062. - 070. (RESERVED).

071. TRUST AGREEMENTS QUALIFIED UNDER SECTION 061.

01. Beneficiary. Beneficiary means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator). ()

02. Grantor. Grantor means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer. ()

03. Obligations. "Obligations", as used in Subsection 071.04.k., means
:
()
- a. Reinsured losses and allocated loss expenses paid by the ceding
company, but not recovered from the assuming insurer; ()
 - b. Reserves for reinsured losses reported and outstanding; ()
 - c. Reserves for reinsured losses incurred but not reported; and ()
 - d. Reserves for allocated reinsured loss expenses and unearned premiums.
()
04. Required Conditions. ()
- a. The trust agreement shall be entered into between the beneficiary, the
grantor and a trustee which shall be a qualified United States financial institution as
defined in Idaho Code, Section 41-514(4). ()
 - b. The trust agreement shall create a trust account into which assets shall
be deposited. ()
 - c. All assets in the trust account shall be held by the trustee at the trustee's
office in the United States, except that a bank may apply for the director's permission to
use a foreign branch office of such bank as trustee for trust agreements established
pursuant to this section. If the director approves the use of such foreign branch office as
trustee, then its use must be approved by the beneficiary in writing and the trust agreement
must provide that the written notice described in Subsection 071.04.d.i. must also be
presentable, as a matter of legal right, at the trustee's principal office in the United States.
()
 - d. The trust agreement shall provide that: ()
 - i. The beneficiary shall have the right to withdraw assets from the trust
account at any time, without notice to the grantor, subject only to written notice from the
beneficiary to the trustee; ()
 - ii. No other statement or document is required to be presented in order to
withdraw assets, except that the beneficiary may be required to acknowledge receipt of
withdrawn assets; ()
 - iii. It is not subject to any conditions or qualifications outside of the trust
agreement; and ()
 - iv. It shall not contain references to any other agreements or documents
except as provided for under Subsection 071.04.k. ()
 - e. The trust agreement shall be established for the sole benefit of the
beneficiary. ()

- f. The trust agreement shall require the trustee to: ()
- i. Receive assets and hold all assets in a safe place; ()
- ii. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity; ()
- iii. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter; ()
- iv. Notify the grantor and the beneficiary within ten (10) days, of any deposits to or withdrawals from the trust account; ()
- v. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and ()
- vi. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account. ()
- g. The trust agreement shall provide that at least thirty (30) days, but not more than forty-five (45) days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary. ()
- h. The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established. ()
- i. The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee. ()
- j. The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith. ()
- k. Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this rule, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes: ()
 - i. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses

paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;()

ii. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement; or ()

iii. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten (10) days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account, in the name of the ceding insurer in any qualified United States financial institution as defined in Idaho Code, Section 41-514(4) apart from its general assets, in trust for such uses and purposes specified in Subsections 071.04.k. and 071.04.k.ii. as may remain executory after such withdrawal and for any period after the termination date. ()

1. The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by Subsection 071.06.a.ii., so long as these required conditions are included in the trust agreement. ()

05. Permitted Conditions. ()

a. The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than ninety (90) days after receipt by the beneficiary and grantor of the notice and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than ninety (90) days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee. ()

b. The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name. ()

c. The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in Subsection 071.06.a.ii. ()

d. The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets. ()

e. The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor. ()

06. Additional Conditions Applicable to Reinsurance Agreements. ()

a. A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that: ()

i. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover; ()

ii. Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by the Insurance Code or any combination of the above, provided that such investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement; ()

iii. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity; ()

iv. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent; and ()

v. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes: ()

(1) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies; ()

(2) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement; ()

(3) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves; and ()

(4) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement. ()

b. The reinsurance agreement may also contain provisions that: ()

i. Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided: ()

(1) The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or ()

(2) After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount. ()

The ceding insurer shall not unreasonably or arbitrarily withhold its approval. ()

ii. Provide for: ()

(1) The return of any amount withdrawn in excess of the actual amounts required for Subsections 071.09.a.i.(i), (ii) and (iii), or in the case of Subsection 071.09.a.i.(iv), any amounts that are subsequently determined not to be due; and ()

(2) Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subsection 071.09.a.i.(iii). ()

iii. Permit the award by any arbitration panel or court of competent jurisdiction of: ()

(1) Interest at a rate different from that provided in Subsection 071.06.b.ii.(i), ()

(2) Court of arbitration costs, ()

(3) Attorney's fees, and ()

(4) Any other reasonable expenses. ()

c. Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department in compliance with the provisions of this regulation when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure. ()

d. Existing agreements. Notwithstanding the effective date of this rule, any trust agreement or underlying reinsurance agreement in existence prior to 7/1/96 will continue to be acceptable until 7/1/96, at which time the agreements will have to be in full compliance with this rule for the trust agreement to be acceptable. ()

e. The failure of any trust agreement to specifically identify the beneficiary as defined in Subsection A of this section shall not be construed to affect any actions or rights which the director may take or possess pursuant to the provisions of the laws of this state. ()

072. -- 080. (RESERVED).

081. LETTERS OF CREDIT QUALIFIED UNDER SECTION 061.

01. Letters of Credit Under Section 061. The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution as defined in Idaho Code, Section 41-514(3). The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in Subsection 081.09.a. As used in this section, "beneficiary" means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court appointed domiciliary receiver (including conservator, rehabilitator or liquidator). ()

02. Heading of Letter. The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only. ()

03. Statement. The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto. ()

04. Term of Letter. The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" which prevents the expiration of the letter of

credit without due notice from the issuer. The "evergreen clause" shall provide for a period of no less than thirty (30) days' notice prior to the expiration date or nonrenewal. ()

05. Disclosure Statement. The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution. ()

06. Letter Subject to Uniform Customs and Practice. If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 500), then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of Publication 500 occur. ()

07. Issued or Confirmed by Authorized Institution. The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized to issue letters of credit, pursuant to Idaho Code, Section 41-514(3). ()

08. Exception. If the letter of credit is issued by a qualified United States financial institution authorized to issue letters of credit, other than a qualified United States financial institution as described in Subsection 081.07., then the following additional requirements shall be met: ()

a. The issuing qualified United States financial institution shall formally designate the confirming qualified United States financial institution as its agent for the receipt and payment of the drafts, and ()

b. The "evergreen clause" shall provide for thirty (30) days' notice prior to the expiration date for nonrenewal. ()

09. Reinsurance Agreement Provisions. ()

a. The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which: ()

i. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover. ()

ii. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons: ()

(1) To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies; ()

(2) To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement; ()

(3) To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves); and ()

(4) To pay any other amounts the ceding insurer claims are due under the reinsurance agreement. ()

iii. All of the foregoing provisions of Subsection 081.09.a. should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer. ()

b. Nothing contained in Subsection 081.09.a. shall preclude the ceding insurer and assuming insurer from providing for: ()

i. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to Subsection 081.09.a.ii.(iii); and/or ()

ii. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the case of Subsection 081.09.a.ii.(iv), any amounts that are subsequently determined not to be due. ()

c. When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of Subsection 081.09.a.ii., require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document. ()

10. No Reduction in Liability. A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this department unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure. ()

082. - 090. (RESERVED).

091. OTHER SECURITY.

A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control. ()

092. - 100. (RESERVED).

101. REINSURANCE CONTRACT.

Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of Sections 011., 021., 031., 041., or 061. or otherwise in compliance with Idaho Code, Section 41-514(1) after the adoption of this rule unless the reinsurance agreement: ()

01. Insolvency Clause. Includes an insolvency clause which provides, in substance, the following: ()

a. In the event of the ceding insurer's insolvency, the reinsurance afforded by the reinsurance agreement shall be payable by the assuming insurer directly to the ceding insurer or its domiciliary liquidator, on the basis of and at the time the ceding insurer's liability is determined in the liquidation proceedings, without diminution because of the ceding insurer's insolvency or because its liquidator has failed to pay all or a portion of any claim, except: ()

i. Where the contract specifically provides another payee of such reinsurance in the event of the insolvency of the ceding insurer, or ()

ii. Where the assuming insurer, with the consent of the direct insured(s), has assumed such policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees. ()

b. The ceding insurer's liquidator, shall give written notice to the assuming insurer of the pendency of a claim against the insolvent ceding insurer on the contract reinsured within a reasonable time after such claim is filed in the liquidation proceeding. During the pendency of such claim, any assuming insurer may investigate such claim and interpose in the proceeding where the claim is to be adjudicated, at its own expense, any defense that it may deem available to the ceding insurer or its liquidator. The expense thus incurred by the assuming insurer shall be chargeable against the ceding insurer, subject to court approval, as part of the expense of liquidation to the extent of proportionate share of the benefit which may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming companies are involved in the same claim and a majority in interest elect to interpose a defense to such claim, each assuming insurer's share of the expense thus incurred shall be determined in accordance with the terms of the reinsurance agreement as though such expense had been incurred by the ceding insurer. ()

02. Other Provision. Includes a provision pursuant to Idaho Code, Section 41-514(1)(f) whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel. ()

102. - 110. (RESERVED).

111. CONTRACTS AFFECTED.

All new and renewal reinsurance transactions entered into after 7/1/96 shall conform to the requirements of the Idaho Code and this rule if credit is to be given to the ceding insurer for such reinsurance. ()

112. - 999. (RESERVED).

FORM AR-1
CERTIFICATE OF ASSUMING INSURER

I, _____, _____
(name of officer) (title of officer)
of _____ the assuming insurer
(name of assuming insurer)
under a reinsurance agreement(s) with one or more insurers domiciled in
_____, hereby certify that
(name of state)
_____, ("Assuming Insurer"):
(name of assuming insurer)

1. Submits to the jurisdiction of any court of competent jurisdiction in

(ceding insurer's state of domicile)

for the adjudication of any issues arising out of the reinsurance agreement(s), agrees to comply with all requirements necessary to give such court jurisdiction, and will abide by the final decision of such court or any appellate court in the event of an appeal. Nothing in this paragraph constitutes or should be understood to constitute a waiver of Assuming Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. This paragraph is not intended to conflict with or override the obligation of the parties to the reinsurance agreement(s) to arbitrate their disputes if such an obligation is created in the agreement(s).

2. Designates the Insurance Commissioner of _____
(ceding insurer's state of domicile)

as its lawful attorney upon whom may be served any lawful process in any action, suit or proceeding arising out of the reinsurance agreement(s) instituted by or on behalf of the ceding insurer.

3. Submits to the authority of the Insurance Commissioner of _____ to examine its
(ceding insurer's state of domicile)

books and records and agrees to bear the expense of any such examination.

4. Submits with this form a current list of insurers domiciled in _____ reinsured by
(ceding insurer's state of domicile)

Assuming Insurer and undertakes to submit additions to or deletions from the list to the Insurance Commissioner at least once per calendar quarter.

Dated: _____
(name of assuming insurer)

BY: _____
(name of officer)

(title of officer)

IDAPA 20 - DEPARTMENT OF LANDS
20.03.05 - RULES GOVERNING RIVERBED MINERAL LEASING IN IDAHO
DOCKET NO. 20-0305-9601
NOTICE OF PROPOSED RULE-MAKING

ACTION: The proposed action, under Docket No. 20-0305-9601 involves the amendment of Rules Governing Riverbed Mineral Leasing in Idaho, Title 03, Chapter 05 Rules of the Idaho Department of Lands.

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency has initiated a proposed rule-making. The proposed action is authorized pursuant to Section 58-104(6) and title 47, chapter 7, Idaho Code.

PUBLIC HEARING SCHEDULE: Rule-making hearing(s) will be held as follows:

NO PUBLIC HEARINGS ARE ANTICIPATED

Any hearing site(s) will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five days' notice. For arrangement, contact the undersigned at (208) 334-0232.

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

(1) Reflect current policy; (2) Clarify commodities extracted under a mineral lease; (3) Clarify which rivers are closed to mining; (4) Authorize the director to set surface damage and royalty payment bond rates.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Thomas R. Markland at (208) 334-0232.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and be postmarked or delivered on or before January 24, 1996.

DATED this 22nd day of November, 1995.

Thomas R. Markland, Chief
Bureau of Minerals
Department of Lands
954 West Jefferson
Boise, ID 83720-0050
(208) 334-0232

IDAPA 20
TITLE 03
Chapter 05

RULES GOVERNING RIVERBED MINERAL LEASING IN IDAHO
IDAHO DEPARTMENT OF LANDS

000. LEGAL AUTHORITY.

01. Statutory Authority. These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to Sections 47-710, 47-714 and 58-104, Idaho Code. (2-7-91)

02. . The Board of Land Commissioners is delegated discretionary power to regulate and control the use or disposition of state-owned lands in the beds of navigable lakes, rivers, and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided that the Board shall take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands. [Section 58-104(9), Idaho Code]. (2-7-91)(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Available State-owned Lands. All state-owned lands between the ordinary high water marks of a navigable river which have not been located, leased, or withdrawn. (2-7-91)(____)

02. Board. The State Board of Land Commissioners or its authorized representative. (2-7-91)

~~03. Casual exploration. Entry and/or exploration which does not appreciably disturb or damage the land or resources thereon. Casual exploration includes, but is not limited to, geochemical and/or geophysical exploration techniques, sampling with hand tools, and entry using wheeled vehicles for transportation to conduct such exploration. Exploration using suction dredges having an intake diameter of two inches (2") or less shall be considered casual exploration when operated in a perennial stream and authorized under the stream protection act, title 42, chapter 38, Idaho Code. Refer to Rule 20.03.05005 for further clarification regarding casual exploration and recreational mining.~~ (2-7-91)

~~04. Commercial. The type of operation that engages in the removal of construction materials or uses suction dredges with an intake diameter larger than five inches (5") or attendant power sources rated at greater than fifteen (15) horsepower and/or other motorized equipment.~~ (2-7-91)

053. Construction Materials. Sand, gravel, cobble, boulders, and other similar materials. (2-7-91)

064. Director. The Director of the Idaho Department of Lands or his authorized representative. (2-7-91)

075. Motorized Exploration. Exploration which may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques which employ the use of earth moving or other motorized equipment, seismic operations using explosives, and sampling with suction dredges having an intake diameter greater than two inches (2") when operated in a perennial stream. When operated in an intermittent stream, suction dredges shall be considered motorized exploration regardless of the intake size. (2-7-91)

086. Natural or Ordinary High Water Mark. The line which the water impresses upon the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. (2-7-91)

097. Person. i) an individual of legal age; ii) any firm, association or corporation which is qualified to do business in the state of Idaho; or iii) any public agency or government unit, including without limitation, municipalities. (2-7-91)

108. Recreational Mining. Mining with a suction dredge having an intake diameter of five inches (5") or less, and attendant power sources, rated at fifteen (15) horsepower or less, pans, rockers, hand tools, hand operated sluices and other similar equipment. (2-7-91)

109. River Mile. 5,280 feet of contiguous riverbed as measured along the approximate center of the river. (2-7-91)

120. Navigable River. A natural water course of perceptible extent, with definite bed and banks, which confine and conducts continuously flowing water, and the bed of which is owned by the State of Idaho in trust. (2-7-91)

131. Submerged Lands. The state-owned beds of navigable lakes, rivers, and streams between the natural of ordinary high water marks. (2-7-91)

011. -- 014. (RESERVED).

015. ~~CASUAL EXPLORATION AND RECREATIONAL MINING.~~

01. Lands Open. All state-owned beds of navigable rivers which have not been located, leased or withdrawn in accordance with statute or the terms of these rules, are free and open to ~~casual exploration and recreational mining on a nonexclusive and first come basis.~~ (2-7-91)(____)

02. ~~Equipment Limitations. Mining equipment for casual exploration that may occur prior to the filing of a location or lease application shall be limited to suction dredges with a two inch (2") intake or less, pans, rockers, hand tools, hand operated sluices and other similar equipment.~~ (2-7-91)

~~02.~~ Lands Closed. State-owned beds of navigable rivers which have been totally or partially withdrawn from mineral entry by the Idaho Dredge and Placer Mining Protection Act are listed in Section 47-1323, Idaho Code. A listing of riverbeds withdrawn by the Comprehensive Water Management Plan is available from the Idaho Department of Water Resources in their information relating to application for a permit to alter a stream for recreation dredge mining, authorized by IDAPA 37, Title 03, Chapter 07. ()

~~03.~~ No Approval For Casual Exploration Required. No written approval is required from the Director for casual exploration. (2-7-91)

~~04~~ 03. Recreational Mining Equipment. Mining equipment for recreational mining shall be limited to suction dredges with an intake diameter of five (5) inches or less with attendant power sources rated at fifteen (15) horse power or less, pans, rockers, hand tools, hand operated sluices and other similar equipment. (2-7-91)

~~05~~ 04. Department of Water Resources Permits. Possession of a valid Stream Protection Act Permit issued by the Idaho Department of Water Resources and a Recreational Mining Permit issued authorized by the Idaho Department of Lands shall constitute the Board's waiver of bond, waiver of royalty, and written approval to engage in recreational mining under Section 47-704(6), Idaho Code, and title 47, chapter 13, Idaho Code. (2-7-91)()

016. EXPLORATION LOCATIONS.

01. Lands Open. The beds of navigable rivers which have not been located or withdrawn, or are not under application to lease, in accordance with statute or the terms of these rules, are available for exploration location; provided that salable minerals are not subject to exploration location. Details of exploration locations on state lands can be found in title 47, chapter 7, Idaho Code. (2-7-91)

~~02.~~ Lands Closed. State-owned beds of navigable rivers which have been totally or partially withdrawn from mineral entry by the Idaho Dredge and Placer Mining Protection Act are listed in Section 47-1323, Idaho Code. A listing of riverbeds withdrawn by the Comprehensive Water Management Plan is available from the Idaho Department of Water Resources in their information relating to application for a permit to alter a stream for recreation dredge mining, authorized by IDAPA 37, Title 03, Chapter 07. ()

~~02~~ 3. Size of Location. Each exploration location is limited to one-half mile in length. (2-7-91)

~~03~~ 4. Record Keeping Requirement. A locator must keep a record of all minerals recovered during exploration operations and must pay to the state a royalty of 5% of the gross value of the minerals recovered. Payment must be made each year with the filing of the assessment work report. (2-7-91)

~~04~~ 5. When No Written Approval Required. No written approval is required from the director for exploratory activity on an exploration location when such exploration is limited to mining equipment such as suction dredges with a five inch (5") intake diameter or less and attendant power sources rated at fifteen (15) horsepower or less, pans,

rockers, hand operated sluices, and other similar equipment; provided however, that recreational mining activity performed under a Recreational Mining Permit as authorized under Rule 015 shall not serve to establish any basis for an exploration location. (2-7-91)

056. When Written Approval Required. Written approval is required from the director prior to entry for operators conducting motorized exploration except as allowed in Rule 016.04. Approved operations shall be bonded as outlined in Rule 040.03. (2-7-91)

(BREAK IN CONTINUITY OF SECTIONS)

020. RIVERBED MINERAL LEASE.

01. ~~Limitations on Suction Dredges~~ Commercial Operation. Operations shall not use engaged in the extraction of precious metals, minerals, and construction materials, using suction dredges with an intake diameter larger than five inches (5") or attendant power sources rated greater than fifteen (15) horsepower, is a commercial operation and except under must first obtain a lease from the Department of Lands before commencing operations. (2-7-91)()

02. Approval Required Before Operations. Prior to entry upon navigable rivers, operators are required to have written approval from the director. (2-7-91)

03. Bonding. Approved operations shall be bonded as outlined in Rule 040.01. (2-7-91)

04. Simultaneous Filings. Two or more lease applications received on the same date and hour, covering the same lands, shall be considered simultaneous filings. Simultaneous filings will be resolved by competitive bidding. (2-7-91)

(BREAK IN CONTINUITY OF SECTIONS)

031. SIZE AND COMPOSITION OF LEASABLE TRACT.

01. One Mile Limitation. A riverbed lease shall not exceed one contiguous river mile in length or all the state-owned riverbed within one section should all the available state lands within the section exceed one river mile. (2-7-91)()

02. Construction Materials. Leases for construction materials may be limited to a smaller size tract at the Board's discretion. (2-7-91)

(BREAK IN CONTINUITY OF SECTIONS)

040. BOND.

01. Minimum Bond. Concurrent with the execution of the lease by the

lessee, lessee shall furnish to the Director a good and sufficient bond or undertaking on a department form, in favor of the State of Idaho, in ~~the~~ an amount to be determined by the director of \$5,000.00 for commercial operations and \$1,000.00 for all other operations, in favor of the state of Idaho, conditioned on necessary to cover the payment of all damages to the land and all improvements thereon and unpaid royalty which result from the lessee's operation and conditioned on complying with statute, these rules and the lease terms. This bond is in addition to the bonds required by the Idaho Dredge and Placer Mining Protection Act (title 47, chapter 13, Idaho Code). (2-7-91)(____)

02. Statewide Bond. In lieu of the above bond, the lessee may furnish a good and sufficient "statewide" bond conditioned as above in the amount of \$50,000 in favor of the state of Idaho, to cover all lessee's leases and operations carried on under statute and these rules. (2-7-91)

03. Motorized Exploration. Motorized exploration on a site under location is subject to a minimum bond in the amount of \$750. A larger bond not exceeding \$750 per acre may be required by the department depending on the size and scope of the operation. (2-7-91)

IDAPA 29 - IDAHO POTATO COMMISSION
29.01.02 RULES OF THE IDAHO POTATO COMMISSION
DOCKET NO. 29-0102-9601

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rules are effective January 3, 1996.

SUBJECT: Rules Governing Payment of Advertising Tax and Use of Federally Registered Trademarks.

ACTION: The temporary and proposed action, under Docket No. 29-0102-9601, involves the adoption of rules governing payment of advertising tax and use of federally registered trademarks, IDAPA 29, Title 01, Chapter 02, Rules of the Idaho Potato Commission.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated a temporary and proposed rule-making. The temporary and proposed action is authorized pursuant to Sections 22-1207 and -1213, Idaho Code.

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

This rule sets forth the technical requirements for labelling potato containers to provide consumers with better information as to the variety of potato being purchased. The rule has a transition period so that existing container supplies can be exhausted before compliance is required. The agency has acted in the interest of the public health, safety, and welfare so as to avoid the economic hardship that could result if large quantities of unused containers were wasted. The temporary rule will not go into effect until publication. Publication will be after industry-wide meetings explaining the rule have occurred.

PUBLIC HEARING SCHEDULE: Rule-making hearing(s) will be held as follows: Pursuant to Section 67-5222(2), Idaho Code, public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. The request must be made within fourteen (14) days of the date of publication of this notice in the bulletin, or within fourteen (14) days prior to the end of the comment period, whichever is later.

Any hearing site(s) will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five (5) days' notice. For arrangements, contact the undersigned at (208) 345-2000.

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

Patrick J. Kole, Moffatt, Thomas, Barrett, Rock & Fields, Chartered, Attorneys for Idaho Potato Commission, Post Office Box 829, Boise, Idaho 83701, (208) 345-2000.

Anyone can submit written comment regarding the proposed rules. All written comments and data concerning the proposed rules must be directed to the undersigned and postmarked or delivered on or before January 24, 1996.

Dated this 22nd day of November, 1995.

Patrick J. Kole
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
Attorneys for Idaho Potato Commission
Post Office Box 829
Boise, Idaho 83701
(208) 345-2000

TEXT OF DOCKET NO. 29-0102-9501

104. REPORTING, LABELING AND REVOCATION.

01. Reporting of Fresh Shipments of Potatoes. (7-1-93)

a. Effective July 1, 1976, handlers of Idaho (Registered Trademark) potatoes who have a valid licensing agreement with the Idaho Potato Commission for the use of the "Grown in Idaho (Registered Trademark)" registered trademark on potato containers are required to report shipments of all fresh Idaho grown potatoes to designated geographical locations giving information as to weight, packaging and type of receiver. Reporting forms will be furnished for this information by the Idaho Potato Commission and information will be sent to and tallied by an independent accounting firm. All information received by this firm will be kept in strictest confidence as to individual shipments. (7-1-93)

b. The purpose of this information is to provide the Idaho Potato Commission with information concerning fresh potato sales in geographical marketing areas receiving Idaho (Registered Trademark) grown potatoes to enable it to design and evaluate advertising and marketing programs. (7-1-93)

02. Labeling Containers of Fresh Idaho Potatoes To Indicate the Variety Packed Therein. (7-1-93)

a. All potatoes grown in Idaho, ~~other than the Russet Burbank variety,~~ that are packed or repacked in containers in Idaho, or packed or repacked in containers outside of Idaho under an out-of-state packer license agreement, shall be packed or repacked in containers that are printed, marked, labeled or stenciled in a plain and legible manner that identifies the variety packed therein. ~~(7-1-93)~~(1-3-96)T

b. ~~If the No container may~~ contains more than one variety of potato, ~~it shall be printed, labeled or stenciled in a plain and legible manner with the words "MIXED VARIETY POTATOES."~~ (7-1-93)(1-3-96)T

c. Any mark, label or stencil required by this rule shall be conspicuously placed on the container and printed in a color contrasting with the background and shall be of a size determined as follows: (7-1-93)

i. For bags and other containers holding one hundred (100) pounds of potatoes or more, the letters of the label shall be at least one (1) inch high; (7-1-93)

ii. For bags and other containers holding fifty (50) pounds or more of potatoes, but less than one hundred (100) pounds, the letters of the label shall be at least three-fourths (3/4) of an inch high; (7-1-93)

iii. For bags or other containers holding less than fifty (50) pounds of potatoes, the letters on the label shall be five-eighths of an inch high. (7-1-93)

d. Any person seeking authorization to comply with this rule in a manner other than that specified herein shall submit a written request to the Commission for approval of an alternate method of compliance, which alternative method shall be in substantial compliance with these standards and which request shall describe in detail the proposed alternate method of compliance. The Executive Director of the Commission shall have the authority and responsibility to review such requests and rule whether they should be allowed, said determination to be based upon a finding that such alternate method has nor has not been shown to comply with the purpose and meet the standards of this rule; provided, any interested person may request in writing that the Commission grant a de novo review of said request at a subsequent regular meeting deemed convenient and appropriate by the Commission, which request the Commission may in its discretion, either grant or deny. (7-1-93)

e. No potatoes grown in Idaho and packed or repacked in containers in Idaho, or packed or repacked outside of Idaho under an out-of-state packer license agreement, shall carry or be printed, labeled or identified with the GROWN IN IDAHO (Registered Trademark) or IDAHO (Registered Trademark) marks unless this rule is fully complied with as respects said potatoes. (7-1-93)

f. All persons growing potatoes in Idaho or packing or repacking in containers in Idaho, or packing or repacking outside of Idaho under an out-of-state license agreement, shall have the affirmative duty to avoid and refrain from ambiguous or misleading practices, acts or representations and to eliminate the same in marketing or handling Idaho (Registered Trademark) potatoes if such practice does or is likely to mislead any purchaser or consumer regarding the quality and variety of Idaho (Registered Trademark) potatoes purchased by such buyer or consumer. (7-1-93)

g. All persons licensed as of January 3, 1996, shall have until August 31, 1996, to use existing supplies of containers and such use of existing supplies of containers shall not be a violation of Subsection 104.02.a. or 02.b. (1-3-96)T

03. Revocation of Right to Use Marks. (7-1-93)

a. The Commission shall have the power to revoke the right of any person, firm or corporation to use any of the Commission's Certification Marks if such person, firm or corporation fails to pay any advertising tax assessed against it or fails to comply

with any of these rules. (7-1-93)

b. Revocation of the right to use the Certification Marks shall not occur without reasonable notice of at least twenty (20) days and an opportunity for a hearing pursuant to Section 67-5242, Idaho Code. However, where the Executive Director determines that expedited action is necessary, he may: (7-1-93)

i. Issue an order immediately suspending the right to use any of the Commission's Certification Marks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or (7-1-93)

ii. Issue an order conditioning the right to use any of the Commission's Certification Marks pending a hearing, which hearing shall be held within twenty (20) days from the Executive Director's order; or (7-1-93)

iii. Issue an order directing that the user of the Commission's Certification Marks show cause why the right to use the marks should not be suspended or conditioned further. (7-1-93)

**IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.03.49 - RULES GOVERNING IGNITION INTERLOCK
BREATH ALCOHOL DEVICES**

DOCKET NO. 39-0349-9501

NOTICE OF FINAL RULE

EFFECTIVE DATE: The final rule will be effective upon adoption of the concurrent resolution or such other date specified in the concurrent resolution, or upon the conclusion of the 1996 legislative session, whichever is greater.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a final rule. The action is authorized pursuant to Section 18-8008, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for adopting the final rule and any amendments to the initial proposed text: Adoption of this rule would implement the National Highway Traffic Safety Administration standards for Breath Alcohol Ignition Interlock Device (BAIID) instruments within Idaho and contribute to the consistency of standards among the states.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the final rule, contact Marie Bishop, at (208) 334-8101.

DATED this 22nd day of November, 1995.

Mary F. Detmar
PO Box 7129
Boise, ID 83707
Phone/Fax Numbers: (208) 334-8804/(208)334-8195

**IDAPA 39
TITLE 03
Chapter 49**

**RULES GOVERNING IGNITION INTERLOCK
BREATH ALCOHOL DEVICES**

**There are no substantive changes
from the proposed rule text**

**The original text was published in the Idaho
Administrative Bulletin, Volume 95-11, November 1, 1995
Pages 141 through 156**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1996 Idaho State Legislature
for final adoption**

IDAPA 59 - PERSI

**59.01.06 - RULES GOVERNING RETIREMENT RULES OF THE PUBLIC
EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)**

DOCKET NO. 59-0106-9601

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date is January 1, 1996.

AUTHORITY: In compliance with Sections 67-5221 and 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule and has proposed rule-making. The action is authorized pursuant to Sections 59-1301, 59-1305, 59-1392, 67-5221, 67-5226, 72-1405, 72-1406, and 72-1471, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be held as follows:

Public hearings concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996.

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

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

The reason for amending IDAPA 59.01.06163 (Rule 163) is to comply with Title 72, Chapter 14, Section 72-1471. Rule 163 states the procedure for adopting the mandatory COLA for the FRF system as opposed to the exact amount of the COLA.

PERSI finds that this temporary rule confers a benefit in that it gives a cost of living increase to FRF retirees, thus increasing their retirement benefit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Bernadette C. Buentgen, Deputy Attorney General, PERSI, (208) 334-2451, ext. 271.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before January 24, 1996.

DATED this 16th day of November, 1995.

Bernadette C. Buentgen,
Deputy Attorney General for PERSI
607 North Eighth Street
Boise, Idaho 83702-5567
208-334-2451, ext. 271

TEXT OF DOCKET NO. 59-0106-9601

**163. POST RETIREMENT COST OF LIVING ADJUSTMENTS--
FIREFIGHTERS' RETIREMENT FUND (Rule 163).**

The Board shall annually determine the post retirement cost of living adjustment (COLA) for the firefighters' retirement fund pursuant to Section 72-1471, Idaho Code. The Board shall annually adopt the COLA at the November Board meeting with an effective date of January 1 of the next year. Statutory References: Section 72-1471, Idaho Code. Cross References: ~~(1-1-95)~~(1-1-96)T

~~01. Mandatory Adjustment — 1994. The post retirement cost of living adjustment (COLA) as provided in Section 72-1471, Idaho Code, for the year 1994 shall be seven and fifteen one hundredths percent (7.15%). (1-1-94)~~

~~02. Mandatory Adjustment — 1995. The post retirement cost of living adjustment (COLA) as provided in Section 72-1471, Idaho Code, for the year 1995 shall be five and forty one one hundredths percent (5.41%).~~

IDAPA 59 - PERSI

**59.01.06 - RULES GOVERNING RETIREMENT RULES OF THE PUBLIC
EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)**

DOCKET NO. 59-0106-9602

NOTICE OF TEMPORARY AND PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Sections 33-1228, 33-2109A, 59-1301, 59-1302(5)(B)(e), 59-1302(31), 59-1305, 59-1322, 59-1325, 59-1333, 59-1355, 59-1392, 67-5221, and 67-5339, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be held as follows:

Public hearings concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than January 17, 1996.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance of the proposed rules:

IDAPA 59.01.06104 - Exclude from current rule the refund on lump sum payments of employee and employer contributions at time of retirement.

IDAPA 59.01.06161 - To establish a procedure that the Board will use to determine the post retirement cost of living adjustment for PERSI retirees.

IDAPA 59.01.06522 - To increase the sick leave rate for school districts to maintain the actuarial soundness of the sick leave fund.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Bernadette C. Buentgen, Deputy Attorney General, PERSI, (208) 334-2451, ext. 271.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered on or before January 24, 1996.

DATED this 16th day of November, 1995.

Bernadette C. Buentgen,
Deputy Attorney General for PERSI
607 North Eighth Street
Boise, Idaho 83702-5567
208-334-2451, ext. 271

TEXT OF DOCKET NO. 59-0106-9602

104. UNUSUAL COMPENSATION PATTERN EFFECT ON RETIREMENT CALCULATION (Rule 104).

Upon application for a retirement benefit, any portion of compensation which represents payments in excess of and inconsistent with the usual compensation pattern, for example, but not limited to lump sum contract payouts, excess vacation paid but not taken, paid sick leave, or a clothing allowance will not be considered in determining benefits, ~~and contributions made on any excess or inconsistent payment will be refunded by the board.~~ Statutory References: Cross Reference: (Amended 10-31-95) ~~(1-1-94)(____)~~

(BREAK IN CONTINUITY OF SECTIONS)

161. POST RETIREMENT ALLOWANCE ADJUSTMENTS--PERSI RETIREES (Rule 161).

The Board shall annually determine the post retirement cost of living adjustment (COLA) for the Public Employee Retirement System of Idaho (PERSI) pursuant to Section 59-1355, Idaho Code. The Board shall have discretion in adopting a yearly discretionary and retro-active COLA. The Board shall yearly adopt this COLA no later than the December Board meeting of each year with an effective date of March 1 of the next year. Statutory References: Section 59-1355, Idaho Code. Cross References: (Amended 10-31-95) ~~(3-1-95)(____)~~

~~01. Mandatory and Discretionary Adjustment -- 1993. The inflation factor for the post retirement allowance adjustments (cost of living adjustment or COLA) as provided in Section 59-1355(1), Idaho Code, for the year 1993 shall be a total of three and one tenth percent (3.1%) comprised of:~~ ~~(1-1-94)~~

~~a. A mandatory factor of one percent (1%), and~~ ~~(1-1-94)~~

~~b. A discretionary factor of two and one tenth percent (2.1%), as provided in Section 59-1355(1), Idaho Code; and~~ ~~(1-1-94)~~

~~e. An additional discretionary adjustment to increase the retirement allowances (retro COLA) for all persons retiring on or before December 31, 1978, up to eighty percent (80%) of the increase in the consumer price index (purchasing power) for that year as provided in Section 59-1355(8), Idaho Code. Statutory References: Section 59-1355, Idaho Code. Cross References:~~ ~~(1-1-94)~~

~~02. Mandatory and Discretionary Adjustment -- 1994. The inflation factor for the post retirement allowance adjustments (cost of living adjustment or COLA) as provided in Section 59-1355(1), Idaho Code, for the year 1994 shall be a total of two and eight tenths percent (2.8%) comprised of:~~ ~~(3-1-94)~~

~~a. A mandatory factor of one percent (1%), and~~ ~~(3-1-94)~~

~~b. A discretionary factor of one and eight tenths percent (1.8%), as provided in Section 59-1355(1), Idaho Code; and~~ ~~(3-1-94)~~

e. ~~An additional discretionary adjustment to increase the retirement allowances (retro COLA) for all persons retiring on or before December 31, 1981, up to ninety percent (90%) of the increase in the consumer price index (purchasing power) for that year as provided in Section 59-1355(8), Idaho Code.~~ (3-1-94)

03. ~~Mandatory and Discretionary Adjustment -- 1995. The inflation factor for the post retirement allowance adjustments (cost of living adjustment or COLA) as provided in Section 59-1355(1), Idaho Code, for the year 1995 shall be a total of two and nine tenths percent (2.9%) comprised of:~~ (3-1-95)

a. ~~A mandatory factor of one percent (1%), and~~ (3-1-95)

b. ~~A discretionary factor of one and nine tenths percent (1.9%), as provided in Section 59-1355(1), Idaho Code.~~ (3-1-95)

(BREAK IN CONTINUITY OF SECTIONS)

552. SICK LEAVE RATES--STATE EMPLOYEES--SCHOOL EMPLOYEES (Rule 552).

The sick leave rate shall be as follows: (1-1-94)

01. State. State: .65% (1-1-94)

02. School. School: 1.105% effective September 1, 1993. (1-1-94)()

Statutory References: Sections 33-1228, 33-2109A, and 67-5339, Idaho Code. Cross References: (Amended 10-31-95). (1-1-94)()

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