

IDAHO ADMINISTRATIVE BULLETIN

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DOCKET NO. 47-0103-9701

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IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.29 - RULES CREATING THE ELBA SEED POTATO MANAGEMENT AREA
DOCKET NO. 02-0629-9701

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective July 18, 1997.

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 Title 22, Chapter 10, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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

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

To repeal the rules in their entirety.

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

There was only one (1) seed potato grower in the Elba seed potato management area, Mr. Ryan Hawker. Mr. Hawker has not grown seed potatoes in the Elba management area in the last four (4) years. The current rules require that all potatoes grown in the management area be submitted to the Idaho Crop Improvement Association for seed certification, an unnecessary expense for farmers growing potatoes for tablestock or processing. Because seed potatoes are no longer grown and no potatoes for tablestock and processing could possibly be grown in the Elba seed potato management area, the rules should be repealed. Mr. Hawker has no objection to the repeal of the rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dr. Roger R. Vega or Mr. Michael E. Cooper at 332-8620.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 18th day of July, 1997

Patrick A. Takasugi
Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, ID 83701
(208) 332-8500/(208) 334-4623 FAX

THIS RULE IS REPEALED IN ITS ENTIRETY

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.01 - RULES GOVERNING ELECTRICAL INSPECTION TAGS
DOCKET NO. 07-0101-9701

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective August 1, 1997.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has temporary and proposed rule-making. The action is authorized pursuant to Section 54-1006(5), Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997. 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 at the address below.

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

IDAPA 07.01.01.013 would provide exemption from licensing from any property owner regardless of the type of property, i.e., residential, commercial or industrial; and define the inspection before cover, and final inspection, requirements. IDAPA 07.01.01.014 clarifies the licensing requirements of employees of industrial accounts.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code, and is necessary in order to protect the public health, safety, or welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this temporary and proposed rule, contact Gary L. Malmén, Bureau Chief, Electrical Bureau, Division of Building Safety, 277 N. 6th, Street, Suite 201, P.O. Box 83720, Boise, Idaho 83720-0028, (208) 334-2183\Fax (208) 334-4891.

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 September 24, 1997.

DATED this 23rd day of July, 1997.

Renee Bryant, Secretary
Division of Building Safety
277 N. 6th St., Ste. 100, P.O. Box 83720
Boise, Idaho 83720-0048
Telephone: (208) 334-3950
Fax: (208) 334-2683

TEXT OF DOCKET NO. 07-0101-9701

013. ELECTRICAL LICENSING EXEMPTION FOR ~~RESIDENTIAL~~ REAL PROPERTY OWNERS AND MAINTENANCE ELECTRICIANS; INSPECTION TAG REQUIREMENTS.

The licensing provisions of Title 54, Chapter 10, Idaho Code, and IDAPA 07.01.03, Rules Governing Electrical Licensing, do not apply to the following pursuant to Section 54-1016, Idaho Code: ~~(2-23-94)(8-1-97)T~~

01. Personal Property Installations, ~~on Primary or Secondary Residence for Private Use. Natural~~

~~Persons making electrical installations on their own residential rental property, or on their own primary or secondary residence and associated buildings. This exemption shall not apply to electrical installations for swimming pools, hot tubs, spas, hydromassage tubs, fountains, and similar installations, Article 680 NEC, or any hazardous location, Article 500 through 514 NEC.~~ (7-1-96)L(8-1-97)T

02. Maintenance Electricians. Maintenance electricians employed full-time only to service, maintain, assemble, or repair EXISTING electrical installations located on their employers' premises. (2-23-94)

03. Procedures for Inspection Tags for Exempt Property Owners. ~~Natural~~ Persons exempt from licensing pursuant to Subsection 013.01 of this rule must still secure all electrical inspection tags required by Section 54-1005, Idaho Code, before making any electrical installation. No electrical wiring or equipment may be concealed in any manner from access or sight until the work has been inspected and approved for cover by the electrical inspector. A final inspection shall be made upon the completion of all electrical work. The procedure for obtaining inspection tags follows: (2-23-94)(8-1-97)T

a. Any exempt person shall obtain an application form from the Electrical Bureau, either at its Boise, Idaho, main office or at a designated location in each county. The application form shall be properly completed, signed, and mailed to the Electrical Bureau, ~~277 North 6th Street, Statehouse Mail, P.O. Box 83720, Boise, Idaho 83720-0028,~~ with the proper inspection fee as provided for in these rules. (2-23-94)(8-1-97)T

b. Upon receipt of the properly completed application together with the proper inspection fee, the Electrical Bureau shall immediately issue an electrical inspection tag for the electrical installation designated in the application. (2-23-94)

c. Parts No. 1 and 4 of the electrical inspection tag shall be retained by the Electrical Bureau. Part No. 2 shall be mailed to the applicant and shall be placed on the location of the service, and Part No. 4 shall be forwarded to the state electrical inspector who will make the electrical inspection as provided by Sections 54-1004 and 54-1005, Idaho Code. (2-23-94)

d. Part No. 3 shall be mailed or delivered to the power supplier. (2-23-94)

014. ELECTRICAL INSPECTION TAGS FOR NON-EXEMPT PROPERTY OWNERS. REQUIREMENTS FOR INDUSTRIAL ACCOUNTS.

Property owners, companies, firms, associations, or corporations who use employees to make making electrical installations coming under the provisions of Section 54-1001, Idaho Code, on their own premises, must establish an Industrial Account with the Electrical Bureau shall and secure electrical inspection tags by making application to the Electrical Bureau ~~as provided by Section 54-1005, Idaho Code. The provisions of IDAPA 07.01.01.013 apply to residential property owners exempt from licensing pursuant to Section 54-1016, Idaho Code. Employees performing non-maintenance electrical installations on an Industrial Account must be licensed electrical journeymen as provided by Section 54-1002(2). One properly licensed employee shall be designated the supervising journeyman for the Industrial Account with the Electrical Bureau.~~ (2-23-94)(8-1-97)T

01. Application Forms. ~~Application forms for property owners for commercial and industrial electrical installations shall be printed by the Electrical Bureau and made available at the office of the Electrical Bureau in Boise, Idaho, or locally at a designated location in each county. The application form shall be properly completed, signed by the property owner or agent of the company, firm, association, or corporation, and mailed to the Electrical Bureau, Statehouse Mail, P.O. Box 83720, Boise, Idaho, 83720-0028, with the proper inspection fee as hereinafter provided. Companies, firms, associations, or corporations making electrical installations on their own property must use regularly employed electrical journeymen licensed by the State of Idaho as provided by Section 54-1002(2), Idaho Code. One person shall be designated the supervising journeyman and shall be listed as the signing journeyman with the Electrical Bureau. Persons, companies, firms, associations, or corporations making electrical installations other than on their own property must be licensed as electrical contractors by the State of Idaho as provided by Section 54-1002(1), Idaho Code.~~ (1-14-87)(8-1-97)T

02. Posting of Electrical Inspection Tag. Upon receipt of a properly completed application from a property owner, company, firm, association, or corporation for an electrical inspection tag, together with the proper inspection fee, the Electrical Bureau shall immediately issue an electrical inspection tag for the electrical installations

designated in the application. Parts No. 1 and No. 4 shall be retained by the Electrical Bureau. Part No. 2 of the 4-part tag shall be mailed to the applicant and shall be placed at the location of the service switch. Part No. 3 shall be mailed or delivered to the power supplier, and Part No. 4 shall be forwarded to the State Electrical Inspector who will make the electrical inspection as provided by Sections 54-1004 and 54-1005, Idaho Code. (1-14-87)

03. Power Supply Company. In the event the power supplier deems it necessary to energize an electrical installation without delay to preserve life or property, the power supply company may accept the application properly completed and signed, with the proper inspection fee attached, in lieu of the electrical inspection tag required by Section 54-1004, Idaho Code, provided the power supply company or its authorized agent shall assume the responsibility of mailing the application and inspection fee to the Electrical Bureau, ~~Statehouse Mail, P.O. Box 83720, Boise, Idaho, 83720-0028~~. The Electrical Bureau shall, upon request, furnish application forms and self-addressed, postage-paid envelopes to power supply companies operating within the State of Idaho. (~~1-14-87~~)(8-1-97)T

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING
DOCKET NO. 07-0104-9701

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 1997.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has temporary and proposed rule-making. The action is authorized pursuant to Section 54-1006(5), Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997. 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 at the address below.

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

Repeals IDAPA 07.01.04.014.04, specialty electrical license requirements for mobile home dealers. IDAPA 07.01.04.014.05 would be modified to exclude licensing requirements for the installation of communication circuits. IDAPA 07.01.04.014.07 would no longer be necessary given the changes to IDAPA 07.01.04.014.05, and would be deleted. The change in IDAPA 07.01.04.014.06 would allow persons licensed in this category to install, maintain, repair and replace all electrical equipment, including the disconnecting device for domestic water pumps 120/240 volt, single phase sixty (60) amps or less.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code, and is necessary in order to protect the public health, safety, or welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this temporary and proposed rule, contact Gary L. Malmgren, Bureau Chief, Electrical Bureau, Division of Building Safety, 277 N. 6th, Street, Suite 201, P.O. Box 83720, Boise, Idaho 83720-0028, (208) 334-2183\Fax (208) 334-4891.

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 September 24, 1997.

DATED this 23rd day of July, 1997.

Renee Bryant, Secretary
Division of Building Safety
277 N. 6th St., Ste. 100, P.O. Box 83720
Boise, Idaho 83720-0048
Telephone: (208) 334-3950
Fax: (208) 334-2683

TEXT OF DOCKET NO. 07-0104-9701

014. ELECTRICAL SPECIALTIES REQUIRING A SPECIAL LICENSE.

The following shall be considered as electrical specialties, the practice of which shall require a special license:

(4-9-79)

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

(4-9-79)

02. Sign Electrical. Any person qualifying for and having in his possession a current sign electrical license may install, maintain, repair, and replace equipment, controls, and wiring on the secondary side of sign disconnecting means; providing the disconnecting means is located on the sign or within a distance of two (2) feet and in sight therefrom. He shall be employed by a licensed sign electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty.

(4-9-79)

03. Creation of Manufacturing or Assembling Equipment Specialty Contractor and Specialty Electrician.
(7-1-94)

a. Effective July 1, 1994, the category of licensed specialty manufacturing or assembling equipment contractor is created. Effective July 1, 1994, any person qualifying for and having in his possession a current license in the category of specialty manufacturing or assembling equipment electrician must be employed by a licensed specialty manufacturing or assembling equipment contractor in order to work in this category. The holder of a specialty license in this category may not countersign a contractor's license application as supervising journeyman except for work within this specialty.

(7-1-94)

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

(7-1-94)

~~04. Mobile Home Dealer Electrician. Any person qualified by examination or having in his possession a current license in this category, employed by a mobile home and recreational vehicle dealer, may exchange standard appliances, i.e., dishwashers, disposals, coolers, etc., and make repairs to the existing internal wiring system but does not include installation of new wiring, circuit, and extensions to existing circuits, or hookups to the power source. This license shall be limited to mobile homes and recreational vehicles owned by or in the possession of the dealer by whom employed.~~

~~(1-14-87)~~

~~054. Limited Energy Electrical License. (9-17-85)~~

~~a. Any person who installs, maintains, replaces, or repairs electrical wiring and electrical products of the types in compliance with the National Electrical Code, Articles 90, 110, 300, 400, 650, 720, 725, 760, 770, 800, and 820, is required to have a valid limited energy electrical license and shall be employed by a licensed limited energy electrical contractor. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty.~~

~~(9-17-85)~~

~~a. Limited energy systems are defined as fire and security alarm systems, class 2 and class 3 signaling circuits, landscape sprinkler controls, key card operators, nurse call systems, motor and electrical apparatus controls and other limited energy applications covered by the NEC.~~

~~(7-1-97)T~~

~~b. A limited energy electrician shall countersign contractor applications and sign all permits for limited energy electrical installations. Such licenses shall be limited to installations covered by the above referenced sections of the National Electrical Code, such as: electric or electronic organs, landscape sprinkler control, security, power limited fire alarms, audio-visual, sound and intercom, data processing, and non-utility owned communications~~

~~systems: i.e., telephone, radio, television, master antenna television, and community antenna television. (9-17-85)~~

b. Limited Energy Systems do not include, and no license of any type is required for, the installation of communication circuits, wires and apparatus that include telephone systems, telegraph facilities, outside wiring for fire and security alarm systems which are used for communication purposes, and central station systems of a similar nature, PBX systems, audio-visual and sound systems, public address and intercom systems, data communication systems, radio and television systems, antenna systems and other similar systems. (7-1-97)T

c. Unless exempted by Section 54-1016 Idaho Code, any person who installs, maintains, replaces or repairs electrical wiring and equipment for limited energy systems in facilities other than one- or two-family dwellings shall be required to have a valid limited energy electrical license and must be employed by a licensed limited energy specialty electrical contractor or electrical contractor. The holder of a specialty license may only countersign a contractor's application as a supervising journeyman for work within his specialty. (7-1-97)T

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

~~07. Limited Energy Systems. No license of any type is required for the installation of limited energy systems not exceeding one hundred (100) VA in Class II and Class III as defined in Article 725 of the approved National Electrical Code for temperature control and intercommunication audio systems in one and two family dwellings, doorbells, sound and sound recording systems in residential occupancies, single station smoke or ionization detection systems in one and two family dwellings, radio and television antenna systems, closed circuit TV systems in buildings three (3) stories or less in height except where interconnected with an installation system covered in IDAPA 07.01.04, master antenna television and community antenna television systems in buildings of three (3) stories or less in height and radio and television antenna systems. Such installations shall be subjected to inspection and shall comply with the appropriate articles of the National Electrical Code. (1-14-87)~~

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

a. Single or three phase well pumps: Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to the load side, including fuses, of the disconnecting device. Disconnecting device installed by others. (9-17-85)(7-1-97)T

b. Domestic water pumps, one hundred twenty/two hundred forty (120/240) volt, single phase, sixty (60) amps or less: Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device. (7-1-97)T

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

~~e. Maintain, repair, and replace all electrical equipment, wires, and accessories for the pump motor up to and including the load side, including fuses, of the disconnecting device on existing single or three phase installations. Disconnecting device installed by others. (1-14-87)~~

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

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

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

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

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.08 - RULES GOVERNING ELECTRICAL INSPECTION TAG APPEALS
DOCKET NO. 07-0108-9701

NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective July 1, 1997.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has temporary and proposed rule-making. The action is authorized pursuant to Section 54-1006(5), Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997. 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 at the address below.

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

The appeals rule in IDAPA 07.01.08 would now allow for a Preliminary Order procedure and review by the Administrator or by any party pursuant to the provisions of Section 67-5245, Idaho Code. Changing the Title to read "Electrical Inspection Tag Appeals."

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code, and is necessary in order to protect the public health, safety, or welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this temporary and proposed rule, contact Gary L. Malmgren, Bureau Chief, Electrical Bureau, Division of Building Safety, 277 N. 6th, Street, Suite 201, P.O. Box 83720, Boise, Idaho 83720-0028, (208) 334-2183\Fax (208) 334-4891.

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 September 24, 1997.

DATED this 23rd day of July, 1997.

Renee Bryant, Secretary
Division of Building Safety
277 N. 6th St., Ste. 100, P.O. Box 83720
Boise, Idaho 83720-0048
Telephone: (208) 334-3950
Fax: (208) 334-2683

TEXT OF DOCKET NO. 07-0108-9701

07.01.08 - RULES GOVERNING ELECTRICAL INSPECTION TAG APPEALS

000. LEGAL AUTHORITY.

The Idaho Electrical Board is authorized under Sections 54-10045 and 54-1006(5), Idaho Code, to adopt rules concerning the administrative appeals process to appeals board of electrical inspection tags to the administrator of

the Division of Building Safety.

(2-26-93)(7-1-97)T

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 07, Title 01, Chapter 08, Rules Governing Electrical Inspection Tag Appeals, Division of Building Safety. ~~These rules include criteria for action taken by an electrical appeals board. The rules contained in this chapter govern the appeal of electrical inspection tags issued by the Electrical Bureau on electrical installations that do not meet the requirements of state law, the administrative rules promulgated by the Electrical Board, or the National Electrical Code as adopted by Idaho law.~~

(2-26-93)(7-1-97)T

002. WRITTEN INTERPRETATIONS.

This agency has no written interpretations of this chapter. The referenced code may be obtained from the National Fire Protection Association, ~~470 Atlantic Ave., Boston, MA, 02210.~~ 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269-9101.

(2-26-93)(7-1-97)T

003. ~~ADMINISTRATIVE APPEALS.~~ EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES FOR CONTESTED CASES.

~~This chapter governs administrative relief of the provisions outlined herein. Pursuant to Section 67-5206(5), Idaho Code, the procedures contained in Subchapter B, "Contested Cases", of the rules promulgated by the Attorney General as IDAPA 04.11.01, Sections 100 through 799 do not apply to electrical inspection tag appeals.~~

(2-26-93)(7-1-97)T

004. REASONS FOR EXEMPTION FROM ATTORNEY GENERAL'S ADMINISTRATIVE PROCEDURE RULES.

In order to protect consumers from unsafe electrical installations and to prevent unnecessary delays and increased costs in construction projects, the rules of procedure in this chapter are adopted to promote the speedy resolution of contested cases involving electrical inspection tags.

(7-1-97)T

004~~5~~. -- 010. (RESERVED).

011. APPEALS.

In order to determine the suitability of materials and methods of wiring and to provide for interpretations of the provisions of the National Electrical Code, the creation of an electrical appeals board is hereby authorized; by the administrator of the Division of Building Safety, to be composed of three members of the Idaho Electrical Board, or an electrical supervisor and two members of the Board, as determined and selected by the ~~director of the Division of Building Safety~~ administrator upon receipt of a written notice of appeal as set forth below. (42-17-92)(7-1-97)T

01. Notice of Appeal. A person, firm, or corporation making an electrical installation subject to the provisions of Title 54, Chapter 10, Idaho Code, may appeal, to the ~~appeals board administrator~~, a decision by the ~~administrator~~ electrical bureau chief, chief electrical inspector, or other electrical inspector, that a particular electrical installation is not in conformance with Idaho Code, these rules, or the National Electrical Code as adopted by Idaho Law. An appeal ~~may~~ must be lodged by filing a written notice of appeal with the ~~appeals board administrator~~ within ten (10) days of the date of issuance of a notice of defects issued pursuant to Section 54-1004 of the Idaho Code. The notice of appeal shall state in particular the reasons why the appellant contends that the notice of defects is incorrect. (42-17-92)(7-1-97)T

02. Filing Date. If mailed, the notice of appeal shall be considered filed as of the date of postmark. The mailing address for filing such notice of appeal shall be ~~Idaho Electrical Board~~ to the administrator, Division of Building Safety, Statehouse Mail P.O. Box 83720, Boise, Idaho, 83720-0028. (41-5-81)(7-1-97)T

03. Appeals Board. The members of the Idaho Electrical Board and other persons appointed by the administrator to, acting as the appeals board, are authorized to hold hearings at the Division of Building Safety in Boise, Idaho, to determine the merits of an appeal filed pursuant to this rule. (41-5-81)(7-1-97)T

04. Function of Appeals Board. The members of the Idaho Electrical Board, acting as an appeals board, shall not have the authority to grant variances from the National Electrical Code; its sole function as an appeals board shall be to determine whether the materials or method of wiring utilized by the appellant meets the requirements of the National Electrical Code. (11-5-81)

05. Appeals Hearing Fee. An appeals hearing fee of one hundred dollars (\$100) shall be charged to an appellant for each appeal brought before the appeals board. The appeals hearing fee shall accompany the notice of appeal. When the appeal is found in favor of the appellant, the appeals hearing fee shall be returned to the appellant. (11-5-81)

06. Conditions Disqualifying Board Member. No Board member shall sit on an appeals board in which he or his employer, employee, business partner or any person related to him, is the appellant in the matter; or where he has a pecuniary interest in the outcome of the matter to be decided by the appeals board. ~~(11-5-81)~~(7-1-97)T

07. Rules of Evidence. The rules of evidence for the hearing are governed by the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. (11-5-81)

08. Limitations of Appeal. The filing of an appeal does not stay or discontinue a red tag, disconnect order, or notification to the power company not to energize, in situations where the defect is of a nature so as to be an imminent threat to life or property. (11-5-81)

~~09. Decisions Final. The decision of the appeals board shall be final and binding except either the Bureau or the appellant may request the appeals board to request a formal interpretation under Section 16 of the Regulations Governing Committee Projects of the National Fire Protection Association (NFPA). Either the Division or the appellant may appeal the official interpretation of the Governing Committee of the NFPA to the District Court within thirty (30) days of the date of receipt of the formal opinion. (11-5-81)~~

09. Preliminary Order. Within five (5) days of the conclusion of the administrative hearing, the appeals board shall issue a preliminary order. The preliminary order will become a final order without further notice unless reviewed by the administrator, or review is requested by any party to the inspection tag appeal, pursuant to the provisions of Section 67-5245, Idaho Code. When a preliminary order is reviewed by the administrator, the administrator will issue a final order pursuant to the requirements of Sections 67-5245 and 67-5246, Idaho Code. (7-1-97)T

10. Motions for Reconsideration. Motions for reconsideration of the appeal board's preliminary order or of the administrator's final order are not allowed. (7-1-97)T

IDAPA 08 - STATE BOARD OF EDUCATION
08.02.02 - RULES GOVERNING UNIFORMITY
DOCKET NO. 08-0202-9701

NOTICE OF AMENDMENT TO TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective June 19, 1997.

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 Sections 33-105, 33-107(3), 33-116, and 33-1612, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rule-making will be held as follows:

Friday, October 24, 1997 at 8:30 a.m. MDT
Idaho School for the Deaf and the Blind
1450 Main Street, Gooding, Idaho.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making and the amendment to the existing temporary rule:

The proposed rule will allow Idaho school districts to assign certificated teachers to duties outside of those for which the teacher is formally endorsed, provided the requirements of the rule are met. The temporary rule has been amended to reflect the changes made to the proposed rule.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is necessary to protect the public welfare, and to comply with Section 33-1612, Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because of the need for temporary rules to be in effect at the beginning of the 1997-98 school year.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dr. Darrell Loosle, State Department of Education, (208) 332-6800.

Anyone may submit written comments regarding this temporary and proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before October 3, 1997.

DATED this 23rd Day of July, 1997,

Dr. Darrell Loosle
Chief Deputy Superintendent
State Department of Education
650 West State Street
P.O. Box 83720
Boise, Idaho 83720-0027
Phone: (208) 332-6800
FAX: (208) 334-2228

TEXT OF DOCKET NO. 08-0202-9701

040. MISASSIGNMENTS - GRANDFATHERING.

01. Certificate. A person employed by a school district in a position requiring a certificate must hold a valid certificate for the service being rendered or a waiver under this rule. For In any situation in which a person not holding a specific endorsement is to provide educational services in a specific area, the employing district must apply to may request a waiver from the State Department of Education's Certification Office for misassigned status to place the individual in that assignment for the school year. The district must demonstrate in a written report that it has made a good faith effort to employ properly certificated educators for those duties and that a conscientious effort is being made to remedy each specific problem. The request must include the rationale for the waiver. Criteria for acceptance of the report approval of a waiver will includes the following: (4-1-97)T(6-19-97)T

a. The duties may comprise no more than one-half (1/2) of the teacher's fulltime annual workload assignment; (4-1-97)T(6-19-97)T

b. Teachers who are misassigned must have a minimum of six (6) semester hours of college credit in each subject area in which service is rendered; and (4-1-97)T

c. Teachers who are misassigned must comprise no more than five percent (5%) of the total number of the district's certificated, full-time teachers, or five (5) teachers, whichever is greater. Districts which have secondary schools located more than fifteen (15) miles from another secondary school may misassign up to an additional five (5) teachers upon approval of the Certification Office. However, in no circumstance will more than five (5) teachers be misassigned in any one building. (4-1-97)T(6-19-97)T

02. Approval of Waiver. The approval of the waiver will not affect accreditation. Funds will not be withheld for persons serving in a misassigned area. Any teacher who was authorized to teach under previous exceptions to rules of the State Board of Education, based upon service or experience before September 1978, will continue to be authorized to teach as authorized by previous rule IDAPA 08.02.03.180.06. Districts may request a waiver of the misassignment policy, according to IDAPA 08.02.01, Section 001. The waiver request must include a rationale for the misassignment. (4-1-97)T(6-19-97)T

03. Affect on Accreditation. All misassignments will be noted on the accreditation report. Any misassignments not meeting the above criteria may affect accreditation. Funds will be withheld for that portion of the misassigned person's time which exceeds the criteria included in this rule if a waiver has not been approved by the State Board of Education. (6-19-97)T

04. Previous Exceptions. Any teacher authorized to teach under previous exceptions to the rules of the State Board of Education, based upon service or experience before September 1978, will continue to be authorized to teach as provided for under previous rule IDAPA 08.02.03, Subsection 180.06. (6-19-97)T

IDAPA 13 - DEPARTMENT OF FISH AND GAME
13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS
DOCKET NO. 13-0109-9703

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary and proposed rules are effective August 1, 1997.

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) 36-104(b).

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

Rule 100 (tags, stamps, permits, validations, and clarification for 1997 hunts); Rule 615 (controlled hunt procedures for 1997 sandhill crane hunts); Rule 616 (seasons and limits for 1997 sandhill crane hunts); Rule 620 (general and controlled hunt procedures and seasons and limits for 1997 early September Canada goose hunts).

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

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary rule, contact Gary Will, (208) 334-2920.

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 September 24, 1997.

DATED this 23rd day of July 1997.

W. Dallas Burkhalter
Deputy Attorney General
600 South Walnut
PO Box 25
Boise, ID 83707
(208) 334-3715/FAX: (208) 334-2148

TEXT OF DOCKET NO. 13-0109-9703

100. TAGS, STAMPS, PERMITS, AND VALIDATIONS.

01. Pheasant, Quail, or Partridge. No person, seventeen (17) years of age or older, shall hunt pheasant, quail, or partridge anywhere within the state, except licensed shooting preserves, without having in his or her possession the appropriate hunting license that has been validated for upland game. The validation shall be valid from January 1 through December 31 of each year. (5-1-97)T

02. Ducks, Geese, or Brant. No person, seventeen (17) years of age or older, shall hunt ducks, geese, or brant anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for waterfowl. The validation shall be valid from January 1 through December 31 of each year. (5-1-97)T

03. Migratory Game Birds. No person shall hunt ducks, geese, brant, coots, common snipe, sandhill cranes, or mourning doves anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for the Federal Migratory Game Bird Harvest Information Program. The validation

shall be valid from January 1 through December ~~21~~ 31 of each year.

~~(5-1-97)T~~(8-1-97)T

04. Wild Turkey. No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements: ~~(7-1-93)~~(8-1-97)T

- a. Tags issued for wild turkey are valid for any general season hunt. (7-1-93)
- b. Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from hunting in any other wild turkey hunt. (7-1-93)
- c. Nonresident permit limitations: On controlled hunts with ten (10) or fewer permits, not more than one (1) permit will be issued to a nonresident. On controlled hunts with more than ten (10) permits, not more than ten percent (10%) of the permits may be issued to nonresidents. ~~(7-1-93)~~(8-1-97)T
- d. Eligibility: The holders of valid hunting licenses are eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)
 - i. Holders of a Type 208 Nongame Hunting License may not apply for any controlled hunt. (7-1-93)
 - ii. In the event a permit is issued based on erroneous information, the permit will be invalidated and the person will remain on the drawn list. (7-1-93)
 - e. Applications: Applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than February 15, annually. Applications must comply with the following requirements: (2-7-95)
 - i. Holders of a Duplicate License (Type 501) must use their original license number to apply for a controlled hunt. Duplicate license numbers will not be accepted. (7-1-93)
 - ii. Only one (1) application card per person or group will be accepted. Additional application cards will result in all applicants being declared ineligible. (7-1-93)
 - iii. Fees: All Applicants for controlled hunts must submit a ~~five-dollar (\$5)~~ non-refundable application fee with their application. ~~The fee is five dollar (\$5) for each applicant;~~ one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. If you are successful, you will be issued a permit that entitles you to purchase the appropriate controlled hunt tag, beginning April 1, at any license vendor or Fish and Game office by presenting your hunting license and controlled hunt permit. ~~(2-7-95)~~(8-1-97)T
 - iv. A single payment (either cashier's check, money order, certified check, or personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. (2-7-95)
 - v. A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (2-7-95)
 - vi. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (7-1-93)
 - f. Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (7-1-93)
 - g. Tag validation and attachment: Immediately after any wild turkey is killed, the turkey tag must be validated and securely attached to the wild turkey. (7-1-93)
 - h. To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border

of the tag, one (1) for the month and one (1) for the day of the kill. (7-1-93)

i. The tag must remain attached so long as the turkey is in transit or storage. (7-1-93)

05. Early September Canada Goose Hunts. (7-31-96)T

~~a. General Hunts: No person shall hunt Canada geese during the general, early September season (September 1-15) without having in his or her possession the appropriate hunt hunting license and permit. Persons obtaining and using general hunt permits must comply with the following requirements: (7-31-96)T~~

~~i. Applications: Applications for general hunt permits shall be made on a form prescribed by the Department. They may be submitted to the Department's Headquarters Office or any Regional or Subregional office. Applications will be accepted until all permits are issued or the season ends, whichever comes first. (7-31-96)T~~

~~ii. Fees: Permits for general hunts are free. Permits will be issued on a first come, first served basis until all are issued. (The Idaho Migratory waterfowl validation (Waterfowl Stamp) and the Federal Migratory Bird Stamp are required by any person 17 and 16 years of age and older, respectively (Idaho Code 36-414; Title 50 Code of Federal Regulations, Part 20)). (7-31-96)T~~

~~iii. Landowner Preference Permits: Landowner Preference Permits shall be the same as IDAPA 13.01.04.400.01 through 400.06. (7-31-96)T~~

~~iv. The following rules previously established for wild turkey also apply to general, early September Canada goose hunts: Subsections 100.03.e., d., e.ii., and e.v. 100.04.d. (7-31-96)T~~

~~ba. Controlled Hunts: No person shall hunt Canada geese during controlled, early September seasons (September 1-15) without having in his or her possession the appropriate hunting license and controlled hunt permit. Persons obtaining and using controlled hunt permits must comply with the following requirements: (7-31-96)T(8-1-97)T~~

~~i. Applications: Applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than August + 13, annually. Applications must comply with the following requirements: (7-31-96)T(8-1-97)T~~

~~ii. Fees: All Applicants for controlled hunts must submit a five dollar (\$5) nonrefundable application fee with their application. The fee is five dollars (\$5) for each applicant; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. Successful applicants will be issued a permit that entitles them to hunt. (The Idaho Migratory waterfowl validation (Waterfowl Stamp) and the Federal Migratory Bird Stamp are required by any person sixteen (16) and seventeen (17) years of age and older, respectively (Idaho Code 36-414; Title 50 Code of Federal Regulations, Part 20)). (7-31-96)T(8-1-97)T~~

~~iii. Landowner Preference Permits: Landowner Preference Permits shall be the same as IDAPA 13.01.04, Subsection 400.01 through 400.06. (7-31-96)T~~

~~iv. The following rules previously established for wild turkey also apply to early September Canada goose hunts: Subsections 100.03.b., 100.03.c., 100.03.d., 100.03.e.ii., 100.03.e.iv. through 100.03.e.vi., and 100.03.f. (7-31-96)T(8-1-97)T~~

~~v. Any controlled hunt permits for Canada geese that remain unsold after the controlled hunt drawing may be sold by the Department on a first-come, first-served basis. Applications for leftover controlled hunt permits will be accepted at the Department's Headquarters office and Regional and Subregional offices from August 15 through the end of the early September goose hunting seasons. (7-31-96)T(8-1-97)T~~

(BREAK IN CONTINUITY OF SECTIONS)

615. SANDHILL CRANES.

No person shall hunt sandhill cranes without having in his or her possession the appropriate hunting license, ~~tag,~~ and controlled hunt permit. Persons obtaining and using ~~tags and~~ permits must comply with the following requirements: ~~(8-19-96)T~~(8-1-97)T

01. Applications. Applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game not later than August ~~26~~ 13. ~~(8-19-96)T~~(8-1-97)T

02. Fees. ~~All~~ Applicants for controlled hunts must submit a ~~five dollar (\$5)~~ nonrefundable application fee with their application. ~~The fee is five dollars (\$5) for each applicant; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. Successful applicants will be issued a permit that entitles them to purchase hunt the appropriate controlled hunt tag at any license vendor or Fish and Game office. (The Idaho Migratory waterfowl validation (W-waterfowl Sstamp) and the Federal Migratory Bird Stamp are not required (Idaho Code 36-414; Title 50 Code of Federal Regulations, Part 20.))~~ ~~(8-19-96)T~~(8-1-97)T

03. Hunt Rules. (8-19-96)T

a. The following rules previously established for wild turkey hunts also apply to sandhill crane hunts. Subsections 100.03.b., ~~100.03.c., 100.03.d., 100.03.e.ii, 100.03.e.iv. through 100.03.e.vi., and 100.03.f. through 100.03.i.~~ ~~(8-19-96)T~~(8-1-97)T

b. Any controlled hunt permits for sandhill cranes that remain unsold after the controlled hunt drawing may be sold by the Department on a first-come, first-served basis. ~~Applications for leftover controlled hunt permits will be accepted at the Department's Headquarters office and Regional and Subregional offices from September 1 through the end of the sandhill crane hunting season.~~ ~~(8-19-96)T~~(8-1-97)T

616. SANDHILL CRANE SEASONS AND BAG AND POSSESSION LIMITS.

The following seasons, bag and possession limits, and permits shall apply: (8-19-96)T

01. Controlled Hunts. Controlled hunt areas include the following: (8-19-96)T

a. Area 1 includes that portion of Bonneville County northwest of Grays Lake National Wildlife Refuge within the following boundary: Township 3 South, Range 42 East, Sections 10, 11, 12, 13, 14, 15, 22, and 23; and Township 3 South, Range 43 East, Sections 7 and 18. (8-19-96)T

b. Area 2 includes that portion Caribou County within the following boundary: beginning at the junction of Government Dam Road and State Highway 34, then north along Government Dam Road to North Reservoir Road, then east along North Reservoir Road to Poison Creek, then south along Poison Creek to the edge of Blackfoot Reservoir, then south along the western, southern, and eastern edge of Blackfoot Reservoir to Meadow Creek north of Henry, then east along Meadow Creek to North Reservoir Road, then east along North Reservoir Road to State Highway 34, then south along State Highway 34 to the junction of the Blackfoot River Road, then east along the Blackfoot River Road to the Monsanto Haul Road, then southwest along the Monsanto Haul Road to State Highway 34, then south along State Highway 34 to its junction with Government Dam Road, the point of beginning; and that portion of Caribou County within Sections 1, 2, 10, 11, 12, and 15 of Township 34 North, Range 42 East, which is east of State Highway 34. (8-19-96)T

c. Area 3 includes that portion of Teton County south and west of State Highway 33 and north of State Highway 31 within two (2) miles of the Teton River. (8-19-96)T

02. Controlled Hunt Seasons, Bag and Possession Limits, and Permits. (8-19-96)T

Hunt Area	Hunt Number	Season	Daily Bag Limit	Possession Limit After the First Day of the Season	Season Limit	Permits
1	9501	September 1 through September 8	1	1	1	5
2	9502	September 1 through September 8	1	1	1	15
3	9503	September 1 through September 8	1	1	1	10

<u>HUNT AREA</u>	<u>HUNT NUMBER</u>	<u>SEASON</u>	<u>PERMITS</u>
1	9501	September 1-4	15
1	9502	September 6-9	15
1	9503	September 12-15	15
2	9504	September 1-4	40
2	9505	September 6-9	40
2	9506	September 12-15	40
3	9507	September 1, 2, 6, 7, 10, 13, 14	50

NOTE: Daily limit, possession limit, season limit - are all 1.

(8-19-96)T(8-1-97)T

03. Mandatory Check and Report. Any person taking a sandhill crane must comply with the following mandatory check and report requirements by: (8-19-96)T

a. Presenting the whole carcass of every sandhill crane taken to the Department's Southeast Regional Office (Pocatello), Upper Snake Regional Office (Idaho Falls), or official check point within seventy two (72) hours of the time of kill and completing the relevant harvest report. (8-19-96)T

04. ~~Season Quota. The harvest quota for the season is twenty (20) sandhill cranes for all hunt areas combined. The season may be closed when the harvest quota is reached. If the season is closed, permittees will be notified by telephone of the closure.~~ (8-19-96)T

617. -- 619. RESERVED.

620. EARLY SEPTEMBER CANADA GOOSE SEASONS AND BAG AND POSSESSION LIMITS.

(8-1-97)T

01. General Hunts. General hunts include the following:

(8-1-97)T

i. Nez Perce County. Nez Perce County within the following boundary: beginning at the Snake River at the Idaho-Washington state line, then north along the Idaho-Washington state line to the Nez Perce-Latah county line, then east along the Nez Perce county line to the Potlatch River, then south along the east bank of the Potlatch River to the Clearwater River, then west along the south bank of the Clearwater River to Lapwai Creek, then south along Lapwai Creek to Webb Creek Road, then west along Webb Creek Road to Waha Road, then south along Waha Road to Ten-Mile Creek, then northwest along Ten-Mile Creek to the Snake River, the point of beginning.

(8-1-97)T

02. General Hunt Seasons, Bag and Possession Limits, and Permits. (8-1-97)T

a. Season: September 6, 1997 through September 12, 1997. (8-1-97)T

b. Possession limit after the first day of the season: Eight (8). (8-1-97)T

c. Daily bag limit: Four (4). (8-1-97)T

03. Controlled Hunts. Controlled hunt areas include the following: (8-1-97)T

i. Area 1 includes that portion of Caribou County within the following boundary: beginning at Bancroft and Old State Highway 30, then northwest along Old State Highway 30 to the junction with Nipper Road, then north along Nipper Road to the junction with Miles Road, then west along Miles Road to Kelley-Toponce Road, then north on Kelley-Toponce Road to Reservation Road, then north along Reservation Road to the West Side Road, then east and south on West Side Road to Kelley-Toponce Road, then east along Kelly-Toponce Road to Chesterfield Road, then south on Chesterfield Road to Hatch Loop Road, then east, south, and west on Hatch Loop Road to Chesterfield Road, then south on Chesterfield Road to Bancroft and Old State Highway 30, the point of beginning. That portion of Caribou County within the following boundary: beginning at the junction of Government Dam Road and State Highway 34, then north along Government Dam Road to North Reservoir Road, then east along North Reservoir Road to Poison Creek, then south along Poison Creek to the edge of Blackfoot Reservoir, then south along the western, southern, and eastern edge of Blackfoot Reservoir to Meadow Creek north of Henry, then east along Meadow Creek to North Reservoir Road, then east along North Reservoir Road to State Highway 34, then south along State Highway 34 to the junction of the Blackfoot River Road, then east along the Blackfoot River Road to the Monsanto Haul Road, then southwest along the Monsanto Haul Road to State Highway 34, then south along State Highway 34 to its junction with Government Dam Road, the point of beginning; and that portion of Caribou County within Sections 1, 2, 10, 11, 12, and 15 of Township 34 North, Range 42 East, which is east of State Highway 34. And, that portion of Bonneville County northwest of Grays Lake National Wildlife Refuge within the following boundary: Township 3 South, Range 42 East, Sections 10, 11, 12, 13, 14, 15, 22, and 23; and Township 3 South, Range 43 East, Sections 7 and 18.

(8-1-97)T

ii. Area 2 includes that portion of Fremont County within Township 9 North, Range 42 East, and that portion within Township 8 North, Range 42 East north of the Falls River.

(8-1-97)T

iii. Area 3 includes that portion of Teton County south and west of State Highway 33 and north of State Highway 31 within two miles of the Teton River.

(8-1-97)T

04. Controlled Hunt Seasons, Bag and Possession Limits, and Permits. (8-1-97)T

<u>Hunt Area</u>	<u>Hunt Number</u>	<u>Season</u>	<u>Daily Bag Limit</u>	<u>Possession Limit After the First Day of the Season</u>	<u>Permits</u>
1	9601	September 1, 2, 6, 7, 12, 13, and 14	2	4	50
2	9602	September 1, 2, 6, 7, 10, 13, and 14	2	4	30

<u>Hunt Area</u>	<u>Hunt Number</u>	<u>Season</u>	<u>Daily Bag Limit</u>	<u>Possession Limit After the First Day of the Season</u>	<u>Permits</u>
3	9603	September 1, 2, 6, 7, 10, 13, and 14	2	4	30

(8-1-97)

617 621. -- 699. RESERVED.

IDAPA 13 - DEPARTMENT OF FISH AND GAME

13.01.14 - RULES GOVERNING FALCONRY

DOCKET NO. 13-0114-9701

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary and proposed rules are effective August 1, 1997.

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) 36-104(b).

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

Rule 250 (clarification or permits, licenses, and validations required by nonresidents); Rule 350 (permit nonresidents to capture goshawks and residents to capture ferruginous hawks); and Rule 550 (clarification of permits, licenses, and validations required by residents).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Gary Will, (208) 334-2920.

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 September 24, 1997.

DATED this 23rd day of July 1997.

W. Dallas Burkhalter
Deputy Attorney General
600 South Walnut
PO Box 25
Boise, ID 83707
(208) 334-3715/FAX: (208) 334-2148

TEXT OF DOCKET NO.13-0114-9701

250. NONRESIDENT FALCONERS.

01. Transporting Birds. Nonresidents may transport birds of prey through or remain temporarily in the state of Idaho, for a period not to exceed thirty (30) days, without having obtained an Idaho falconry permit provided they have in their possession all required federal permits as well as all permits required by their state of residence. Nonresident licensed falconers who temporarily reside in Idaho for schooling, temporary jobs, extended visits, etc., may, at the discretion of the inspecting officer, keep birds of prey in Idaho longer than thirty (30) days when issued written permission to do so. (10-26-94)

02. Hunting. ~~Nonresidents must have in their possession a valid Idaho hunting or combination license and all necessary stamps and permits while actively hunting with birds of prey. Nonresidents must have in their possession a valid Idaho hunting license of the proper class, all necessary validations (upland game, waterfowl, Migratory Game Bird Harvest Information Program), and a valid falconry permit from his or her state of residence.~~ (10-26-94)(8-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

350. CAPTURING BIRDS OF PREY FROM THE WILD.

01. Permits. Birds of prey may be captured from the wild ONLY by the holder of a valid Idaho falconry permit or a valid nonresident capture permit and only in compliance with the conditions listed below. A form 3-186A must be completed reporting all birds of prey so captured. (7-1-93)

02. Approved Species. (7-1-93)

a. Approved species shall be determined by the Department. No person may capture any bird of prey that has been defined as a threatened or endangered species by the state of Idaho or by federal law or regulation UNLESS that species has specifically been declared exempt. ~~Birds of prey defined as species of special concern by the state of Idaho may be taken when approved by the director. Of the birds of prey defined as species of special concern by the state of Idaho, only the merlin (passage birds only) and the ferruginous hawk may be captured.~~ (7-1-93)(8-1-97)T

i. No person may capture more than one (1) ferruginous hawk per year. (8-1-97)T

ii. Any person intending to capture an eyass ferruginous hawk must submit a written request for preliminary authorization to the appropriate regional office thirty (30) days prior to capture. This request must include the county and anticipated date of capture. In addition, final approval for capture must be obtained from the appropriate regional office not more than seven (7) days but at least two (2) working days prior to capture. (8-1-97)T

b. All birds of prey listed in the Migratory Bird Treaty Act taken or possessed under authority of any Idaho permit are and shall remain the property of the state of Idaho. No liability shall be incurred by the state or Department for damages arising from the possession of any birds of prey under such permits. (7-1-93)

c. Permits available annually to nonresidents holding valid nonresident capture permits, on a first-come-first-served basis, include: (10-26-94)

American Kestrel	10
Cooper's Hawk	10
Gyr Falcon	2
Merlin (passage birds only)	5
Prairie Falcon	10
Red-tailed Hawk	10
Sharp-shinned Hawk	10
Goshawk	10

(7-1-93)(8-1-97)T

i. No person may capture more than one (1) goshawk per year. (8-1-97)T

ii. Any person intending to capture an eyass goshawk must submit a written request for preliminary authorization to the appropriate regional office at least thirty (30) days prior to capture. This request must include the county and the anticipated date of capture. In addition, final approval for capture must be obtained from the appropriate regional office not more than seven (7) days but at least two (2) working days prior to capture. (8-1-97)T

d. Any nonresident who captures a bird of prey in Idaho must have his or her capture permit validated by an Idaho Department of Fish and Game regional office prior to leaving the state and within seventy-two (72) hours of the time of capture. (8-1-97)T

03. Capture Dates. (7-1-93)

a. Immature birds (either eyass or passage) may be taken from January 1 through February 20; May 15 through July 31 on weekends and holidays (Memorial Day and Independence Day) ONLY; and, September 1 through September 30 on weekends and holidays (Labor Day) ONLY, and October 1 through December 31. (7-1-93)

04. Age of Birds That May Be Captured. (7-1-93)

a. Eyasses (young birds not capable of flight) may be taken ONLY by holders of a General or Master Falconer's Permit. At least one (1) nestling shall be left in any nest from which one or more nestlings are removed. (7-1-93)

b. No bird of prey older than one (1) year of age, EXCEPT American kestrels, may be taken from the wild for falconry purposes. (7-1-93)

05. Recapture of Lost Birds. Any licensed falconer may retrap his/her lost, captive, bird of prey. If it is not during the regular falcon trapping season, after fifteen (15) days, the falconer must obtain permission from the appropriate regional conservation officer to continue recapture efforts. If the bird is retrapped and has been reported on Form 3-186A, the falconer must comply with the requirements of Form 3-186A. (10-26-94)

(BREAK IN CONTINUITY OF SECTIONS)

550. SPECIAL RESTRICTIONS ON HUNTING WITH BIRDS OF PREY.

01. Permissible Species: Only species from the following families may be used for falconry: (7-1-93)

a. Accipitridae (except the bald eagle); (7-1-93)

b. Falconidae; and (7-1-93)

c. Strigidae (Great horned owl only). (7-1-93)

02. Hunting Restrictions. Persons hunting with birds of prey must comply with the following: (7-1-93)

a. Any time a hunting bird of prey kills quarry that may not be taken under established regulations, seasons, bag limits, or license requirements, the falconer must leave the dead quarry where it lies. Except, the bird of prey may be allowed to feed upon the quarry before leaving the kill site. (7-1-93)

~~b. Any person hunting by falconry shall have in his possession a valid Idaho falconry permit and hunting license of the proper class. Any resident hunting by falconry shall have in his or her possession a valid Idaho falconry permit, a valid hunting license of the proper class, and all necessary validations (upland game, waterfowl, Migratory Game Bird Harvest Information Program).~~ (7-1-93)(8-1-97)T

c. No person may carry a firearm or be accompanied by any person carrying a firearm while hunting by falconry. (7-1-93)

IDAPA 15 - OFFICE OF THE GOVERNOR
15.01.01 - RULES GOVERNING IDAHO SENIOR SERVICES PROGRAM
DOCKET NO. 15-0101-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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 non-technical explanation of the substance and purpose of the proposed rule-making:

These proposed rules will replace the current rules for the Idaho Senior Services Program, Senior Homemaker Services, and Care Coordination for the Elderly. They will also establish new rules for Respite Care, Adult Day Care, and Chore service for the elderly.

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

Fees are charged for homemaker, chore, respite, and adult day care services according to a sliding fee scale based upon the client's income. This is authorized by Section 67-5008, Idaho Code.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was conducted. The Notice of Negotiated Rule-making was published in the Idaho Administrative Bulletin, Volume 97-5, page 27.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ken Wilkes, 334-2219.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 21st day of July 1997.

Arlene D. Davidson, Director
Idaho Commission on Aging
700 W. Jefferson, Room 108
P.O. Box 83720
Boise, Idaho 83720-0007
Telephone: (208) 334-3833 Fax: (208) 334-3033

TEXT OF DOCKET NO. 15-0101-9701

IDAPA 15
TITLE 01
Chapter 01

15.01.01 - RULES GOVERNING IDAHO SENIOR SERVICES PROGRAM

000. LEGAL AUTHORITY.

Under authority of Idaho Code, Section 67-5003, the Idaho Commission on Aging adopts the following rules. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 15.01.01, "Rules Governing Senior Services Program." ()

02. Scope. These rules constitute minimum requirements for aging services funded under authority of Idaho Code, Sections 67-5005 through 5008, and include a list of common terms and definitions related to Idaho's aging programs. ()

002. WRITTEN INTERPRETATIONS.

This agency has no written statements which pertain to the interpretation of the rules in this chapter. ()

003. ADMINISTRATIVE APPEALS.

The ICOA and its AAAs shall provide recipients and provider organizations with opportunity to appeal administrative decisions in accordance with IDAPA 15.01.20, Section 003, "Rules Governing Area Agency on Aging Operations." ()

004. -- 009. (RESERVED).

010. DEFINITIONS.

01. Act. The Idaho Senior Services Act. Programs and services established in Idaho Code, Section 67-5001, et. seq., Idaho Code. ()

02. Activities of Daily Living (ADL). Bathing, dressing, toileting, transferring, eating, walking. ()

03. Adult Day Care. A structured day program which provides individually planned care, supervision, social interaction, and supportive services for frail older persons in a protective group setting, and provides relief and support for caregivers. ()

04. Aging Network. The ICOA, it's AAAs and providers. ()

05. Advance Directive. A Living Will or Durable Power of Attorney for healthcare executed under the Natural Death Act, 39-4501, Idaho Code. ()

06. Area Agency on Aging (AAA). Local agency designated by the Idaho Commission on Aging, pursuant to the OAA (OAA) of 1965, as amended, that plans, develops, and implements services for older persons within a specified geographic area. ()

07. Area Plan. Plan for aging programs and services which an AAA is required to submit to the Idaho Commission on Aging, in accordance with the OAA, in order to receive OAA funding. ()

08. Care Coordinator. A licensed social worker, or licensed professional nurse (RN), or an individual with a BA or BS in a human services field and at least one (1) year's experience in service delivery to the service population. ()

09. Care Coordination. Case management assistance in circumstances where the older person, their caregivers, or both, are experiencing diminished functioning capacities, personal conditions, or other characteristics which require the provision of services by formal service providers. Activities of care coordination include assessing needs, developing care plans, authorizing services among providers, follow-up and reassessment, as required. ()

10. Care Coordination Supervisor. An individual who has at least a BA or BS degree and is a licensed social worker, psychologist or licensed professional nurse (registered nurse/RN) with at least two (2) years'

- experience in service delivery to the service population. ()
11. Chore Services. Providing assistance to persons having difficulty with one or more of the following instrumental activities of daily living: heavy housework, yard work or sidewalk maintenance. ()
12. Client. Person who has met program eligibility requirements for services addressed in this chapter. ()
13. Cognitive Impairment. A disability or condition due to mental impairment. ()
- () 14. Congregate Meals. Meals that meet the requirements of the OAA, as amended, served in a group setting. ()
15. Department. Department of Health and Welfare. ()
16. Direct Costs. Costs incurred from the provision of direct services. These costs include, but are not limited to, salaries, fringe benefits, travel, equipment, and supplies directly involved in the provision of services. Salaries of program coordinators and first line supervisors are considered direct costs. ()
17. Eligible Clients. Residents of the state of Idaho who are sixty (60) years or older and their spouses. ()
18. Fee for Services. An established payment required from individuals receiving services under the Act. The fee varies according to client's current annual household income. ()
19. Fiscal Effectiveness. A financial record of the cost of all formal services provided to insure that maintenance of an individual at home is more cost effective than placement of that individual an institutional long-term care setting. ()
20. Formal Services. Services provided to clients by a formally organized entity. ()
- () 21. Functional Impairment. A condition that limits an individual's ability to perform ADLs and IADLs. ()
22. Home-Delivered Meals. Meals delivered to eligible clients in private homes. These meals shall meet the requirements of the OAA. ()
23. Homemaker. A person who has successfully completed a basic prescribed training, who, with additional supervision, provides homemaker services. ()
24. Homemaker Service. Assistance with housekeeping, meal planning and preparation, essential shopping and personal errands, banking and bill paying, medication management, and, with restrictions, bathing and washing hair. ()
25. Household. For sliding fee purposes, a "household" includes a client and any other person(s) permanently resident in the same dwelling who share accommodations and expenses with the client. ()
26. Idaho Commission on Aging (ICOA). Commission designated by the Governor to plan, set priorities, coordinate, develop policy, and evaluate state activities relative to the objectives of the OAA. ()
27. Informal Supports. Those supports provided by church, family, friends, and neighbors, usually at no cost to the client. ()
28. Instrumental Activities of Daily Living (IADL). Meal preparation, money management, transportation, shopping, using the telephone, medication management, heavy housework, light housework. ()
29. Legal Representative. A person who carries a Durable Power of Attorney or who is appointed

- Guardian or Conservator with legal authority to speak for a client. ()
30. National Aging Program Information System. (NAPIS) Standardized Nationwide reporting system that tracks: ()
- a. Service levels by individual service, identifies client characteristics, State and area agency staffing profiles, and identifies major program accomplishments; and ()
- b. Complaints received against long term care facilities and family members or complaints related to rights, benefits and entitlements. ()
31. Non-Institutional. Living arrangements which do not provide medical oversight or organized supervision of residents' activities of daily living. Non-institutional residences include congregate housing units, board and room facilities, private residential houses, apartments, condominiums, duplexes and multiplexes, hotel/motel rooms, and group homes in which residents are typically unrelated to individuals. Non-institutional does not include skilled nursing homes, residential care facilities, homes providing adult foster care, hospitals, or residential schools/hospitals for the severely developmentally disabled or the chronically mentally ill. ()
32. Older Americans Act (OAA). Federal law which authorizes funding to states to provide supportive and nutrition services for the elderly. ()
33. Ombudsman. An individual or program providing a mechanism to receive, investigate, and resolve complaints made by, or on behalf of, residents of long-term care facilities, or persons aged sixty (60) and older living in the community. ()
34. Performance-Based Agreements. A written agreement between the ICOA and area agencies which establishes payment for services based upon output and outcome measures. ()
35. Personal Care Services (PCS). Services which include personal and medically-oriented procedures required to meet the physical needs of a patient convalescing at home or to provide for a long-term care client's ongoing maintenance/support, in accordance with Section 39-5602 (f), Idaho Code. ()
36. Program. The Idaho Senior Services Program. ()
37. Planning and Service Area (PSA). Substate geographical area designated by the ICOA for which an area agency is responsible. ()
38. Provider. An AAA that provides services directly or another entity under contract with the AAA to provide a specific service(s). ()
39. Respite. Short-term, intermittent relief provided to full-time caregivers (individuals or families) of a functionally-impaired relative. ()
40. Shopping Assistance. Accompaniment and provision of assistance to an elderly individual for the purpose of purchasing food, medicine and other necessities; purchasing of food, medicine and other necessities for an elderly individual who is disabled or homebound. ()
41. Sliding Fee Scale. A fee scale ranging from zero percent (0%) to one hundred percent (100%) of the cost of services. Cost of services shall be based on the contractor's or provider's actual unit costs. A client's percentage (payment) shall be determined by ranking the client's household's annual income against the federally determined poverty guidelines for that year. ()
42. Supportive Service Plan (SSP). An individual support plan outlining an array of services or the components of an individual service required to maintain a client at home. ()
43. Supportive Services Technician. AAA employee who is a paraprofessional working under the supervision of a licensed social worker or care coordinator assisting in the performance of specified tasks associated

with investigation of AP reports or development and initiation of a SSP. The employee shall have a degree in a related field or a high school diploma and at least two (2) years' experience working with elderly or at-risk populations. ()

44. Transportation Services. Services designed to transport eligible clients to and from community facilities/resources for the purposes of applying for and receiving services, reducing isolation, or otherwise promoting independence. ()

45. Uniform Assessment Instrument (UAI). A comprehensive assessment instrument utilizing uniform criteria. The ICOA mandates use of a UAI in determining an applicant's need for care and services. ()

011. -- 019. (RESERVED).

020. PROGRAM OUTCOMES.

State Senior Services are designed to provide older individuals with assistance they need to compensate for functional or cognitive limitations. Individuals qualifying for these services are those who require personal assistance, stand-by assistance, supervision or cueing to accomplish ADLs, IADLs, or both. The program aims to help clients: ()

01. Avoid Inappropriate or Premature Institutional Placement. Facilitate earlier discharge of an institutionalized client; or prevent reinstitutionalization of a formerly discharged client. ()

02. Enhance Ability to Accomplish Short-Term Rehabilitation. Provide the opportunity for rehabilitation at home by providing services to those who are temporarily incapacitated due to short-term illness or injury. ()

03. Assist in Crisis Intervention. Maintain older individuals in their own homes, on a short-term basis, during a crisis when the primary caregiver is incapacitated or absent. ()

04. Provide Protection. Enable individuals to remain in their own homes during a crisis through coordination with Adult Protection Services. ()

021. ELIGIBILITY.

Persons eligible to receive services under the Act shall be sixty (60) years of age or older and residents of the state of Idaho. Functionally- or cognitively-impaired adults living in the home of a caregiver who is age sixty (60) or older are exempted from this requirement. In those instances the caregiver is considered to be the client. ()

022. CLIENT ASSESSMENT.

All applicants for services under this chapter shall be assessed utilizing the ICOA standardized UAI. ()

023. UNIT OF SERVICE.

One (1) hour, or fraction thereof, providing Adult Day Care, Care Coordination, Chore, Homemaker, or Respite Service. ()

024. FAMILY AND CAREGIVER SUPPORTS.

01. Intent of ICOA. It is the intent of ICOA to support efforts of family caregivers to maintain functionally or cognitively-impaired elderly relatives in the household. ()

02. Eligibility. Based on eligibility and fee for service requirements, AAAs shall support family caregiver efforts by making program services available to such families. ()

025. CULTURAL ACCOMMODATIONS.

01. Accommodations for Language. All providers providing services under these rules shall make accommodations to work with persons who speak a language other than English and with those who have vision or hearing impairments. ()

02. Cultural Accommodations. All providers shall accommodate cultural differences and take them into account when delivering services. ()

026. FEES AND CLIENT CONTRIBUTIONS.

01. Poverty Guidelines. Clients whose income exceeds one hundred percent (100%) of poverty (as established by the United States Department of Health and Human Services) shall be required to pay a fee for service according to a variable fee schedule established by the ICOA. ()

02. Income Declaration. Income shall be determined by an annual client self-declaration. When a client's income increases or decreases, the client shall notify the provider for a redetermination of income. ()

03. Determining Income. For this purpose, income means gross household income from all sources, less the cost of medical insurance and expenditures for non-covered medical services and prescription drugs. Payments the client receives from owned property currently being leased shall be counted as income after expenses, i.e., insurance, taxes, water, sewer, and trash collection, if paid by the client, are deducted. ()

04. Fee Based on Actual Cost. Assessed fee shall be a percentage of the provider's actual unit cost. ()

05. Fee Waived. The fee may be waived for clients who refuse to pay a fee if there is documented evidence that not providing the service would increase risk of harm to the client. ()

06. Fee Not Required. Fees are not required from clients receiving care coordination, nutrition, or transportation services. ()

07. Client Contributions. Clients whose annual income falls below poverty shall be given the opportunity to make voluntary contributions. ()

08. Use of Fees and Contributions. Providers shall maintain accounting records of all fees and contributions collected and of all monies expended from these sources. All monies derived from fees, contributions, or both, shall be used to offset the costs of providing the service(s) for which they were collected. ()

027. CLIENT WAITING LISTS.

When an eligible applicant is denied service based on lack of available service personnel or funding, the applicant shall be placed on a waiting list. The applicant shall receive an in-home assessment prior to placement on a waiting list. Applicants on the waiting list for service shall be prioritized according to IDAPA 15.01.20, Section 053, "Rules Governing Area Agency on Aging Operations." All applicants placed on a waiting list shall be notified of this action in writing. ()

028. DISCLOSURE OF INFORMATION.

AAA employees' and contractors' disclosure of information about clients is limited by law. All information obtained from a client, whether verbal or written, and any records created from that information, shall be treated as confidential. The OAA requires that confidentiality regarding clients shall be followed thus: ()

01. Disclosure. An AAA provider or contractor may disclose to anyone the content of a client's communication only with the client's prior, informed consent. Without the client's prior, informed consent, the provider or contractor may: ()

a. Only disclose information for purposes directly related to the administration of the program under which the client is applying for or receiving benefits; or ()

b. Disclose client information to auditors and to persons conducting research within certain defined circumstances. ()

02. Client's Expectation of Privacy. Disclosure of information to others does not abrogate a client's expectation of privacy as protected by law. Those to whom disclosure is made have a duty to maintain the

confidentiality of the disclosure. ()

03. Disclosure Required. The disclosure of information required for a coordinated assessment of a client and for coordinating delivery of services to a client is allowed between aging network providers and contractors and, if required, the Department. Disclosure to individuals outside that group shall not be authorized. In determining income for client's of respite and adult day care services, income means the gross income of the client as specified above but shall not include the income of any other person(s) who reside in the household. ()

029. DENIAL OF SERVICE.

An applicant shall be notified in writing of a denial of service and the right to appeal in accordance with IDAPA 15.01.20, Section 028, "Rules Governing Area Agency on Aging Operations." The request for services may be denied for any of the following reason(s): ()

01. Applicant Not In Need of Service. The applicant's functional or cognitive deficits are not severe enough to require services or applicant has adequate support through family or other sources. ()

02. Family or Other Supports Adequate. Family, or other informal supports are adequate to meet applicants current needs. ()

03. Other Care Required. The client's needs are of such magnitude that more intensive supports, such as Medicaid PCS, attendant care, or referral for residential or nursing home placement are indicated. In such instances, alternatives shall be explored with the client and the client's legal representative and family, if available. Referrals shall be made by the provider, as appropriate. ()

04. Barriers to Service Delivery Exist. The applicant's home is hazardous to the health or safety of service workers. ()

05. Geographical Inaccessibility. The cost of service delivery is prohibitive because the applicant's home is more than twenty (20) miles from the nearest point of service provision of Chore, Adult Day Care, Homemaker, Respite or Care Coordination Services. ()

030. -- 039. (RESERVED).

040. TERMINATION OF SERVICE.

01. Documentation. Documentation of notice of termination shall be duplicated in the client's case record, signed, and dated by the provider. ()

02. Appeals Process. The client shall be informed of the appeals process, in accordance with IDAPA 15.01.20, Subsection 027.03, "Rules Governing Area Agency on Aging Operations." ()

03. AAA Services. AAA authorized services may be discontinued by the provider for any of the reasons listed below, or at the discretion of a program director or AAA director: ()

a. Services proved ineffective, insufficient, or inappropriate to meet client needs. ()

b. Other resources were utilized. ()

c. Client withdrew from the program or moved. ()

d. Family or other support to client increased. ()

e. Client placed in a long-term care facility. ()

f. Client died (if obituary in case file, no notification of termination required). ()

g. Client's functioning improved. ()

- h. Client refused service. ()
- i. Client's home is hazardous to the service provider (requires approval of the AAA Director). ()
- j. Client's home is not reasonably accessible. ()
- k. Client's behavior is a threat to the safety of the provider (requires approval of the AAA Director.) ()
- l. Client verbally abuses or sexually harasses service provider. ()
- m. Client refuses to pay fee determined for service. ()
- n. Service provider is not available in locale. ()
- o. Services are no longer cost effective. ()

04. Notification of Termination and Right to Appeal. Client shall be informed in writing of the reasons for agency initiated service termination and the right to appeal at least two (2) weeks prior to termination. Exceptions to the two (2) week advance notification of termination shall be justified and approved in writing by the AAA Director. Appeal actions are the responsibility of the AAA. The client shall be referred to other services as appropriate. ()

041. HOMEMAKER.

01. Policy. Homemaker service is designed to provide assistance required to compensate for functional or cognitive limitations. Homemaker services provide assistance to eligible individuals in their own homes, or, based on an adult protection referral, in a caregivers home; to restore, enhance, or maintain their capabilities for self-care and independent living. Available family shall be involved in developing a supportive services plan for the client to ensure the formal services provided shall enhance any available informal supports provided. A client or legal representative shall have the right to accept or refuse services at any time. Homemaker providers shall reserve funds to support the expenditure of up to a maximum of ten percent (10%) of their annual Act funding to support emergency service requests and response to adult protection referrals. ()

02. Service Eligibility. Individuals are eligible for homemaker services if they meet any of the following requirements: ()

a. They have been assessed to have ADL deficits, IADL deficits, or both, which prohibit their ability to maintain a clean and safe home environment. ()

b. Clients over age sixty (60), who have been assessed to need homemaker service, may be living in the household of a family member (of any age) who is the primary caregiver. ()

c. They are Adult Protection referrals for whom homemaker service is being requested as a component of a SSP to remediate or resolve an adult protection complaint. ()

d. Vulnerable adults under age sixty (60), who have been assessed to need homemaker service are eligible to receive the service only for three (3) consecutive months within a program year. ()

e. They are home health service clients who may be eligible for emergency homemaker service. ()

03. PCS. Persons eligible to receive PCS through the Department are not eligible for homemaker services unless the services are determined to be needed on an interim, emergency basis until PCS is initiated. Interim emergency services shall not exceed two (2) months' duration. ()

04. Purpose of Service. ()
- a. Maintain Independence and Dignity. To secure and maintain in a home environment the independence and dignity of clients who are capable of self-care with appropriate supportive services. ()
 - b. Prevent Institutionalization. To avoid or delay placement into long-term care institutions. ()
 - c. Remedy Harmful Living Arrangements. To promote the health and safety of the client. ()
 - d. Crisis Intervention. To assist the client through a crisis situation, if the homemaker service(s) required meet the client's needs and can be provided within the guidelines set forth in these rules. ()
05. Exclusions. ()
- a. Meal Preparation. Homemakers shall not prepare meals for a client if home-delivered meals are available. ()
 - b. Transportation. Homemakers shall not transport a client unless the provider carries liability insurance. ()
 - c. Medical Judgments. Homemakers shall not make medical judgments nor any determinations regarding the application of advance directives. ()
 - d. Bathing and washing hair. Contractors shall obtain adequate and appropriate insurance coverage prior to assigning homemakers to assist clients with bathing and (or) washing hair. ()
06. Service Priorities. Once approved, clients shall be prioritized to receive homemaker services based on their needs, as determined through the uniform assessment process. Prioritization shall be as follows: ()
- a. Highest priority shall be given to clients with the greatest degree of functional or cognitive impairment; then ()
 - b. To clients lacking informal supports; then ()
 - c. To clients whose homes are in poor condition with respect to those circumstances which the homemaker service can remedy. ()
07. Homemaker Training and Supervision. All homemakers shall receive an employee orientation from the provider before performing homemaker services. Orientation shall include the purpose and philosophy of homemaker services, review of homemaking skills, program regulations, policies and procedures, proper conduct in relating to clients, and handling of confidential and emergency situations involving a client. ()
- a. CPR. Homemakers shall complete CPR training within three (3) months of hire and shall maintain certification thereafter. ()
 - b. In-Service Training. Contractors shall annually provide homemakers with a minimum of ten (10) hours training, including CPR, for the purpose of upgrading their skills and knowledge. ()
 - c. Providers shall assure that homemakers who assist clients with bathing or hair washing receive specific training in performing these services prior to being assigned to a client. ()
 - d. Homemaker Supervision. All contractors shall maintain written job descriptions for homemakers and shall have written personnel policies. All homemakers shall receive an annual performance evaluation. Homemaker supervisors shall be available to homemakers during work hours to discuss changes in client's circumstances, to resolve problems with schedules, or to respond to emergencies. ()
08. Medical Emergencies. In case of medical emergency, the homemaker shall immediately call 911 or

the available local emergency medical service and, if appropriate, shall initiate CPR. ()

09. Conduct of Homemakers. Contractors shall insure, through personnel policies, orientation procedures, signed homemaker agreements, and supervision, that homemaker conduct is governed by the following restrictions. A copy of these restrictions, signed by the homemaker, shall be placed in each homemaker's personnel file. ()

a. Accepting Money or Loans. A homemaker shall not accept money or a loan, in any form, from a client. ()

b. Sale of Goods. A homemaker shall not solicit the purchase of goods, materials, or services. ()

c. Addresses and Telephone Numbers. A homemaker shall not provide a personal telephone number or home address to clients. ()

d. Private Work. A homemaker shall not work privately for a client of homemaker services. ()

e. Client's Residence. A homemaker shall not enter a clients' residence in the absence of the client. ()

f. Proselytizing. A homemaker shall not engage in religious proselytizing during the course of employment. ()

g. Medication Administration. A homemaker shall not administer medications. The homemaker may remind a client to take medications, assist with removing the cap from a multi-dose or bubble pack container, and may observe the client taking medications. ()

h. Confidentiality. A homemaker shall regard all client communications and information about clients' circumstances as confidential. ()

i. Smoking. A homemaker shall not smoke in the home of a client. ()

10. Intake and Assessment. ()

a. Normal Intake. Client contact shall be initiated within five (5) days of receipt of the referral, and an assessment shall be conducted within two (2) weeks of referral. ()

b. Emergency Intake. Client referrals indicating a crisis or potential crisis such as a marked decline in health or functional status, hospital discharge, or adult protection referral require a home visit be conducted to assess service need within one (1) working day of receipt of referral. If appropriate, a homemaker shall be assigned and service shall be initiated immediately. Such emergency homemaker service shall not exceed two weeks' duration. ()

c. Client Assessment. To determine the level of need and the type of service needed, the provider shall conduct an in-home assessment using the ICOA uniform assessment tool. The assessment shall include: ()

i. A Client Consent and Release of Information Form. ()

ii. Information about client: Race, sex, age, and similar information. ()

iii. Living arrangement and condition of home. ()

iv. ICOA Income Declaration Form. ()

v. Service alternatives shall be discussed and referrals initiated as appropriate. ()

d. Assessment Coordination. A client need not be re-assessed if an assessment completed within the

past ninety (90) days by another human services agency provides the same information as the ICOA's UAI and the client signs a Release of Information form. A client assessment shall be completed if no current assessment from another agency is available. In either case, a home visit shall be included in the process of developing the client's individual SSP. ()

11. Individual Supportive Service Plan (SSP). A supportive service plan shall be signed by the client or legal representative prior to initiation of service. ()

a. An approved plan shall reflect needed services to be provided by available family or others. ()

b. Revision of the SSP. After services have been in place for one (1) month, the homemaker shall inform the supervisor of any modifications needed in the SSP, such as changes in hours of service or tasks to be performed. ()

c. Reassessments of SSP. The SSP shall be updated at least annually. Any revisions to an SSP shall be initiated by the client prior to being put into effect. An SSP may be updated more often than annually if changes in a client's circumstances (i.e., functional or cognitive ability, living conditions, availability of supports) indicate a necessity for re-evaluation. ()

042. CHORE.

01. Policy. Chore service is designed to be provided to individuals who reside in their own homes or who occupy individual rental units. Chore services for those individuals who rent housing shall not replace repairs or maintenance which are customarily the landlord's responsibility. ()

02. Service Eligibility. Clients qualify to receive chore service if: ()

a. They have been assessed to have ADL or IADL deficits which inhibit their ability to maintain their homes, yards, walkways, or lawns; ()

b. There are no available informal supports; ()

c. Client Safety. Chore service is needed to improve the client's safety at home or to enhance the client's use of existing facilities in the home the service is not needed on a continuing basis. The service objective can be achieved with work done on a one-time-only basis. ()

03. Prioritization for Receipt of Chore Service. Service provision shall be prioritized based on client's degree of functional impairment. ()

04. Program Intake and Eligibility Determination. ()

a. A home visit shall be made within five (5) work days of the referral. ()

b. Client assessment shall be conducted utilizing the UAI. ()

c. If chore services are to be provided, the income declaration, service determination and work plan shall be completed prior to any work being done. The work plan shall be signed by both the client and the service provider. The work plan shall include a description of the work to be accomplished, the start and completion dates for such work, and a summary of any cost to the client (for labor or materials) the work shall incur. ()

d. If the client is not eligible for services, appropriate referrals shall be made. ()

043. ADULT DAY CARE.

01. Policy. Adult Day Care is designed to meet the needs of eligible participants whose functional or cognitive abilities have deteriorated. It is intended to provide relief for care providing family members. It is a comprehensive program which provides a variety of social and other related support services in a protective setting

- during any part of a day, but for a duration of less than twenty-four (24) hours. ()
02. Eligibility. Individuals eligible for adult day care include: ()
- a. Those who have physical or cognitive disabilities affecting ADL or IADL functioning; ()
- b. Those capable of being transported; ()
- and c. Those capable of benefiting from socialization, structured and supervised group-oriented programs; ()
- d. Those capable of self-care with supervision or cueing. ()
03. Enrollment Agreement. A signed enrollment agreement shall be completed to include: ()
- a. Scheduled days of attendance; ()
- b. Services and goals of the center; ()
- c. Amount of fees and when due; ()
- d. Transportation agreement, if appropriate; ()
- e. Emergency procedures; ()
- f. Release from liability (for field trips, etc.); ()
- g. Conditions for service termination; ()
- h. A copy of the center's policy; and ()
- i. A SSP. ()
04. Staffing. Staff shall be adequate in number and skills to provide essential services. ()
- a. There shall be at least two (2) responsible persons at the center at all times when clients are in attendance. One shall be a paid staff member. ()
- b. The staff to client ratio shall be, at minimum, one to six (1:6). ()
- c. Staff to client ratio shall be increased appropriately if the number of clients in day care increases or if the degree of severity of clients' functional or cognitive impairment increases. ()
- d. Staff persons counted in the staff to client ratio shall be those who spend the major part of their work time in direct service to clients. ()
- e. If the administrator is responsible for more than one (1) site or has duties not directly related to adult day care, a program manager shall be designated for each site. ()
- f. Volunteers shall be included in the staff ratio only when they conform to the same standards and requirements as paid staff. ()
05. Services. Adult Day Care Programs shall, at a minimum, provide the following services: ()
- a. Assistance with transferring, walking, eating, toileting; ()
- b. Transportation; ()

- c. Social services such as counseling and information and referral; ()
- d. Recreation; ()
- e. Nutrition and therapeutic diets; and ()
- f. Exercise. ()

06. National Standards. Adult Day Care Programs shall operate under guidelines established by the ICOA in accordance with national standards developed by the National Council on Aging's National Institute on Adult Day Care. ()

044. RESPITE.

01. Policy. Respite is designed to encourage and support efforts of family caregivers to maintain functionally or cognitively-impaired elderly relatives at home. The family may utilize respite care to meet emergency needs, to restore or maintain the physical and mental well being of family caregivers, and provide socialization for the client. Respite volunteers provide companionship for the homebound client so the caregiver can attend to personal business or recreational interests outside the home. This allows the caregiver intervals of needed relief. The Respite Care Service provides no hands-on care. ()

02. Eligibility. ()

a. The client shall be homebound or have physical or cognitive impairments affecting ADL or IADL functioning to the extent twenty-four (24) hour supervision is required. ()

b. Functionally or cognitively-impaired persons under sixty (60) years of age living in the household of a person sixty (60) years of age or older are exempted from the eligibility exclusions of these rules. ()

03. Exclusions. ()

a. Respite care volunteers shall not perform housework, prepare meals, or provide any type of nursing or medical care. ()

b. Respite care volunteers shall not transport clients. ()

04. Service Priority. All approvals to receive respite services shall be based on an in-home visit and completion of the UAT. ()

05. Volunteer Recruitment, Training, and Supervision. ()

a. Job Descriptions. All respite care programs shall have written job descriptions for volunteers. ()

b. Volunteer Screening. All respite care programs shall screen volunteers prior to placement. ()

c. Orientation. All respite care volunteers shall receive a minimum of three (3) hours orientation and training prior to placement. ()

d. Respite providers. Respite providers shall be available to volunteers to discuss changes in client circumstances, resolve scheduling problems, and respond to emergency situations. ()

06. Client Recruitment. In coordination with Information & Assistance (I&A) and other referral sources, providers shall actively recruit families in need of respite care. ()

045. -- 055. (RESERVED).

056. CARE COORDINATION.

01. Policy. Care coordination is part of the community-based care system which promotes utilization of in-home and community-based care as preferred alternatives to institutional placement for functionally- or cognitively-impaired clients. Care coordination enhances the autonomy of eligible clients, considers client preferences, and promotes efficient use of available resources. ()

02. Eligibility. Eligibility is based on requirements cited in IDAPA 15.01.01, Section 021 of these rules and the following criteria: ()

- a. Require at least minimal assistance with one or more ADLs or IADLs, and ()
- b. Require services from multiple health/social services providers, and ()
- c. Are unable to obtain the required health/social services for themselves, or, ()
- d. Lack available family or friends who do not have family or friends who, can provide the needed assistance. ()

04. Screening and Referral. ()

a. The purpose of screening is to determine whether an older person needs service referral, assistance and client advocacy, or is a potential care coordination client who should receive a home visit and a comprehensive assessment. ()

b. Screening shall be provided over the telephone. Screening may also be provided in the field, if appropriate. ()

c. Screening shall usually be accomplished by the I&A component, Adult Protection, provider, or by a community agency. However, care coordination may receive a direct referral of a potential client who has not been screened. In such cases, care coordination conduct the screening or refer the potential client to the I&A component for screening. ()

d. All Care Coordination Programs shall utilize the pre-screen and referral component of the UAI to screen potential clients. ()

e. Pre-referral screening shall be done to determine if a potential client meets the criteria for receipt of Care Coordination Services. If the potential client meets the criteria and agrees to the referral, the client shall be referred for a comprehensive assessment utilizing the UAI. ()

f. Referrals who do not meet the criteria for Care Coordination Services shall be referred for other appropriate services. ()

g. If notification was requested, the referral sources shall be notified of case disposition following the screening. ()

h. Screening shall include direct telephone contact with the eligible client being screened. Although third-party information is valuable in developing an overall impression of a client's level of functioning, direct contact is necessary to confirm the client's need for, and willingness to, receive services. ()

05. Referral for Care Coordination. Referrals shall be accepted from any source and may include eligible clients who are seeking or already receiving other services. ()

06. Working Agreements. ()

a. The Care Coordination Program shall identify the primary community resources utilized by older persons. When deemed necessary and appropriate, working agreements with these resources shall be developed. These resources may include AAA service providers, mental health centers, hospitals, home health agencies, legal services providers, and others. ()

b. Working agreements shall address at least the following: ()

i. How long each party shall take to respond to a request for service; ()

ii. Release of information procedures; ()

iii. Referral and follow-up procedures; ()

iv. How each party shall notify the other of program changes and non-availability of service; and ()

v. Procedures for working out problems between the two (2) parties. ()

07. Core Services. Care coordination provides responsible utilization of available informal (unpaid) supports before arranging for formal (paid) services. The care coordinator and client shall work together in determining the frequency, duration, of needed services. Services shall be arranged subsequent to approval by the client or legal representative. Services provided shall be recorded and monitored to insure cost effectiveness and compliance with the SSP. ()

a. Client assessment shall be conducted during a home visit and shall utilize the ICOA UAT. ()

b. A client need not be re-assessed if an assessment completed within the past ninety (90) days by another human service agency provides the same information as the ICOA's UAI and the client signs a Release of Information form. ()

c. SSP. Based on the information obtained during the client assessment and input obtained from family or professionals familiar with the client, the care coordinator shall develop a written SSP which shall include at least the following: ()

i. Problems identified during the assessment; ()

ii. Exploration of opportunities for family and other informal support involvement to be included in development of the SSP; ()

iii. Overall goals to be achieved; ()

iv. Reference to all services and contributions provided by informal supports including the actions, if any, taken by the care coordinator to develop the informal support services; ()

v. Documentation of all those involved in the service planning, including the client's involvement ()

vi. Schedules for care coordination monitoring and reassessment; ()

vii. Documentation of unmet need and service gaps; and ()

viii. References to any formal services arranged, including fees, specific providers, schedules of service initiation, and frequency or anticipated dates of delivery. ()

d. The SSP shall be reevaluated and updated by the care coordinator at least annually or when significant changes in the client's status occur; ()

- e. A copy of the current SSP shall be provided to the recipient or legal representative. ()
- f. Case files shall be maintained for three (3) years following service termination. ()
- 08. Other Supportive Services. ()
 - a. Necessary Services. Care coordinators shall assist clients to obtain available benefits, entitlements, services, medically related devices, assistive technology, necessary home modifications, or other services required to fulfill unmet needs. ()
 - b. Social-Emotional Support. Care coordinators shall link clients and their families with available services which facilitate life adjustments and bolster informal supports. ()
 - c. Unmet Needs. To assist the AAA in future planning, care coordinators shall identify and document unmet client needs. ()
 - d. Other Informal Resources. In all cases, available informal supports shall be explored prior to utilization of formal services. ()
- 09. Structure and Role. Care coordination is a centralized evaluator and arranger of services and provides those activities previously outlined under "Service Functions." AAAs shall be the direct provider for care coordination services. The AAA is responsible for the implementation of the care coordination program. ()
 - a. Care coordinators shall actively advocate for services required by clients and shall coordinate service delivery between multiple agencies, individuals, and others. ()
 - b. All providers of Care Coordination Services shall carry insurance in the types and amounts which meet acceptable business and professional standards. ()
 - c. Providers shall conduct an orientation program for all new employees which covers, at least, local resources available, care coordination service delivery, confidentiality of information, and client rights. ()
 - d. In addition to the development and maintenance of the SSP individual community service plan, program and client records shall be maintained to provide an information system which assures accountability to clients, the Care Coordination Program, and funding agencies, and which supplies data for AAA planning efforts. The information system established shall comply with the following ICOA requirements: ()
 - i. NAPIS Registration Form; ()
 - ii. Completed UAI; ()
 - iii. Pertinent correspondence relating specifically to the client; ()
 - iv. A narrative record of client contacts, including problems encountered and SSP modifications developed in response; ()
 - v. Activity record describing client and community contacts. ()
 - vi. Completed SSP, signed by the client; ()
 - vii. Written consent and acceptance of Care Coordination Services and release of information forms; ()
 - viii. Any other documentation necessary for systematic care coordination and SSP continuity. ()
- 10. Standards of Performance. AAAs shall assure care coordination meets the requirements for service neutrality. An agency providing care coordination shall not be a direct provider of other in-home services without

proper written justification and approval by the Director of the ICOA. ()

11. Monitoring. Monitoring is required to assure quality control. The AAA is responsible for monitoring care coordination activities for quality control and assurance. The AAA shall review client records to determine: ()

a. Services are being provided as outlined in the SSP; ()

b. Services are meeting the goals established in the SSP; ()

c. The client is satisfied with the service(s) being provided; ()

d. Changes in service have been authorized; ()

e. The SSP continues to be cost-effective; ()

f. Providers are noting observations and relating information about informal caregivers, additional actions required by the care coordinator, re-evaluations, amendments to the SSP, and client contacts. ()

057. -- 999. (RESERVED).

IDAPA 15 - OFFICE OF THE GOVERNOR
15.01.01 - RULES GOVERNING STATE SENIOR SERVICES
DOCKET NO. 15-0101-9702
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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 non-technical explanation of the substance and purpose of the proposed rule-making:

These rules will be repealed in their entirety. They are being replaced by proposed new rules which will become effective July 1, 1998.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was conducted. The Notice of Negotiated Rule-making was published in the Idaho Administrative Bulletin, Volume 97-5, page 27.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ken Wilkes, 334-2219.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 21st day of July 1997.

Arlene D. Davidson, Director
Idaho Commission on Aging
700 W. Jefferson, Room 108
P.O. Box 83720
Boise, Idaho 83720-0007
Telephone: (208) 334-3833 Fax: (208) 334-3033

THIS RULE IS REPEALED IN ITS ENTIRETY

IDAPA 15 - OFFICE OF THE GOVERNOR
15.01.02 - RULES GOVERNING AREA AGENCY ADULT PROTECTION SERVICES
DOCKET NO. 15-0102-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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 non-technical explanation of the substance and purpose of the proposed rule-making:

These rules address the duties and responsibilities of area agency on aging Adult Protection programs to investigate and resolve adult protection complaints under current law. Principle issues involve area agency requirements in administering and providing adult protection services pursuant to the Idaho Senior Services Act and the Adult Abuse, Neglect and Exploitation Act.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was conducted. The Notice of Negotiated Rule-making was published in the Idaho Administrative Bulletin, Volume 97-5, page 27.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Omar Valverde, 334-2219.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 21st day of July 1997.

Arlene D. Davidson, Director
Idaho Commission on Aging
700 W. Jefferson, Room 108
P.O. Box 83720
Boise, Idaho 83720-0007
Telephone: (208) 334-3833 Fax: (208) 334-3033

TEXT OF DOCKET NO. 15-0102-9701

IDAPA 15
TITLE 01
Chapter 02

15.01.02 - RULES GOVERNING AREA AGENCY ADULT PROTECTION SERVICES

000. AUTHORITY.

Under authority of sections 67-5003, 39-5312, Idaho Code, the ICOA adopts the following rules. ()

001. TITLE AND SCOPE.

- () 01. Title. These rules shall be cited as IDAPA 15.01.02, "Rules Governing Area Agency AP Programs."
- () 02. Scope. These rules relate to the authority and responsibilities of area agencies to provide AP services.

002. WRITTEN INTERPRETATION.

This agency has no written statements which pertain to the interpretation of the rules in this chapter. ()

003. ADMINISTRATIVE APPEALS.

The ICOA and its AAAs shall provide recipients and provider organizations with opportunity to appeal administrative decisions in accordance with IDAPA 15.01.20, Section 003, "Rules Governing Area Agency on Aging Operations." ()

004. - 009. (RESERVED).

010. DEFINITIONS.

Any item not specifically defined below shall have the same meaning as those defined in Idaho Code or IDAPA 15.01.01, "Rules Governing Idaho Senior Services Program." ()

01. Adult Protection (AP). Statutory protections safeguarding vulnerable adults through investigations of reports alleging abuse, neglect, self-neglect or exploitation, and arrangements for the provision of emergency or supportive services necessary to reduce or eliminate risk of harm. ()

02. Adult Protection Supervisor. AAA employee responsible for overseeing the provision of AP services. The Supervisor's duties include the direct supervision of AP staff, case assignments, the monitoring of case loads and documentation, and the maintenance of cooperative relationships with other agencies, organizations or groups serving vulnerable "at risk" populations. The employee shall be a social worker licensed to practice in Idaho. ()

03. Adult Protection Social Worker. AAA employee providing AP services. The Social Worker's duties include the investigation of AP reports, client risk assessment and the development of plans for supportive services and/or law enforcement referral. The employee shall be a social worker licensed to practice in Idaho. ()

04. Supportive Services Technician. AAA employee who is a paraprofessional working under the supervision of a licensed social worker assisting in the performance of specified tasks associated with the investigation of AP reports or the development and initiation of a supportive service plan. The employee shall have a degree in a related field or a high school diploma and at least two (2) years' experience working with elderly or at-risk populations. ()

05. Plan of Supportive Services. A written description of the remedial, social, legal, medical, educational, mental health and other services available to reduce risk and meet the care needs of a vulnerable adult. ()

06. Injury or Serious Imposition of Rights. A situation of substantiated abuse, neglect or exploitation. ()

011. -- 019. (RESERVED).

020. POLICY STATEMENT.

The ICOA is charged by statute to provide AP services to ensure the vulnerable adult population in Idaho is protected from abuse, neglect and exploitation. Protective services shall be provided that are the least restrictive to personal freedom and ensure the maximum independence of individuals served. In protecting the vulnerable adult population,

AP services are also intended to provide assistance to care giving families experiencing difficulties in maintaining functionally impaired relatives in the household. ()

021. ADMINISTRATIVE REQUIREMENTS.

In accordance with section 67-5011, Idaho Code, the ICOA shall administer AP services through contractual relationships with AAAs. Each AAA shall adhere to all administrative requirements relating to AP programs and those enumerated in IDAPA 15.01.01, "Rules Governing Idaho Senior Services Program," unless a waiver is granted by the ICOA. ()

01. Staffing. Each AAA shall provide sufficient staffing to respond to AP complaints within the statutory time frames set forth in section 39-5304 (2), Idaho Code. ()

02. Employee Qualifications. Each AAA shall adhere to standards set forth in rule for the education and licensing of AP program employees, including requirements for the AP Supervisor, AP Social Worker and AP Technician. Any person hired after July 1, 1998, to fill the position of AP Supervisor shall be a social worker licensed to practice in Idaho. ()

03. Program Reporting and Records. All AAA AP programs shall comply with the ICOA's requirements for reporting and investigative documentation, and shall utilize standardized forms provided by the ICOA. ()

04. Conflict of Interest. AP program employees and their immediate families shall not hold a financial interest in agencies, organizations and entities providing care for vulnerable adults. ()

05. Program Reviews. Upon prior notice and at reasonable intervals determined by ICOA, ICOA shall conduct on site program reviews of AAA AP programs. ()

022. PROVISION OF SERVICE REQUIREMENTS.

In accordance with section 67-5011, Idaho Code, each AAA shall assume all responsibilities cited in Chapter 53, Title 39, Idaho Code. ()

01. Direct Provision of Service. Each AAA shall provide AP as a direct service. ICOA may waive this requirement upon justification that such direct provision of AP service is not in the interest of effective service delivery. ()

02. Provision of Service Contracts. Each AAA shall provide AP services pursuant to contractual requirements delineating the duties and obligations of each area agency AP program. ()

03. Court Visitors. No AP employee shall serve as a court appointed visitor in a guardianship or conservatorship proceeding involving a proposed ward who is or has been the alleged victim in an AP investigation. ()

023. -- 030. (RESERVED).

031. INVESTIGATIVE REQUIREMENTS.

01. Vulnerability Determination. Upon investigating an AP report, each area agency shall determine whether an alleged victim is vulnerable as defined in section 39-5302, Idaho Code. If the alleged victim is not vulnerable as defined in section 39-5302, Idaho Code, AP may refer the complaint to the Ombudsman, Law Enforcement or other appropriate entity for investigation and resolution. ()

02. Assessment of Alleged Victim. An alleged victim's vulnerability and associated risk factors shall be determined through the administration of the UAI. Direct interviews and assessments of an alleged victim shall be conducted by a licensed social worker. ()

03. Investigative Findings. AP shall make one of two (2) investigative findings upon completion of an AP investigation: ()

- a. Substantiated. AP determines that a report is valid based on sufficient evidence. ()
- b. Unsubstantiated. AP determines that a complaint is invalid due to insufficient supporting evidence. This finding requires AP to close the case. ()
 - i. If an allegation is unsubstantiated, but the vulnerable adult has unmet supportive service needs, AP shall initiate appropriate referrals with consent of the vulnerable adult or his legal representative. ()
 - ii. A case shall be closed if AP determines that an allegation has been made in bad faith or for a malicious purpose. ()
 - iii. A case shall be closed if AP determines that an alleged victim is not a vulnerable adult. ()
- 04. Caretaker Neglect. In investigating a report of caretaker neglect, AP shall take into account any deterioration of the mental or physical health of the caregiver resulting from the pressures associated with care giving responsibilities that may have contributed to the neglect of the vulnerable adult. In such cases, AP shall make every effort to assist the primary caregiver in accessing program services necessary to reduce the risk to the vulnerable adult. ()
- 05. Referral to Law Enforcement. A substantiated report of abuse, neglect or exploitation is presumed to have caused a serious imposition of rights or injury to the alleged victim and shall be immediately referred to law enforcement pursuant to section 39-5310, Idaho Code. ()
- 06. Adult Protection and Ombudsman Coordination. Area agencies shall ensure that AP staff and the substate ombudsman maintain a written agreement establishing cooperative protocols in the investigation of complaints. ()
- 07. Confidentiality. All records relating to a vulnerable adult and held by an area agency are confidential and shall only be divulged as permitted pursuant to Sections 39-5307, 39-5304 (5), Idaho Code, and IDAPA 15.01.01, Section 018, "Rules Governing Idaho Senior Services Program." ()

032. SUPPORTIVE SERVICES AND CASE CLOSURE.

- 01. Plan of Supportive Services. If determined necessary to reduce risk to a vulnerable adult, AP shall assist in the development and initiation of a plan of supportive services with the consent of the vulnerable adult or his legal representative. ()
- 02. Documentation of Client Consent. A vulnerable adult's consent, refusal to grant consent, or withdrawal of consent to a plan of supportive services shall be documented in the client case record. ()
- 03. Case Review. Implemented plans of supportive service shall be reviewed annually or more frequently based on the circumstances of each individual case. ()
- 04. Case Closure. AP shall close a case under the following circumstances: ()
 - a. AP shall close a substantiated case upon a determination that a plan of supportive services has successfully reduced the risk to the vulnerable adult. ()
 - b. AP may close a case if another program or agency has agreed to assume responsibility to monitoring implementation of a plan of supportive services. ()
- 05. Suspense File. Closed cases shall be maintained in a suspense file until formal action is completed by law enforcement and/or the courts in the following instances:
 - a. Cases referred by AP to law enforcement for criminal investigation and prosecution as determined necessary by the law enforcement agency.

b. Cases referred by AP for guardianship/conservatorship proceedings.

033. -- 999. (RESERVED).

IDAPA 15 - OFFICE OF THE GOVERNOR
15.01.02 - RULES GOVERNING SENIOR HOMEMAKER SERVICES
DOCKET NO. 15-0102-9702
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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 non-technical explanation of the substance and purpose of the proposed rule-making:

These rules will be repealed in their entirety. They are being replaced by proposed new rules which will become effective July 1, 1998.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was conducted. The Notice of Negotiated Rule-making was published in the Idaho Administrative Bulletin, Volume 97-5, page 28.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ken Wilkes, 334-2219

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 21st day of July 1997.

Arlene D. Davidson, Director
Idaho Commission on Aging
700 W. Jefferson, Room 108
P.O. Box 83720
Boise, Idaho 83720-0007
Telephone: (208) 334-3833 Fax: (208) 334-3033

THIS RULE IS REPEALED IN ITS ENTIRETY

IDAPA 15 - OFFICE OF THE GOVERNOR
15.01.03 - RULES GOVERNING OMBUDSMAN FOR THE ELDERLY PROGRAM
DOCKET NO. 15-0103-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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 non-technical explanation of the substance and purpose of the proposed rule-making:

Ombudsman rules establish minimum requirements and responsibilities necessary for area agencies on aging to operate a substate Ombudsman for the Elderly program in Idaho. Pursuant to federal and state law these rules address issues of administration, staffing, case handling, confidentiality and disclosure.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was conducted. The Notice of Negotiated Rule-making was published in the Idaho Administrative Bulletin, Volume 97-5, page 29.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cathy Hart, 334-4693.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 21st day of July 1997.

Arlene D. Davidson, Director
Idaho Commission on Aging
700 W. Jefferson, Room 108
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Boise, Idaho 83720-0007
Telephone: (208) 334-3833 Fax: (208) 334-3033

TEXT OF DOCKET NO. 15-0103-9701

IDAPA 15
TITLE 01
Chapter 03

15.01.03. - RULES GOVERNING OMBUDSMAN FOR THE ELDERLY

000. LEGAL AUTHORITY.

Under authority set forth in the OAA and Title 67, Chapter 50, Idaho Code, Section 67-5009, ICOA adopts the following rules. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 15.01.03, "Rules Governing the Ombudsman for the Elderly Program." ()

() 02. Scope. These rules relate to the authority, responsibility, and designation of the ombudsman program.

002. WRITTEN INTERPRETATION.

This agency has no written statements which pertain to the interpretation of the rules in this chapter. ()

003. ADMINISTRATIVE APPEALS.

The ICOA and its AAAs shall provide recipients and provider organizations with opportunity to appeal administrative decisions in accordance with IDAPA 15.01.20, Section 003, "Rules Governing Area Agency on Aging Operations." ()

004. -- 009. (RESERVED).

010. DEFINITIONS.

Any item not specifically defined below shall have the same meaning as those defined in IDAPA 15.01.01, "Rules Governing Idaho Senior Services Program," and OAA, Section 711, and Idaho Code. ()

01. Access. Right to enter long-term care facility upon notification of person in charge. ()

02. Affected Parties. Long-term care facilities, state or county departments or agencies, or others against whom a complaint has been lodged. ()

03. Area III. Planning and service area made up of: Canyon, Valley, Boise, Gem, Elmore, Washington, Ada, Adams, Payette, and Owyhee counties. ()

() 04. Complainant. The ombudsman, any individual or organization who registers a complaint with the ombudsman.

05. Complaint Investigation/Resolution. Activities related to receiving, analyzing, researching, observing, interviewing, verifying or resolving a complaint through advocacy, facilitation, conciliation, mediation, negotiation, representation, referral, follow-up, or education. ()

06. Complaints. Allegations made by or on behalf of eligible clients, whether living in long-term care facilities or in the community. ()

07. Designation. Process by which the Office approves the location of substate ombudsman programs within AAAs and delegates to such programs the authority to carry out the purposes of the program. ()

08. Non-Jurisdictional Complaints. Complaints made by or on behalf of residents of long-term care facilities who are under the age of sixty (60) or complaints concerning persons outside the statutory jurisdiction of an ombudsman. ()

09. Office. Office of the State Ombudsman for the Elderly pursuant to Title 67, Chapter 50, Idaho Code, Sections 67-5009. ()

10. Omission. The act of leaving out or neglecting to include. ()

11. Substate Ombudsman. An individual associated with a designated local Ombudsman for the Elderly Program, who performs the duties of ombudsman ()

011. -- 019. (RESERVED).

020. ADMINISTRATIVE REQUIREMENTS.

Each AAA substate ombudsman program shall meet all administrative requirements as cited in OAA, Section 712 (a), and Title 67, Chapter 50, Idaho Code, Section 67-5009, unless granted a waiver by the ICOA. ()

01. Procedures. All substate Ombudsmen shall follow procedures outlined in the Ombudsman for the Elderly Procedures Manual. Each AAA shall provide the ombudsman with private office space conducive to holding confidential meetings. They shall also supply secretarial support, telephone, and supplies adequate for full time operation of the program. ()

02. Supervision. Substate Ombudsmen shall operate under the direct supervision of the State Ombudsman for all complaint handling activities and are considered subdivisions of the Office. ()

03. Forms. All substate Ombudsmen shall utilize standardized forms provided by the Office. ()

04. Conflict of Interest. AAAs shall ensure that the substate Ombudsmen shall not be part of an organization which: ()

a. Is responsible for licensing and certifying skilled nursing or residential care facilities under IDAPA 16.03.22, "Rules for Residential Care Facilities in Idaho." ()

b. Provides skilled nursing or living care or is an association of such a provider; or ()

c. May impair the ability of the ombudsman to investigate and resolve complaints objectively and independently. ()

05. Travel Funds. Each AAA shall provide adequate travel funds for the ombudsman program to carry out all activity related to complaint investigations. ()

06. Activity Report. On the twentieth day following the end of the quarter, each AAA shall submit to ICOA a report documenting ombudsman program activity for the quarter just ended. ()

07. Program Reviews. Each AAA shall submit to a program review of substate ombudsman programs at reasonable intervals deemed necessary by the ICOA. ()

08. Adult Protection and Ombudsman Coordination. Each AAA shall ensure that Adult Protection staff and the substate ombudsman maintain a written agreement establishing cooperative protocols in the investigation of complaints. ()

09. State Agreements. All substate programs shall honor and carry out state-level agreements between the Office and other agencies of government. ()

021. STAFFING.

Pursuant to the OAA, Section 712, in order to meet minimum requirements established for the position of substate ombudsman, each AAA shall seek applicants having the following qualifications. ()

01. Minimum qualifications: ()

a. Any person hired to fill the position of substate ombudsman on or after July 1, 1998, shall have: ()

b. A current Idaho social work license; ()

c. Minimum of two (2) years' experience working with the elderly; ()

d. Ability to effectively communicate verbally and in writing; ()

- e. Knowledge of long-term care issues and resources; ()
 - f. Demonstrated ability to interpret and apply relevant local, state and federal laws, rules, regulations, and guidelines; ()
 - g. Demonstrated ability to work independently; ()
 - h. Demonstrated skill in interviewing techniques; and ()
 - i. Demonstrated ability to collect data, conduct interviews and to form conclusions. ()
02. Fair Hiring. In filling the substate ombudsman position, the AAA shall follow fair hiring practices in compliance with EEO and Affirmative Action guidelines. ()
- a. The Office shall be included in the process of interviewing and selecting applicants. ()
 - b. The AAA shall make the final selection from the top three (3) applicants. ()

022. -- 030. (RESERVED).

031. DESIGNATION OF AUTHORITY OF AAA.

The State Ombudsman shall designate an entity as a substate ombudsman. ()

01. Designation of Authority. Each AAA shall directly provide, through a contract agreement with the ICOA, a substate Ombudsman Program employing at least one (1) full-time Ombudsman whose function shall be to carry out the duties of the Ombudsman for the Elderly Program. AAAs I, II, IV, V and VI shall employ one (1) full-time Ombudsman; AAA III shall employ two (2) full-time Ombudsmen. An AAA may petition ICOA in writing for a waiver of this requirement. ()

02. Grounds for Revocation or Termination. In revoking a designated ombudsman program, the ICOA shall provide due process in accordance with applicable law and IDAPA 04, Title 1, Chapter 01, Section 000 et seq., "Idaho Rules of Administrative Procedure of the Attorney General." ()

a. Following termination of a substate ombudsman program, the ICOA shall perform the duties of the substate program. ()

b. Following termination of a substate ombudsman program, the ICOA shall withdraw funding for the substate program for the remainder of the funding period. ()

c. An AAA's appeal of ICOA's termination of its substate ombudsman program shall be governed by the Adjudicatory Rules of Practice and Procedures in Claims Relating to Contracts and Grants Funded under Title III, OAA. ()

032. HANDLING OF COMPLAINTS.

The Ombudsman for the Elderly Program has jurisdiction to accept, identify, investigate, and resolve complaints made by, or on behalf of, persons aged sixty (60) or older, living in the community or in long-term care facilities. The Office and the substate Ombudsmen shall ensure that persons aged sixty (60) or older have regular and timely access to services provided through the Office. The Ombudsman for the Elderly Program shall represent the interests of older persons before governmental agencies and shall seek to protect the health, safety, welfare and rights of older persons. ()

01. Conflict of Interest. Substate Ombudsmen shall refer to the Office any complaint involving AAA staff or contractors. ()

02. Complaints. Complaints concerning substate Ombudsmen, or relative to an Ombudsman's official duties, shall be directly referred to the ICOA. The ICOA, upon completing an investigation of such complaint(s), shall

provide findings and recommendations to the AAA. ()

03. Guardianship. The substate Ombudsmen shall not serve as an ex-officio or appointed member of any Community Board of Guardian, nor file an affidavit to the court for guardianship. The substate Ombudsmen may only function as a court visitor in cases not involving any AAA employee. ()

04. Court Visitor. The substate Ombudsmen shall not act as court visitor in any guardianship/conservatorship proceeding concerning a client of the AAA or its' providers. ()

05. Legal Documents. Substate Ombudsmen shall not, in their capacity as Ombudsmen, act as a notary or a witness of signatures for legal documents. ()

033. ACCESS.

The Office shall ensure that representatives of the Office have access to long-term care facilities and residents as well as appropriate access to medical and social records needed to investigate complaints. ()

01. Visitation. For visitation purposes, Ombudsmen shall have access to long-term care facilities during regular business hours. Visiting Ombudsmen shall: ()

a. Notify the person in charge upon entering the facility; ()

b. Be allowed to visit common areas of the facility and the rooms of residents if consent is given by the resident; ()

c. Seek out residents who consent to communicate privately; and ()

d. Communicate privately and without restriction with any resident who consents to the communication. ()

02. Investigation. Ombudsman shall have access to facilities for the purpose of conducting investigations. An ombudsman conducting an investigation shall: ()

a. Notify the person in charge upon entering the facility; ()

b. Be allowed to visit common areas of the facility and the rooms of residents if consent is given by the resident; ()

c. Seek out residents who consent to communicate privately; ()

d. Communicate privately and without restriction with any resident who consents to the communication; and ()

e. Inspect a resident's records under conditions set forth in the OAA, Section 712. ()

03. Privacy. Ombudsmen shall have statutory authority to visit facilities and residents in facilities unescorted by facility personnel. See Section 67-5009, Idaho Code. ()

034. --- 040. (RESERVED).

041. WRITTEN CONSENT.

The office shall ensure appropriate access to review medical and social records of a resident. (See OAA, Section 712) ()

01. Resident Written Consent. Access to confidential records requires the written consent of the resident or legal representative. ()

02. Lack of Consent. If the client is unable to provide written or oral consent, or the legal representative

is unavailable to provide consent, the substate Ombudsman, with approval of the office may inspect available client records, including medical records that are necessary for investigation of a complaint. ()

03. Consent Refused. If a substate Ombudsman has been refused access to records by legal representative but has reasonable cause to believe that the legal representative is not acting in the best interest of the client, the substate Ombudsman may, with the approval of the office, inspect client records, including medical records. ()

04. Requirements for Informing Client or Resident. The ombudsman shall inform the complainant or resident regarding: ()

- a. Who will receive the information; ()
- b. What information will be disclosed; and ()
- c. The purpose for which the information is being disclosed. ()

042. CONFIDENTIALITY.

The Office shall be the custodian of all statewide ombudsman program records including, but not limited to, records and files containing personal information relative to complainants and residents of long-term care facilities. Requests for release of confidential information shall be submitted to the Office for approval or denial. Release of information shall be granted pursuant to OAA, Section 721(e). ()

01. Storage of Records. Client records shall be maintained in locked storage. Case records inactive for two (2) years or longer may be expunged. As required by law, release of these records shall be limited to persons authorized by the Office. ()

02. Performance Evaluations. For performance evaluation purposes, direct supervisors shall have access to client files maintained by substate Ombudsmen. ()

03. Confidential Records. Records to be safeguarded include, but are not limited to, long-term care and community-based complaint files including: ()

- a. Notes of interviews with complainants and clients or collateral contacts; ()
- b. All copies of residents' medical records or diagnoses; ()
- c. All records relevant to complaint investigations; ()
- d. All memoranda generated by the state ombudsman program or by another agency office during the evaluation and resolution of a complaint; ()
- e. All photographs, video tapes, tape recordings, etc. pertaining to complaint investigation; ()
- f. All memoranda or letters generated during evaluation or resolution of a complaint; ()
- g. Written documentation that parties affected by ombudsman opinions or recommendations have been notified; and ()
- h. Information containing unverified complaints about long-term care facility owners, administrators, staff or other persons involved in the long-term care system or in other service programs. ()

04. Request for Anonymity. The ombudsman shall honor a resident's or complainant's request to remain anonymous. If investigation of a complaint requires that a resident's or complainant's name be divulged in order for the investigation to proceed, the ombudsman shall so inform the resident or complainant. If the resident or complainant insists on maintaining anonymity, the ombudsman shall terminate the investigation. ()

043. DISCLOSURE.

The Office shall be the only entity having authority to authorize disclosure of substate Ombudsmen files maintained by the program except when the ICOA is subpoenaed by the court to disclose pertinent records. ()

044. -- 999. (RESERVED).

IDAPA 15 - OFFICE OF THE GOVERNOR
15.01.03 - RULES GOVERNING CARE COORDINATION FOR THE ELDERLY
DOCKET NO. 15-0103-9702
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposes rule-making. The action is authorized pursuant to Section 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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 non-technical explanation of the substance and purpose of the proposed rule-making:

These rules will be repealed in their entirety. They are being replaced by proposed new rules which will become effective July 1, 1998.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was conducted. The Notice of Negotiated Rule-making was published in the Idaho Administrative Bulletin, Volume 97-5, page 29.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ken Wilkes, 334-2219.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 21st day of July 1997.

Arlene D. Davidson, Director
Idaho Commission on Aging
700 W. Jefferson, Room 108
P.O. Box 83720
Boise, Idaho 83720-0007
Telephone: (208) 334-3833 Fax: (208) 334-3033

THIS RULE IS REPEALED IN ITS ENTIRETY

IDAPA 15 - OFFICE OF THE GOVERNOR
15.01.20 - RULES GOVERNING AREA AGENCY ON AGING (AAA) OPERATIONS
DOCKET NO. 15-0120-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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 non-technical explanation of the substance and purpose of the proposed rule-making:

These rules address the administrative requirements for the Idaho commission on Aging and Area Agencies on Aging, pursuant to state and federal laws. They address issues of designation and de-designation of area agencies on aging, contracting requirements, and financial management.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was conducted. The Notice of Negotiated Rule-making was published in the Idaho Administrative Bulletin, Volume 97-5, page 30.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ken Wilkes, 334-2219.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 21st day of July 1997.

Arlene D. Davidson, Director
Idaho Commission on Aging
700 W. Jefferson, Room 108
P.O. Box 83720
Boise, Idaho 83720-0007
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TEXT OF DOCKET NO. 15-0120-9701

IDAPA 15
TITLE 01
Chapter 20

15.01.20 - RULES GOVERNING AREA AGENCY ON AGING (AAA) OPERATIONS

000. AUTHORITY.

Under authority of Idaho Code, Section 67-5003, the ICOA adopts the following rules. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 15.01.20, "Rules Governing Area Agency on Aging (AAA) Operations." ()
02. Scope. These rules relate to the authority, responsibilities, and designation of AAAs. ()

002. WRITTEN INTERPRETATION.

This agency has no written statements which pertain to the interpretation of the rules in this chapter. ()

003. ADMINISTRATIVE APPEALS.

The ICOA and its AAAs shall provide service recipients and provider organizations with opportunity to appeal administrative decisions as follows: ()

01. AAA Designation. Any organization denied AAA designation through a competitive bidding process may appeal the decision in accordance with IDAPA 38.05.01, "Rules of the Division of Purchasing." ()
02. AAA Provider Contracts. Any organization denied an AAA contract through a competitive bidding process may appeal the decision in accordance with IDAPA 38.05.01, "Rules of the Division of Purchasing." ()
03. Recipients of Service. AAAs shall develop fair and impartial hearing procedures and shall provide an opportunity for a hearing according to those procedures for any individual who is denied or terminated from a service. ()

004. -- 009. (RESERVED).

010. DEFINITIONS.

Any item not specifically defined below shall have the same meaning as those listed in IDAPA 15.01.01, "Rules Governing Idaho Senior Services Program." ()

01. Bidder/Offerer/Proposer. An eligible organizational entity which submits to the AAA a proposal to provide specific service(s). ()
02. Bidders' Conference. A meeting conducted by the AAA to review the materials and information described in the RFP and to respond to questions from organizations that submit letters of intent and are interested in completing proposals on specific services. ()
03. Blind Negotiation. A process which takes place between the AAA and bidders after the local evaluation committee has "scored" proposals and has determined that there is no significant difference, five to ten percent (5% - 10%) between bids. In this case, the AAA has the authority to select the proposal most advantageous to the AAA. ()
04. Blind Review. A proposal reviewing process which conceals the identify of the submitting organization. ()
05. Contract. A legally binding, written agreement between two (2) or more parties which outlines the terms and provisions to which both parties agree. ()
06. Evaluation Committee. A group of individuals selected to review proposing organizations' completed proposals. ()
07. Letter of Intent. A written communication submitted by a potential bidder soliciting a request for proposal to provide a specific service. ()
08. Performance-Based Agreement. A contract or grant which expresses priorities and directions through a scope of work and which serves as the basis for program review/assessment through the year. ()

09. Request for Proposal (RFP). A document issued by the AAA, describing in detail the service to be contracted and how it is to be delivered. ()

10. Sole Source. Documentation that only one (1) eligible, available provider is interested in providing a specific service. ()

11. Statement of Work. The precise, definitive statement of what is expected of the provider. It shall answer such questions as what, how, when, where, and sometimes, why. ()

011. -- 019. (RESERVED).

020. PLANNING AND SERVICE AREA (PSA) DESIGNATION.
The ICOA shall divide the state into PSAs in accordance with Section 305 of the OAA, as amended. ()

021. AAA DESIGNATION.
The ICOA shall accept applications for AAA designation in accordance with Section 305 of the OAA. ()

022. REVOKING AAA DESIGNATION.
The ICOA may revoke the designation of an AAA in accordance with conditions specified in 45 CFR 1321.35. ()

01. Due Process. The ICOA shall provide due process in revoking AAA designation in accordance with Section 003 of this chapter and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()

02. Assumption of Responsibilities. Upon revocation of AAA designation, the ICOA shall assume the responsibilities of the AAA in accordance with 45 CFR 1321.35. ()

023 -- 030. (RESERVED).

031. LIMIT ON THE NUMBER OF AREA AGENCIES AND PSA'S.
In order to maximize funding for services that directly benefit the elderly, the ICOA shall limit the number of PSAs and AAAs to six (6). ()

032. DISTRIBUTION OF FUNDS.
In accordance with Section 305 of the OAA, the ICOA shall develop a formula for distribution of funds and shall publish the formula for review and comment. ()

033. AWARDING OF FUNDS.
The ICOA shall award funds to AAAs through performance-based agreements set forth in a prescribed format and in accordance with guidelines developed by the ICOA. ()

034. AAA BUDGETS.

01. Budget Forms. As part of their agreement with the ICOA, each AAA shall submit, on forms provided by the ICOA, a budget for agency operations. The AAA shall maintain sufficient detail in budget and expenditure records to support responses to questions subsequently posed by the ICOA, AoA, legislators, or members of the general public. ()

02. Budget Revisions. Budget revisions shall be provided to the ICOA: ()

a. In order to process transfers in Title III programs; ()

b. To reflect holdbacks or midyear increases in state or federal spending; or ()

c. If there is a change in spending plans which exceeds ten percent (10%) or ten thousand dollars (\$10,000) within state funds or Title III B services. ()

035. -- 040. (RESERVED).

041. AAA RESPONSIBILITIES.

On behalf of all older persons in the PSA, the AAA shall assume the lead role relative to aging issues. In accordance with the OAA and all pertinent federal regulations, the AAA shall serve as the public advocate for the development and enhancement of comprehensive, coordinated community-based service systems within each community throughout the PSA. ()

042. CONTRACT MANAGEMENT REQUIREMENTS.

AAAs shall follow State Procurement Practices in awarding contracts, in accordance with IDAPA 38.05.01, "Rules of the Division of Purchasing." ()

01. Competitive Bids. The AAAs shall accept competitive bids and shall develop contracts for provision of programs and services authorized and funded under the OAA of 1965, as amended, and Sections 67-5007 and 5008, Idaho Code. ()

02. Incorporation of Non-Profit Agency Contractors. All private non-profit agency contractors shall be incorporated as 501(c)(3) organizations. All contracts between the AAA and service providers shall contain sufficient program and financial information to ensure all activities comply with the Area Plan, the Act, federal regulations, and the rules of the ICOA. ()

03. Multi-Year Contracts. The AAA may award multi-year contracts not to exceed three (3) years. The AAA shall maintain documentation which justifies the reason(s) a multi-year contract was awarded. Justification for a multi-year contract shall include, but is not limited to, the following: ()

- a. More than one (1) year is necessary to complete the project or service; ()
- b. More than one (1) year is necessary to justify substantial cost savings; ()
- c. A multi-year contract award is necessary to allow the provider opportunity to increase and demonstrate capacity to operate a particular service. or ()
- d. Results of evaluation justify continuance of the contract with the existing provider. ()

04. Appeals. When there is competition for specific services, the bidder who does not receive the award has a right to appeal the decision. The AAA is required to include information in the RFP describing the appeal procedure available to non-selected organizations. ()

05. Noncompetitive Negotiation. Noncompetitive negotiation of contracts is allowable if the AAA follows IDAPA 38.05.01, "Rules of the Division of Purchasing." ()

06. Execution of Contracts. The AAA is required to demonstrate prudent execution of any agreements (contracts) between the agency and public or private (for-profit or non-profit) organizations receiving state or federal funds. ()

07. Standard Contracts. The AAA shall develop a standard contract format to be used in those instances where no special format is required by ICOA. The AAA shall develop procedures assuring that recipients of contracts are made fully aware of responsibilities and obligations under the approved Area Plan. Upon approval of contracts under the Area Plan, the AAA shall maintain file copies of contracts, criteria used to approve contracts, copies of the approved proposals, and any amendments. ()

08. Contract Management Activities. Contract management encompasses those AAA activities which shall take place after a contract has been executed. The AAA shall assure that each executed contract is performed, as written, by both the provider and the AAA. ()

09. Contract Management Staff. The AAA shall assign a staff person to assure that contracts are

properly administered, monitored, and reviewed on a continuing basis. ()

10. Close Out or Termination. The close out or termination phase of a contract begins when one (1) or more of certain steps are initiated to bring the contract to an end and concludes with the final settlement of all contract matters. Close out may entail such steps as: ()

a. Issuance of stop work orders, termination notices, etc.; ()

b. Negotiation and adjudication of disputes and appeals; ()

c. Negotiation and execution of releases; ()

d. Final payment; and ()

e. Other pertinent procedures. ()

11. Close Out or Termination Procedures. Close out or termination includes the following procedures: ()

a. Upon termination of contract, the AAA may require the provider to return any property specifically produced or acquired under the contract. The provisions of the "Treatment of Assets" clause contained in the contract document shall apply in such property transfer. ()

b. The AAA shall pay the provider the agreed upon price, if separately stated, for goods and services accepted by the AAA and for the amount agreed upon by the provider and the AAA for: ()

i. Completed work and services for which no separate price is stated; ()

ii. Partially completed work and services; ()

iii. Other property or services which are accepted by the AAA; and ()

iv. The protection and preservation of property, unless the termination is for default, in which case the AAA shall determine the extent of liability of the contracting agency. ()

c. Failure to agree with such determination shall be regarded as a dispute concerning a question of fact within the meaning of the "Disputes" clause of the written contract document. The AAA may withhold, from any amounts due the provider for such completed work or services, such sum as the AAA determines to be necessary to protect the AAA from loss resulting from outstanding liens or claims of former holders. ()

12. Non-Exclusivity of Rights and Remedies. The rights and remedies of the AAA provided in this part shall not be exclusive and are in addition to any other rights and remedies provided by law or under the terms of the contract document. ()

13. Provider Termination Responsibilities. After receipt of a notice of termination, the provider shall: ()

a. Stop work under the contract on the date and to the extent specified in the notice; ()

b. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract as is not terminated; ()

c. Settle all outstanding liabilities and all claims arising out of such termination of order and contract. ()

d. Transfer title to the AAA and deliver in the manner, at the time, and to the extent, if any, directed by the AAA, any property which, if the contract had been completed, would have been required to be furnished to the AAA;

()

e. Complete performance of such part of the work as shall not have been terminated by the AAA; and ()

f. Take such action as may be necessary, or as the AAA may direct, for the protection and preservation of the property related to the contract, which is in the possession of the provider and in which the AAA has or may acquire an interest. ()

043. -- 050. (RESERVED).

051. AREA ADVISORY COUNCILS ON AGING.

01. Establishment of Council. The AAA shall establish an advisory council in accordance with the requirements of the OAA, as amended, and all pertinent federal regulations ()

02. Council Meetings. In addition to the federal requirements, the Council shall hold at least two (2) full council meetings each year, and committees of the Council shall meet at least four (4) times each year. ()

03. Local Elected Officials. The Council shall include at least two (2) local elected officials from different jurisdictions ()

04. Ethnic Minority Representation. The Council shall include at least one (1) representative from each racial or ethnic minority community located within the PSA. For purposes of this subsection, a community is a unified group of African American, Asian/Pacific Island, Hispanic, Native American, or other individuals sharing common origin, history, culture, or interests living in a particular geographic area. ()

05. Conflict of Interest. Staff paid under the Area Plan, or members of the immediate families of paid staff members shall not serve on the Council. ()

06. By-laws. The Council shall operate according to by-laws adopted by the Council. Such by-laws shall include: ()

a. Name of Council. ()

b. Council responsibilities. ()

c. Selection and composition of Council members. ()

d. Term of Office. ()

e. Council meetings. ()

f. Election, duties, and term of office of officers. ()

g. Committees of the Councils and their responsibilities. ()

h. Provisions for adoption and amendment of by-laws. ()

052. AREA PLANS.

Each AAA shall submit an area plan to the ICOA by close of business May 15, 1999, and every four (4) years thereafter. The area plan shall be submitted in a uniform format prescribed by the ICOA to meet the requirements of the OAA and all pertinent federal regulations. ()

053. SERVICE PRIORITY.

Each AAA shall ensure that all service providers prioritize service delivery to those older individuals having the greatest economic and/or social need, with particular attention to low-income minority individuals. ()

054. ELIGIBILITY.

01. Eligibility for Act Programs. Persons age sixty (60) years and older who are residents of the state of Idaho are eligible for Act Programs. ()

02. Eligibility for OAA Programs. Persons age sixty (60) years and older and their spouse, regardless of residency, are eligible for OAA programs with the exception of the Senior Community Service Employment Program (SCSEP). Eligibility for the SCSEP program is fifty-five (55) years and older. ()

055. AAA ASSESSMENTS OF PROVIDERS.

AAAs shall conduct, at a minimum, bi-annual on-site assessments of each of their providers. Such assessments shall comply with the terms of the grant agreement with the ICOA. Such reviews shall be on file for ICOA review. ()

056. REPORTING REQUIREMENTS.

01. Reporting Forms. Each AAA shall submit to the ICOA such reports as are specified by the ICOA, in such format and on such schedule as is established by the ICOA, in fulfillment of all federal and state requirements. The reports are due in the ICOA office twenty (20) calendar days after the end of the reporting period. ()

02. Verification of Service Provider Reports. The AAAs shall conduct ongoing verification of service provider reports in accordance with the terms of the grant agreement with the ICOA. ()

03. Reporting Deficiencies. If reports are late, incorrect, or incomplete, the ICOA shall withhold funds from the AAA, in accordance with terms of the agreement between the ICOA and the AAA, until a correct report is received by the ICOA. ()

057. COMPLAINTS AGAINST AAA EMPLOYEES.

When complaints are received alleging improper or illegal actions on the part of AAA employees who are providing direct services to clients, the AAA shall refer the complaint to the ICOA. The ICOA shall conduct an investigation, develop findings, and make recommendations to the AAA. ()

058. CIVIL RIGHTS.

Neither the AAAs nor their providers shall violate any state or federal law regarding civil rights and shall provide all services and functions funded by the ICOA, affected by rule of the ICOA or provided for by contract with the ICOA without discrimination on the basis of race, color, national origin, age, gender, physical or mental impairment, or on any other basis prohibited by law. ()

059. -- 065. (RESERVED).

066. FINANCIAL MANAGEMENT.

01. Regulations. Area agencies and service providers shall meet the financial management requirements of 45 CFR, Section 74 and Section 92. ()

02. Timing of Expenditures. Expenditures for a program shall not be made before the beginning date of the contract, nor after the ending date, except for accounts payable and other written obligations. Those obligations shall be paid within sixty (60) days of the end of the fiscal year. ()

067. ALLOWABLE COSTS.

Allowable costs are delineated in the OAA, Cost Principles for Colleges and Universities, OMB Circular A-21, and Cost Principles for Non-Profit Organizations, OMB circular A-122. These cost principles shall apply to the expenditure of federal funds and local funds which are reported as match for federal funds. In-kind contributions shall benefit the program for which they are reported as match. No expenditure shall be used as match if it has been or will be counted as match for another award of federal or state funds. ()

068. COLLECTION AND ACCOUNTABILITY OF PARTICIPANT CONTRIBUTIONS.

01. Participant Contribution Confidentiality. All participants shall be given the opportunity to contribute to programs operated with AoA funds. The method of collection shall respect the privacy of the participant, and provide for confidentiality of the fact and amount of the contribution. ()

02. State Funds Cost Sharing. State-funded Adult Day Care, Chore, Homemaker, and Respite Services identified in IDAPA 15.01.01, Subsection 016.06, "Rules Governing Idaho Senior Services Program," shall be provided on a cost-sharing basis, with a sliding fee scale. ()

03. Payment for Service. Persons under the age of sixty (60), who are not spouses of eligible participants, shall pay the full cost of meals, as published by the meal provider. No eligible person shall be denied services because of inability to pay. ()

04. Used to Support Service. Service contributions shall be used to support the service from which they were generated. ()

05. Security For Cash Collections. The service provider collecting funds shall provide for security of cash collected by having two (2) people involved in the collection and counting process. ()

069. AUDITS OF AAA'S AND SERVICE PROVIDERS.

All AAAs and service providers receiving more than three hundred thousand dollars (\$300,000) of federal funds per year shall be audited per the Single Audit Act of 1996 and OMB Circular A-133. No audit is required for service providers receiving state funds or less than three hundred thousand dollars (\$300,000) in federal funds per year. ()

070. -- 999. (RESERVED).

IDAPA 15 - OFFICE OF THE GOVERNOR
15.01.21 - RULES GOVERNING OLDER AMERICANS ACT SERVICES
DOCKET NO. 15-0121-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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 non-technical explanation of the substance and purpose of the proposed rule-making:

Establishes new rules for Nutrition, Information and Assistance, Transportation, Outreach and Legal Assistance services for the Elderly.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was conducted. The Notice of Negotiated Rule-making was published in the Idaho Administrative Bulletin, Volume 97-5, page 31.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Ed Wimmer, 334-2219.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 21st day of July 1997.

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TEXT OF DOCKET NO. 15-0121-9701

IDAPA 15
TITLE 01
Chapter 21

15.01.21 - RULES GOVERNING OLDER AMERICANS ACT SERVICES

000. AUTHORITY.

Under authority of Section 67-5003, Idaho Code, the ICOA adopts the following rule. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 15.01.21, "Rules Governing OAA Services." ()

02. Scope. These rules constitute the state regulatory requirements related to services funded under Title III of the OAA, as amended. ()

002. WRITTEN INTERPRETATION.

This agency has no written statements which pertain to the interpretation of the rules in this chapter. ()

003. ADMINISTRATIVE APPEALS.

The ICOA and its AAAs shall provide recipients and provider organizations with opportunity to appeal administrative decisions in accordance with IDAPA 15.01.20, Section 003, "Rules Governing Area Agency on Aging Operations." ()

004. -- 009. (RESERVED).

010. DEFINITIONS.

Any item not specifically defined below shall have the same meaning as those defined in Idaho Code or IDAPA 15.01.01, "Rules Governing Idaho Senior Services Programs." ()

01. Access services. Transportation, Outreach, Information and Assistance and Case Management. ()

02. I&A. Information and Assistance Services initiated by an older person or their representative that: ()

a. Provides current information about services available within the community, including information about assistive technology; ()

b. Assesses the problem(s) and determines the appropriate available service(s); and ()

c. To the maximum extent practicable, by establishing adequate follow-up procedures, ensures that the client receives the needed service(s) and is made aware of other available services. ()

03. Legal Assistance. Advice, counseling, or representation by an attorney or by a paralegal under the supervision of an attorney. ()

04. Meal Site. A facility or location where eligible persons (and spouses) assemble for a meal, either site prepared or catered. ()

05. Outreach Service. A service which actively seeks out older persons, identifies their service needs, and provides them with information and assistance to link them with appropriate services. ()

06. Rural. Communities having a population of fewer than twenty thousand (20,000) persons. ()

07. USDA Eighty/Twenty (80/20) Commodity Program. Federal program in which the participating AAA agrees to accept a minimum of twenty percent (20%) of its total entitlement in commodities with the balance of eighty percent (80%) being paid in cash at the current USDA reimbursement rate. ()

011. NUTRITION SERVICES.

01. Applicability of Federal Regulations. The ICOA incorporates, by reference, all federal and state statutes and requirements governing the administration, operation and management of the congregate and home-delivered meal programs. ()

02. Minimum Requirements. The minimum requirements for nutrition services are as follows: ()

a. Meal sites in operation in rural areas prior to July 1, 1998, shall, by July 1, 2002, increase the

number of meal days to a minimum of three (3) meal days per week. ()

b. Any meal site not meeting all requirements shall request a waiver from the ICOA; ICOA may or may not grant the requested waiver. ()

c. Client's eligibility to receive home-delivered meals shall be based upon the degree to which ADLs/IADLs limit ability to independently prepare meals. ()

d. The AAA shall ensure providers comply with all state and local fire, health, sanitation, safety, building, and zoning laws, ordinances, or codes; ()

e. Have a valid permit to operate a food service establishment: ()

i. Are in compliance with the Federal Occupational Safety and Health Administration (O.S.H.A.) requirements; ()

ii. Pass the Food Safety and Sanitation course in compliance with IDAPA 16.02.19, Subsection 400.02, "Rules Governing Food Safety and Sanitation Standards for Food Establishments (UNICODE);" and ()

f. Comply with the provisions of the Americans with Disabilities Act (PL 101-336). ()

03. USDA Eighty/Twenty (80/20) Commodity Program Participation Requirements. All AAA nutrition service providers shall participate in the USDA Eighty/Twenty (80/20) Commodity program. ()

012. -- 020. (RESERVED).

021. INFORMATION AND ASSISTANCE.

01. Information Regarding Opportunities. Each AAA shall, in accordance with Section 306, OAA, directly provide area-wide toll-free I&A telephone service. ()

02. Client Screening. I&A shall provide client screening in coordination with Care Coordination, Adult Protection, and Ombudsman services. ()

03. Screening. Each I&A program shall utilize the UAI to screen potential clients. ()

04. Reporting Requirements. I&A contractors and service providers shall maintain records as required by the ICOA, and shall report to the ICOA the number of persons who use the service. Such records shall include information about the purpose and date of incoming calls, referrals of callers to other service providers, and any follow-up information regarding the outcome of referrals. ()

022. OUTREACH.

01. Identification of Older Persons in Need of Services. The AAA, in accordance with Section 306 of the OAA, shall assure that outreach efforts focus on identifying those older persons who have the greatest economic or social need, with particular attention to low-income minority elderly, elderly living in rural communities, and severely disabled elderly. ()

02. Minimum Requirements. To determine the effectiveness of outreach services, each AAA shall: ()

a. Annually review program data to determine success in reaching those older individuals having greatest economic or social need, especially low-income minority elderly, elderly living in rural communities, and severely disabled elderly; and ()

b. Require all funded nutrition providers report outreach activities on a quarterly basis. ()

023. TRANSPORTATION.

01. Available Services. Each AAA, in accordance with Section 306, OAA, shall assure transportation services are available to older individuals residing within the geographical boundaries of the PSA. ()

02. Transportation to Meal Sites. Where appropriate, the AAA shall assure transportation to congregate meal sites is available. ()

024. EXPENDITURES FOR ACCESS SERVICES.

The AAA shall expend for access services the percentage established in the ICOA state plan. ()

025. -- 030. (RESERVED).

031. LEGAL ASSISTANCE.

01. Administrative Requirements. The AAA shall assure adherence to all administrative requirements as set forth in rule, unless the ICOA grants a waiver. ()

02. Title III-B Funds. Under an approved area plan, the AAA shall expend, at minimum, three percent (3%) in Title III-B funds for legal assistance. ()

03. Contracts. Through performance-based agreements with local providers, the AAA shall provide legal assistance to older residents of the PSA. ()

i. AAA contracts with for-profit providers of legal assistance services shall conform with standards set forth in 45 CFR 1321.71. Prior to being executed, contracts shall be submitted to ICOA for approval. ()

ii. Contracts for legal assistance services shall be executed for the purpose of providing direct legal assistance and representation to persons aged sixty (60) or older. The number of service units to be provided must be clearly stated in the contract. ()

iii. Contracts for legal services shall include provision for a minimum eight (8) hours of service per month to clients of the AAA's Ombudsman for the Elderly Program and clients aged sixty (60) or older of the Adult Protection Program. ()

04. Idaho Legal Aid Services. AAA contracts with Idaho Legal Aid Services, Inc. shall provide the following assurances: ()

a. Services provided under the contract to individuals sixty (60) years of age or older shall be in addition to legal assistance furnished with funds obtained from other sources. ()

b. The contractor shall submit a quarterly report documenting legal assistance provided from other funding sources to individuals sixty (60) years of age or older. The report shall include: ()

i. Description of legal problem; ()

ii. Description of service provided; ()

iii. Number of units of service provided; and ()

iv. Number of unduplicated persons served. ()

05. Maintenance of Legal Assistance Records. AAAs shall maintain records documenting legal assistance provided within each calendar quarter to individuals aged sixty (60) or older. ()

06. Provision of Service. In accordance with OAA Section 307 (a) and 45 CFR 1321.71, Subparts (a) through (k), each AAA shall assure provision of legal assistance to older individuals residing within the PSA.

()

032. -- 999. (RESERVED).

IDAPA 15 - OFFICE OF THE GOVERNOR

15.01.30 - RULES GOVERNING SENIOR COMMUNITY SERVICES EMPLOYMENT PROGRAM

DOCKET NO. 15-0130-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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 non-technical explanation of the substance and purpose of the proposed rule-making:

These rules: (1) address the need for local coordination of Senior Community Service Employment program (SCSEP) services with 5% Job Training Partnership Act Program (JTPA) services and Area Agency on Aging services; (2) specify that subgrantee selection shall be accomplished as stated in the grant agreement with the U.S. Department of Labor; (3) state the criteria for removing an enrollee from the SCSEP program for failure to comply with the terms of the enrollee's employment plan.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was conducted. The Notice of Negotiated Rule-making was published in the Idaho Administrative Bulletin, Volume 97-5, page 32.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Melinda Adams, 334-2289.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 21st day of July 1997.

Arlene D. Davidson, Director
Idaho Commission on Aging
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P.O. Box 83720
Boise, Idaho 83720-0007
Telephone: (208) 334-3833 Fax: (208) 334-3033

TEXT OF DOCKET NO. 15-0130-9701

**IDAPA 15
TITLE 01
Chapter 30**

15.01.30 - RULES GOVERNING SENIOR COMMUNITY SERVICES EMPLOYMENT PROGRAM

000. AUTHORITY.

Under authority of section 67-5003, Idaho Code, The ICOA adopts the following rules. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 15.01.30, "Rules Governing the Senior Community Services Employment Program," (Title V, OAA) Older Worker Programs administered by the ICOA. ()

02. Scope. These rules constitute the state regulatory requirements related to services funded under Title V of the OAA, as amended. ()

002. WRITTEN INTERPRETATION.

This agency has no written statements which pertain to the interpretation of the rules in this chapter. ()

003. ADMINISTRATIVE APPEALS.

The ICOA and its AAAs shall provide recipients and provider organizations with opportunity to appeal administrative decisions in accordance with IDAPA 15.01.20, Section 003. ()

004. DEFINITIONS.

01. Enrollee. Enrollee, for purposes of the SCSEP, means an individual who is eligible, receives services, and is paid wages for engaging in community service assignments under a project. ()

02. Individual Development Plan (IDP). Individual Development Plan means an employability plan for an enrollee which shall include an employment goal, achievement objectives, an appropriate sequence of services for the enrollee based on an assessment conducted by the grantee or subgrantee and jointly agreed upon by the enrollee. ()

03. Older Worker Coordinator. Older Worker Coordinator means the staff person who is designated by the subgrantee's administrator as responsible for direct services provision. ()

04. Subgrantee. Subgrantee means the legal entity to which a subgrant is awarded by a grantee and which is accountable to the grantee (or higher tier subgrantee) for the use of the funds provided. ()

005. -- 010. (RESERVED).

011. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM (SCSEP).

All activities and services shall comply with the requirements of Title V of the OAA of 1965, as amended, the Final Rule Governing the SCSEP (20 CFR Part 641, 29 CFR Part 89), IDAPA 15.01.30, and the Agreement between the ICOA and the subgrantee. ()

01. Individual Development Plan (IDP) Related Termination Policy. When an enrollee refuses to accept a minimum of four job referrals or job offers to unsubsidized employment consistent with his or her IDP, unless otherwise noted in the IDP and allowing for extenuating circumstances, the enrollee may be terminated from the SCSEP. Such a termination shall: ()

a. Be consistent with the administrative guidelines issued by the U. S. Department of Labor which describe the minimum requirements for IDP-related terminations (Section 641.316, 20 CFR Part 641); ()

b. Be subject to the participant appeal rights procedures described in Section 641.324., 20 CFR Part 641; and ()

c. Be consistent with the IDP Termination policies delineated in the agreement between the ICOA and the subgrantee. ()

02. Available Option. The IDP termination is the last option after other measures have failed. All practical steps should be employed to avoid termination of an enrollee based on the IDP. ()

03. Need for Adequate Notification. Prior to putting this option into affect, the subgrantee must inform all enrollees of the rules for IDP terminations. These rules must be presented during orientation or, if that is not possible, at an enrollee meeting. The rules must also be contained in the subgrantee's enrollee handbook or similar document. Enrollees must be given ample time to consider the ramifications of this policy. ()

04. Relationship to the IDP. An IDP related termination must be a logical consequence of the agreements established between the enrollee and the subgrantee staff in the jointly signed IDP. The IDP must clearly and accurately reflect the goals of the enrollee. If the enrollee is unable or unwilling to commit to fulfilling the jointly signed IDP agreement, it is essential that this lack of commitment be determined and resolved early in the process. ()

05. Consistency of Application. The subgrantee's rules and procedures must be applied in a fair and consistent manner to all enrollees in a project. ()

06. Adequate Internal Procedures. When the enrollee's actions were not consistent with the IDP, staff must explore the cause in each case. A corrective action notice or letter must be developed and provided to the enrollee in each of these cases, including where a referral is provided but not fulfilled. The notice shall include appropriate response time frames. ()

07. IDP Change. Where appropriate, an IDP may be modified to be consistent with a new situation which was not considered in the original IDP. ()

08. Documentation. All determinations must specify the basic information relating to the termination. This information must be specific and verifiable. It must include written notice and time frames. ()

09. Appeals Process. If an enrollee appeals the IDP-Related Termination decision, the Older Worker Coordinator will elevate the case to the administrator in charge of the local subgrantee's operations for review. In the event the enrollee disputes the decision of the local administrator, the case will be elevated to the ICOA for resolution. ()

012. COORDINATION.

01. Coordination Among JTPA Older Worker Programs, SCSEP, and Workforce Development Initiatives. Each subgrantee must demonstrate the coordination of five percent (5%) JTPA Older Worker Program services with workforce development initiatives and ICOA administered SCSEP services. ()

02. Coordination Between JTPA Older Worker and SCSEP Service Providers. Whenever the Area Agency on Aging (AAA) does not operate the JTPA Older Worker Program or the SCSEP in its PSA, the AAA must enter into a formal coordination agreement with the local service provider. ()

013. SUBGRANTEE SELECTION.

Subgrantee selection shall be accomplished as stated in the SCSEP grant agreement between the ICOA and U.S. Department of Labor. ()

014. -- 999. (RESERVED).

IDAPA 15 - IDAHO COMMISSION ON AGING
15.01.31 - RULES GOVERNING THE FIVE PERCENT JOB TRAINING PARTNERSHIP
ACT (JTPA) OLDER WORKER PROGRAM

DOCKET NO. 15-0131-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section 67-5003, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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 non-technical explanation of the substance and purpose of the proposed rule-making:

These rules: (1) address the need for local coordination of the Job Training Partnership Act (JTPA) Older Worker Program with the state-administered Senior Community Service Employment Program (SCSEP) and Area Agency on Aging services; (2) specify that subgrantee selection shall be accomplished as provided in the 5% JTPA Older Worker State Plan.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was conducted. The Notice of Negotiated Rule-making was published in the May 7, 1997, Idaho Administrative Bulletin, Volume 97-5, page 33.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Melinda Adams, 334-2289.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 21st day of July 1997.

Arlene D. Davidson, Director
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TEXT OF DOCKET NO. 15-0131-9701

IDAPA 15
TITLE 01
Chapter 31

15.01.31 - RULES GOVERNING THE FIVE PERCENT JOB TRAINING PARTNERSHIP
ACT (JTPA) OLDER WORKER PROGRAM

000. AUTHORITY.

Under authority of section 67-5003, Idaho Code, The ICOA adopts the following rules. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 15.01.31, "Rules Governing the Five Percent Job Training Partnership Act (JTPA) Older Worker Program," administered by the ICOA. ()

02. Scope. These rules constitute the state regulatory requirements related to services funded under the five percent (5%) JTPA Older Worker Program administered by the ICOA. ()

002. WRITTEN INTERPRETATION.

This agency has no written statements which pertain to the interpretation of the rules in this chapter. ()

003. ADMINISTRATIVE APPEALS.

The ICOA and its AAAs shall provide recipients and provider organizations with opportunity to appeal administrative decisions in accordance with IDAPA 15.01.20, Section 003, "Rules Governing Area Agency on Aging Operations." ()

004. DEFINITIONS.

Subgrantee. Subgrantee means the legal entity to which a subgrant is awarded by a grantee and which is accountable to the grantee (or higher tier subgrantee) for the use of the funds provided. ()

005. -- 010. (RESERVED).

011. FIVE PERCENT (5%) JTPA OLDER WORKER PROGRAM.

All activities and services shall be performed in accordance with the Act governing JTPA (Public Law 97-300, as amended), federal regulations (20 CFR Part 626, et al.), Idaho Department of Labor Rules and General Provisions and Assurances, and the Agreement between the ICOA and the Subgrantee. ()

012. COORDINATION.

01. Coordination Among JTPA, Workforce Development Initiatives, and ICOA Administered SCSEP Programs. Each subgrantee must demonstrate the coordination of five percent (5%) JTPA Older Worker Program services with workforce development initiatives and ICOA administered SCSEP services, IDAPA 15.01.30, "Rules Governing Senior Community Services Employment Program." ()

02. Coordination Between JTPA and SCSEP Service Providers. Whenever the Area Agency on Aging (AAA) does not operate the JTPA Older Worker Program or the SCSEP in its PSA, the AAA must enter into a formal coordination agreement with the local service provider. ()

013. SUBGRANTEE SELECTION.

Subgrantee selection shall be accomplished as stated in the five percent (5%) JTPA Older Worker State Plan. ()

014. -- 999. (RESERVED).

IDAPA 15 -OFFICE OF THE GOVERNOR
15.03.01 - RULES GOVERNING IDAHO FOREST PRODUCTS COMMISSION

DOCKET NO. 15-0301-9701

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the commission and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1997, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code notice is hereby given that this commission has adopted a pending rule. The action is authorized pursuant to Sections 67-5206(1) and 38-1508(h), Idaho Code.

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

These pending rules are to conform the existing rules to the 1997 legislative changes clarifying the types of businesses subject to assessment and to allow the commission increased access to state records to identify businesses for assessment. Also, minor changes clarifying meeting times and commission member terms.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the July 2, 1997, Idaho Administrative Bulletin, Volume 97-7, pages 15 through 17.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Betty Munis at (208) 334-3292.

DATED this 17th day of July, 1997.

Kevin D. Satterlee, Deputy Attorney General
Office of the Attorney general
Statehouse, Room 114
P. O. Box 83720
Boise, Idaho 83720-0010
(208)322-3081 (208) 334-3107 (FAX)

IDAPA 15
TITLE 03
Chapter 01

RULES GOVERNING IDAHO FOREST PRODUCTS COMMISSION

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

**The original text was published in the Idaho Administrative Bulletin,
Volume 97-7, July 2, 1997, pages 15 through 17.**

**This rule has been adopted as Final by the Agency and is now pending review by the
1998 Idaho State Legislature for final adoption.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.01 - RULES FOR THE CONTROL OF AIR POLLUTION IN IDAHO
DOCKET NO. 16-0101-9703

NOTICE OF NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Idaho Code Section 67-5220 and IDAPA 04.11.01.810 to .815, notice is hereby given that this agency intends to promulgate a rule and desires public participation in an informal, negotiated rulemaking process prior to the initiation of formal rulemaking procedures by the agency. The negotiated rulemaking action is authorized by Idaho Code Section 39-105. The formal rulemaking action is authorized by Idaho Code Sections 39-105 and 39-107. In addition, this rulemaking is mandated by the United States Environmental Protection Agency pursuant to 40 CFR 70.9.

DESCRIPTIVE SUMMARY: The following is a statement in nontechnical language of the purpose and substance of the negotiated rulemaking and the principle issues involved:

40 CFR 70.9 requires the Department of Health and Welfare, Division of Environmental Quality (Department) to charge fees for the Title V operating permit program. Sufficient funds must be obtained from these fees to meet the presumptive minimum and meet all funding requirements of the program. This rulemaking has been undertaken to provide industry the option of paying Title V operating permit fees based on actual emissions as opposed to permitted emissions. This will lower fees for some facilities choosing to pay fees based on the actual emissions. The rule will affect industry required to pay Title V operating permit fees.

A preliminary draft of the text of the rule may be obtained by contacting Jessica Jones at (208)373-0502. Persons interested in participating in the negotiated rulemaking process are encouraged to attend the meeting scheduled for September 11, 1997 at 10:30a.m. in Conference Room B of the Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho. Interested persons may also participate in the negotiated rulemaking process by submitting written comments as provided below.

The goal of the negotiated rulemaking process will be to develop by consensus the text of a recommended rule. If a consensus is reached, a draft of the rule, incorporating the consensus and any other appropriate information, recommendations, or materials, will be transmitted to the Department for consideration and use in the formal rulemaking process. If a consensus is unable to be achieved on particular issues, the negotiated rulemaking process may result in a report specifying those areas on which consensus was and was not reached, together with arguments for and against positions advocated by various participants. At the conclusion of the negotiated rulemaking process, the Department intends to present the rule to the Board of Health and Welfare (Board) for temporary adoption and, at the same time, commence formal rulemaking with the publication of a proposed rule, using and taking into consideration the results of the negotiated rulemaking process. The Department intends to present the rule to the Board for temporary adoption in November 1997 and initiate formal rulemaking with the publication of the temporary and proposed rule in the January 1998 issue of the Idaho Administrative Bulletin.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning the negotiated rulemaking, contact Martin Bauer at (208)373-0502.

SUBMISSION OF WRITTEN COMMENTS: Anyone may submit written comments regarding this proposal to initiate negotiated rulemaking. All written comments must be received by the undersigned on or before September 24, 1997.

Dated this 3rd day of September, 1997.

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. 16-0105-9702

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Idaho Code Section 67-5221(1), notice is hereby given that this agency has proposed rulemaking. The action is authorized by Idaho Code Sections 39-4401 et seq. and 39-5801 et seq. In addition, 40 CFR 271.2(e) and Idaho Code Section 39-4404 require the Idaho Department of Health and Welfare (Department) to adopt amendments to federal law as proposed under this docket.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Idaho Code Section 67-5222(2), a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for a hearing must be received by the undersigned on or before September 17, 1997. If no such written request is received, a public hearing will not be held.

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

The Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's (EPA) federal regulations governing hazardous waste as directed by the Idaho Hazardous Waste Management Act. This proposed rulemaking is the annual update to make Idaho's rules consistent with revisions to the federal hazardous waste regulations as of July 1, 1997. In addition, this proposed rule adopts the air emission standards in 40 CFR 264 Subpart CC and 40 CFR 265 Subpart CC. These regulations were excluded from the 1996 annual update because their status, federally, was uncertain. Since that time, however, EPA has finalized the revisions to these regulations.

In June 1996, the Board of Health and Welfare adopted a temporary rule clarifying that the federal enhanced public participation requirements, which were adopted as part of the 1996 annual update, are applicable to Idaho's hazardous waste program. The temporary rule is currently effective. With this publication, the Department proposes final adoption of this rule change.

Section 900 of the proposed rule, Expenditures from Hazardous Waste Emergency Accounts, implements an amendment to Idaho Code Section 39-4417B, effective July 1, 1997, which makes only one hazardous waste emergency account available for expenditures in response to hazardous waste emergencies. Finally, Section 997 of the proposed rule, Confidentiality of Records, has been revised so that the language better reflects the requirements of federal law and state statutory provisions.

Negotiated rulemaking was not conducted because the nature of this rulemaking does not lend itself to the negotiated rulemaking process.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rulemaking, contact John Brueck at (208)373-0502.

SUBMISSION OF WRITTEN COMMENTS: Anyone can submit written comment regarding this proposed rule. All written comments must be received by the undersigned on or before September 24, 1997.

DATED this 3rd day of September, 1997.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
Phone No. (208)373-0418
Fax No. (208)373-0481

TEXT OF DOCKET NO. 16-0105-9702

002. INCORPORATION BY REFERENCE OF FEDERAL REGULATIONS.

Any reference in these rules to requirements, procedures, or specific forms contained in the Code of Federal Regulations (CFR), Title 40, Parts 124, 260-266, 268, 270, 273, and 279 shall constitute the full adoption by reference of that part and Subparts as they appear in 40 CFR, revised as of July 1, 1996~~7~~, including any notes and appendices therein, unless expressly provided otherwise in these rules. (7-2-97)(_____)

01. Exceptions. Nothing in 40 CFR Parts 260 - 266, 268, 270, 273, 279 or Part 124 as pertains to permits for Underground Injection Control (U.I.C.) under the Safe Drinking Water Act, the Dredge or Fill Program under Section 404 of the Clean Water Act, the National Pollution Discharge Elimination System (NPDES) under the Clean Water Act or Prevention of Significant Deterioration Program (PSD) under the Clean Air Act is adopted or included by reference herein. (7-2-97)

02. Availability of Referenced Material. The federal regulations adopted by reference throughout these rules are maintained at the following locations: (7-2-97)

a. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194, Federal Bldg., 915 Second Ave., Seattle, WA 98174, (206)553-4270; and (7-2-97)

b. State Law Library, 451 W. State Street, P.O. Box 83720, Boise, ID 83720-0051, (208)334-3316; and (7-2-97)

c. Division of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (7-2-97)

(BREAK IN CONTINUITY OF SECTIONS)

004. HAZARDOUS WASTE MANAGEMENT SYSTEM.

40 CFR Part 260 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1996~~7~~. For purposes of 40 CFR 260.20 and 260.22, "Federal Register" shall be defined as the Idaho Administrative Bulletin. (7-2-97)(_____)

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, 1996~~7~~. (7-2-97)(_____)

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: (3-16-96)

a. Verification Testing Requirements. Sample Collection and analyses, including quality control procedures, conducted pursuant to Subsections 005.01.b. and 005.01.c., must be performed according to SW-846 methodologies and the RCRA Part B permit, including future revisions. (3-16-96)

b. Initial Verification Testing. (3-16-96)

i. For purposes of Subsection 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 Subsection 005.01.d. (3-16-96)

ii. Prior to the initial treatment of any new source of EAFD, ESII must notify the Department in writing. The written notification shall include: (3-16-96)

(1) The waste profile information; and (3-16-96)

(2) The name and address of the generator. (3-16-96)

iii. The first four (4) consecutive batches treated must be sampled in accordance with Subsection 005.01.a. Each of the four (4) samples shall be analyzed to determine if the CSEAFD generated meets the delisting levels specified in Subsection 005.01.d. (3-16-96)

iv. If the initial verification testing demonstrates that the CSEAFD samples meet the delisting levels specified in Subsection 005.01.d., ESII shall submit the operational and analytical test data, including quality control information, to the Department, in accordance with Subsection 005.01.f. Subsequent to such data submittal, the CSEAFD generated from EAFD originating from the new source shall be considered delisted. (3-16-96)

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: (3-16-96)

(1) Initial verification testing demonstrates that the CSEAFD meets the delisting levels specified in Subsection 005.01.d.; and (3-16-96)

(2) The operational and analytical test data is submitted to the Department pursuant to Subsection 005.01.b.iv. (3-16-96)

vi. For purposes of Subsections 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. (3-16-96)

c. Subsequent Verification Testing. (3-16-96)

i. Subsequent to initial verification testing, ESII shall collect a representative sample, in accordance with Subsection 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. (3-16-96)

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 Subsection 005.01.d. (3-16-96)

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. (3-16-96)

iv. If the levels of constituents measured in a sample, or composite sample, of CSEAFD do not exceed the levels set forth in Subsection 005.01.d., then any batch of CSEAFD which contributed to the sample that does not exceed the levels set forth in Subsection 005.01.d. is non-hazardous and may be managed and/or disposed of in a Subtitle D or Subtitle C landfill. (3-16-96)

v. If the constituent levels in a sample, or composite sample, exceed any of the delisting levels set forth in Subsection 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: (3-16-96)

(1) Retested, and retreated if necessary, until it meets the levels set forth in Subsection 005.01.d.; or (3-16-96)

(2) Managed and disposed of in accordance with Subtitle C of RCRA. (3-16-96)

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 Subsection 005.01.d. (3-16-96)

d. Delisting levels. (3-16-96)

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
zinc	70

(3-16-96)

ii. Metal concentrations must be measured in the waste leachate by the method specified in 40 CFR Part 261.24. (3-16-96)

e. Modification of Treatment Process. (3-16-96)

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. (3-16-96)

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. (3-16-96)

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. (3-16-96)

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. (3-16-96)

f. Records and Data Retention and Submittal. (3-16-96)

- 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. (3-16-96)
- ii. The records and data maintained by ESII must be furnished upon request to the Department or EPA. (3-16-96)
- 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. (3-16-96)
- 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." (3-16-96)

006. STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE.

01. Incorporation By Reference. 40 CFR Part 262 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1996~~7~~, ~~except reference to 40 CFR 265 Subpart CC~~. For purposes of 40 CFR 262.53, 262.55, 262.56, and 262.57(b), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. Copies of advance notification, annual reports, and exception reports, required under those sections, shall also be provided to the Director. For purposes of 40 CFR 262.51 and 262.54(g)(1), EPA shall be defined as the U.S. Environmental Protection Agency. (7-2-97)()

02. Generator Emergency Notification. In addition to the emergency notification required by 40 CFR 265.56(d)(2) and 262.34(d)(5)(iv)(c), (see 40 CFR 262.34(a)(4)), the emergency coordinator must also immediately notify the State Communications Center by telephone, 1-800-632-8000, to file an identical report. (7-1-97)

007. STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE.

40 CFR Part 263 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1996~~7~~. (7-2-97)()

008. STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 264 and all Subparts (excluding 40 CFR 264.149, 264.150, and 264.301(1), ~~and Subpart CC~~) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1996~~7~~. For purposes of 40 CFR Subsection 264.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. (7-2-97)()

009. INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE AND DISPOSAL FACILITIES.

40 CFR Part 265, and all Subparts (excluding Subpart R, ~~Subpart CC~~, 40 CFR 265.149 and 265.150) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1996~~7~~. For purposes of 40 CFR Subsection 265.12(a), "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency Region 10 Regional Administrator. (7-2-97)()

010. STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE FACILITIES.

40 CFR Part 266 and all Subparts (excluding Subparts A and B) are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1996~~7~~. (7-2-97)()

011. LAND DISPOSAL RESTRICTIONS.

40 CFR Part 268 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1996~~7~~, except for 40 CFR 268.1(e)(3), 268.5, 268.6, and 268.42(b). The authority for implementing the provisions of these excluded sections remains with the EPA. However, the requirements of Sections 39-4403(1~~6~~7) and 39-4423, Idaho Code, shall be applied in all cases where these requirements are more stringent than the federal standards. If the Administrator of the EPA grants a case-by-case variance pursuant to 40 CFR 268.5, that variance will simultaneously create the same case-by-case variance to the equivalent requirement of these rules. (7-2-97)()

012. HAZARDOUS WASTE PERMIT PROGRAM.

40 CFR Part 270 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1996~~7~~, ~~except reference to 40 CFR 264 Subpart CC and 40 CFR 265 Subpart CC.~~ For purposes of 40 CFR 270.2, 270.5, 270.10(e)(2), 270.10(e)(3), 270.10(f)(3), 270.72(a)(5), and 270.72(b)(5), "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator respectively. (7-2-97)()

013. PROCEDURES FOR DECISION-MAKING (STATE PROCEDURES FOR RCRA OR HWMA PERMIT APPLICATIONS).

40 CFR Part 124, Subparts A and B are is herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1996~~7~~, except that the fourth sentence of 40 CFR 124.31(a), the third sentence of 40 CFR 124.32(a), and the second sentence of 40 CFR 124.33(a) are expressly omitted from the incorporation by reference of each of those subsections. For purposes of 40 CFR 124.6(e), 124.10(b), and 124.10(c)(1)(ii) "EPA" and "Administrator" or "Regional Administrator" shall be defined as the U.S. Environmental Protection Agency and the U.S. Environmental Protection Agency Region 10 Regional Administrator, respectively. (7-2-97)()

(BREAK IN CONTINUITY OF SECTIONS)

015. STANDARDS FOR THE MANAGEMENT OF USED OIL.

01. Incorporation by Reference. 40 CFR Part 279 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1995~~7~~. (7-1-97)()

02. Used Oil as a Dust Suppressant. 40 CFR Part 279 contains a prohibition on the use of used oil as a dust suppressant at 279.82(a), however, States may petition EPA to allow the use of used oil as a dust suppressant. Members of the public may petition the State to make this application to EPA. This petition to the State must: (2-11-94)

a. Be submitted to the Idaho Division of Environmental Quality, 1410 North Hilton, Boise, Idaho 83706; and (2-11-94)

b. Demonstrate how the requirements of 40 CFR 279.82(b) will be met. (2-11-94)

016. STANDARDS FOR UNIVERSAL WASTE MANAGEMENT.

40 CFR Part 273 and all Subparts are herein incorporated by reference as provided in 40 CFR, revised as of July 1, 1996~~7~~. (7-2-97)()

(BREAK IN CONTINUITY OF SECTIONS)

997. 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;" HWMA Section 39-4411(3), Idaho Code; the Idaho Public Writings Act, Sections 9-337 et. seq., Idaho Code; and Section 004 of this chapter. Information obtained by the Department under these rules may be disclosed to the public subject to the provisions of Sections 39-4411 and 9-337 to 9-350, Idaho Code; Sections 004 (40 CFR 260.2) and (40 CFR 270.12) of these rules; and any other applicable law. (7-1-97)()~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.08 - RULES GOVERNING VITAL STATISTICS

DOCKET NO. 16-0208-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section(s) 39-255, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 24, 1997.

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 rationale for the proposed deletion of IDAPA 300.05:

Idaho Code, Section 39-255(e)(4) states, "If the father is not named on the certificate of birth, no other information about the father shall be entered on the certificate." IDAPA 16.02.08, Subsection 300.05, written pursuant to this statute, interprets "no other information about the father" to include his surname. Thus, this rule prohibits unmarried mothers from using the father's surname as the child's surname, but will allow any other surname the mother chooses. A married mother is not limited in her choice of surnames for her child. Therefore, deleting this rule would eliminate discriminating between married and unmarried mothers.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Jane S. Smith at (208) 334-5976.

Anyone can submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and delivered on or before September 24, 1997.

DATED this 3rd day of September, 1997.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Legal Services Division
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0208-9701

300. REGISTRATION OF BIRTHS.

01. Certifier's Signature. The person certifying the facts of birth according to Section 39-255, Idaho Code, must sign the birth certificate. No stamps or other types of facsimile signatures may be used. The State Registrar may require additional evidence of the birth when the birth did not occur in an institution and was not attended by a person who regularly attends births. (11-20-87)

02. Local Registrar's Signature. The local registrar must sign the certificate. The registrar's signature must be the same as it appears in the notarized certificate of appointment. No stamps or other types of facsimile

signatures may be used. (12-26-83)

03. Signature of Certifier. When a birth occurs in an institution, the signature of the certifier on the medical record of birth may satisfy the requirements of Section 39-255(a), Idaho Code. (11-20-87)

04. Signature of the Informant. When a birth occurs in an institution and the institution maintains a working paper (worksheet) signed by either parent (named on the birth certificate) as informant, and the working paper (worksheet) is part of the medical record, the signature of the informant on the working paper (worksheet) may satisfy the requirements of Section 39-255(c), Idaho Code. (11-20-87)

~~05. Surname of a Child. If the mother was not married at the time of either conception or birth, or between conception and birth, the surname of the child may be the surname of the father only if: (12-26-83)~~

~~a. The father gives written notarized consent; or (12-26-83)~~

~~b. The father's paternity is established by a court of competent jurisdiction. (12-26-83)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.01 - RULES GOVERNING AID TO FAMILIES WITH DEPENDENT CHILDREN

DOCKET NO. 16-0301-9702

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1998, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-201 through 56-233, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the May 7, 1997, Idaho Administrative Bulletin, Volume 97-5, page 56.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Patti Campbell at (208) 334-5819.

DATED this 3rd day of September, 1997.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Legal Services Division
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-5548 fax

IDAPA 16
TITLE 03
Chapter 01

RULES GOVERNING AID TO FAMILIES WITH DEPENDENT CHILDREN

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 97-5, May 7, 1997, page 56.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature for final adoption.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.01 - RULES GOVERNING MEDICAID FOR FAMILIES AND CHILDREN
DOCKET NO. 16-0301-9703

NOTICE OF AMENDMENT TO TEMPORARY RULE AND PENDING RULE

EFFECTIVE DATE: The amendments to the temporary rule are effective July 1, 1997. These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1998, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section(s) 56-201 through 56-233, Idaho Code.

DESCRIPTIVE SUMMARY: The proposed rules have been amended in response to public comment and to make typographical, transcriptional, and clerical corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rules was published in the June 4, 1997, Idaho Administrative Bulletin, Volume 97-5, pages 57 through 72.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Patti Campbell at (208) 334-5819.

DATED this 3rd day of September, 1997.

Sherri Kovach
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IDAPA 16
TITLE 03
Chapter 01

RULES GOVERNING MEDICAID FOR FAMILIES AND CHILDREN

**There are substantive changes
from the proposed rule text.**

**Only those sections that have changed from the
original proposed text are printed in this
Bulletin following this notice.**

The complete original text was published in the
Idaho Administrative Bulletin, Volume 97-5, May 7, 1997,
pages 57 through 72.

This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature
for final adoption.

TEXT OF DOCKET NO. 16-0301-9703

005. ABBREVIATIONS.

Abbreviations applicable to IDAPA 16.03.01 are listed in Subsections 005.01 through 005.33.

(7-1-97)T

- | | | |
|------------------|---|------------------|
| 01. | AFDC. Aid to Families with Dependent Children, the cash assistance program for families and children in effect through June 30, 1997. | (7-1-97)T |
| 02. | AG. Office of the Attorney General, Health and Welfare Division. | (7-1-97)T |
| 03. | AIM. The Department's Advanced Information Management system for Medicaid. | (7-1-97)T |
| 04. | ASVI. Alien Status Verification Index. | (7-1-97)T |
| 05. | BCSS. Bureau of Child Support Services. | (7-1-97)T |
| 06. | DHW. Department of Health and Welfare. | (7-1-97)T |
| 07. | DOE. Department of Employment. | (7-1-97)T |
| 08. | DVR. Department of Vocational Rehabilitation. | (7-1-97)T |
| 09. | EE. Eligibility Examiner. | (7-1-97)T |
| 10. | EITC. Earned Income Tax Credit. | (7-1-97)T |
| 11. | EPICS. The DHW Eligibility Programs Integrated Computer System. | (7-1-97)T |
| 12. | EPSDT. Early and Periodic Screening, Diagnosis, and Treatment. | (7-1-97)T |
| 13. | FmHA. The Farmer's Home Administration of the U.S. Department of Agriculture. | (7-1-97)T |
| <u>14.</u> | <u>FPG. Federal Poverty Guideline.</u> | <u>(7-1-97)T</u> |
| 14 5. | HUD. The U.S. Department of Housing and Urban Development. | (7-1-97)T |
| 15 6. | ICF/MR. Intermediate Care Facility/Mentally Retarded. | (7-1-97)T |
| 16 7. | ICES. The Idaho Child Support Enforcement System. | (7-1-97)T |

178.	IEVS. Income and Eligibility Verification System.	(7-1-97)T
189.	INA. Immigration and Naturalization Act.	(7-1-97)T
192 0.	IRS. Internal Revenue Service.	(7-1-97)T
201.	MA. Medicaid (Medical Assistance).	(7-1-97)T
242.	PRWORA. Personal Responsibility Work Opportunity Reconciliation Act of 1996.	(7-1-97)T
223.	PWE. Principal Wage Earned.	(7-1-97)T
234.	RSDI. Retirement, Survivors, and Disability Insurance.	(7-1-97)T
245.	SAVE. Systematic Alien Verification for Entitlement.	(7-1-97)T
256.	SRS. Self Reliance Specialist.	(7-1-97)T
267.	SSA. Social Security Administration.	(7-1-97)T
278.	SSI. Supplemental Security Income.	(7-1-97)T
289.	SSN. Social Security Number.	(7-1-97)T
2930.	TAFI. Temporary Assistance for Families in Idaho.	(7-1-97)T
301.	TPL. Third Party Liability	(7-1-97)T
342.	UIB. Unemployment Insurance Benefits.	(7-1-97)T
323.	VA. Veterans Administration.	(7-1-97)T
334.	VRS. Vocational Rehabilitation Services, Department of Education.	(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

203. CITIZENSHIP AND LEGAL NON-CITIZEN CRITERIA.

Individuals must be citizens of the United States (U.S.) or be legal non-citizens. Nationals of American Samoa or Swain's Island are the equivalent of U.S. citizens. Only the groups of ~~legal non-citizens~~ listed in Subsections 203.01 through 203.07 are legal non-citizens. Individuals must provide proof of citizenship or proof of legal non-citizen status. An adult family member must sign a declaration, under penalty of perjury, attesting to citizenship or legal non-citizen status. ~~(7-1-97)T~~(7-1-97)T

01.	Permanent Residents. An individual admitted to the U.S. for permanent residence.	(7-1-97)T
02.	Refugees. A refugee admitted under 207 of the INA.	(7-1-97)T
03.	Asylee. Individuals granted asylum under 208 of the INA.	(7-1-97)T
04.	Deportee. Individuals whose deportation is withheld under 243 of the INA.	(7-1-97)T
05.	Parolee. Individual granted parole for at least one (1) year under 212(d)(5) of the INA.	(7-1-97)T
06.	Conditional Entrant. An individual granted conditional entry under 302 203(a)(7) of the INA.	

~~(7-1-97)F~~(7-1-97)T

07. Battered Immigrants. A battered immigrant meeting certain requirements. (7-1-97)T

204. LEGAL NON-CITIZEN REQUIREMENTS AND LIMITATIONS.

Legal non-citizens, who are otherwise eligible, are subject to requirements and limitations listed in Subsections 204.01 through 204.07. (7-1-97)T

01. Permanent Residents. Permanent residents, living in the U.S. prior to August 22, 1996, ~~and having forty (40) quarters of Social Security coverage,~~ can get Medicaid without time limits. ~~(7-1-97)F~~(7-1-97)T

02. Veterans. Regardless of entry date, honorably discharged veterans, whose discharge reason is other than alienage, can get Medicaid without time limits. This includes the veteran's spouse and unmarried dependent children. (7-1-97)T

03. Armed Forces Members. Regardless of entry date, members of the U.S. Armed Forces, who are on full time active duty, can get Medicaid without time limits. This includes the member's spouse and unmarried dependent children. (7-1-97)T

04. Refugees. Regardless of entry date, refugees can get Medicaid for five (5) years from the date of entry. (7-1-97)T

05. Asylees. Regardless of entry date, asylees can get Medicaid for five (5) years from the date asylum is granted. (7-1-97)T

06. Deportees. Regardless of entry date, individuals whose deportation is withheld can get Medicaid for five (5) years from the date deportation is withheld. (7-1-97)T

07. Parolees, Conditional Entrants, and Battered Immigrants. Parolees, Conditional Entrants, and Battered Immigrants, living in the U.S. prior to August 22, 1996, can get Medicaid without time limits. (7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

300. FINANCIAL ELIGIBILITY.

Financial eligibility is determined by using Section 300. through Section 399. Income and resource methodologies for Medicaid for Families and Children support the AFDC plan income and resource methodologies which were in effect on July 16, 1996. ~~(7-1-97)F~~(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

350. INCOME AVAILABILITY.

All income from financially responsible persons is counted for Medicaid eligibility. Income is available when the participant has a legal interest in a liquidated sum. Income must be under the control of the participant during the period for which need is being determined. Income is available when action can be taken by the individual to obtain or use it. Income is converted to a monthly amount. As a condition of financial eligibility, the participant must take all necessary steps to obtain program benefits for which they may be eligible. This includes RSDI, unemployment insurance, and worker's compensation. ~~(7-1-97)F~~(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

386. UNEARNED INCOME DISREGARDS.

Unearned income disregards are subtracted from monthly income as listed in Subsections 386.01 and 386.02.

(7-1-97)T

01. Child Support Disregard. The first fifty dollars (\$50) of child support is disregarded. (7-1-97)T

02. TAFI. ~~Thirty~~Seventy-five dollars (~~\$30~~75) of TAFI income is disregarded for one (1) and two (2) person families. ~~(7-1-97)T~~(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

413. LOW INCOME FAMILIES WITH CHILDREN.

Families with minor children in the home, who would be AFDC eligible if the program was in effect, are eligible if non- financial, financial, and the conditions listed in Subsections 413.01 through 413.04 are met. (7-1-97)T

01. Living with a Relative. A child must live in a home with an adult caretaker who is related to the child by blood, marriage, or adoption. (7-1-97)T

02. Dependent Child. A dependent child is a child under eighteen (18) years of age or, if over eighteen (18) years of age, is expected to graduate from high school by the nineteenth (19th) birthday. (7-1-97)T

03. Deprivation. The dependent child must be deprived. Deprivation is experiencing a the lack of, or interruption in parental care, guidance and support ordinarily received from one (1) or both parents. Deprivation is caused by through continued absence, incapacity which is expected to last at least thirty (30) days, death, or the unemployment/underemployment of the principal wage earner (PWE) parent. An incapacitated parent must cooperate with a plan for training, employment or medical treatment. A PWE is unemployed/underemployed if the PWE is working less than one hundred (100) hours per month. A PWE must apply for unemployment benefits and accept an offer of employment, training, or education. If the receipt of unemployment benefits causes financial ineligibility under this coverage group, family members may qualify for Medicaid under FPG coverage groups. ~~(7-1-97)T~~(7-1-97)T

04. One Hundred Eighty-five Percent (185%) Test. The family is ineligible for Medicaid when total gross income exceeds one hundred eighty-five percent (185%) of the monthly need standard. (7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

603. MINOR PARENT (MP) LIVING WITH PARENTS.

A minor parent (MP) who lives with her parents may be eligible for Medicaid for herself and her child. A MP is a child under the age of eighteen (18) who is pregnant or has a child. The MP's parent(s) are not required to apply. The MP's parent(s) income is deemed to the MP. The MP must meet financial and non-financial criteria. The MP's parental income is deemed as shown in Subsections 603.01 through 603.04. ~~(7-1-97)T~~(7-1-97)T

01. Standard Disregard. From earned income, subtract the standard work disregard of ninety dollars (\$90). (7-1-97)T

02. Child Care Costs. From earned income subtract child care costs up to the maximums in Section 361. (7-1-97)T

03. Unearned Income. To earned income, add the amount of unearned income. (7-1-97)T

04. Parental Family Deduction. From the total income, subtract an amount equal to the AFDC Need Standard or the FPG for the MP's parent's family size. This deduction is determined by the MP's coverage group. In calculating the family size, exclude the MP and her children. (7-1-97)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-9702

NOTICE OF AMENDMENT TO TEMPORARY RULE AND PENDING RULE

EFFECTIVE DATE: The amendments to the temporary rule are effective September 22, 1997, April 1, 1997, May 1, 1997, July 1, 1997. These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1998, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67- 5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section(s) 56-202 (B) and 39-106 (I), Idaho Code.

DESCRIPTIVE SUMMARY: The proposed rules have been amended in response to public comment and to make typographical, transcriptional, and clerical corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rules was published in the May 7, 1997 Administrative Bulletin, Volume 97-5, pages 73 through 113.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Patti Campbell at (208) 334-5819.

DATED this 3rd Day of September.

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IDAPA 16
TITLE 03
Chapter 04

RULES GOVERNING FOOD STAMP PROGRAM IN IDAHO

**There are substantive changes
from the proposed rule text.**

**Only those sections that have changed from the
original proposed text are printed in this
Bulletin following this notice.**

The complete original text was published in the
Idaho Administrative Bulletin, Volume 97-5, May 7, 1997,
pages 73 through 113.

This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature
for final adoption.

TEXT OF DOCKET NO. 16-0304-9702

234. ENDING SANCTIONS FOR FAILURE TO COMPLY WITH JSAP.

Households or household members sanctioned for not complying with JSAP are ineligible until a condition listed below is met. (6-1-94)

01. Fair Hearing Reversal. Sanction ends if a fair hearing reverses the sanction. (6-1-94)
02. Sanctioned Member Becomes Exempt. Sanction ends if the sanctioned member becomes exempt from JSAP and has served the minimum sanction period. ~~(9-22-96)T~~(9-22-96)T
03. Sanctioned Member Leaves Household. Sanction ends if the sanctioned member leaves the Household. (6-1-94)
04. New Head of Household. Sanction ends if a new eligible individual joins the household and is the new head of household. (6-1-94)
05. Six (6) Months Elapse for Sanctioned Household. The household's sanction ends if six (6) months elapse. The sanction for the individual member continues until he becomes exempt or complies. (9-22-96)T
06. Member Complies with JSAP. Sanction ends if the member who refused to comply with a JSAP requirement, complies by completing or resuming the assignment and has served the minimum sanction period. This must be proved by JSAP staff. (9-22-96)T

(BREAK IN CONTINUITY OF SECTIONS)

252. ENDING WORK REGISTRATION SANCTION.

Households or household members sanctioned for not complying with work registration are ineligible until a condition listed below is met. (6-1-94)

01. Fair Hearing Reversal. Sanction ends if a fair hearing reverses the sanction. (6-1-94)
02. Sanctioned Member Becomes Exempt. Sanction ends if the sanctioned member becomes exempt from work registration and has served the minimum sanction period. ~~(9-22-96)T~~(9-22-96)T
03. Sanctioned Member Leaves Household. Sanction ends if the sanctioned member leaves the Household. (6-1-94)
04. New Head of Household. Sanction ends if a new eligible individual joins the household and is the

new head of household.

(6-1-94)

05. Six (6) Months Elapse. The household's sanction ends if six (6) months elapse. The sanction for the individual member continues until he becomes exempt or complies. (9-22-96)T

06. Member Complies with Work Registration. Sanction ends if the member who refused to comply with the work registration requirement, complies by registering and has served the minimum sanction period. (9-22-96)T

(BREAK IN CONTINUITY OF SECTIONS)

275. ENDING VOLUNTARY QUIT OR REDUCTION OF WORK HOURS PENALTY.

Eligibility may be re-established after a voluntary quit or work reduction penalty period has elapsed for an otherwise eligible household or household member when a condition in Subsection 275.01 is met. Eligibility may be reestablished before the end of the penalty period for an otherwise eligible household or household member when a condition in Subsection 275.02 is met. (9-22-96)T

01. Ending Voluntary Quit or Reduction Penalty After Penalty Period Has Elapsed. (9-22-96)T

a. Member gets a job. The penalty member gets new employment comparable in salary or hours to the job the person quit. Comparable employment may entail fewer hours or a lower net salary than the job which was quit. To be comparable, the hours for the new job cannot be less than twenty (20) hours per week. To be comparable, the salary or earnings for the new job cannot be less than Federal minimum wage multiplied by twenty (20) hours per week. (9-22-96)T

b. Member increases hours to more than thirty (30) hours per week. The penalty member's hours of work are restored to the average number of hours per week before reduction. (9-22-96)T

~~e. Member becomes exempt. The penalty member becomes exempt from work registration requirements. The voluntary quit penalty does not end if the member becomes exempt due to: JOBS program participation. Application or receipt of Unemployment Insurance. (9-22-96)T~~

~~dc. Six (6) months elapse. The penalty for the household ends if six (6) months elapse. The sanction for the individual member continues until a condition for ending the penalty is met. (9-22-96)T~~

02. Ending Voluntary Quit or Reduction Penalty Before the End of the Penalty Period. (9-22-96)T

a. Member leaves household. The penalty member leaves the household. The penalty follows the member who caused it. If the penalty member joins another household as the head of household, the new household is ineligible for the greater of balance of the penalty period, or the date the member complies. The household's penalty period cannot exceed six (6) months. (9-22-96)T

b. The household's penalty ends when the head of household changes because a new and otherwise eligible member joins the household as head of household. The penalty period continues for the penalty member for the greater of the length of the minimum penalty period or the date he complies. (9-22-96)T

~~c. Member becomes exempt. The penalty member becomes exempt from work registration requirements. The voluntary quit penalty does not end if the member becomes exempt due to: JOBS program participation. Application or receipt of Unemployment Insurance. (9-22-96)T~~

(BREAK IN CONTINUITY OF SECTIONS)

277. PENALTY FOR FAILURE TO COMPLY WITH A REQUIREMENT OF ANOTHER MEANS-TESTED PROGRAM.

The penalties applied to the Food Stamp case for failure to comply with a requirement of another means-tested program to prevent an increase in Food Stamp benefits are listed in Subsections 277.01 and 277.02. (7-1-97)T

01. Failure to Comply with a TAFI Requirement. When a Food Stamp recipient fails to comply with a requirement of the TAFI program count that portion of the benefit decrease attributed to the TAFI penalty. Conditions for ending the penalty are listed below. (7-1-97)T

a. Time limited TAFI penalty. If the TAFI penalty is time limited, end the FS penalty when the TAFI penalty is ended. (7-1-97)T

b. Lifetime TAFI penalty. If the TAFI penalty is a lifetime penalty, apply the FS penalty for a length of time to match the remaining months of TAFI eligibility for the household. End the FS penalty if the household subsequently reapplies for TAFI and is denied for a reason other than the noncompliance that caused the TAFI penalty. (7-1-97)T

c. Member who caused the TAFI penalty leaves the household. End the ~~TAFI~~ FS penalty when the member who caused the TAFI penalty leaves the household. (7-1-97)T(7-1-97)T

02. Failure to Comply with a Requirement of a Means-tested Program Such as SSI. For a failure to comply with a requirement of another means-tested program, such as SSI, which results in a reduction of benefits, count that portion of the benefit decrease which is attributed to the penalty. (9-22-96)T

278. COOPERATION IN ESTABLISHMENT OF PATERNITY AND OBTAINING SUPPORT.

A natural or adoptive parent or other individual living with and exercising parental control over a minor child who has an absent parent must cooperate in establishing paternity for the child and obtaining support for the child and herself. Cooperation is defined in Subsection 278.01 and 278.02.

01. Providing All Known Information. Cooperation includes but is not limited to providing all known information to identify and locate the absent parent. (7-1-97)T

02. Established Case for Participant. After CSS has established a case for a participant, all child support payments must be sent directly to CSS. After CSS has established a case, cooperation includes forwarding support payments received directly from the absent parent to CSS. (7-1-97)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-9704
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective September 1, 1997.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b) and 39-106(I), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 1997.

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: Changes the definition of coupon to include access devices to accommodate the change to the issuance of benefits via EBT.

Adds a definition of electronic benefit transfer to the Food stamp definitions.

Adds an abbreviation for electronic benefit transfer (EBT) to the Food Stamp rules.

Adds a section which explains that the rules governing electronic benefit transfer are located in Title 3, Chapter 20.

Deletes criteria for eligibility of legal non-citizens participating in the Food Stamp program on August 22, 1996.

These individuals must have had their eligibility determined using the new criteria between April and August of 1997.

Deletes pending adoption as good cause for failure to cooperate in establishing paternity and obtaining support for a minor child.

This makes good cause for Food Stamps consistent with TAFI policy.

Changes term "coupon return" to "coupons" in those sections dealing with repayment of claims. This change is to accommodate the change to the issuance of benefits via EBT.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: 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 September 24, 1997.

DATED this 3rd day of September, 1997.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
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(208) 334-5564 phone, (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0304-9704

002. DEFINITIONS.

For the Food Stamp Program, the following definitions apply:

(6-1-94)

01. Administrative Error Claim. A claim resulting from an overissuance caused by the Department's action or failure to act. (6-1-94)
02. Applicant. A person applying for Food Stamps. (6-1-94)
03. Application for Participation. The application form filed by the head of the household or authorized representative. (6-1-94)
- ~~04. Authorization to Participate. The card issued by the Department authorizing a Food Stamp allotment. The card specifies the household, allotment amount and the redemption month. (6-1-94)~~
054. Authorized Representative. A person designated by the household to act on behalf of the household to apply for or get and use Food Stamps. Authorized representatives include private nonprofit organizations or institutions conducting a drug addiction or alcoholic treatment and rehabilitation center acting for center residents. Authorized representatives include group living arrangement centers acting for center residents. Authorized representatives include battered women's and children's shelters acting for the shelters' residents. Homeless meal providers may not be authorized representatives for homeless Food Stamp recipients. (6-1-94)
065. Battered Women and Children's Shelter. A shelter for battered women and children which is a public or private nonprofit residential facility. If the facility serves others, a portion of the facility must be set aside on a long-term basis to serve only battered women and children. (6-1-94)
076. Boarder. Any person or group to whom a household, other than a commercial boarding house, furnishes meals and lodging in exchange for an amount equal to or greater than the thrifty food plan. Children, parents and spouses in a household must not be treated as boarders. (6-1-94)
087. Boarding House. A licensed commercial enterprise offering meals and lodging for payment to make a profit. (6-1-94)
098. Categorical Eligibility. If all household members are authorized to get TAFI, AABD and/or SSI, the household is categorically eligible. Categorically eligible households are exempt from resource, gross and net income eligibility standards. (7-1-97)T
109. Certification Determination. Actions necessary to determine household eligibility including interviews, verification, approval, denial, field investigation, analysis and corrective action necessary to insure prompt, efficient and correct certifications. (6-1-94)
140. Claim Determination. The action taken by the Department establishing the household's liability for repayment when an overissuance of Food Stamps occurs. (6-1-94)
121. Client. A person entitled to or receiving Food Stamps. (6-1-94)
132. Coupon. Any coupon, stamp, access device, or certificate issued pursuant to the Food Stamp Program for the purchase of food. ~~(6-1-94)~~(9-1-97)T
143. Coupon Allotment. The total dollar amount of Food Stamps allowed the household during the full or prorated month. (6-1-94)
154. Department. The Idaho Department of Health and Welfare. (6-1-94)
165. Disqualified Household Members. Individuals required to be excluded from participation in the Food Stamp program are Disqualified Household Members. These include: (6-1-94)
- a. Ineligible legal noncitizen who do not meet the citizenship or eligible legal noncitizen requirements. (4-1-97)T

- b. Individuals awaiting proof of citizenship when citizenship is questionable. (6-1-94)
 - c. Individuals disqualified for failure or refusal to provide a Social Security Number (SSN). (6-1-94)
 - d. Individuals disqualified for Intentional Program Violation (IPV). (6-1-94)
 - e. Individuals disqualified for receiving three (3) months of Food Stamps in a three (3) year period in which they did not meet the work requirement for able-bodied adults without dependent children. (9-22-96)T
 - f. Individuals disqualified as a fugitive felon or probation or parole violator. (9-22-96)T
 - g. Individuals disqualified for a voluntary quit or reduction of hours of work to less than thirty (30) hours per week. (9-22-96)T
 - h. Individuals disqualified for failure to cooperate in establishing paternity and obtaining support for a child under eighteen (18). (7-1-97)T
 - i. Individuals disqualified for a conviction of a felony which has as an element, the use, possession or distribution of a controlled substance. (7-1-97)T
176. Documentation. The method used to record information establishing eligibility. The information must sufficiently explain the action taken and the proof and how it was used. (6-1-94)
187. Drug Addiction or Alcoholic Treatment Program. Any drug addiction or alcoholic treatment rehabilitation program conducted by a private nonprofit organization or institution or a publicly operated community mental health center under Part B of Title XXIX of the Public Health Service Act (42 USC 300 et seq.). Indian reservation based centers may qualify if FCS requirements are met and the program is funded by the National Institute on Alcohol Abuse under Public Law 91-616 or was transferred to Indian Health Service funding. (4-1-97)T
18. EBT Handbook. Idaho Department of Health and Welfare Rules, IDAPA 16.03.20, "Rules Governing Electronic Benefit Transfer (EBT) of Public Assistance and Food Stamps." (9-1-97)T
19. Electronic Benefit Transfer. A method of issuing Food Stamps to an eligible household. (9-1-97)T
1920. Eligible Foods. Any food or food product for human consumption excluding alcohol, tobacco, and hot foods and hot food products ready for immediate consumption. Eligible foods include: (6-1-94)
- a. Garden seeds and plants to grow food for human consumption. (6-1-94)
 - b. Meals prepared for the elderly at a communal dining facility. (6-1-94)
 - c. Meals prepared and delivered by an authorized meal delivery service. (6-1-94)
 - d. Meals served to an narcotics addict or alcoholic who participate and reside in a rehabilitation center program. (6-1-94)
 - e. Meals prepared and served by an authorized group living center to blind or disabled residents who receive benefits under Titles I, II or X, XIV, XVI of the Social Security Act. (6-1-94)
 - f. Meals prepared and served at a shelter for battered women and children to eligible residents. (6-1-94)
 - g. Meals prepared and served by an authorized public or private nonprofit establishment to homeless Food Stamp participants. (6-1-94)
201. Eligible Household. A household living in a project area and meeting the eligibility criteria in these rules. (6-1-94)

242. Emancipated Minor. A person, age fourteen (14) but under age eighteen (18), who has been married or whose circumstances show the parent and child relationship has been renounced such as a child in the military service. (6-1-94)

223. Enumeration. The requirement that each household member provide the Department either their Social Security Number (SSN) or proof that they have applied. (6-1-94)

234. Exempt. A household member who is not required to register for or participate in the JSAP program is exempt. A household member who is not required to register for work is exempt. (6-1-94)

245. Federal Fiscal Year. The Federal fiscal year (FFY) is from October 1 to September 30. (6-1-94)

256. Food Assistance. The Department's Food Stamp Program or Food Distribution Program. (6-1-94)

267. General Assistance. Cash or other aid, excluding in-kind assistance, financed by Federal, state or local government and provided to cover living expenses or other basic needs. This cash or other aid is intended to promote the health and well-being of recipients. (6-1-94)

278. Group Living Arrangement. A public or private nonprofit residential setting serving no more than sixteen (16) residents. The residents are blind or disabled and receiving benefits under Title II or XVI of the Social Security Act, certified by the Department under regulations issued under Section 1616(e) of the Social Security Act, or under standards determined by the Secretary of USDA to be comparable to Section 1616(e) of the Social Security Act. (6-1-94)

289. Homeless Person. A person: (6-1-94)

a. Who has no fixed or regular nighttime residence. (6-1-94)

b. Whose primary nighttime residence is a temporary accommodation for not more than ninety (90) days in the home of another individual or household. (9-22-96)T

c. Whose primary nighttime residence is a temporary residence in a supervised public or private shelter providing temporary residence for homeless persons. (6-1-94)

d. Whose primary nighttime residence is a temporary residence in an institution which provides temporary residence for people who are being transferred to another institution. (6-1-94)

e. Whose primary nighttime residence is a temporary residence in a public or private place which is not designed or customarily used as sleeping quarters for people. (6-1-94)

2930. Homeless Meal Provider. A public or private nonprofit establishment or a profit making restaurant which provides meals to homeless people. The establishment or restaurant must be approved by the Department and authorized as a retail food store by FCS. (7-1-97)T

301. Identification Card. The card identifying the bearer as eligible to get and use Food Stamps. (6-1-94)

342. Inadvertent Household Error Claim (IHE). A claim resulting from an overissuance, caused by the household's misunderstanding or unintended error. A household error claim pending an intentional program violation decision. (6-1-94)

323. Income and Eligibility Verification System (IEVS). A system of information acquisition and exchange for income and eligibility verification which meets Section 1137 of the Social Security Act requirements. (6-1-94)

334. Indian General Assistance. The general assistance program administered by the Bureau of Indian Affairs. (6-1-94)

345. Institution of Higher Education. Any institution which normally requires a high school diploma or equivalency certificate for enrollment. These institutions include colleges, universities, and business, vocational, technical, or trade schools at the post-high school level. (6-1-94)

356. Institution of Post Secondary. Educational institutions normally requiring a high school diploma or equivalency certificate for enrollment, or admits persons beyond the age of compulsory school attendance. The institution must be legally authorized by the state and provide a program of training to prepare students for gainful employment. (6-1-94)

367. Nonexempt. A household member who must register for and participate in the JSAP program. A household member who must register for work. (6-1-94)

378. Nonprofit Meal Delivery Service. A political subdivision or a private nonprofit organization, which prepares and delivers meals, authorized to accept Food Stamps. (6-1-94)

389. Overissuance. The amount Food Stamps issued exceeds the Food Stamps a household was eligible to receive. (6-1-94)

3940. Parental Control. Parental control means that an adult household member has a minor in the household. The minor is dependent financially or otherwise on the adult. Minors, emancipated through marriage, are not under parental control. Minors living with children of their own are not under parental control. (3-1-97)T

401. Participation. Participation means a person or household was certified for the Food Stamp Program and is getting Food Stamps. (6-1-94)

412. Period of ~~ATP~~ or Coupons Intended Use. The month ~~the ATP~~ or Food Stamps are issued. When issued after the twentieth (20th), the period of intended use is from the twenty-first (21st) to the last day of the next month. ~~(6-1-94)~~(9-1-97)T

423. Program. The Food Stamp Program created under the Food Stamp Act and administered in Idaho by the Department. (6-1-94)

434. Project Area. The state of Idaho has been approved as one project area by the Department of Agriculture. (6-1-94)

445. Public Assistance. Public assistance means Old-Age Assistance (OAA), Temporary Assistance for Families in Idaho (TAFI), Aid to the Blind (AB) and Aid to the Disabled (AD). (7-1-97)T

456. Retail Food Store. A retail food store, for Food Stamp purposes means: (6-1-94)

a. An establishment, or recognized department of an establishment, or a house-to-house food trade route, whose food sales volume is more than fifty percent (50%) staple food items for home preparation and consumption. (6-1-94)

b. Public or private communal dining facilities and meal delivery services. (6-1-94)

c. Private nonprofit drug addict or alcohol treatment and rehabilitation programs. (6-1-94)

d. Public or private nonprofit group living arrangements. (6-1-94)

e. Public or private nonprofit shelters for battered women and children. (6-1-94)

f. Private nonprofit cooperative food purchasing ventures, including those whose members pay for food prior to the receipt of the food. (6-1-94)

g. A farmers' market. (6-1-94)

h. An approved public or private nonprofit establishment which feeds homeless persons. The establishment must be approved by FCS. (7-1-97)T

~~467.~~ Spouse. Persons who are: (6-1-94)

a. Ceremonially married under applicable state law; or (6-1-94)

b. Living together, free to marry and holding themselves out as man and wife. (6-1-94)

~~478.~~ State. Any of the fifty (50) States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands and the Virgin Islands of the United States. (6-1-94)

~~489.~~ State Agency. The Idaho Department of Health and Welfare. (6-1-94)

~~4950.~~ Student. An individual between the ages of eighteen (18) and fifty (50), physically and mentally fit, and enrolled at least half-time in an institution of higher education. (6-1-94)

~~501.~~ Supplemental Security Income (SSI). Monthly cash payments under Title XVI of the Social Security Act. Payments include state or Federally administered supplements, such as AABD payments in Idaho. (6-1-94)

~~542.~~ Verification. The proof obtained to establish the accuracy of information and the household's eligibility. (6-1-94)

003. ABBREVIATIONS.

For the purposes of the Food Stamp Program, the following abbreviations are used. (6-1-94)

01. AABD. Aid to the Aged, Blind and Disabled. (9-1-94)

02. ABAWD. Able bodied adults without dependents. (7-1-97)

03. AFA. Application for Assistance (HW 0901). (6-1-94)

04. ASVI. Alien Status Verification Index. (6-1-94)

~~05. ATP. Authorization to participate card. (6-1-94)~~

~~065.~~ A/R. The applicant or recipient. (6-1-94)

~~076.~~ BEER. Beneficiary Earnings Exchange Report. (6-1-94)

~~087.~~ BENDEX. Beneficiary Data Exchange. (6-1-94)

~~098.~~ BIA. Bureau of Indian Affairs. (6-1-94)

~~409.~~ BIA GA. Bureau of Indian Affairs-general assistance. (6-1-94)

~~140.~~ CIP. The Crisis Intervention Program administered by the Community Services Administration (CSA). (6-1-94)

~~121.~~ COLA. Cost of Living Allowance (COLA) data received from SSA. (6-1-94)

~~132.~~ CSA. The Community Services Administration of the U.S. Department of Housing and Urban Development. (6-1-94)

~~143.~~ CSS. Bureau of Child Support Services. (7-1-97)T

- 154. DHW. The Department of Health and Welfare in Idaho. (6-1-94)
- 165. DOL. Department of Labor of the State of Idaho. (7-1-97)T
- 16. EBT. Electronic Benefit Transfer. (9-1-97)T
- 17. EE. Eligibility Examiner. (6-1-94)
- 18. EFNEP. Expanded Food and Nutrition Education Program. (6-1-94)
- 19. FCS. The Food and Nutrition Service of the U.S. Department of Agriculture. (7-1-97)T
- 20. FFY. Federal fiscal year. (6-1-94)
- 21. FmHA. Farm Home Administration. (8-1-94)
- 22. FMV. Fair market value. (6-1-94)
- 23. FQC. Federal Quality Control. (6-1-94)
- 24. GA. General assistance. (6-1-94)
- 25. HUD. The U.S. Department of Housing and Urban Development. (6-1-94)
- 26. IEVS. Income and Eligibility Verification Systems. (6-1-94)
- 27. IHE. Inadvertent household error. (6-1-94)
- 28. INS. Immigration and Naturalization Service (6-1-94)
- 29. IPV. Intentional program violation. (6-1-94)
- 30. IRS. Internal Revenue Service. (6-1-94)
- 31. JSAP. Job Search Assistance Program. (6-1-94)
- 32. JTPA. Job Training Partnership Act. (6-1-94)
- 33. PA. Public Assistance. (6-1-94)
- 34. RSDI. Retirement, Survivors, Disability Insurance received from SSA. (6-1-94)
- 35. SAVE. Systematic Alien Verification for Entitlements. (6-1-94)
- 36. SAW. Special Agricultural Worker. (6-1-94)
- 37. SDX. State Data Exchange. (6-1-94)
- 38. SQC. State Quality Control. (6-1-94)
- 39. SRS. Self Reliance Specialist. (7-1-97)T
- 40. SUA. Standard utility allowance. (6-1-94)
- 41. SSA. Social Security Administration. (6-1-94)

- 42. SSI. The Federal Supplemental Security Income Program for the aged, blind or disabled. (6-1-94)
- 43. SSN. Social Security number. (6-1-94)
- 44. SWICA. State Wage Information Collection Agency. (6-1-94)
- 45. TAFI. Temporary Assistance for Families in Idaho. (7-1-97)T
- 46. TPQY. Third Party Query. (6-1-94)
- 47. UI. Unemployment Insurance. (6-1-94)
- 48. USDA. United States Department of Agriculture. (6-1-94)
- 49. VA. The Veterans Administration. (6-1-94)
- 50. WIC. The special supplemental Food Program for Women, Infants, and Children. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

~~143. TIME LIMITS FOR FOOD STAMPS ISSUED BY MAIL.~~

~~The Department will mail Food Stamps to assure they are received within thirty (30) days of the application date. The Food Stamps must be mailed by the twenty-eighth (28th) day after the application date. (6-1-94)~~

~~144. TIME LIMIT FOR ATP.~~

~~Some Food Stamp cases require an Authorization to Participate (ATP). The Department will give households an ATP in time to redeem it within thirty (30) days of the application date. The ATP must be mailed within twenty-eight (28) days of the application date. (6-1-94)~~

143. -- 144. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

156. TIME LIMITS FOR EXPEDITED FOOD STAMPS.

Time limits for acting on expedited Food Stamp applications are listed below: (6-1-94)

01. Seven (7) Day Limit for Food Stamps. For households entitled to expedited service, the Department will provide Food Stamps to the household within seven (7) days of the application date. (9-22-96)T

~~02. Seven (7) Day Limit for ATP. The Department will provide an ATP to the household no later than the seventh day after the application date. (9-22-96)T~~

032. Seven (7) Days After Discovery. If not discovered at initial screening, the Department will provide expedited services to an expedite eligible household within seven (7) days. Seven (7) days begins the day after the Department finds the household is entitled to expedited service. (9-22-96)T

043. Seven (7) Days for Waived Interview. The Department will provide expedited services within seven (7) days for households entitled to an office interview waiver. Seven (7) days is counted from the application date. If a telephone interview is conducted, the AFA must be mailed to the household for signature. The mailing time must not be included in the seven (7) days. Mailing time includes the days the AFA is in the mail to and from the household. Mailing time includes the days the AFA is at the household pending signature and mailing. (9-22-96)T

054. Treatment Centers. For residents of drug addiction or alcoholic treatment centers, an ATP or Food Stamps must be provided within seven (7) days of the application date. (9-22-96)T

065. Shelter Residents. For residents of shelters for battered women and children, Food Stamps must be provided within seven (7) days of the application date. (9-22-96)T

(BREAK IN CONTINUITY OF SECTIONS)

204. CITIZENSHIP OR SATISFACTORY IMMIGRATION STATUS.

A person must be a U. S. resident to get Food Stamps. A person must be a U.S. citizen or qualified legal noncitizen to get Food Stamps. ~~Legal noncitizens getting Food Stamps on August 22, 1996 and meeting a category in Subsection 204.01 are qualified legal noncitizens eligible for Food Stamps and must have their eligibility redetermined using the criteria in Subsection 204.02 between April 1, 1997 and August 31, 1997. All other~~ To be eligible for Food Stamps, legal noncitizens must meet a category in Subsection 204.021. (4-1-97)T(9-1-97)T

01. ~~Eligible Immigration Status for Legal Noncitizens Getting Food Stamps on August 22, 1996.~~ (4-1-97)T

a. ~~Permanent Legal Noncitizen. An legal noncitizen lawfully admitted for permanent residence as an immigrant under sections 101(a)(20) and 101(a)(15) of the Immigration and Nationality Act. This includes: Amerasians admitted under Section 884(a)(1) of Public Law 100-202. The legal noncitizen is aged, or disabled, or married to a U.S. citizen, Section 244 of the Immigration and Nationality Act with a code of "Z-11."~~ (4-1-97)T

b. ~~Permanent Resident Under Color of Law. A legal noncitizen entering the United States before January 1, 1972 is lawfully admitted for permanent residence by the Attorney General, under Section 249 of the Immigration and Nationality Act. A legal noncitizen entering the United States after January 1, 1972, and since residing in the United States, is lawfully admitted for permanent residence by the Attorney General, under Section 249 of the Immigration and Nationality Act.~~ (4-1-97)T

e. ~~Refugees. A legal noncitizen qualified for entry under Section 207 or 208 of the Immigration and Nationality Act. A legal noncitizen granted asylum by the Attorney General under Section 208 of the Immigration and Nationality Act.~~ (4-1-97)T

d. ~~Other permanent residents. A legal noncitizen lawfully in the United States for urgent reasons, by order of the Attorney General. A legal noncitizen lawfully in the United States, by order of the Attorney General, for reasons in the public interest under Section 212(d)(5) of the Immigration and Nationality Act. A legal noncitizen lawfully in the United States, by an Attorney General grant of parole.~~ (4-1-97)T

e. ~~Legal noncitizen subject to persecution. A legal noncitizen not deported under Section 243 of the Immigration and Nationality Act. The Attorney General believes the legal noncitizen would be subject to persecution due to race, religion, or political opinion.~~ (4-1-97)T

f. ~~Special agricultural worker. Effective June 1, 1987. A legal noncitizen granted temporary residence as a Special Agricultural Worker (SAW) under Section 210(a) of the Immigration and Nationality Act.~~ (4-1-97)T

g. ~~Disabled Legal noncitizen. Effective November 7, 1988. A legal noncitizen defined as aged, blind, or disabled under Section 1614(a)(1) of the Social Security Act. The legal noncitizen must be lawfully admitted for permanent or temporary residence, under Section 245A(b)(1) of the Immigration and Nationality Act.~~ (4-1-97)T

021. Eligible Immigration Status for ~~All Other~~ Legal Noncitizens. (4-1-97)T(9-1-97)T

a. ~~Legal noncitizen eligible up to five (5) years from admission. A legal noncitizen is a eligible legal noncitizen for five (5) years from the date he obtained a status listed below.~~ (4-1-97)T

~~i.a.~~ Refugees. ~~Refugees~~ admitted under Section 207 of the Immigration and Nationality Act are eligible for Food Stamps for five (5) years from the date the refugee status is assigned. ~~(9-22-96)F(9-1-97)T~~

~~ii.b.~~ Asylees. ~~Asylees~~ admitted under Section 208 of the Immigration and Nationality Act are eligible for Food Stamps for five (5) years from the date the asylee status is assigned. ~~(9-22-96)F(9-1-97)T~~

~~iii.c.~~ Deportation Withheld. ~~Legal noncitizen Individuals~~ whose deportation is withheld under Section 243(h) of the Immigration and Nationality Act are eligible for Food Stamps for five (5) years from the date the deportation was withheld. ~~(4-1-97)F(9-1-97)T~~

~~b.~~ Legal noncitizen eligible with no time limit. A legal noncitizen is an eligible legal noncitizen with no time limit if he meets a requirement listed below. ~~(4-1-97)F~~

~~id.~~ A permanent resident legal noncitizen admitted under the Immigration and Nationality Act before August 22, 1996, who has forty (40) qualifying quarters of work coverage under Title II of the Social Security Act. A qualifying quarter includes a quarter worked by the legal noncitizen's parent while the legal noncitizen was under age eighteen (18) and a quarter worked by the legal noncitizen's spouse during marriage if the legal noncitizen remains married to the spouse or the spouse is deceased can be counted as a quarter of work for the legal noncitizen. Any quarter after January 1, 1997 in which legal noncitizen received any Federal means tested benefit is not counted as a qualifying quarter of work. ~~(4-1-97)F(9-1-97)T~~

~~ii.e.~~ A permanent resident legal noncitizen admitted under the Immigration and Nationality Act on or after August 22, 1996, who has lived in the United States for five years since obtaining permanent resident status and who has forty (40) qualifying quarters of coverage under Title II of the Social Security Act work. ~~(4-1-97)F(9-1-97)T~~

~~iii.f.~~ Veterans. ~~A veteran~~ Veterans honorably discharged for a reason other than alienage citizen status. ~~and This includes~~ the veteran's spouse and unmarried dependent children. ~~(4-1-97)F(9-1-97)T~~

~~iv.g.~~ Members of the U.S. Armed Forces. ~~An active~~ Active duty members of the U.S. Armed Forces who is not on active duty for training only, ~~and the This includes~~ the member's spouse and unmarried dependent children. ~~(4-1-97)F(9-1-97)T~~

(BREAK IN CONTINUITY OF SECTIONS)

280. EXEMPTIONS FROM THE COOPERATION REQUIREMENT.

The parent or individual will not be required to provide information about the absent or alleged parent or otherwise cooperate in establishing paternity or obtaining support if good cause for not cooperating exists. Good cause for failure to cooperate must be proved. Notify the parent or individual in writing of the right to claim a good cause exemption at application and recertification. ~~(7-1-97)T~~

01. Good Cause Defined. Good cause for failure to cooperate in obtaining support is listed below: ~~(7-1-97)T~~

a. Rape or incest. Proof the child was conceived as a result of incest or forcible rape. ~~(7-1-97)T~~

b. Physical or emotional harm. Proof the absent parent may inflict physical or emotional harm to the children, the participant or individual exercising parental control. This must be supported by medical evidence, police reports, or as a last resort, an affidavit from a knowledgeable source. ~~(7-1-97)T~~

~~e.~~ Adoption. ~~Proof an adoption for the child is pending.~~ ~~(7-1-97)F~~

02. Procedures for a Good Cause Claim. A parent or individual claiming good cause for failure to cooperate must submit a notarized statement to the Department identifying the child for whom the exemption is claimed. The statement must list the reasons for the good cause claim. Allow the individual twenty (20) days to

supply evidence supporting the claim. Evidence submitted must be reviewed by the EE or SRS and his Supervisor. A decision on the claim must be made within thirty (30) days of the claim. Food Stamps must not be delayed, denied or stopped pending a decision on a good cause claim. The final decision on the claim will be made by the Self Reliance staff after consultation with CSS. (7-1-97)T

03. Good Cause Decision. Waive the cooperation requirement if good cause exists. Take no further action to establish paternity or obtain support. If good cause does not exist, notify the parent or individual of the decision, the cooperation requirement and that the case will be referred to CSS. Disqualify the parent or individual subsequently refuses to cooperate. (7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

652. PROCEDURES FOR RESTORING BENEFITS.

Procedures for restoring lost benefits are listed below: (6-1-94)

01. Errors Discovered by the Department. The Department must restore lost benefits to entitled households. Household action is not necessary. Benefits lost twelve (12) months or less before Department discovery must be restored. Benefits lost twelve (12) months or less before the Department was notified must be restored. The household must be notified of: (6-1-94)

- a. Its entitlement. (6-1-94)
- b. The amount of benefits to be restored. (6-1-94)
- c. Offsetting benefits. (6-1-94)
- d. The method of restoration. (6-1-94)
- e. The right to a fair hearing if the household disagrees with the benefit restoration. (6-1-94)

02. Lost Benefits to Persons Disqualified for IPV. Persons disqualified for IPV are entitled to restored benefits if the disqualification is later overturned or reversed. Determine the restored benefit by comparing Food Stamps received with the Food Stamps which would have been received if the member was not disqualified. Benefits must be restored regardless of the elapsed time since the disqualification. Restored benefits may exceed twelve (12) months. (6-1-94)

03. Restoring Benefits to Households Who Have Moved Out of State. If benefits are not restored before the household moves, send a letter to the household authorizing the receiving State to restore lost benefits. The receiving State must accept the authorization and issue the benefits. The letter may be presented by the household or sent to the receiving state. Food Stamps ~~or ATPs~~ must not be ~~mailed~~ issued to a household residing out of state. To request another State to issue the benefits: (6-1-94)(9-1-97)T

a. Write a letter to the household or receiving state's certification office. Explain lost benefits must be restored. Explain lost benefits were not issued before the household's departure. (6-1-94)

b. Mail the letter to the household or the receiving state's Food Stamp office. Keep a copy of the letter in the case record. (6-1-94)

04. Computing the Restored Amount. If the lost benefits were an incorrect issuance to an eligible household, issue the difference between the correct and incorrect allotment: (6-1-94)

- a. Issue the difference for the months the household got Food Stamps. (6-1-94)
- b. Issue the difference for the months the household did not get Food Stamps, but was eligible.

(6-1-94)

c. If the loss was caused by an incorrect delay, calculate the restored benefits for the months benefits were lost. (6-1-94)

d. If the loss was caused by an incorrect denial, prorate benefits from the application date. If an eligible household reapplied on time, and was denied incorrectly, restore lost benefits beginning the month after the first certification expired. (6-1-94)

e. If the loss was caused by incorrect closure of the Food Stamp case, restore lost benefits beginning the first month benefits were not issued because of the closure. (6-1-94)

f. The calculation of lost benefits continues until: (6-1-94)

i. The error causing lost benefits is corrected; or (6-1-94)

ii. The household is found ineligible for Food Stamps. (6-1-94)

g. The Department must compute the household's eligibility for each month of loss. If the case file does not document eligibility, inform the household of proof needed to determine eligibility for the lost benefit months. For each month the household cannot provide proof, the household is ineligible. (6-1-94)

h. If a Food Stamp claim against the household is unpaid or in suspense, the restored benefits must be offset against the claim before benefits are issued. (6-1-94)

05. Method of Restoration. The Department must: (6-1-94)

a. Issue lost benefits to entitled households, currently eligible or ineligible. (6-1-94)

b. Issue lost benefits equal to the amount lost. (6-1-94)

c. Issue lost benefits in addition to the current Food Stamps. (6-1-94)

d. Honor reasonable requests to restore lost benefits in monthly installments if: (6-1-94)

i. The household fears loss or theft of excess Food Stamps (6-1-94)

ii. The amount to be restored is more than the household can use in a reasonable period. (6-1-94)

06. Changes in Household Composition. When lost Food Stamps are due a household whose membership has changed, lost benefits must be restored to the household containing the majority of individuals who were members at the time of the loss. If the Department cannot locate or determine the household containing the most members, restore lost benefits to the household containing the head of the household at the time of loss (6-1-94)

07. Disputed Benefits. If the Department and the household do not agree on the restoration calculated or with any other Department action to restore benefits: (6-1-94)

a. The household has ninety (90) days from the determination date to request a fair hearing. If a hearing is requested, the Department must issue lost benefits pending the fair hearing. If the decision is favorable to the household, lost benefits must be restored under the hearing decision. (6-1-94)

b. Do not restore benefits lost more than twelve (12) months prior to the date the Department was initially informed of the loss. (6-1-94)

08. Prevent Recurrence. The Department must act to prevent recurrence of errors when caused by the Department. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

675. OVERISSUANCE CLAIMS AGAINST HOUSEHOLDS.

When more Food Stamps are issued than a household is eligible for, an overissuance exists. The Department must begin a Food Stamp Intentional Program Violation (IPV), Inadvertent Household Error (IHE), or Administrative Error (AE) claim against any household with a Food Stamp overissuance. All adult household members are jointly and separately liable for the value of overissuances. The adult household members, in the household at the time of the overissuance, are liable whether residing in the household with the claim or in any other household. ~~An overissuance exists if a household altered and used an expired ATP. An overissuance does not exist when the household uses an expired ATP that is not altered.~~ An overissuance does not exist when the household does not pay a budgeted expense. An overissuance does not exist if the Department did not ensure the household signed the application, registered for work or provided or applied for an SSN. (6-1-94)(9-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

680. COLLECTING IHE OVERISSUANCES.

Food Stamps are reduced by ten percent (10%) of the monthly Food Stamps or ten dollars (\$10) per month, whichever is greater. Food Stamps must not be withheld from an initial month's benefits. ~~The procedures for collecting IHE claims are listed below:~~ (6-1-94)(9-1-97)T

~~01. Lump Sum Payment. The household makes a full or partial lump sum cash or coupon return repayment, not requiring liquidation of the household's resources. (6-1-94)~~

~~02. Installments. The household makes regular monthly installments by cash or coupon return. (6-1-94)~~

~~03. Lump Sum and Installments. The household makes a combination of lump sum and installment cash or coupon returns. (6-1-94)~~

~~04. Repayment Within Three (3) Years. If the claim cannot be repaid in three (3) years, the Department may lower the debt to an amount allowing repayment in three (3) years. (6-1-94)~~

~~05. Benefits Offset by Amount Not Restored. When offsetting unrestored benefits, use the full amount of the claim. Include any amount compromised for the three (3) year requirement. (6-1-94)~~

~~061. Household Fails to Pay. Send a notice if the household fails to pay under the repayment agreement, by paying nothing or less than agreed, ~~send them a notice.~~ (6-1-94)(9-1-97)T~~

~~a. The notice must state insufficient or no payment was received. (6-1-94)~~

~~b. The notice must state the household may contact the Department to renegotiate their repayment agreement. (6-1-94)~~

~~c. The notice must state if the household fails to make the overdue payment or to contact the Department to discuss renegotiation, the current Food Stamps will be reduced without further notice. (6-1-94)~~

~~072. Household Renegotiates Repayment. If the household requests renegotiation, the Department must decide if their financial circumstances allow payment renegotiation. If their financial circumstances warrant renegotiation, negotiate a new repayment agreement. If renegotiation is not feasible, continue renegotiation until a settlement is reached. Begin allotment reduction if a settlement is not reached. Notice is not required. (6-1-94)(9-1-97)T~~

083. Household Fails to Respond to Notice. Begin allotment reduction if a Food Stamp household fails to respond to the notice. (6-1-94)

094. IHE Collection by Federal Income Tax Refund Offset Program (FTROP). Past Due claims can be submitted for collection through FTROP as specified in 7CFR 273.18 (g). The claim must meet the following criteria: ~~(7-1-97)~~(9-1-97)T

- a. The claim is properly established. (7-1-97)
- b. No person liable for the claim currently participates in a Food Stamp household. (7-1-97)
- c. The claim is for at least thirty dollars (\$30). Multiple claims may be combined to total thirty dollars (\$30). (7-1-97)
- d. The date of the first demand letter is within ten (10) years of the processing year. There is no time limit on court judgements. (7-1-97)
- e. Voluntary or involuntary payments are thirty (30) days past due. (7-1-97)

405. FTROP Notices. Sixty (60) days before referring claims for collection under FTROP, the Department will provide the person with a notice of intent to collect via tax refund offset. The notice must inform the person of their right to request a Department review of the intended collection action. The request for review must be received within sixty (60) days of the notice of intent. The Department will determine if the claims in question are past due and legally enforceable based on a review of its records or other information submitted by the person. The Department will notify the person in writing if it is determined the claim is past due and legally enforceable and the Department intends to refer the claim to IRS for offset. The notice of determination must inform the person of the right to request that FCS review the Department's decision. The notice must include instructions for requesting a review by FCS and the address of the FCS regional office. Claims subject to federal salary offset will be handled in accordance with 7CFR 273.18(g). (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

693. COLLECTING ADMINISTRATIVE ERROR CLAIMS.

The Department must collect against any or all adult members of the household with the AE overissuance. If household membership changes, collect from any previous adult member of the household with the overissuance. ~~The procedures for collection of administrative error claims are listed below:~~ (6-1-94)(9-1-97)T

~~01. Lump Sum Payment. The household makes a full or partial lump sum cash or Food Stamp repayment not requiring liquidation of the household's resources. (6-1-94)~~

~~02. Monthly Installments. The household makes regular monthly installments by cash or Food Stamps. (6-1-94)~~

~~03. Combination Payments. The household makes a combination of lump sum and installment cash or Food Stamp payments. (6-1-94)~~

~~04. Three (3) Year Payment Limit. If the claim cannot be repaid in three (3) years, the Department may compromise to an amount allowing three (3) years of repayment. (6-1-94)~~

~~05. Offset Benefits. When offsetting benefits, use the full amount of the claim and any amount compromised for the three (3) year requirement. (6-1-94)~~

061. Household Fails To Repay. Send a notice if the household fails to pay under a repayment agreement by paying nothing or less than agreed, ~~send a notice~~. The notice must state insufficient or no payment was

received. The notice must state the household may contact the Department to renegotiate their repayment agreement. If the household requests renegotiation, negotiate a new repayment agreement. Begin allotment reduction if a settlement is not reached. Notice is not required. If the household fails to respond to the notice, send additional demand letters to participating and nonparticipating households. Send additional notices until one of the following conditions is met: (6-1-94)(9-1-97)T

- a. ~~The household pays or agree to pay.~~ (6-1-94)
- b. ~~The household meets the criteria for suspension.~~ (6-1-94)
- e. ~~Other collection action is started.~~ (6-1-94)

072. ~~Food Stamp Amount Reduced. The amount of Food Stamp reduction will not exceed the greater of ten percent (10%) of monthly Food Stamps or ten dollars (\$10) per month, unless the household requests a higher amount, in writing. The Department must be sure the household is told:~~ (6-1-94)(9-1-97)T

- a. ~~Food Stamp reduction will be negotiated if the household chooses to pay by this method.~~ (6-1-94)
- b. ~~Repayment method is the choice of the household.~~ (6-1-94)
- e. ~~The recovery amount must be negotiated and agreed upon by the household.~~ (6-1-94)
- d. ~~Food Stamps are not reduced without the household's request for allotment reduction.~~ (6-1-94)

083. ~~Department Must Not. The Department must not: start allotment reduction from an initial month's benefits.~~ (6-1-94)(9-1-97)T

- a. ~~Start allotment reduction without the household's request for allotment reduction.~~ (6-1-94)
- b. ~~Start allotment reduction from an initial month's benefits.~~ (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

713. COLLECTING IPV OVERISSUANCES.

Procedures for collecting IPV claims are listed below: The Department must collect against any or all adult members of the household with the IPV overissuance. If household membership changes, collect from any previous adult member of the household with the overissuance. (6-1-94)(9-1-97)T

01. ~~Lump Sum Payment. The household makes a full or partial lump sum cash or coupon return repayment, not requiring liquidation of the household's resources.~~ (6-1-94)

02. ~~Installments. The household makes regular monthly installments by cash or coupon return.~~ (6-1-94)

03. ~~Lump Sum and Installments. The household makes a combination of lump sum and installment cash or coupon returns.~~ (6-1-94)

04. ~~Unable to Repay Within Three (3) Years. If the claim cannot be repaid in three (3) years, the Department may lower the debt to an amount allowing repayment in three (3) years.~~ (6-1-94)

05. ~~Benefits Offset by Amount Not Restored. When offsetting unrestored benefits, use the full amount of the claim. Include any amount compromised for the three (3) year requirement.~~ (6-1-94)

061. ~~Household Fails to Pay. Send a notice If the household fails to pay under the repayment agreement, by paying nothing or less than agreed, send them a notice. The notice must state:~~ (6-1-94)(9-1-97)T

- a. No payment, or not enough payment, was received. (6-1-94)
- b. The household may contact the Department to renegotiate their repayment agreement. (6-1-94)
- c. If the household fails to make the overdue payment or to contact the Department to discuss renegotiation, the current Food Stamps will be reduced without further notice. (6-1-94)

072. Household Renegotiates Repayment. If the household requests renegotiation, the Department must decide if their financial circumstances allow payment renegotiation. If their financial circumstances warrant renegotiation, negotiate a new repayment agreement. If renegotiation is not feasible, continue renegotiation until a settlement is reached. Begin allotment reduction if a settlement is not reached. Notice is not required. (6-1-94)

083. Household Fails to Respond to Notice. If a Food Stamp household fails to respond to the notice by making the overdue payments or requesting renegotiation, reduce Food Stamp issuance. (6-1-94)

094. Collection by Federal Income Tax Refund Offset Program (FTROP). Past Due claims can be submitted for collection through FTROP as specified in 7CFR 273.18 (g). The claim must meet the following criteria: ~~(7-1-97)~~(9-1-97)T

- a. The claim is properly established. (7-1-97)
- b. No person liable for the claim currently participates in a Food Stamp household. (7-1-97)
- c. The claim is for at least thirty dollars (\$30). Multiple claims may be combined to total thirty dollars (\$30). (7-1-97)
- d. The date of the first demand letter is within ten (10) years of the processing year. There is no time limit on court judgements. (7-1-97)
- e. Voluntary or involuntary payments are thirty (30) days past due. (7-1-97)

405. FTROP Notices. Sixty (60) days before referring claims for collection under FTROP, the Department will provide the person with a notice of intent to collect via tax refund offset. The notice must inform the person of their right to request a Department review of the intended collection action. The request for review must be received within sixty (60) days of the notice of intent. The Department will determine if the claims in question are past due and legally enforceable based on a review of its records or other information submitted by the person. The Department will notify the person in writing if it is determined the claim is past due and legally enforceable and the Department intends to refer the claim to IRS for offset. The notice of determination must inform the person of the right to request that FCS review the Department's decision. The notice must include instructions for requesting a review by FCS and the address of the FCS regional office. Claims subject to federal salary offset will be handled in accordance with 7CFR 273.18(g). (7-1-97)

714. IPV REPAYMENT AMOUNTS.

IPV repayment factors are listed below: (6-1-94)

- 01. Repayment Amount. The repayment amount is the greater of: (6-1-94)
 - a. Twenty percent (20%) of the household's monthly Food Stamp amount, if they had not been disqualified. (6-1-94)
 - b. Ten dollars (\$10) per month. (6-1-94)
- 02. Repayment Amount Adjusted Monthly. The repayment amount is adjusted monthly as the Food Stamps increase or decrease. (6-1-94)
- 03. Installment Payments Not Adjusted Monthly. The installment repayment agreement must specify

monthly payments, not less than the allotment reduction amount. Once negotiated, monthly installments remain unchanged. The Department or household may renegotiate payments if the household's finances change. (6-1-94)

04. Full Repayment Within Three (3) Years. Restitution of a claim must be paid within three (3) years. The Department may compromise the claim amount to allow repayment within the three (3) years. The full amount, including compromises, must be used to offset benefits. (6-1-94)

05. Payment Not Withheld From First Month's Benefit. The Food Stamp reduction must never be withheld from an initial month's benefits. (6-1-94)

06. Department Must Inform ~~Client~~ Household. The Department must tell the household of the options of lump sum cash payment, a food coupon return lump sum, installment cash, or coupons repayment, or a combination of lump and installment repayments. ~~(6-1-94)~~(9-1-97)T

a. ~~The Department must~~ Tell the household the formula used for reducing the Food Stamp amount. ~~(6-1-94)~~(9-1-97)T

b. ~~The Department must~~ Tell the household the Food Stamp amount will be reduced unless the household repays by a lump sum cash or coupon return, or negotiates and repays under a repayment agreement. ~~(6-1-94)~~(9-1-97)T

c. ~~The Department must~~ Tell the household there is a ten dollar (\$10) minimum Food Stamp issuance for one (1) and two (2) person households. If the Department is collecting an overissuance by withholding, benefits cannot be reduced below a ten dollar (\$10) minimum for one (1) and two (2) person households. ~~(6-1-94)~~(9-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

778. FOOD STAMPS FOR HOUSEHOLDS WITH MEMBERS DISQUALIFIED FOR FAILURE TO MEET THE ABAWD WORK REQUIREMENT, FOR CITIZEN OR LEGAL NONCITIZEN STATUS OR FOR FAILURE TO COOPERATE IN ESTABLISHING PATERNITY AND OBTAINING SUPPORT.

Food Stamp eligibility and benefit level for households containing disqualified members must be computed using the steps in Table 778 if the member fails ~~disqualified for failure to meet the ABAWD work requirement, for failure to cooperate in establishing paternity and obtaining support, for failure to sign the citizenship or legal noncitizen status declaration or because the member is in an ineligible legal noncitizen~~ must be computed using the steps in Table 778. ~~(7-1-97)~~(9-1-97)T

01. Step 1. Count all resources of the disqualified members as resources to the household. (9-22-96)T

02. Step 2. Do not count the disqualified member as a part of the household to compute the resource limit. (9-22-96)T

03. Step 3. Count all income of the disqualified members as income to the household. (9-22-96)T

04. Step 4. Do no count the disqualified member when computing household size for the gross and net income limit tests. (9-22-96)T

05. Step 5. The entire household's allowable earned income, standard, medical, dependent care, child support and excess shelter deductions apply to the remaining household members. (9-22-96)T

06. Step 6. Count the disqualified member to compute the medical deduction. (9-22-96)T

07. Step 7. Count the disqualified member to compute uncapped shelter deduction. (9-22-96)T

08. Step 8. Do not count the disqualified member to compute the household size for Food Stamps. (9-22-96)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.05 - RULES GOVERNING AID TO THE AGED, BLIND AND DISABLED
DOCKET NO. 16-0305-9703

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective September 1, 1997.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b); 39-1061(l), Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 1997.

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: Adds policy for paying Aid to the Aged, Blind and Disabled (AABD) participants using direct deposit and Electronic Benefits Transfer (EBT) rather than the State warrant system.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to convert from paper, warrants to electronic benefit transfer for cash assistance payments.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: 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 September 24, 1997.

DATED this 3rd day of September, 1997.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0305-9703

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 participant 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 16.03.19, "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. (7-1-97)T

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. Applicant. A person who has applied for public assistance from the Department, and whose application has not been fully processed. (1-1-93)

04. 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)

05. Department. The Idaho Department of Health and Welfare. (1-1-93)

06. Direct Deposit. The electronic deposit of a participant's grant to the participant's personal account with a financial institution. (9-1-97)T

07. EBT Handbook. Idaho Department of Health and Welfare Rules, IDAPA 16.03.20, "Rules Governing Electronic Benefits Transfer (EBT) of Public Assistance and Food Stamps." (9-1-97)T

08 Electronic Benefits Transfer. A method of issuing a grant to a participant, a participant's guardian or a holder of a limited power of attorney for EBT payments in behalf of the participant. (9-1-97)T

069. Essential Person. A person of the participant's choice whose presence in the household is essential to the participant's well-being. The essential person renders specific services, which must be provided for a participant to live at home. (7-1-97)T

~~0710.~~ Grant. A ~~money payment in the form of a state warrant made electronically paid~~ to a participant, a participant's guardian, or a ~~protective payee~~ holder of a limited power of attorney for EBT payments in behalf of a participant. (7-1-97)T(9-1-97)T

~~0811.~~ Ineligible Child. A child under age twenty-one (21) who does not receive AABD, and lives with the AABD participant. (7-2-97)T

~~0912.~~ 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)(9-1-97)T

~~1013.~~ Ineligible Spouse. A participant's husband or wife, living with the participant, not receiving AABD is an ineligible spouse. The non-AABD husband or wife, of the parent of a child participant, living with the child and his parent, is an ineligible spouse. (7-1-97)T

144. Inmate. A person living in an institution and receiving treatment or services from the institution. The treatment or services must fit the participant'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. (7-1-97)T

125. Medicaid. The Federally-aided program for medical care (Title XIX, Social Security Act). (1-1-93)

136. Medical Assistance Handbook. Idaho Department of Health and Welfare Rules, IDAPA 16.03.09, "Rules Governing Medical Assistance. (7-1-94)

- ~~147.~~ Medicaid for Families with Children Handbook. Idaho Department of Health and Welfare Rules, IDAPA 16.03.01, "Rules Governing Eligibility for Medicaid for Families with Children." (7-1-97)T
- ~~158.~~ Participant. An individual applying for or receiving assistance. (7-1-97)T
- ~~169.~~ Room and Board. A living arrangement in which the participant purchases lodging (room) and meals (board). (7-1-97)T
- ~~1720.~~ 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)
- ~~1821.~~ TAFI Handbook. Idaho Department of Health and Welfare Rules, IDAPA 16.03.08, "Temporary Assistance for Families in Idaho." (7-1-97)T
- ~~1922.~~ Working Day. A calendar day when regular office hours are observed by the state of Idaho. (1-1-93)

004. ABBREVIATIONS.

01. AABD. Aid to the Aged, Blind and Disabled. (7-1-97)T
02. AB. Aid to the Blind. (1-1-93)
03. AFA. Application for Assistance. (7-1-97)T
04. AG. Office of the Attorney General, Health and Welfare Division. (1-1-93)
05. APTD. Aid to the Permanently and Totally Disabled. (1-1-93)
06. ASVI. Alien Status Verification Index. (1-1-93)
07. COLA. Cost of Living Adjustment. (1-1-93)
08. CSA. Community Spouse Allowance. (1-1-93)
09. CSNS. Community Spouse Need Standard. (1-1-93)
10. CSRA. Community Spouse Resource Allowance. (1-1-93)
11. DHW. The Idaho Department of Health and Welfare. (1-1-93)
12. EBT. Electronic Benefits Transfer. (9-1-97)T
- ~~123.~~ EE. Eligibility Examiner. (1-1-93)
- ~~134.~~ EITC. Earned Income Tax Credit. (1-1-93)
- ~~145.~~ FMA. Family Member Allowance. (1-1-93)
- ~~156.~~ FSI. Federal Spousal Impoverishment. (1-1-93)
- ~~167.~~ HCBS. Home and Community Based Services. (1-1-93)
- ~~178.~~ HUD. The U.S. Department of Housing and Urban Development. (1-1-93)
- ~~189.~~ IEVS. Income and Eligibility Verification System. (1-1-93)

1920.	INA. Immigration and Nationality Act.	(7-1-97)T
201.	IRS. The U.S. Internal Revenue Service.	(1-1-93)
242.	MA. Medical Assistance.	(1-1-93)
223.	OAA. Old Age Assistance.	(1-1-93)
234.	PASS. Plan for Achieving Self-Support.	(1-1-93)
245.	RSDI. Retirement, Survivors, and Disability Insurance.	(1-1-93)
256.	SAVE. Systematic Alien Verification for Entitlements.	(1-1-93)
267.	SRS. Self-Reliance Specialist.	(7-1-97)T
278.	SSA. Social Security Administration.	(1-1-93)
289.	SSI. Supplemental Security Income.	(1-1-93)
2930.	SSN. Social Security Number.	(1-1-93)
301.	TAFI. Temporary Assistance for Families in Idaho.	(7-1-97)T
342.	UIB. Unemployment Insurance Benefits.	(1-1-93)
323.	VA. Veterans Administration.	(1-1-93)
334.	VRS. Vocational Rehabilitation Services, Department of Education.	(1-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

072. TIME LIMITS.

Each application will be processed within forty-five (45) days, or, for a disabled applicant, ninety (90) days. The time limit can be extended by events beyond the Department's control. A delay, caused by SSA in determining RSDI or SSI, is not beyond the Department's control, unless the SSA delay is caused by the client. The time limit is counted from the application date to the date the participant is able to access his AABD check benefit through EBT or direct deposit, or the Medicaid card; or notice of denial is mailed to the client participant. The time limit must not be used as a waiting period for acting on an application. The time limit must not be used as the basis for denial of an application. Table 072 lists time limits. (1-1-93)(9-1-97)T

TABLE 072 - APPLICATION TIME LIMITS

PROGRAM	TIME LIMIT
AABD For Aged Applicant	45 Days
AABD For Disabled Applicant	90 Days
Medicaid For Aged Applicant	45 Days
Medicaid For Disabled Applicant	90 Days

073. APPLICATION PROCESSING ACTIONS.

An application for AABD or Medicaid must be processed in one of the following manners: (1-1-93)

01. Approval. When an Examiner determines the client participant is eligible for AABD and Medicaid, a Notice of Decision must be mailed to the client participant. The Notice of Decision must advise the client participant of his approval for AABD and the amount of his AABD payment benefit. The Notice of Decision must show how the amount of AABD was calculated. (~~1-1-93~~)(9-1-97)T

02. Denial. When an Examiner determines the client participant is not eligible for AABD or Medicaid, a Notice of Decision must be mailed to the client participant. The Notice of Decision must give the information listed in the following Subsections 073.02.a. through 073.02.d. (~~1-1-93~~)(9-1-97)T

- a. Reason for Ineligibility. The notice must state why the client participant is not eligible for aid. (~~1-1-93~~)(9-1-97)T
- b. Rules. The notice must list the rules supporting the decision. (1-1-93)
- c. Date. The notice must list the date of the decision for denial. (1-1-93)
- d. Fair Hearing. The notice must give an explanation of the applicant's right to request a fair hearing if he disagrees with the decision. (1-1-93)

03. Withdrawal. A client participant may request to withdraw his application, either orally or in writing. A Notice of Decision must be mailed to the client participant telling him the application is denied due to withdrawal. An application abandoned due to the client's participant's failure to keep a scheduled appointment will be considered voluntarily withdrawn. An abandoned application must be denied thirty (30) days after the application date or the day after the last interview, whichever is later. The Notice of Decision must give the information listed in the following Subsections 073.03.a. through 073.03.d. (~~1-1-93~~)(9-1-97)T

- a. Withdrawal. The notice must say the application is denied due to the client's participant's withdrawal of the application. (~~1-1-93~~)(9-1-97)T
- b. Rules. The notice must list the rules supporting the decision. (1-1-93)
- c. Date. The notice must list the date of the decision for denial. (1-1-93)
- d. Fair Hearing. The notice must give an explanation of the applicant's right to request a fair hearing if he disagrees with the decision. (1-1-93)

04. Death. Medicaid can be approved, through the date of death, if an AABD applicant dies before eligibility is determined. The applicant must meet all eligibility criteria. AABD ~~checks~~ must not be issued for a deceased client participant. (~~1-1-93~~)(9-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

133. AABD PAYMENTS AND GUARDIAN FOR PUBLIC AID.

The client's participant's AABD ~~checks~~ benefits will be written accessible through EBT to the guardian and the client participant. (~~1-1-93~~)(9-1-97)T

134. ENDING GUARDIANSHIP FOR PUBLIC AID.

If a client participant no longer needs a guardian for public aid, the Department must petition the District Court to end the guardianship. The Department must remove the former guardian's name ~~from~~ access to the client's participant's AABD ~~checks~~. (~~1-1-93~~)(9-1-97)T

135. ADMINISTRATOR FOR PUBLIC AID FOR DECEASED-CLIENT PARTICIPANT.

An administrator for public aid for a deceased ~~client's~~ participant's AABD funds can be appointed by the court. AABD checks, ~~delivered~~ benefits accessible through EBT before the death of the ~~client~~ participant, must be spent by the administrator ~~to pay bills owed by~~ on behalf of the ~~client's~~ participant's estate. AABD benefits paid by direct deposit or posted to the participant's EBT account ~~checks delivered after the client's~~ participant's death are the property of the state of Idaho. ~~(1-1-93)~~(9-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

463. AABD GRANT PAYMENTS.

AABD grant payments must be made at one hundred percent (100%) of a participant's budget deficit. (7-1-97)T

01. AABD Payment for Couple. An AABD couple living together in the same household will receive their monthly AABD in one (1) payment. (7-1-97)T

02. AABD Payment Procedures. If a participant is found eligible, the Department must take all necessary actions to issue the AABD grant payment. If the budget deficit is not in an even dollar amount, the AABD grant payment must be paid at the next higher dollar. (7-1-97)T

03. Months For Which AABD Payment is Made. If a participant meets all eligibility factors for AABD on the date of application, the effective date of the AABD grant is the date of application. AABD grant payments must continue to be made to a participant through the month eligibility ceases. A participant for AABD for the aged will be eligible to receive a grant payment starting the month he reaches age sixty-five (65). (7-1-97)T

04. Form of Payment. AABD grant payments are paid by direct deposit or posted to the participant's EBT account as set forth in the EBT Handbook. (9-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

503. TEN (10) DAY NOTICE NOT REQUIRED.

Ten (10) day notice is not required, when the conditions in Subsections 503.01 through 503.11 are met. The notice must be adequate. (1-1-95)

01. Death of Participant. The Department has proof of the participant's death. (7-1-97)T

02. Statement of Participant. The Department receives a clear written statement signed by a participant that he no longer wishes aid, or gives information requiring ending or reduction of aid. The participant must state, in writing, he understands ending or lowering of aid is the result of giving the information. (7-1-97)T

03. Participant in Institution. The participant has been admitted or committed to an institution, and further payments to that individual do not qualify for federal financial participation under the state plan. (7-1-97)T

04. Nursing Care. The participant has been placed in a nursing facility, or Intermediate Care for the Mentally Retarded. (7-1-97)T

05. Participant's Address Unknown. The participant's whereabouts are unknown. Department mail directed to him has been returned by the Post Office, showing no known forwarding address. The participant's ~~check~~ benefit must be made available to him if his whereabouts become known during the payment period covered by the ~~check~~ benefit. ~~(7-1-97)T~~(9-1-97)T

06. Aid in Another State. A participant has been approved for aid in another state. The new state providing aid has verified the participant's status. (7-1-97)T

07. Change in Level of Care. The participant's doctor prescribed a change in the level of long-term care. (7-1-97)T
08. Eligible One (1) Month. The participant is eligible for aid only during the calendar month of his application for aid. (7-1-97)T
09. Non-Citizen with Emergency. The participant is an illegal or legal non-citizen whose MA eligibility ends the day his emergency medical condition stops. (8-22-96)T
10. Retroactive Medicaid. The participant is not now eligible for Medicaid but is eligible for a prior period. (7-1-97)T
11. Special Allowance. A special allowance granted for a specific period is stopped. The participant was told, in writing, at the start of the allowance, it would continue only for the specified period. (7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

545. ~~CLIENTS~~ PARTICIPANTS WHO MOVE.

If an AABD ~~client~~ participant 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~~ He 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 and that~~ 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)~~(9-1-97)T

01. Transfer of Case Record. The ~~client~~ participant 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)~~(9-1-97)T

~~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)(9-1-97)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.06 - RULES GOVERNING REFUGEE RESETTLEMENT ASSISTANCE
DOCKET NO. 16-0306-9701
NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective July 1, 1997.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 39-1061(I), 56-202(b), and 56-209, Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 1997.

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: Major changes involve:
Correcting references to cite TAFI rules instead of AFDC rules.
Defining that the AFDC program, as it was in effect on June 30, 1997 will continue to be the standard for determining eligibility for Refugee Cash and Medical Assistance. This is required by Federal Regulation.
Requiring that newly admitted Refugees will be eligible for Refugee Cash or Medical Assistance only if they are not eligible for TAFI assistance.
References to AFDC will be changed to TAFI in those instances where they refer to the current program, and Refugees, resettlement agencies, and refugee service providers.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Penny Robbe at (208) 334-5714.

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 September 24, 1997.

DATED this 3rd Day of September, 1997.

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone, (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0306-9701

002. DEFINITION OF TERMS AND ABBREVIATIONS.

For the purposes of the rules contained in Title 03, Chapter 06, the following terms and abbreviations are used, as defined herein: (6-1-81)

01. AFDC. As used in this chapter, Aid to Families with Dependent Children (AFDC) will refer to the program in effect on June 30, 1997. (7-1-97)T
02. Caretaker. A person related by blood or marriage who holds legal responsibility for the care and support of a minor child or otherwise dependent individual and who is needed in the home to care for such dependent. (5-22-78)
023. Department. The Department of Health and Welfare. (6-1-81)
034. DOE. Department of Employment. (5-22-78)
045. Eligible Amerasian. A citizen of Vietnam born between January 1, 1962, and January 1, 1976, who has one (1) American parent. (7-1-88)
056. Employability Plan. An individualized written plan prepared by the Idaho Refugee Services Program or DOE in areas not serviced by the Idaho Refugee Services Program for a refugee registered for employment services that sets forth a program of services intended to result in the earliest possible employment of the refugee. (7-1-89)
067. Entrant. A person from Cuba or Haiti who has been granted special immigration status by INS. (4-1-82)
078. Full-time Student. A student enrolled in an institution of higher education (other than a correspondence school) who is carrying a full-time academic workload as determined by the school under standards applicable to all students enrolled in that particular program. (5-1-84)
089. HHS. Department of Health and Human Services. (6-1-81)
0910. INA. Immigration and Naturalization Act. (6-1-81)
101. INS. United States Immigration and Naturalization Service. (5-1-77)
142. IRSP. Idaho Refugee Service Program. (7-1-89)
123. I-94. A white three by five (3x5) inch alien identification card issued to refugees prior to their release to a sponsor. This card gives the refugee's name, U.S. address, and other identifying data. The refugee status will be printed in the lower right hand corner. If a refugee does not have this card, he should be referred to INS to obtain one. The dependent of a repatriated U.S. citizen may also have an I-94 card. (6-1-81)
134. Institution of Higher Education. An educational institution which provides: (5-1-84)
- a. An educational program for which it awards an associate, baccalaureate, graduate or professional degree; or (5-1-84)
- b. At least a two (2) year program which is acceptable for full credit toward a baccalaureate degree; or (5-1-84)
- c. At least a one (1) year training program which leads to a certificate or degree and prepares students for gainful employment in a recognized occupation; or (5-1-84)
- d. At least a six (6) month program of training to prepare students for gainful employment in a recognized occupation. (5-1-84)
145. Refugee. An alien who: (6-1-81)
- a. Because of persecution or fear of persecution on account of race, religion, or political opinion fled

from his homeland; (6-1-81)

- b. Cannot return there because of fear of persecution on account of race, religion or political opinion. (6-1-81)

156. Repatriate. Excluded from the definition of "refugee" are those persons who are U.S. citizens returning to the United States from a foreign country, or dependents of repatriated U.S. citizens. (5-1-77)

17. TAFI. Temporary Assistance for Families in Idaho. Program which replaced the AFDC program. Provides temporary cash assistance for Idaho families. (7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

200. REFUGEE CASH ASSISTANCE.

01. Time Limitation. Effective October 1, 1991, refugee cash assistance under the Refugee Resettlement Program, also known as refugee financial assistance, will be limited to eight (8) consecutive months beginning with the month the refugee enters the United States. The eligibility period for refugee cash assistance for a child born in the United States to refugee parents who are not eligible for ~~AFDC TAFI~~, AABD or SSI expires when both of his parents with whom he is living have been in the United States for eight (8) months or when the child has reached eight (8) months of age, whichever occurs first. (~~10-28-93~~)(7-1-97)T

a. Effective October 1, 1991, the refugee cash assistance eligibility period is reduced to eight (8) months for persons who were not receiving refugee cash assistance as of September 30, 1991. (10-28-93)

b. Effective November 30, 1991, refugee cash assistance must be terminated for any recipient who, as of that date, has reached or passed the end of the eight (8) month period beginning with the refugee's month of entry into the U.S. (10-28-93)

02. Categorical Relatedness Waived. The requirements of categorical relatedness are waived. This means that refugees must meet the financial eligibility criteria only. It is not required that adults be disabled, blind, or elderly, or that children in families be deprived of parental support in order to be eligible for refugee cash assistance. (10-1-84)

03. Assistance Based on AFDC Standards. Cash assistance to all types of refugee cases, regardless of family composition and age will be based on the AFDC need standard. The AFDC need standard must also apply to those refugee cases which would normally be considered AABD-related. The standard for an assistance unit of one (1) in AFDC may be used for single individuals and the AFDC two (2) person standard for husband and wife. (7-1-89)

04. Consideration of Income and Resources. Income and resources are considered on the same basis as in the AFDC program, except that the Department must not apply an earned income disregard of thirty dollars (\$30) plus one-third (1/3) of the remainder of the earnings. (6-1-87)

05. Availability of Income and Resources. No income or resources which are not in fact available to the refugee including resources remaining in his homeland or the income and resources of sponsors, will be considered in determining eligibility for cash assistance. (7-1-89)

a. Money paid directly to a refugee by a sponsor or resettlement agency is income in the month received and a resource to the extent retained in subsequent months. (6-23-88)

b. In-kind services and shelter provided by a sponsor or resettlement agency will not be counted as income. A shelter allowance will not be provided for any in-kind shelter provided. (6-23-88)

06. Extended Medicaid. An assistance unit which becomes ineligible for refugee cash assistance (RCA) or refugee medical assistance (RMA) because of increased earnings from employment of a member of the unit or which becomes ineligible for RCA or RMA wholly or partly because of collection or an increased collection of child or spousal support, is entitled to an extension, up to four (4) months, of nonspend down refugee medical assistance. Refugee medical assistance must not be extended beyond a refugee's eighth (8) month in the United States. (10-28-93)

07. Nuclear Family. Each nuclear family of parent(s) and children under eighteen (18) years of age or under nineteen (19) years of age if they are expected to complete a secondary level of school by the month of their nineteenth birthday is a separate assistance unit. (7-1-89)

08. Extended Family. Within the extended family, each adult child over eighteen (18) years of age, or over nineteen (19) years of age if he is expected to complete a secondary level of school by the month of his nineteenth (19th) birthday, and each adult relative (including, but not limited to grandparents, cousins) is a separate assistance unit. (7-1-89)

09. Minor Children. Minor children related to the caretaker but who have no parent in the household are eligible for AFDC rather than refugee cash assistance. (7-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

300. EMPLOYMENT AND TRAINING REQUIREMENTS FOR REFUGEES APPLYING FOR OR RECEIVING REFUGEE CASH ASSISTANCE.

The employment and training requirements for applicants for and recipients of refugee cash assistance are set forth in Section 300. ~~These requirements do not apply to refugees who are A/Rs for AFDC.~~ (12-31-91)(7-1-97)T

01. Employable Refugee. An employable refugee is an A/R for refugee cash assistance who is not exempt from registration for employment services. (7-1-89)

a. The exemption criteria are in Subsection 300.04. (12-31-91)

b. Inability to communicate in English does not exempt a refugee from registration for employment services, participation in employability services, or carrying out job search or acceptance of appropriate offers of employment. (7-1-89)

02. Requirements. As a condition of eligibility for refugee cash assistance, an employable refugee must: (7-1-89)

a. Register for employment services and participate in employment services provided by the Idaho Refugee Service Program (IRSP) or by the Department of Employment in areas of the state not serviced by IRSP; (7-1-89)

b. Carry out job search; (7-1-89)

c. Go to a job interview which is arranged by the IRSP or by the Department of Employment in areas not served by IRSP; (7-1-89)

d. Participate in any employability service program which provides job or language training in the area in which the refugee resides and which the IRSP determines is available and appropriate for that refugee; (7-1-89)

e. Accept an offer of employment and not terminate employment which is determined to be appropriate by the resettlement agency which was responsible for the initial resettlement of the refugee or by the IRSP or by the Department of Employment in areas not served by the IRSP. (7-1-89)

f. Not be enrolled as a full-time student in an institution of higher education except where his enrollment is approved by the IRSP, or its designee, as part of an individual employability plan. (1-29-92)

03. Good Cause. Good cause for refusal to register for employment and refusal to participate in employment services exists when those services do not meet the criteria specified in Subsections 300.07. (12-31-91)

04. Exemption Criteria. An individual is considered employable unless one (1) of the following exemptions applies: (7-1-89)

a. An individual who is under age sixteen (16); or who is over the age of fifteen (15), is a full-time student in a secondary school or equivalent level of technical or vocational training, and is reasonably expected to complete the curriculum no later than the month of his nineteenth birthday; or who is enrolled full-time in training approved by the Department's Idaho Refugee Service Program as part of an approved employability plan; (5-1-84)

b. A person who is ill where medical evidence or another sound criterion indicates the illness or injury is serious enough to temporarily prevent entry into employment or training; (7-1-89)

c. A person who is incapacitated, when determined by a physician or licensed or certified psychologist and verified by the Field Office that a physical or mental impairment, by itself or in conjunction with age, prevents the person from engaging in employment or training; (7-1-89)

d. A person who is sixty-five (65) or older; (7-1-89)

e. A person who is caring for another member of the household who has a physical or mental impairment which requires, as determined by a physician or licensed or certified psychologist and verified by the Field Office, care in the home on a substantially continuous basis, and no other appropriate member of the household is available; (7-1-89)

f. A parent or other caretaker of a child under the age of six (6) who is caring for the child; (7-1-89)

g. A person who is working at least thirty (30) hours a week in unsubsidized employment expected to last a minimum of thirty (30) days. This exemption continues to apply if there is a temporary break in full-time employment expected to last no longer than ten (10) workdays; or (7-1-89)

h. A person who is pregnant if it has been medically verified that the child is expected to be born in the month in which such registration would be required or within the next three (3) months. (7-1-89)

05. Voluntary Registration. A refugee who meets the exemption criteria in Subsection 300.04 may voluntarily register for and participate in employment services. (12-31-91)

06. Voluntary Quit. As a condition of eligibility for refugee cash assistance, an employable refugee must not, without good cause, within the thirty (30) consecutive calendar days prior to the application for refugee cash assistance have voluntarily quit employment or have refused to accept an offer of employment determined appropriate by the IRSP or by the Department of Employment in areas not served by the IRSP using the appropriateness criteria in Subsection 300.07. (12-31-91)

07. Criteria for Determining Appropriateness of Employability Services and Employment. The determination of "appropriateness" must be made by the IRSP. (7-1-89)

a. In making the "appropriateness" determination the IRSP will assure the following criteria are met: (7-1-89)

i. All assignments must be within the scope of the individual's employability plan. The plan may be modified to reflect changed services or employment conditions; (7-1-89)

ii. The services or employment must be related to the capability of the individual to perform the task

on a regular basis. Any claim of adverse effect on physical or mental health must be based on adequate medical testimony from a physician or licensed or certified psychologist indicating that participation would impair the individual's physical or mental health; (7-1-89)

iii. The total daily commuting time to and from home to the service or employment site must not normally exceed two (2) hours, including the transporting of a child to and from a child care facility, unless a longer commuting distance or time is generally accepted in the community, in which case, the round trip commuting time must not exceed the generally accepted community standards; (7-1-89)

iv. When child care is required, the care must meet the standards normally required by the Department in the work and training programs for ~~AFDC~~ TAFI recipients; (7-1-89)(7-1-97)T

v. The service or work site to which the individual is assigned must not be in violation of applicable federal, state or local health standards; (7-1-89)

vi. Assignments must not be made which are discriminatory in terms of age, sex, race, creed, color or national origin; (7-1-89)

vii. Appropriate work may be temporary, permanent, full-time, part-time, or seasonal work if such work meets the other standards of appropriateness contained in this section; (7-1-89)

viii. The wage must meet or exceed the federal or state minimum wage law, whichever is applicable, or if such laws are not applicable, the wage must not be substantially less favorable than the wage normally paid for similar work in the labor market; (7-1-89)

ix. The daily hours of work and the weekly hours of work must not exceed those customary to the occupation; (7-1-89)

x. No individual is required to accept employment if: (7-1-89)

(1) The position offered is vacant due to a strike, lockout or other bona fide labor dispute; or (7-1-89)

(2) The individual would be required to work for an employer contrary to the conditions of his existing membership in the union governing that occupation. Employment not governed by the rules of a union in which he has membership may, however, be deemed appropriate; and (7-1-89)

xi. The quality of training must meet local employers' requirements so that the individual will be in a competitive position within the labor market. The training must also be likely to lead to employment which meets the appropriateness criteria. (7-1-89)

b. If a refugee is a professional in need of professional refresher training and other recertification services in order to qualify to practice his profession in the United States, the training may consist of full-time attendance in a college or a professional training program, provided that such training is: (7-1-89)

i. Approved as part of the individual's employability plan; (7-1-89)

ii. Does not exceed one (1) year's duration, including any time enrolled in such program in the United States prior to the individual's application for refugee cash assistance; (7-1-89)

iii. Is specifically intended to assist the professional in becoming relicensed in his profession; and (7-1-89)

iv. If completed, can realistically be expected to result in his being relicensed. (7-1-89)

c. The offer of a job meeting the appropriateness criteria must be accepted without regard to whether it would interrupt a program of services planned or in progress unless: (7-1-89)

i. The refugee is currently participating in a program in progress of on-the-job training which meets the appropriateness criteria and is being carried out as part of his employability plan; or (7-1-89)

ii. The refugee is enrolled full-time in a professional recertification program which meets the requirements of Subsection 300.07.b. (12-31-91)

08. Job Search. As a condition of continued eligibility for refugee cash assistance, an employable recipient must carry out a job search program according to the requirements of his employability plan. (7-1-89)

a. The refugee must begin job search no later than six (6) months after he entered the United States or at the time he is determined eligible for refugee cash assistance if the refugee has completed at least six (6) months in the United States at the time of such determination. (7-1-89)

b. The refugee must continue job search for at least eight (8) consecutive weeks. (7-1-89)

c. The refugee must make at least three (3) employer contacts each week of the eight (8) consecutive weeks. (7-1-89)

d. The refugee's compliance with job search requirements is determined by IRSP or the Department of Employment in areas not served by the IRSP. (7-1-89)

09. Sanctions. The following sanctions are to be applied to an individual who has failed or refused to carry out job search or to accept employability services or employment: (7-1-89)

a. Voluntary Registrant. When a voluntary registrant has failed or refused to participate in appropriate employability services, to carry out job search or to accept an appropriate offer of employment, the IRSP or the Department of Employment in areas not served by the IRSP, may deregister the individual for up to ninety (90) days from the date of determination that such failure or refusal has occurred, but the individual's eligibility or the amount of his refugee cash assistance must not be affected. (7-1-89)

b. Mandatory Registrant. When a mandatory registrant has, without good cause, failed or refused to register for employment services, participate in employability services, accept appropriate offers of employment, continue appropriate employment or carry out job search, his refugee cash assistance must be terminated following proper notice in accordance with the provisions of Subsection 300.09.c. (12-31-91)

c. Sanctions. Sanctions are to be applied according to the following: (7-1-89)

i. If the sanctioned individual is the only member of the assistance unit, assistance must be terminated for three (3) payment months for the first failure and six (6) payment months for any subsequent failure. (7-1-89)

ii. If the assistance unit includes members other than the sanctioned individual, the sanctioned individual's needs must not be taken into account in determining eligibility for or the amount of refugee cash assistance for the assistance unit for three (3) payment months for the first failure and six (6) payment months for each subsequent failure. (7-1-89)

iii. IRSP or the Department of Employment in areas not served by the IRSP must provide a conciliation period prior to the imposition of any sanctions in accordance with the following: (7-1-89)

(1) The conciliation effort must begin as soon as possible, but no later than ten (10) days following the date of the failure or refusal to participate and can continue for a period not to exceed thirty (30) days. (7-1-89)

(2) The conciliation period can be terminated sooner by the IRSP or the individual when either believes the dispute cannot be resolved by conciliation. (7-1-89)

10. Thirty Dollars (\$30) and One-third (1/3) Disregard. The thirty dollars (\$30) and one-third (1/3) disregard and thirty dollars (\$30) disregard must not be allowed in determining refugee cash assistance eligibility or grant amount. Other disregards which apply in the AFDC program shall apply in the same manner in the refugee

assistance program.

(12-31-91)

(BREAK IN CONTINUITY OF SECTIONS)

400. MEDICAL ASSISTANCE PROGRAM - REFUGEES.

01. Time Limitation. Effective October 1, 1991, medical assistance under the Refugee Resettlement Program will be limited to eight (8) consecutive months beginning with the month the refugee enters the United States. The eligibility period for a child born in the United States to ~~refugee parents who are not eligible for AFDC AABD, or SSI, receiving Refugee medical assistance~~ expires when both of his parents with whom he is living ~~have been in the United States for eight (8) months or when the child has reached eight (8) months of age, whichever occurs first. are no longer eligible.~~ ~~(10-28-93)~~(7-1-97)T

a. Effective October 1, 1991, the refugee medical assistance eligibility period is reduced to eight (8) months for persons who were not receiving refugee medical assistance as of September 30, 1991. (10-28-93)

b. Effective November 30, 1991, refugee medical assistance must be terminated for any recipient who, as of that date, has reached or passed the end of the eight (8) month period beginning with the refugee's month of entry into the U.S. (10-28-93)

02. Medical Only. A refugee is not required to apply for or receive Refugee Cash Assistance as a condition of eligibility for Refugee Medical Assistance. (1-29-92)

03. Automatic Eligibility. Refugees whose countable income does not exceed the AFDC payment standard are automatically eligible for medical assistance. (10-1-82)

04. Medical Assistance with "Spend Down." Refugees whose countable income exceeds the AFDC payment standard may also be eligible for medical assistance under certain conditions. A special provision, for refugees only, will allow those refugees whose income exceeds the AFDC payment standard to apply their income above the payment standard to their medical costs and thus "spend down" to the AFDC eligibility level. This "spend down" will be computed on a quarterly basis; the quarter begins with the month of application. Compute the amount by which the refugee's income exceeds the AFDC payment standard on a monthly basis using the best estimate of income to be received during the quarter and multiply the monthly excess by three (3) to determine the quarterly "spend down." (10-1-82)

05. Counting Income and Resources for Refugee Medical Assistance with a "Spend Down." (7-1-93)

a. AFDC policy determines which income must be counted, excluded, or deducted, except that a refugee is not entitled to the thirty dollars (\$30) and one-third (1/3) disregard or the thirty dollar (\$30) disregard must not be allowed. (12-31-91)

b. The AFDC payment standard applicable for the size of family unit determines the amount to which an individual or family must "spend down" to be eligible for refugee medical assistance. (7-1-89)

c. AFDC policy determines which resources must be counted or excluded for a refugee unit which must meet a medical "spend down." (10-1-82)

d. Total countable resources of the assistance unit must not exceed one thousand dollars (\$1,000). (7-1-89)

e. No financial resources which are not available to the refugee, including resources remaining in his homeland, are to be considered in determining eligibility for medical assistance. (6-1-81)

f. The income and resources of sponsors, and the in-kind services and shelter provided to refugees by

their sponsors, will not be considered in determining eligibility for medical assistance. A shelter allowance must not be given for any in-kind shelter provided. (6-1-81)

06. Financially Responsible Relatives. (6-1-81)

a. The Department must consider the income and resources of nonrefugee spouses or parents as available to the refugee whether or not they are actually contributed, if they live in the same household. (6-1-81)

b. If the nonrefugee spouse or parent does not live with the individual, the Department must consider income and resources that are actually contributed by the spouse or parent as available to the refugee. (6-1-81)

07. Deduction of Incurred Medical Expenses. If countable income exceeds the AFDC income standard, the Department must deduct from income, in the following order, incurred medical expenses that are not subject to payment by a third party: (6-1-81)

a. Medicare and other health insurance premiums, deductibles, or coinsurance charges, incurred by the individual or family or financially responsible relatives. (10-1-82)

b. Expenses incurred by the individual or family or financially responsible relatives for necessary medical and remedial services that are recognized under State law but not covered under the scope of the Medical Assistance Program. (6-1-81)

c. Expenses incurred by the individual or family or financially responsible relatives for necessary medical and remedial services covered in the scope of the Medical Assistance Program. (6-1-81)

d. The Department may set reasonable limits on expenses to be deducted from income under Subsections 400.07.a. and 400.07.b. (12-31-91)

08. Determining Eligibility for Medical Assistance for Refugees Who Must Meet a "Spend Down." The refugee recipient must provide verification of expenses incurred pursuant to Subsection 400.07. If the recipient has medical coverage from a third party, he must verify that charges will not be paid by this third party by providing an Explanation of Benefits or other written statement from the third party. (12-31-91)

a. As the recipient submits medical expenses, the charges should be added in the order listed in Subsection 400.07 and then under Subsection 400.07.c. in chronological order by the date of service. (12-31-91)

b. When the charges equal or exceed the amount of the "spend down," the recipient becomes eligible for Medical Assistance. (6-1-81)

c. The date of eligibility is the date of service on the last bill which is covered under the scope of the Medical Assistance Program. (6-1-81)

d. It is the responsibility of the Eligibility Examiner to determine when the "spend down" has been met. (6-1-81)

09. Issuing a Medical Card to a Refugee Who Must Meet a "Spend Down." A Medical Card will not be issued until the recipient has met the "spend down." The dates on the Medical Card under "Valid Only During" will be the date the recipient becomes eligible for Medicaid benefits "to" the last day of the last month in the quarter for which the "spend down" has been determined. (10-1-82)

10. Extended Medicaid. An assistance unit which becomes ineligible for refugee medical assistance because of increased earnings from employment of a member of the unit, is entitled to an extension, up to four (4) months, of non-spend down refugee medical assistance. Extended refugee medical assistance must not be extended beyond a refugee's eighth (8th) month in the U.S. (10-28-93)

(BREAK IN CONTINUITY OF SECTIONS)

700. PRECEDENCE OF CATEGORICAL ASSISTANCE PROGRAMS.

Eligibility for refugee cash and/or medical assistance is limited to refugees who have been determined ineligible for ~~AFDC TAFI~~, AABD, or Medicaid but who meet refugee cash and/or medical assistance eligibility requirements.

~~(7-1-89)~~(7-1-97)T

01. New Applicants. (7-1-93)

a. An applicant for refugee cash and/or medical assistance must first have his eligibility determined for ~~AFDC TAFI~~, AABD and/or Medicaid. To be eligible for ~~AFDC TAFI~~, AABD and/or Medicaid, the refugee must meet all the eligibility criteria for the applicable category of assistance ~~including deprivation~~.

~~(7-1-89)~~(7-1-97)T

b. If the applicant is determined ineligible for ~~AFDC TAFI~~, AABD and/or Medicaid, his eligibility is then determined under the Refugee Resettlement Program.

~~(7-1-89)~~(7-1-97)T

02. Transfer of Cases. At the end of the eight (8) month time limit for Refugee Cash or Medical Assistance, a refugee who is determined eligible may be transferred to TAFI, AABD, or Medicaid.

~~(7-1-89)~~(7-1-97)T

~~a. All recipients of refugee assistance who become eligible for AFDC, AABD and/or Medicaid will be transferred to the appropriate category. Refugees transferred to AFDC, AABD, or Medicaid must meet the criteria of need, resources, age, residence, deprivation and any other tests applicable to the pertinent category of assistance.~~

~~(7-1-89)~~

~~b. When a refugee has been in the United States for eighth (8) months, it should be determined if he is eligible for AFDC, AABD, and/or Medicaid; if so, he should be transferred to the appropriate program. If not, his benefits must be terminated.~~

~~(1-29-92)~~

(BREAK IN CONTINUITY OF SECTIONS)

730. OVERPAYMENTS AND UNDERPAYMENTS.

Policy governing recovery of overpayments and restoration of underpayments of refugee cash and medical assistance is contained in Idaho Department of Health and Welfare Rules, Title 03, Chapter 01, "Rules Governing Eligibility for Aid To Families With Dependent Children (AFDC)" in effect on June 30, 1997.

~~(12-31-91)~~(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

995. PROVISIONS CONTINGENT UPON FEDERAL FUNDING.

The provisions in Sections 000 through 996 inclusive, are contingent upon availability and receipt of funds appropriated through federal legislation. When federal funds are not available to the State of Idaho, these provisions or any part therein shall be considered dormant and advance notice of termination or reduction of benefits may be disposed. When funding is not available to the State, affected persons shall be notified immediately in accordance with the adequate notice provisions discussed in Idaho Department of Health and Welfare Rules, Title 03, Chapter 01, Section 300, "Rules Governing Eligibility For Aid For Families With Dependent Children." Temporary Assistance for Families in Idaho."

~~(12-31-91)~~(7-1-97)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO
DOCKET NO. 16-0308-9701

NOTICE OF AMENDMENT TO TEMPORARY AND PENDING RULE

EFFECTIVE DATE: The amendments to the temporary rule are effective July 1, 1997. These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1998, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section(s) 39-106(I) and 56-202(b), Idaho Code.

DESCRIPTIVE SUMMARY: The proposed rules have been amended in response to public comment and to make typographical, transcriptional, and clerical corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rules was published in the June 4, 1997, Idaho Administrative Bulletin, Volume 97-5, pages 114 through 131.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Penny Robbe at (208) 334-5819.

DATED this 6th day of August, 1997.

Sherri Kovach
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IDAPA 16
TITLE 03
Chapter 08

RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO

**There are substantive changes
from the proposed rule text.**

**Only those sections that have changed from the
original proposed text are printed in this
Bulletin following this notice.**

The complete original text was published in the
Idaho Administrative Bulletin, Volume 97-5, May 7, 1997,
pages 114 through 131.

This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature
for final adoption.

TEXT OF DOCKET NO 16-0308-9701

010. DEFINITIONS.

01. Applicant. An individual who applies for Temporary Assistance for Families in Idaho. (7-1-97)T
02. Department. The Idaho Department of Health and Welfare. (7-1-97)T
03. Earned Income. Cash or in-kind payment derived from employment or self-employment. Receipt of a service, benefit or durable goods instead of wages is in-kind income. Earned income is gross earnings before deductions for taxes or any other purposes. (7-1-97)T
04. Good Cause. The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-97)T
05. Parent. The mother or father of the dependent child. In Idaho, a man is presumed to be the child's parent father if he is married to the child's mother at the time ~~the child is conceived or born of conception or at the time of the child's birth. Common law marriages are not legally recognized after January 1, 1996.~~ (7-1-97)T(7-1-97)T
06. Participant. An individual who has signed a Personal Responsibility Contract. (7-1-97)T
07. Personal Responsibility Contract (PRC). An agreement negotiated between a family and the Department that is intended to result in self-reliance. (7-1-97)T
08. Unearned Income. Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (7-1-97)T

011. ABBREVIATIONS.

01. AABD. Aid to the Aged, Blind and Disabled. (7-1-97)T
02. CSS. Child Support Services. (7-1-97)T
023. ECA. Extended Cash Assistance. (7-1-97)T
034. EITC. Earned Income Tax Credit. (7-1-97)T
045. HUD. The U.S. Department of Housing and Urban Development. (7-1-97)T

056.	IPV. Intentional Program Violation.	(7-1-97)T
067.	PRC. Personal Responsibility Contract.	(7-1-97)T
078.	RSDI. Retirement, Survivors, and Disability Insurance.	(7-1-97)T
089.	SSN. Social Security Number.	(7-1-97)T
0910.	TAFI. Temporary Assistance for Families in Idaho, which is the TANF program in Idaho.	(7-1-97)T
101.	TANF. Temporary Assistance to Needy Families (Federal Program).	(7-1-97)T
142.	VA. Veterans Administration.	(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

101. TIME LIMIT.

Lifetime eligibility for adults is limited to twenty-four (24) months unless otherwise provided by these rules. When there is more than one (1) adult in the family, the number of months of the adult with the most months of TANF participation must be counted towards the time limit. Any month that a TANF benefit was received in another state after June 30, 1997, counts toward the twenty-four (24) month Idaho time limit. If during the twenty-four (24) month time limit the Department does not end benefits at the appropriate time and a payment is made in error, the month is not counted towards the twenty-four (24) month time limit. ~~(7-1-97)T~~(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

109. EFFECTIVE DATE.

The effective date of the TAFI grant is the date all eligibility criteria are satisfied income and resource criteria are met, and a PRC is signed, unless the Department causes a delay, or a later date that is negotiated with the Department. ~~(7-1-97)T~~(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

111. -- 1152. (RESERVED).

113. CONCURRENT BENEFIT PROHIBITION.

If an individual is potentially eligible for either TAFI or AABD, only one (1) program may be chosen. If a child is potentially eligible for either TAFI or foster care, only one (1) program may be chosen. ~~(7-1-97)T~~(7-1-97)T

114. -- 115. (RESERVED).

116. PERSONAL RESPONSIBILITY CONTRACT (PRC).

A personal responsibility contract must be negotiated and signed by the family adults, and all application activities must be completed before eligibility can be approved. The family must continue to comply with ongoing personal responsibility contract requirements to remain eligible. ~~(7-1-97)T~~(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

122. ELIGIBLE INDIVIDUALS.

Individuals who may be eligible are listed in Subsections 122.01 through 122.05.

(7-1-97)T

01. Children. Children under the age of eighteen (18) or, under the age of nineteen (19) if they are attending a secondary school or the equivalent level of vocational or technical training full time. Children must reside with a parent or a caretaker relative who exercises care and control of them. ~~(7-1-97)T~~(7-1-97)T

02. Parents. Parents who have an eligible natural or adopted child residing with them. (7-1-97)T

03. Caretaker Relatives. Adult specified relatives other than parents who have an eligible related child residing with them and who are responsible for the child's care. Only one (1) child in the family must be related to one (1) of the following specified relatives: brother, sister, aunt, uncle, nephew, niece, first cousin, or first cousin once removed; one (1) of these relationships prefixed by "grand" or "great"; one (1) of these relationships by half-blood; a stepparent, step-sibling, or the spouse of a relative by marriage, even if the marriage has ended. ~~(7-1-97)T~~(7-1-97)T

04. Optional Individuals. Related dependent children who are not siblings or half siblings of family members and who are living in the home. (7-1-97)T

05. Pregnant Woman. A pregnant woman with no other children who is in her last trimester of pregnancy and is unable to work due to medical reasons. (7-1-97)T

123. FAMILY.

A family is an eligible individual or group of eligible individuals living in a common residence, whose income and resources are considered in determining eligibility and grant amount, and who may be included in the family size. Married spouses living together in a common residence are considered a family. Adult relatives who reside together are considered separate families. Unrelated families living in a common residence are considered separate families. No individual may be eligible for benefits as a member of more than one (1) family in the same month.

~~(7-1-97)T~~(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

127. -- 1340. (RESERVED).

1321. CITIZENSHIP AND LEGAL NON-CITIZEN CRITERIA.

Eligible individuals must be citizens of the United States or be legal non-citizens. Nationals of American Samoa or Swain's Island are the equivalent of U.S. citizens. Only the groups of legal non-citizens listed in Subsections 132.01 through 132.072 may be eligible. ~~(7-1-97)T~~(7-1-97)T

01. Permanent Residents with Forty (40) Quarters of Work. Lawful permanent residents with forty (40) quarters of work. ~~(7-1-97)T~~(7-1-97)T

02. Veterans. Veterans honorably discharged for a reason other than citizen status. This includes the veteran's spouse and unmarried dependent children. (7-1-97)T

03. Members of the U.S. Armed Forces. Active duty members of the U.S. Armed Forces, who are not on active duty for training only. This includes the active duty member's spouse and unmarried dependent children. (7-1-97)T

04. Refugees. Refugees admitted under Section 207 of the Immigration and Nationality Act, for five (5) years from the date refugee status is assigned. (7-1-97)T

05. Asylees. Asylees admitted under Section 208 of the Immigration and Nationality Act, for five (5) years from the date asylee status is assigned. (7-1-97)T

06. Deportation Withheld. Individuals whose deportation has been withheld under Section 243(h) of the Immigration and Nationality Act, for five (5) years from the date the deportation was withheld. (7-1-97)T

07. Battered Immigrants. Battered immigrants admitted under Section 204(a)(1)(A), 204(a)(1)(B) or such immigrants whose deportation is suspended under 244(a)(3) of the Immigration and Nationality Act. (7-1-97)T

08. Conditional Entrants. Conditional entrants admitted under Section 203(a)(7) of the Immigration and Nationality Act. (7-1-97)T

09. Permanent Residents Admitted Before August 22, 1996. A non-citizen lawfully admitted to the United States for permanent residence before August 22, 1996. (7-1-97)T

132. LEGAL NON-CITIZENS ENTERING THE U.S. ON OR AFTER AUGUST 22, 1996.
Legal non-citizens, not described in Section 131, who enter the U.S. on or after August 22, 1996, are prohibited from receiving TAFI for five (5) years from the date of entry. (7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

142. SCHOOL ATTENDANCE RESPONSIBILITY.

School age ~~C~~children included in the family must attend school until they reach age eighteen (18) or they graduate from a secondary school or the equivalent level of vocational or technical training, Job Corps, alternative or home school. A fifty dollar (\$50) penalty per month, per child, will be subtracted from the grant if a dependent child does not attend school. This penalty does not apply if the child is participating in work activities outlined in the PRC. (7-1-97)T(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

148. COOPERATION RESPONSIBILITY.

For the family to be eligible, a parent, or a caretaker relative included in the grant, must cooperate with the Department to identify and locate the non-custodial parent, establish paternity, and establish, modify and enforce the child support order, unless good cause exists. (7-1-97)T(7-1-97)T

149. GOOD CAUSE FOR NOT COOPERATING.

Good cause for not cooperating with Child Support Services (CSS) is limited to the reasons listed in Subsections 149.01 through 149.02. (7-1-97)T

01. Rape or Incest. Proof is provided that ~~T~~the child was conceived as a result of incest or ~~forcible~~ rape. (7-1-97)T(7-1-97)T

02. Physical or Emotional Harm. Proof is provided that ~~T~~the non-custodial parent may inflict physical or emotional harm to the children, the custodial parent or the caretaker relative. (7-1-97)T(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

151. PATERNITY NOT ESTABLISHED WITHIN TWELVE (12) MONTHS.

If information is provided but paternity is not established within twelve (12) months from the effective date of the

application or the birth of a child, whichever is later, the grant is reduced by fifty percent (50%), unless the delay is caused by the Department or a third party. ~~(7-1-97)F(7-1-97)T~~

157. APPLICANT JOB SEARCH.

Before the application can be approved, adult applicants will be required to engage in job search activities, unless they are exempt good cause is established. ~~(7-1-97)F(7-1-97)T~~

~~158. APPLICANT JOB SEARCH EXEMPTION.~~

~~The individuals listed in Subsections 158.01 through 158.04 are exempt from the applicant job search requirements.~~ ~~(7-1-97)F~~

- ~~01. Caretaker. The applicant is the primary caretaker of a child under age twelve (12) weeks.~~ ~~(7-1-97)F~~
- ~~02. Employed. The applicant is working over thirty (30) hours per week and earning at least the federal minimum wage.~~ ~~(7-1-97)F~~
- ~~03. Ill or Incapacitated. The applicant is physically or mentally unable to work.~~ ~~(7-1-97)F~~
- ~~04. Caretaker for Ill or Incapacitated. The applicant is needed in the home to care for an ill or incapacitated family member.~~ ~~(7-1-97)F~~

158. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

167. WORK ACTIVITIES.

Work activities include paid work, including self-employment of ~~thirty (30) hours per week~~ and that produces earnings of at least the federal minimum wage; unpaid work; community service; work search activities; education leading to high school diploma or equivalency; work preparation education; ~~and~~ vocational or job skills training. ~~The Department may negotiate; and~~ other activities that improve the ability to obtain and maintain employment or support self-reliance. ~~(7-1-97)F(7-1-97)T~~

~~168. WORK ACTIVITY SUPPORTIVE SERVICES.~~

~~Supportive services may be provided to eligible family members if needed to comply with PRC assignments.~~ ~~(7-1-97)F~~

~~169. NOT COMPLYING WITH WORK ACTIVITIES.~~

Each time an adult does not comply with work activity requirements in the PRC, without good cause, it is counted as an occurrence. The family is subject to the penalties, based on the number of occurrences, as listed in Subsections ~~169.01 through 169.03.~~ ~~(7-1-97)F(7-1-97)T~~

- ~~01. First Occurrence. The family is ineligible for one (1) month or until compliance, whichever is longer.~~ ~~(7-1-97)T~~
- ~~02. Second Occurrence. The family is ineligible for three (3) months or until compliance, whichever is longer.~~ ~~(7-1-97)T~~
- ~~03. Third Occurrence. The family is ineligible for lifetime.~~ ~~(7-1-97)T~~

~~170. APPLYING PENALTIES FOR NOT COMPLYING WITH WORK ACTIVITIES.~~

Work activity penalties are applied as listed in Subsections ~~170.01 through 170.02.~~ ~~(7-1-97)F(7-1-97)T~~

01. Family Penalty. Penalties apply to the entire family, but the number of individual occurrences follows the individual. The penalty period for the family is the greatest number of any individual's occurrences. If the individual leaves the family, any period of ineligibility caused by that individual ends. If an adult who does not comply returns or joins another family, any remaining period of ineligibility resumes. (7-1-97)T

02. Work Activity Penalty. A fifty dollar (\$50) penalty per month, per child, will be subtracted from the family grant when a child sixteen (16) years of age or older does not comply with work activities, as long as the child resides with the family. (7-1-97)T

170. SUPPORTIVE SERVICES.

Supportive services may be provided to eligible family members if needed to comply with PRC assignments.

(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

176. CHILD CARE.

Families are eligible for the Idaho Child Care Program, IDAPA 16, Title 06, Chapter 12, if child care is needed for ~~an~~ ~~adult~~ a parent or caretaker relative to participate in Personal Responsibility Contract activities. ~~(7-1-97)T~~(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

240. INDIVIDUALS EXCLUDED FROM FAMILY SIZE.

Individuals listed in Subsections 240.01 through 240.04 are excluded from the family size in determining eligibility and grant amount. Income and resources of these ineligible family members are counted. (7-1-97)T

01. Ineligible Non-Citizens. Individuals who are non-citizens and are not listed in Section 13~~2~~1.

~~(7-1-97)T~~(7-1-97)T

02. Drug Related Conviction. Felons convicted after August 22, 1996, under federal or state law of any offense classified as a felony that involves the possession, use or distribution of a controlled substance. (7-1-97)T

03. Fleeing Felons. Felons who are fleeing to avoid prosecution, custody or confinement after conviction of a felony or an attempt to commit a felony. (7-1-97)T

04. Felons Violating a Condition of Probation or Parole. Felons who are violating a condition of probation or parole imposed for a federal or state felony. (7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

260. APPLICANT ONE-TIME CASH PAYMENT.

An applicant family may be eligible for a one-time cash assistance payment for any emergency need. The family must meet the income criteria in the first month of the one-time cash payment, but all income is excluded in calculating the monthly one-time cash payment amount. Eligibility criteria, except SSN, are verified at the discretion of the Department. ~~(7-1-97)T~~(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

264. AMOUNT OF ONE-TIME CASH PAYMENT.

The amount of the one-time cash payment is the amount of need or upto three (3) times the maximum monthly grant amount.
~~(7-1-97)F~~(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

327. APPLYING PENALTIES FOR IPV.

IPV penalties apply to the entire family, but the number of individual occurrences follows the individual. The penalty period for the family is the greatest number of any individual's occurrences. If the individual leaves the family, any period of ineligibility caused by that individual ends. If an individual serving an IPV penalty returns to the family or joins another family, the remaining period of ineligibility is applied to the family. (7-1-97)T

328. APPLICATION OF AFDC IPV PENALTIES TO TAFI.

An individual serving an AFDC IPV disqualification period will not qualify for TAFI until the disqualification period ends. The disqualified member's income and resources count toward TAFI eligibility and grant amount. When counting the number of IPV occurrences, an individual's AFDC IPV's are added to any new TAFI IPV occurrences. (7-1-97)T

~~329.~~ -- 331. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

342. EXTENDED CASH ASSISTANCE ADDITIONAL ELIGIBILITY CRITERIA.

In addition to all the eligibility requirements for TAFI, all adults in the family must meet one (1) of the conditions listed in Subsections 342.01 through 342.032. ~~(7-1-97)F~~(7-1-97)T

01. Physical Condition. A physical or mental condition expected to last at least three (3) months. The condition must prevent any employment that would generate earnings of at least one hundred sixty-seven percent (167%) of the maximum grant, per month. (7-1-97)T

02. Care of Ill or Incapacitated Family Member. Care of an ill or incapacitated child or spouse in the home. The in-home care must be provided for a minimum of one (1) month. The care must prevent any employment that would generate earnings of at least one hundred sixty-seven percent (167%) of the maximum grant, per month. (7-1-97)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE
DOCKET NO. 16-0309-9710

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective October 20, 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 rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202(b), 56-203(g), and 56-203, Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 21, 1997.

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: These rules expand Medicaid coverage to allow screening mammographies to be allowed for women at least forty years of age once per calendar year. Covered mammographies must be performed with certified or certifiable mammography equipment and staff.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to confer a benefit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Lloyd Forbes 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 May 28, 1997.

DATED this 7th day of May, 1997.

SHERRI KOVACH
Administrative Procedures Coordinator
DHW - Division of Legal Services
450 West State Street, 10th Floor
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TEXT OF DOCKET NO. 16-0309-9710

110. LABORATORY AND RADIOLOGY SERVICES.

01. Qualifications. Laboratories in a physician's office or a physician's group practice association, except when physicians personally perform their own patients' laboratory tests, must be certified by the Idaho Bureau of Laboratories and be eligible for Medicare certification for participation. All other Idaho laboratories must fulfill these requirements. (2-15-86)

02. Payment Procedures. Payment for laboratory tests can only be made to the actual provider of that service. An exception to the preceding is made in the case of an independent laboratory that can bill for a reference laboratory. A physician is not an independent laboratory. (2-15-86)

a. The payment level for clinical diagnostic laboratory tests performed by or personally supervised by a physician will be at a rate established by the Department that is no higher than Medicare's fee schedule. The payment level for other laboratory tests will be a rate established by the Department. (2-15-86)

b. The payment level for clinical diagnostic laboratory tests performed by an independent laboratory will be at a rate established by the Department that is no higher than Medicare's fee schedule. The payment level for other laboratory tests will be at a rate established by the Department. (2-15-86)

c. The payment level for clinical diagnostic laboratory tests performed by a hospital laboratory for anyone who is not an inpatient will be at a rate established by the Department that is no higher than Medicare's fee schedule as described in Section 085. The payment level for other laboratory tests will be at a rate established by the Department. (12-31-91)

d. Collection fees for specimens drawn by vein puncture or catheterization are payable only to the physician or laboratory who draws the specimen. (2-15-86)

03. Mammography Services. Idaho Medicaid will cover screening or diagnostic mammographies performed with certified or certifiable mammography equipment and staff. (7-1-96)T

a. Screening mammographies will be limited to one (1) per calendar year for women who are forty (40) or more years of age. No physician's referral or orders are required except for clients enrolled in Healthy Connections. (7-1-96)T

b. Diagnostic mammographies will be covered when a physician orders the procedure for a patient of any age who is at high risk. (7-1-96)T

**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE**

DOCKET NO. 16-0309-9706

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1998, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 56-202(b), 56-203(g) and 56-203, Idaho Code.

DESCRIPTIVE SUMMARY: The pending rules are being adopted as proposed. The original text of the proposed rules was published in the May 7, 1997 Administrative Bulletin, Volume 97-5, pages 132 through 138.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Lloyd Forbes at (208) 334-5795.

DATED this 3rd day of September, 1997.

SHERRI KOVACH
Administrative Procedures Coordinator
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450 West State Street - 10th Floor
P.O. 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 97-5, May 7, 1997,
pages 132 through 138.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature for final adoption.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.10 - RULES GOVERNING PROVIDER REIMBURSEMENT
DOCKET NO.16-0310-9701

NOTICE OF AMENDMENT TO TEMPORARY AND PENDING RULE

EFFECTIVE DATE: The amendments to the temporary rule are effective July 1, 1997. These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective on July 1, 1998, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section(s) 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The proposed rules have been amended in response to public comment and to make typographical, transcriptional, and clerical corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code.

Only the Sections that have changes are printed in this bulletin. The original text of the proposed rules was published in the May 7, 1997, Idaho Administrative Bulletin, Volume 97-5, pages 139 and 140.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Judith Shipley at (208) 334-0607.

DATED this 3rd day of September 1997.

Sherri Kovach
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IDAPA 16
TITLE 03
Chapter 10

RULES GOVERNING PROVIDER REIMBURSEMENT

**There are substantive changes
from the proposed rule text.**

**Only those sections that have changed from the
original proposed text are printed in this
Bulletin following this notice.**

The complete original text was published in the
Idaho Administrative Bulletin, Volume 97-5, May 7, 1997,
pages 139 and 140.

This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature
for final adoption.

TEXT OF DOCKET NO. 16-0310-9701

115. NONALLOWABLE COSTS.

In the absence of convincing evidence to the contrary, expenses listed below will be considered nonreimbursable.

- (1-16-80)
01. Charity Allowances. Cost of free care or discounted services. (1-16-80)
 02. Nonpatient Care Related Activities. All activities not related to patient care. (1-16-80)
 03. Accelerated Depreciation. Depreciation in excess of straight line except as otherwise provided (see Subsection 354.04.c.ii.). (12-31-91)
 04. Related Party Interest. Interest on related party loans (see HIM-15, Sections 218.1 and 218.2). (1-16-80)
 05. Related Party Nonallowable Costs. All costs not allowable to providers are not allowable to a related party, whether or not they are allocated. (1-16-80)
 06. Acquisitions. Cost of corporate acquisitions, e.g., purchase of corporate stock as an investment. (1-16-80)
 07. Holding Companies. All home office costs associated with holding companies are not allowable (HIM-15, Section 2150.2A). (1-16-80)
 08. Related Party Refunds. All refunds, allowances, terms, etc., shall be deemed to be allocable to the members of related organizations, on the basis of their participation in the related purchases, costs, etc. (1-16-80)
 09. Fund Raising. Certain fund raising expenses (HIM-15, Section 2136.2). (1-16-80)
 10. Vending Machines. Costs of vending machines. Barber and beauty shops. (1-16-80)
 11. Organization. Organization costs (see HIM-15, Section 2134 and subsections of Section 2134 for specifics). (1-16-80)
 12. Fees. Franchise fees (HIM-15, Section 2133.1). (1-16-80)
 13. Medicare Covered Costs. Any All costs of Medicare Part A or Part B services incurred by Medicare certified facilities, which are covered by attributable to Medicare Part A or Part B, including the overhead costs relating to these services. (1-1-82)(7-1-97)T
 14. Yellow Pages Advertising. Telephone book yellow page advertising costs in excess of the base

charge for a quarter column advertisement for each telephone book advertised in. (1-1-82)

15. Consultant Fees. Costs related to the payment of consultant fees in excess of the lowest rate available to a facility. It is the provider's responsibility to make efforts to obtain the lowest rate available to that facility. The efforts may include personally contacting possible consultants and/or advertising. The lowest rate available to a facility is the lower of the actual rate paid by the facility or the lowest rate available to the facility, as determined by departmental inquiry directly to various consultants. Information obtained from consultants will be provided to facilities. Costs in excess of the lowest rate available will be disallowed effective thirty (30) days after a facility is notified pursuant to Subsection 115.15.b., unless the provider shows by clear and convincing evidence it would have been unable to comply with state and federal standards had the lowest rate consultant been retained or that it tried to but was unable to retain the lowest rate consultant. This Subsection in no way limits the Department's ability to disallow excessive consultant costs under other Sections of this chapter, such as Section 100 or 121, when applicable. (7-1-97)

16. Goodwill. Costs associated with goodwill as defined in Subsection 003.27 of these rules. (7-1-97)

17. Interest. Interest to finance nonallowable costs. (7-1-97)

18. Property Costs. Costs reimbursed based on a property rental rate according to other provisions of these rules. (7-1-97)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.20 - RULES GOVERNING ELECTRONIC BENEFIT TRANSFER (EBT)
OF PUBLIC ASSISTANCE AND FOOD STAMPS

DOCKET NO. 16-0320-9701

NOTICE OF TEMPORARY AND PROPOSED RULES

EFFECTIVE DATE: These temporary rules are effective September 1, 1997.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 56-202, Idaho Code.

PUBLIC HEARING SCHEDULE: Pursuant to Section 67-5222(2), Idaho Code, public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 1997.

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: These rules govern the issuance of public assistance and Food Stamp benefits by electronic benefit transfer (EBT). This is an issuance system, when implemented statewide, will replace the issuance of State warrants for cash payments and Food Stamp coupon booklets.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to confer a benefit.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: 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 September 24, 1997.

DATED this 3rd day of September, 1997.

Sherri Kovach
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TEXT OF DOCKET NO. 16-0320-9701

IDAPA 16
TITLE 03
Chapter 20

16.03.20 - RULES GOVERNING ELECTRONIC BENEFITS TRANSFER (EBT)
OF PUBLIC ASSISTANCE AND FOOD STAMPS

000. LEGAL AUTHORITY.

The Department of Health and Welfare is authorized to adopt rules for the administration of public assistance programs by Section 56-202, Idaho Code. (9-1-97)T

001. TITLE AND SCOPE.

01. Title. These rules are known and will be cited as Idaho Department of Health and Welfare Rules, IDAPA 16.03.20, "Rules Governing Electronic Benefits Transfer (EBT) of Public Assistance and Food Stamps." (9-1-97)T

02. Scope. These rules provide standards for delivery of Food Stamp and cash public assistance payments. (9-1-97)T

002. WRITTEN INTERPRETATIONS.

003. ADMINISTRATIVE APPEAL.

004. RULE AVAILABILITY.

Copies of these rules are available from the Administrative Procedures Section, 10th Floor, Towers Building, 450 West State Street, P.O. Box 83720, Boise, Idaho 83720-0036. (9-1-97)T

005. IDAHO ELECTRONIC BENEFIT TRANSFER PAYMENT SYSTEM.

Participants in the Food Stamp and cash public assistance programs in Idaho access their benefits through the Idaho Electronic Transfer Payment system. Access is made using a plastic debit card (EBT card) and secret personal identification number (PIN). Programs using EBT as a payment system include Food Stamps (FS), Temporary Assistance to Families in Idaho (TAFI), Aid to the Aged, Blind and Disabled (AABD) and Refugee Cash Assistance (RCA). The Idaho EBT payment system meets the requirements for the distribution of government benefits set forth in the QUEST Operating Rules as adopted and amended by the National Automated Clearing House Association (NACHA). EBT for the FS and cash public assistance programs is exempt from Regulation E (relating to Electronic Fund Transfers) of the Board of Governors of the Federal Reserve System. Participants are solely liable for unauthorized fund transfers except those initiated fraudulently by an employee of the state of Idaho or the EBT Vendor or its employee or subcontractor. (9-1-97)T

006. -- 009. (RESERVED).

010. DEFINITIONS.

01. Authorized Household Member. A member of a Food Stamp household or cash public assistance family who is issued an EBT card and personal identification number and is authorized to access the primary card holder's benefit account. (9-1-97)T

02. Authorized Representative. A person who is not a member of a Food Stamp participant's household and is authorized in writing by a participant to access a Food Stamp benefit account in behalf of the participant. The authorized representative is issued an EBT card and PIN. (9-1-97)T

03. Automated Teller Machine (ATM). A machine used to withdraw cash benefits and provide participants with account balance information. (9-1-97)T

04. Benefit Account. An authorization file maintained by the EBT Vendor on behalf of a cardholder. A benefit account will be a Food Stamp benefit account or a cash benefit account. A Food Stamp benefit account can be used to make food purchases. A cash benefit account can be used to make cash withdrawals or purchases. (9-1-97)T

05. Customer Service Center (CSC). A toll-free telephone service provided by the EBT Vendor to help the participant with use of the EBT card and provide information about EBT services. This service is available twenty-four (24) hours a day, seven (7) days a week. (9-1-97)T

06. Department. The Idaho Department of Health and Welfare. (9-1-97)T
07. EBT Vendor. A contractor hired by the Idaho Department of Health and Welfare to deliver EBT financial services, including origination of Automated Clearing House (ACH) transactions, electronic transactions, customer service and settlement services. (9-1-97)T
08. Guardian. This term includes the guardian of a person and the guardian for public assistance. (9-1-97)T
09. Limited Power of Attorney for EBT Account. A person with no legal interest in a participant's cash benefit account who is authorized to access that account on the participant's behalf. The limited power of attorney for an EBT account must be authorized by notarized signature on a Department form. (9-1-97)T
10. Personal Identification Number (PIN). A four (4) digit secret number issued to or selected by the EBT cardholder. The PIN is used with the card to initiate an EBT transaction. (9-1-97)T
11. Point of Sale (POS) Terminal. An electronic device located at retail outlets through which card holders can conduct EBT Food Stamp and cash transactions with their EBT card and PIN. (9-1-97)T
12. Primary Card Holder. The person who has primary responsibility for an EBT benefit account. The primary card holder may be: (9-1-97)T
- a. An individual whose client identification number is used to establish an EBT benefit account; or (9-1-97)T
- b. An individual who is a guardian, a parent of a minor child, a protective payee, or a person granted limited power of attorney because the participant is unable to use his EBT benefit card. (9-1-97)T
13. Stale Account. An EBT benefit account that has not had any debit activity for ninety (90) days or longer. (9-1-97)T

011. -- 029. (RESERVED).

030. ABBREVIATIONS.

01. AABD. Aid to the Aged, Blind, and Disabled. (9-1-97)T
02. ACH. Automated Clearing House. (9-1-97)T
03. ATM. Automated Teller Machine. (9-1-97)T
04. EBT. Electronic Benefit Transfer. (9-1-97)T
05. PIN. Personal Identification Number. (9-1-97)T
06. POS. Point of Sale. (9-1-97)T
07. RCA. Refugee Cash Assistance. (9-1-97)T
08. TAFI. Temporary Assistance for Families in Idaho. (9-1-97)T

031. -- 099. (RESERVED).

100. DIRECT DEPOSIT.

A cash assistance participant may choose to have his cash benefits deposited directly to his personal checking or savings account as an alternative to EBT. (9-1-97)T

101. -- 119. (RESERVED).

120. STALE BENEFIT ACCOUNTS.

A participant cannot access benefits in a stale account. The participant must contact the Department to reactivate his account. (9-1-97)T

121. STALE BENEFIT ACCOUNT NOTICE REQUIREMENTS.

The Department must explain to the participant, at certification and at recertification or redetermination, that benefits will not be accessible if the benefit account has not had any debit activity for ninety (90) days. The Department must also explain the procedures necessary to reactivate the stale benefit account. (9-1-97)T

122. -- 129. (RESERVED).

130. CLOSURE OF STALE BENEFIT ACCOUNTS.

Stale accounts will be closed. The participant may lose claim to the benefits depending on specific program policy. Stale benefit accounts will be closed according to the time lines listed in Subsections 130.01 through 130.03. (9-1-97)

01. TAFI Benefit Account. A TAFI benefit account will be closed when the account becomes a stale account. (9-1-97)T

02. AABD or RCA Benefit Account. An AABD or RCA benefit account will be closed if the participant does not request reactivation during the thirty (30) day period beginning with the day the account becomes stale. (9-1-97)T

03. Food Stamp Benefit Account. A Food Stamp benefit account will be closed if the participant does not request reactivation during the one hundred and eighty (180) day period beginning with the day the account becomes stale. (9-1-97)T

131. -- 132. (RESERVED).

133. NOTICE REQUIREMENT FOR CLOSING STALE BENEFIT ACCOUNTS.

The Department must notify the participant before closing the account. (9-1-97)T

134. -- 139. (RESERVED).

140. CONVERSION OF FOOD STAMP BENEFIT ACCOUNT BALANCES.

A participant moving from an EBT area must be able to convert his electronic benefits for use in a non-EBT area. Up to three (3) benefit conversions per year will be allowed for temporary absences from the EBT area. Benefit conversion is not allowed solely for shopping convenience of a participant who is not absent from his home. (9-1-97)T

141. FOOD STAMP BENEFIT CONVERSIONS BETWEEN SEPTEMBER 1, 1997 AND STATEWIDE IMPLEMENTATION OF EBT.

A participant requiring a conversion during the period starting September 1, 1997 and before statewide implementation of EBT will have his electronic Food Stamp benefits converted to Food Stamp coupons. The Department shall round EBT benefits remaining in a benefit account down to the nearest dollar amount suitable for coupon issuance. The participant may access any remaining balance of less than two dollars (\$2) in their EBT account for food purchases within one (1) week after conversion occurs. The EBT account will be closed seven (7) days after conversion and unused benefits will be returned to the Department. (9-1-97)T

142. FOOD STAMP BENEFIT CONVERSIONS AFTER STATEWIDE IMPLEMENTATION.

A participant requiring Food Stamp benefit conversion after statewide implementation of EBT shall have all unused electronic Food Stamp benefits converted to a cash benefit account. (9-1-97)T

143. -- 199. (RESERVED).

200. CARD ISSUANCE.

EBT cards may be issued though the mail by the EBT Vendor or over the counter at a Department field office. (9-1-97)T

201. -- 209. (RESERVED).

210. DAMAGED, LOST, OR STOLEN CARDS.

The primary card holder, and any additional card holder, is responsible to immediately report the loss, damage, or theft of his EBT card to the EBT Vendor's CSC. The participant is responsible to report to the CSC or the Department suspected unauthorized use of his card or unauthorized access to his EBT account. When the CSC receives a report of a lost, stolen or damaged EBT card, the EBT card will be deactivated. The primary card holder is solely responsible for the protection of his EBT card and PIN and for access to his EBT account by alternate payees. (9-1-97)T

211. -- 239. (RESERVED).

240. DESIGNATION OF ADDITIONAL CARD HOLDERS.

An additional card holder is responsible for account transactions made on behalf of the participant. An additional card holder may be an authorized household member, an authorized representative, or a limited power of attorney for EBT. (9-1-97)T

01. Additional Card Holder for EBT Cash Account. The primary card holder may designate an additional card holder for an EBT cash account. (9-1-97)T

02. Additional Card Holder for EBT Food Stamp Account. The primary card holder or another responsible member of the benefit household may designate an additional card holder for an EBT Food Stamp account. (9-1-97)T

241. PRIMARY CARD HOLDER OTHER THAN THE PARTICIPANT.

A primary card holder other than the participant is a guardian, a parent of a minor child, or a protective payee. A primary card holder is also a person granted limited power of attorney for EBT because the participant is unable to use his EBT benefit card. A primary card holder other than the participant is responsible for the participant's EBT benefit account transactions. This person accepts and exercises fiduciary responsibility over the participant's EBT benefit account. The participant shall not be issued an EBT card. (9-1-97)T

242. DEACTIVATING AN EBT CARD.

Methods of deactivating the EBT card are listed in Table 242.

TABLE 242				
		Card may be deactivated by contacting CSC.	Card may be deactivated by contacting Department.	Card may not be deactivated.
01	A card holder requests his own card be deactivated.	Yes	Yes ¹	N/A
02	A primary card holder requests the card of an authorized family member or authorized representative be deactivated.	Yes	Yes ¹	N/A
03	A participant who is a primary card holder requests the card for his limited power of attorney for EBT be deactivated	Yes	Yes ¹	N/A
04	A participant who is not the primary card holder requests the card for his primary card holder be deactivated.	No	Yes	N/A
05	A participant requests the card of a group home be deactivated.	No	No	Yes
¹ Contacting the Department will delay card deactivation.				

(9-1-97)T

243. -- 299. (RESERVED).

300. PERSONAL IDENTIFICATION NUMBER (PIN) ISSUANCE.

The PIN is randomly assigned by the EBT Vendor if the EBT card is issued through the mail. A participant who is issued his EBT card over the counter will select his own PIN. The participant may change his PIN at a Department office.
(9-1-97)T

301. -- 309. (RESERVED).

310. LOST, FORGOTTEN OR COMPROMISED PINS.

A cardholder may request a new PIN by contacting the CSC or the Department if the original PIN has been lost, forgotten or compromised.
(9-1-97)T

311. -- 319. (RESERVED).

320. PIN SECURITY.

The EBT card holder is responsible for maintaining the security of his PIN. The card holder will be provided with training and/or training materials that explain the use of the PIN and how to protect the PIN. The EBT card will be automatically deactivated for up to twenty-four (24) hours after four (4) incorrect PIN entries. The card holder is solely responsible for access to his EBT account through unauthorized use of his PIN.
(9-1-97)T

321. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.12 - RULES GOVERNING IDAHO CHILD CARE PROGRAM (ICCP)

DOCKET NO. 16-0612-9701

NOTICE OF TEMPORARY RULES

EFFECTIVE DATE: These temporary rules are effective July 1, 1997.

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) 39-106(I) and 56-202(b), Idaho Code.

DESCRIPTIVE SUMMARY: Under Docket No. 16-0612-9701, the Idaho Child Care Program will change rules to address child care payments for participants of the Temporary Assistance for Families in Idaho (TAFI) program, created as the result of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, public Law 104-193, as signed into law on August 22, 1996. These changes are in response to public participation comments regarding child care needs in conjunction with the TAFI program.

The rule changes allow child care payments in advance of the child care so that parents can pay for child care to perform work and Personal Responsibility Contract (PRC) activities. PRC activities have been added to the list of reasons child care payments can be made. A requirement for verification of the cost of care is added to these rules.

These rules change the text to indicate that eligible families, except TAFI families participating in non-employment TAFI activities, pay part of their child care costs. Rules are also added to require reporting responsibilities when there is a change in activities where child care is needed, when the cost of child care changes, when there is a change in child care providers, when there is a change in income, or when there is a change of address.

Transitional Child Care (TCC) rules are removed.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to address child care payments for participants of the Temporary Assistance to Families in Idaho program. To respond to public participation comments regarding child care needs in conjunction with the Temporary Assistance to Families in Idaho program.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rules, contact Penny Robbe at (208) 334-5819.

DATED this 3rd day of September, 1997.

Sherri Kovach
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DHW - Division of Legal Services
450 West State Street, 10th Floor
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(208) 334-5564 phone; (208) 334-5548 fax

TEXT OF DOCKET NO. 16-0612-9701

001. TITLE AND SCOPE.

01. Title. These rules shall be cited in full as Idaho Department of Health and Welfare Rules, IDAPA 16.06.12, "Rules Governing the Idaho Child Care Program (ICCP)." (7-1-97)

02. Scope. These rules provide standards for determining eligibility and issuing child care reimbursement. A reference to AFDC in these rules applies to the Temporary Assistance for Families in Idaho (TAFI) program. (7-1-97)(7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

006. ABBREVIATIONS.

The following abbreviations apply to this chapter: (7-1-97)

- 01. AFDC. Aid to Families with Dependent Children. (7-1-97)
- 02. GED. General Equivalency Diploma. (7-1-97)
- 03. ICCP. Idaho Child Care Program. (7-1-97)
- 04. JOBS. Job Opportunities and Basic Skills Program. (7-1-97)
- 05. SSI. Supplemental Security Income. (7-1-97)
- 06. ~~TCC. Transitional Child Care.~~ PRC. Personal Responsibility Contract. (7-1-97)(7-1-97)T
- 07. TAFI. Temporary Assistance for Families in Idaho. (7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

055. REQUIRED VERIFICATION.

Verification is the use of third-party data or proof to establish the accuracy of information contained in the application and claims for child care reimbursement. Each family applying for ICCP benefits shall furnish verification to establish eligibility for reimbursement. At the time of application the family shall receive a written list of the verification they need to provide to ICCP. The family shall be allowed ten (10) calendar days to provide verification. The family shall be advised they may contact the ICCP office before the deadline if they are unable to obtain the required verification and request an extension of the deadline. The family shall be advised failure to provide the verification shall result in benefit denial. ICCP has the right to independently confirm information on the application or on a child care claim form. See Subsections 055.01 through 055.09 for types of verification. (7-1-97)

- 01. Social Security Numbers. Social Security numbers are required for participation in the ICCP program. The Social Security numbers must be verified.. (7-1-97)
- 02. Employment. Verification of all employment shall be supplied. (7-1-97)
- 03. Income. Verification of all income, earned or unearned, shall be supplied. (7-1-97)
- 04. Citizenship and Alien Status. A declaration of citizenship shall be completed for each member of a family applying for ICCP benefits. Each adult shall sign a declaration, under penalty of perjury, attesting to his citizenship, national status, or alien status. The parent, legal guardian, or caretaker shall sign a declaration, under penalty of perjury, attesting to the citizenship, national status, or alien status of children under eighteen (18) years of age. Verification of alien status shall be provided for persons who are not citizens. (7-1-97)
- 05. Verification of Age and Relationship. A birth certificate or other proof of age shall be provided to verify the age and relationship of family members. (7-1-97)

06. Under Court Order. Verification a child is under court supervision shall be provided by a court order. Eligibility shall not extend beyond the term of the court order. (7-1-97)

07. Disability. Disability of a child thirteen (13) years old or older shall be verified by a physician, nurse practitioner, licensed psychologist, social worker, special education teacher, or speech therapist who determines the child physically or mentally incapable of self care. (7-1-97)

08. Training or Education. Verification a person is involved in training or education activity shall be provided by a statement from the school. (7-1-97)

09. Residency. Verification of residency shall be provided by utility bills, landlords, rent receipts, house payments, or other sources. (7-1-97)

10. Cost of Child Care. Verification of the cost of child care shall be provided by the child care provider. (7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

106. ~~TITLE IV-A (NON-JOBS) PROGRAM REQUIREMENTS.~~

~~To be eligible for ICCP services through Title IV-A (Non-JOBS), a family shall meet the requirements listed in the following:- (7-1-97)~~

~~01. Caretaker Receives AFDC. The caretaker shall be currently receiving AFDC benefits. (7-1-97)~~

~~02. Child Receives AFDC, SSI, or Title IV-E. The child shall be currently receiving AFDC, SSI, or Title IV-E Foster Care benefits. (7-1-97)~~

~~03. Caretaker Not Participating In JOBS. The AFDC caretaker shall not be participating in the JOBS Program.- (7-1-97)~~

~~04. Child Care Needed to Attend Training. Child care must be needed so the caretaker can attend an education or training program. Persons with baccalaureate degrees or who are attending post-baccalaureate classes will not qualify for ICCP. The education or training plan submitted by the caretaker shall be approved. The plan must identify the education or training program, and work objective to be achieved. (7-1-97)~~

~~05. Verification of Training. The caretaker receiving Title IV-A Child Care services shall show proof of satisfactory progress in the education or training program. Proof shall be provided at application and at the end of each educational term. If a program does not have specific periods of instruction, proof of standing in the program shall be provided every three (3) months. (7-1-97)~~

~~06. Interim Child Care ICCP Payment. If child care arrangements would be lost, child care may be reimbursed:- (7-1-97)~~

~~a. If education or training is scheduled to begin within two (2) weeks, up to two (2) weeks of child care may be reimbursed. (7-1-97)~~

~~b. During a break in education or training of one (1) month or less, up to one (1) month of child care may be reimbursed. (7-1-97)~~

107. ~~AT RISK CHILD CARE REQUIREMENTS.~~

~~To be eligible for ICCP At-Risk Child Care Services, a family shall meet the requirements listed in the following in addition to income limits: (7-1-97)~~

~~01. Not Receiving AFDC. Families cannot be receiving AFDC benefits. (7-1-97)~~

~~02. Not Receiving or Eligible to Receive TCC. Families cannot be receiving or eligible to receive TCC benefits. (7-1-97)~~

~~03. Child Care Needed for Employment. Child care shall be needed so the caretaker can accept or maintain employment. In a two (2) parent household, both parents shall be employed and unavailable to care for children, unless a parent cannot care for the children because of a disability. (7-1-97)~~

~~04. Meet At Risk Criteria. The family shall be at risk for qualifying for AFDC if the family's income is less than ICCP income limits. (7-1-97)~~

~~05. Interim Child Care ICCP Payment. If child care arrangements would be lost, child care may be reimbursed. (7-1-97)~~

~~a. If employment is scheduled to begin within two (2) weeks, up to two (2) weeks of child care may be reimbursed. (7-1-97)~~

~~b. During a break in employment of one (1) month or less, up to one (1) month of child care may be reimbursed. (7-1-97)~~

106. -- 107. (RESERVED).

108. ELIGIBILITY ACTIVITIES FOR CHILD CARE AND DEVELOPMENT BLOCK GRANT REQUIREMENTS.

To be eligible for ~~Block Grant~~ child care services, a family shall meet the requirements listed below in addition to income limits. (7-1-97)(7-1-97)T

01. Child Care Needed for Employment. Child care shall be needed for the caretaker to accept or maintain employment. (7-1-97)

02. Child Care Needed for Training or Education. Child care shall be needed so the caretaker can attend, full time, an education or training program. Attendance shall meet the institution's definition of full time attendance. Persons with baccalaureate degrees or who are attending post-baccalaureate classes will not qualify for ICCP. Satisfactory progress shall be maintained in order to continue to receive benefits. (7-1-97)

03. Child Care Needed for Preventive Services. Child care is needed to permit families to participate in treatment services, such as individual or family therapy, substance abuse treatment, or parenting classes; or child care is needed as a respite for families. Families must be referred through the Department of Health and Welfare. Case managers shall provide verification of continued need, at least every three (3) months, for the family to continue to be eligible for reimbursement. Children in foster care are not eligible for preventive services. (7-1-97)

04. Child Care Needed for Job Seeking. Child care is needed so that the caretaker can seek employment. ~~Child care reimbursement for job seeking shall be limited to a maximum of thirty (30) hours within any twelve (12) month period. (7-1-97)(7-1-97)T~~

05. Child Care Needed for Activities Negotiated Between the Department and Participate. Child care is needed so that the caretaker can complete activities Negotiated between the Department and the participate for the family. (7-1-97)T

06. Interim Child Care ICCP Payment. If child care arrangements would be lost, child care may be reimbursed. (7-1-97)T

a. If employment is scheduled to begin within two (2) weeks, up to two (2) weeks of child care may be reimbursed. (7-1-97)T

b. During a break in employment of one (1) month or less, up to one (1) month of child care may be reimbursed. (7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

~~153. TRANSITIONAL CHILD CARE (TCC) RECIPIENTS.~~

~~A family eligible for TCC benefits is not eligible for ICCP benefits, except that the family shall be eligible for ICCP benefits needed to attend training or education. A family eligible for, but not receiving TCC benefits, or who has failed to comply with TCC program requirements, is not eligible for ICCP benefits until the twelve (12) month eligibility period for TCC expires.~~ (7-1-97)

~~154. CONCURRENT CHILD CARE BENEFITS.~~

~~A family may receive child care benefits from more than one (1) ICCP component.~~ (7-1-97)

~~155. DETERMINATION OF ICCP BENEFITS.~~

~~ICCP must determine which ICCP component applies to a family's situation.~~ (7-1-97)

~~01. Applicable ICCP Component. Determination of the applicable ICCP component shall be based on the following hierarchy of programs:~~ (7-1-97)

~~a. Earned income disregards for employed AFDC recipients.~~ (7-1-97)

~~b. JOBS Program; Title IV-A Child Care Services.~~ (7-1-97)

~~e. Title IV-A (Non-JOBS) Child Care Services.~~ (7-1-97)

~~d. TCC Services.~~ (7-1-97)

~~e. At Risk Child Care Program.~~ (7-1-97)

~~f. Child Care and Development Block Grant.~~ (7-1-97)

~~02. AFDC Earned Income Disregards. Child care eligible for AFDC earned income disregards cannot be supplemented by any other ICCP component.~~ (7-1-97)

~~03. Highest Level Services. The family shall receive services from the program highest in the program hierarchy for which it is eligible. If the children in the family are eligible for different programs, services shall be provided according to the hierarchy on behalf of each child.~~ (7-1-97)

~~04. Availability of Funds. If funding for a program is insufficient to serve a child eligible for that program, the child shall be eligible and served through the next program in the hierarchy for which the child meets eligibility requirements.~~ (7-1-97)

~~05. Child Care Expenditures Exceed Funds. If child care expenditures exceed available funds in all ICCP programs, applications will not be determined and a waiting list shall be implemented until additional funding is available or secured.~~ (7-1-97)

~~153. -- 154. (RESERVED).~~

155. CHILD CARE EXPENDITURES EXCEED FUNDS.

If child care expenditures exceed available funds in the ICCP program, applications will not be determined and a waiting list shall be implemented until additional funding is available or secured. (7-1-97)T

(BREAK IN CONTINUITY OF SECTIONS)

302. ~~CHILD CARE PAYMENT VERIFICATION.~~

~~The provider shall verify, on the reimbursement claim form, that payment has been made by the family for the child care, or that satisfactory arrangements to pay the provider, have been made. Only claims containing verification of payment or satisfactory arrangements made for such payment shall be paid. (7-1-97)~~

302. REPORTING REQUIREMENTS.

Families applying for or receiving ICCP benefits shall report a change within ten (10) days of the date the family knows of the change. The changes listed in Subsections 302.01 through 302.05 must be reported. (7-1-97)T

01. Cost of Child Care. The family shall report when the cost of child care changes. (7-1-97)T

02. Provider. The family shall report when a child is taken to another child care provider. (7-1-97)T

03. Activity. The family shall report when child care is needed for another activity reason. (7-1-97)T

04. Income. The family shall report when the source or amount of income changes. (7-1-97)T

05. Change of Address. The family shall report when there is a change of address. (7-1-97)T

303. CLAIM REQUIREMENTS.

~~Claims shall include monthly income and child care expenses. (7-1-97)~~

~~01. Timely Filing of Claims. Completed claims shall be received by ICCP no later than the last day of the month following the month child care was provided. Claims received later shall not be allowed for payment. (7-1-97)~~

~~02. Required Signatures. ICCP shall not accept a claim unless it is filled out completely and includes both the parent's and provider's signatures. (7-1-97)~~

~~03. Provider Filing. If a claim has not been filed by a parent, the claim may be filed by the provider with verification that payment is owing and that the parent cannot be contacted or has refused to claim reimbursement. A claim from the provider must be filed within sixty (60) days of the last day of the month following the month child care was provided. (7-1-97)~~

~~04. Closing Families not Receiving Reimbursement. ICCP cases shall be closed after three (3) consecutive months without reimbursement. (7-1-97)~~

303. (RESERVED).

304. DISAPPROVING ICCP CLAIM.

A child care claim shall not be paid if any condition listed below exists. (7-1-97)

01. Claim Not Timely. The claim was not submitted by the end of the month, following the month child care was provided. (7-1-97)

02. Provider Not Paid. The provider has not been paid for the child care and satisfactory arrangements have not been made to pay the care. (7-1-97)

03. Income Exceeds Limit. The verified income of the family exceeds program limits. (7-1-97)

04. Child Care Provider Not Licensed or Registered. The provider of the child care does not meet requirements. (7-1-97)

05. Work or Training Stopped. The child's caretaker(s) are no longer participating in work, training, or

- education which qualify the family for ICCP benefits. (7-1-97)
065. Child Not Eligible. The child is no longer eligible. (7-1-97)
07. ~~Provider or Parent Signature. The provider or parent has not signed the claim form.~~ (7-1-97)
086. Repayment Default. The family has failed to repay an overpayment according to the signed repayment schedule. (7-1-97)

(BREAK IN CONTINUITY OF SECTIONS)

306. CALCULATE REIMBURSEMENT.

Calculation of the allowable reimbursement for child care is made based on the following: (7-1-97)

01. STEP 1: Determine the ~~actual~~ cost of child care. (~~7-1-97~~)(7-1-97)T
02. STEP 2: Determine any child care reimbursed by a grant or loan from another source. (7-1-97)
03. STEP 3: If child care reimbursed by another source is for more than one (1) month, compute the monthly rate. (7-1-97)
04. STEP 4: Subtract reimbursed child care from the ~~actual~~ cost of care. (~~7-1-97~~)(7-1-97)T
05. STEP 5: Determine the local market rate. (7-1-97)
06. STEP 6: Determine the lower of the local market rate or the difference in Step 3. The lower is the reimbursed rate. (7-1-97)
07. STEP 7: Determine the percentage the family must pay for child care from the sliding fee schedule, listed in Table 307. (7-1-97)
08. STEP 8: Determine the allowable rate less the amount calculated using the sliding fee schedule, listed in Table 307. This is the allowable ICCP reimbursement. (7-1-97)

307. SLIDING FEE SCHEDULES.

Eligible families, except TAFI families ~~receiving Title IV-A (Non-Jobs) reimbursement participating in non-employment TAFI activities~~, shall pay part of their child care costs. (~~7-1-97~~)(7-1-97)T

01. Poverty Rates. Poverty rates shall be the established rates published annually in federal regulations. The monthly rate shall be calculated by dividing the yearly rate by twelve (12). (7-1-97)
02. Sliding Fee Schedules. A sliding fee schedule shall be established annually. The amount required from the family shall increase incrementally as the family's income increases. (7-1-97)
03. Calculating Family Payment. Families shall pay directly to the provider of child care. Family income for the month the child care is provided shall be applied to the sliding fee schedule to calculate the family share of child care costs. The ICCP reimbursement shall be the allowable rate less the amount calculated using the sliding fee schedule. The sliding fee schedule is listed in Table 307. (7-1-97)
04. Maximum Income and Sliding Fee Schedules:

TABLE 307 - FAMILY CO-PAYMENT REQUIREMENTS ICCP SLIDING FEE SCHEDULES EFFECTIVE 5-01-96									
FAMILY SIZE	2	3	4	5	6	7	8	9	10
MONTHLY INCOME	PERCENTAGE OF CHILD CARE COST FAMILY MUST PAY								
\$0 - \$99	2%	2%	2%	2%	2%	2%	2%	2%	2%
\$100 - \$199	3%	3%	3%	3%	3%	3%	3%	3%	3%
\$200 - \$299	4%	4%	4%	4%	4%	4%	4%	4%	4%
\$300 - \$399	5%	5%	5%	5%	5%	5%	5%	5%	5%
\$400 - \$499	10%	5%	5%	5%	5%	5%	5%	5%	5%
\$500 - \$599	15%	5%	5%	5%	5%	5%	5%	5%	5%
\$600 - \$699	20%	10%	5%	5%	5%	5%	5%	5%	5%
\$700 - \$799	25%	15%	5%	5%	5%	5%	5%	5%	5%
\$800 - \$899	+30%	20%	5%	5%	5%	5%	5%	5%	5%
\$900 - \$999	45%	25%	10%	5%	5%	5%	5%	5%	5%
\$1,000 - \$1,099	60%	+30%	15%	5%	5%	5%	5%	5%	5%
\$1,100 - \$1,199	75%	40%	20%	10%	5%	5%	5%	5%	5%
\$1,200 - \$1,299	90%	50%	25%	15%	10%	5%	5%	5%	5%
\$1,300 - \$1,399	100%	60%	+30%	20%	10%	5%	5%	5%	5%
\$1,400 - \$1,499	100%	70%	40%	25%	15%	10%	5%	5%	5%
\$1,500 - \$1,599	100%	80%	50%	+30%	20%	10%	5%	5%	5%
\$1,600 - \$1,699	100%	90%	60%	35%	25%	15%	10%	5%	5%
\$1,700 - \$1,799	100%	100%	70%	40%	+30%	20%	10%	5%	5%
\$1,800 - \$1,899	100%	100%	80%	50%	35%	25%	15%	10%	5%
\$1,900 - \$1,999	100%	100%	90%	60%	40%	+30%	20%	10%	5%
\$2,000 - \$2,099	100%	100%	100%	70%	45%	35%	25%	15%	10%
\$2,100 - \$2,199	100%	100%	100%	80%	50%	40%	+30%	20%	10%
\$2,200 - \$2,299	100%	100%	100%	90%	55%	45%	35%	25%	15%
\$2,300 - \$2,399	100%	100%	100%	100%	60%	50%	40%	+30%	15%
\$2,400 - \$2,499	100%	100%	100%	100%	70%	55%	45%	35%	20%
\$2,500 - \$2,599	100%	100%	100%	100%	80%	60%	50%	40%	25%
\$2,600 - \$2,699	100%	100%	100%	100%	90%	65%	55%	45%	+30%
\$2,700 - \$2,799	100%	100%	100%	100%	100%	70%	60%	50%	35%
\$2,800 - \$2,899	100%	100%	100%	100%	100%	80%	65%	55%	40%

TABLE 307 - FAMILY CO-PAYMENT REQUIREMENTS ICCP SLIDING FEE SCHEDULES EFFECTIVE 5-01-96									
FAMILY SIZE	2	3	4	5	6	7	8	9	10
MONTHLY INCOME	PERCENTAGE OF CHILD CARE COST FAMILY MUST PAY								
\$2,900 - \$2,999	100%	100%	100%	100%	100%	90%	70%	60%	45%
\$3,000 - \$3,099	100%	100%	100%	100%	100%	100%	75%	65%	50%
\$3,100 - \$3,199	100%	100%	100%	100%	100%	100%	80%	70%	55%
\$3,200 - \$3,299	100%	100%	100%	100%	100%	100%	90%	75%	60%
\$3,300 - \$3,399	100%	100%	100%	100%	100%	100%	100%	80%	65%
\$3,400 - \$3,499	100%	100%	100%	100%	100%	100%	100%	85%	70%
\$3,500 - \$3,599	100%	100%	100%	100%	100%	100%	100%	90%	75%
\$3,600 - \$3,699	100%	100%	100%	100%	100%	100%	100%	100%	80%
\$3,700 - \$3,799	100%	100%	100%	100%	100%	100%	100%	100%	85%
\$3,800 - \$3,899	100%	100%	100%	100%	100%	100%	100%	100%	90%
\$3,900 - \$3,999	100%	100%	100%	100%	100%	100%	100%	100%	95%
\$4,000 - \$4,099	100%	100%	100%	100%	100%	100%	100%	100%	100%

#Maximum income for ICCP benefits:	+Monthly Poverty Level:
\$1,295 for household of 2	+ \$ 863 for household of 2
\$1,623 for household of 3	+ \$1082 for household of 3
\$1,950 for household of 4	+ \$1300 for household of 4
\$2,277 for household of 5	+ \$1518 for household of 5
\$2,606 for household of 6	+ \$1737 for household of 6
\$2,993 for household of 7	+ \$1955 for household of 7
\$3,260 for household of 8	+ \$2173 for household of 8
\$3,587 for household of 9	+ \$2391 for household of 9
\$3,914 for household of 10	+ \$2609 for household of 10

*MAXIMUM INCOME (OR ELIGIBILITY FOR REIMBURSEMENT) BASED ON ONE HUNDRED FIFTY PERCENT (150%) OF POVERTY (1996 POVERTY TABLES). (7-1-97)

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE
18.01.52 - RULES GOVERNING STATISTICAL REPORTING BY INSURANCE CARRIERS

DOCKET NO. 18-0152-9701

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule making. These rules are proposed pursuant to the authority vested in the Director of the Department of Insurance under Title 41, Chapter 2, Idaho Code. In this rulemaking, the Idaho Department of Insurance proposes to repeal IDAPA 18.01.52, Statistical Reporting by Insurance Carriers.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency on or before September 17, 1997. 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 address below. If no such written request is received, a hearing will not be held.

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

The statutory authority under which IDAPA 18.01.52 was promulgated was repealed by Chapter 305, Section 1, 1996 Idaho Session Laws. Therefore, the rule is being repealed in its entirety.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Robert Murphy at 208-334-4240.

Anyone may submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before September 24, 1997.

Dated this 17th day of June, 1997.

James M. Alcorn, 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 BEING REPEALED IN ITS ENTIRETY

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE
18.01.54 - RULES GOVERNING MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS
DOCKET NO. 18-0154-9701
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. These rules are adopted and proposed pursuant to the authority vested in the Director of the Department of Insurance under Title 41, Chapter 2, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency on or before September 17, 1997. 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 address below. If no such written request is received, a hearing will not be held.

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

Amends "Appendix D" of IDAPA 18.01.54 relating to disclosure statements for health insurance sold to Medicare beneficiaries. Disclosure statements will be required to state that some services paid for by Medicare may also trigger payments of benefits under the policy, and identify circumstances under which long-term care insurance policies are not considered to duplicate Medicare benefits. These changes reflect changes to Federal Law made by Public Law 104-191, H.R. 3103

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Ken Hurt at 208-334-4350.

Anyone may submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before September 24, 1997.

Dated this 17th day of August, 1996.

James M. Alcorn, 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. 18-0154-9701

APPENDIX D

DISCLOSURE STATEMENTS

Instructions for Use of the Disclosure Statements for
Health Insurance Policies Sold to Medicare Beneficiaries
that Duplicate Medicare

1. Federal law, P.L. 103-432, prohibits the sale of a health insurance policy (the term policy or policies includes certificates) that duplicate Medicare benefits unless it will pay benefits without regard to other health coverage and it

includes the prescribed disclosure statement on or together with the application.

2. All types of health insurance policies that duplicate Medicare shall include one of the attached disclosure statements, according to the particular policy type involved, on the application or together with the application. The disclosure statement may not vary from the attached statements in terms of language or format (type size, type proportional spacing, bold character, line spacing, and usage of boxes around text).

3. State and federal law prohibits insurers from selling a Medicare supplement policy to a person that already has a Medicare supplement policy except as a replacement.

4. Property/casualty and life insurance policies are not considered health insurance.

5. Long-term care insurance policies are not considered to duplicate Medicare benefits if they:

a. Provide health care benefits only for long-term care, home nursing care, home health care, or community-based care, or any combination thereof:

b. Coordinate against or exclude services available from or paid by Medicare or other health insurance; and;

c. For policies sold or issued on or after ninety (90) days from the Act's enactment (August 31, 1991), disclose in the outline of coverage that the policy coordinates with or excludes benefits covered by Medicare.

56. Disability income policies are not considered to provide benefits that duplicate Medicare.

67. The federal law does not pre-exempt state laws that are more stringent than the federal requirements.

78. The federal law does not pre-exempt existing state form filing requirements.

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE
18.01.55 - RULES GOVERNING FIRE SAFETY STANDARDS FOR DAY CARE

DOCKET NO. 18-0155-9701

NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule making. These rules are proposed pursuant to the authority vested in the State Fire Marshal by Section 39-1111, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 1997. 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 address below.

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

The proposed rule establishes new staff to children ratios for facilities licensed to provide day care for 13 or more children. The new ratios are based on amendments to Section 39-1109, Idaho Code, which became effective July 1, 1997.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Don McCoy at (208) 334-4370.

Anyone may submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before September 24, 1997.

Dated this 17th day of July, 1997.

James M. Alcorn, 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. 18-0155-9701

015. CHILD-STAFF RATIOS.

~~All adults on the premises shall be counted as staff for the purposes of computing child staff ratios, and each child shall count as one (1) child for the purposes of computing child staff ratios. The child-staff ratio shall be one (1) staff member to each twelve (12) children as set forth below: (7-1-93)~~

~~01. One (1) to Twelve (12) Children. From one (1) child to twelve (12) children: one (1) staff member. (7-1-93)~~

01. Minimum Staff to Child Ratios. Any facility licensed to provide day care for thirteen (13) or more children shall comply with the following minimum staff to child ratios: ()

a. One (1) staff member to six (6) children for all children age eighteen (18) months or less. When children of varying ages are present, any staff member responsible for supervising one (1) or more children age

eighteen (18) months or less shall be responsible for no more than six (6) children. ()

b. One (1) staff member to twelve (12) children for all children above age eighteen (18) months but less than five (5) years. When children of varying ages are present, any staff member responsible for supervising one (1) or more children older than eighteen (18) months but younger than five (5) years shall be responsible for no more than twelve (12) children. ()

c. One (1) staff member to eighteen (18) children for all children whose age is five (5) years or more. ()

02. Thirteen (13) to Twenty-Four (24) Children. From thirteen (13) children to twenty four (24) children: two (2) staff members. Computing Ratios. All adults on the premises shall be counted as staff for the purposes of computing child-staff ratios, and each child shall count as one (1) child for the purposes of computing child-staff ratios. (7-1-93)()

03. Twenty-Five (25) to Thirty-Six (36) Children. From twenty five (25) children to thirty six (36) children: three (3) staff members. (7-1-93)

04. Thirty-Seven (37) to Forty-Eight (48) Children. From thirty seven (37) children to forty eight (48) children: four (4) staff members, etc. (7-1-93)

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE
18.01.63 - RULES GOVERNING UNDERGROUND STORAGE TANK TECHNICIAN CERTIFICATION
DOCKET NO. 18-0163-9701
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule making. These rules are proposed pursuant to the authority vested in the Director of the Department of Insurance under Title 41, Chapter 2, Idaho Code. In this rulemaking, the Idaho Department of Insurance proposes to repeal IDAPA 18.01.63, Underground Storage Tank Technician Certification.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency on or before September 17, 1997. 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 address below. If no such written request is received, a hearing will not be held.

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

The statutory authority under which IDAPA 18.01.63 was promulgated was repealed by Chapter 93, Section 1, 1997 Idaho Session Laws. Therefore, the rule is being repealed in its entirety.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact Don McCoy at 208-334-4370.

Anyone may submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before September 24, 1997.

Dated this 17th day of June, 1997.

James M. Alcorn, 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 BEING REPEALED IN ITS ENTIRETY

IDAPA 18 - IDAHO DEPARTMENT OF INSURANCE
18.01.65 - RULES FOR THE SURPLUS LINE BROKERS OF IDAHO
DOCKET NO. 18-0165-9701
NOTICE OF PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule making. These rules are proposed pursuant to the authority vested in the Director of the Department of Insurance under Title 41, Chapter 2, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency on or before September 17, 1997. 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 address below.

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

Amends the existing rule to conform to changes to the Surplus Lines Insurance Law by House Bill No. 197. These changes include increasing the bond requirement for surplus lines brokers from \$1,000 to \$10,000, requiring that the Director issue a "white list" of companies eligible to write surplus line business in Idaho, requiring that brokers place surplus line business only with companies included on the "white list," and providing that the Surplus Line Association will provide brokers timely notice of additions and changes to the "white list." The rule also replaces the reference to "Executive Committee" with "Board of Directors" and requires Department of Insurance approval of the stamping fee rate established by the Board of Directors.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning these proposed rules, contact James M. Alcorn at (208) 334-4250.

Anyone may submit written comments regarding these rules. All written comments and data concerning the rule must be directed to the undersigned and must be received on or before September 24, 1997.

Dated this 17th day of July, 1997.

James M. Alcorn, 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. 18-0165-9701

011. BIENNIAL LICENSE.

The Idaho license of a Surplus Line Broker must be renewed every two (2) years. Both the original license fee and the renewal fee are prescribed in Rule No. 44 of the Idaho Department of Insurance ("Department"), plus a ~~one~~ ten thousand dollar (\$10,000) bond shall be posted with the Director of the Idaho Department of Insurance ("Director") as provided for in Section 41-1225 of the Idaho Insurance Code. Agents are in violation of the Insurance Code if they solicit surplus line business before they are licensed as a Surplus Line Broker. If a broker decides not to renew his license in any particular year, he should notify the Licensing Division of the Department of his intention prior to his license renewal date. The Director may, in his discretion, allow the continuation of a license which is not timely

renewed, if, within thirty (30) days after the renewal date, the licensee submits the appropriate renewal request and a continuation fee which is twice the amount otherwise required as provided by Section 41-1046(3), Idaho Code.

(1-1-94)()

(BREAK IN CONTINUITY OF SECTIONS)

014. PAYMENT OF STAMPING FEES.

01. Application. The stamping fee shall be charged on all premiums and policy fees written on Idaho business at a rate established by the ~~Executive Committee~~ Board of Directors of the Surplus Line Association and approved by the Department. This rate will be adjusted from time to time in order to obtain the objectives of the Association. The stamping fee cannot be refunded except where there are extenuating circumstances, reported to, and approved by the Stamping Office.

(1-1-94)()

02. Association Summary. Within ten (10) days following the month during which the surplus line insurance was handled through the Association office, the Manager will submit to each Idaho Surplus Line Broker an invoice summarizing the premium, Idaho tax, and Stamping Fee for each submission approved.

(1-1-94)

03. Payable on Receipt. The Stamping Fee of the Surplus Line Association is payable upon receipt of billing. It is delinquent if not paid within thirty (30) days after the last day of the month in which the business was reported.

(1-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

021. APPROVED LIST OF INSURERS.

~~At the discretion of the Director, a A list, commonly known as the "white" list, containing the only non-admitted companies authorized to write surplus line business in this state will be issued from time to time by the Director. While this list is in effect, a broker may place surplus line business with those companies only. The Association will keep brokers informed of changes through periodic bulletins. After receiving the updates from the Director, the association will keep brokers informed of additions and changes through timely notice.~~

(1-1-94)()

IDAPA 20 - DEPARTMENT OF LANDS
20.02.01 - RULES GOVERNING THE IDAHO FOREST PRACTICES ACT
DOCKET NO. 20-0201-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action authorized pursuant to Section 38-1304, Idaho Code.

PUBLIC HEARING SCHEDULE: public hearing(s) concerning this rulemaking will be held as follows:

September 3, 1997 (7:00pm) Federal Building 1500 Highway 2 Sandpoint, Idaho	September 9, 1997 (7:00pm) Helm Restaurant (Nez Perce Room) 1826 Main Street Lewiston, Idaho
September 4, 1997 (7:00pm) North Idaho College 1000 West Garden Hedlund Bldg. Room233A Coeur d' Alene, Idaho	September 10, 1997 (7:00pm) Idaho Department of Lands Office 10230 Highway 12 Orofino, Idaho
September 8, 1997 (7:00pm) Idaho Department of Lands Office 1806 Main Street St. Maries, Idaho	September 11, 1997 (7:00pm) D E Q Office 1410 North Hilton Boise, Idaho

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

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

- Amends notification rules to eliminate redundancy and clarify when a notice of forest practice is required.
- Amends use of chemicals rules to comply with Idaho Department of Agriculture Pesticide rules.
- Amends use of chemicals rules to include petroleum Storage Rules.
- Adds rules for addressing cumulative watershed effects on forest lands.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the Governor and the Land Board of the State of Idaho instructed Idaho Department of Lands to promulgate these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact James Colla, Forest Practices Coordinator at (208) 769-1525.

Anyone may submit written comments regarding this proposed rulemaking,. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 30th day of June 1997

Stanley F. Hamilton, Director
Idaho Department of Lands
954 Jefferson Street
P.O. Box 83720
Boise, Idaho 83720-0050
(208) 334-0200 -- Telephone
(208) 334-398 -- Fax

TEXT OF DOCKET NO. 20-0201-9701

010. DEFINITIONS.

Unless otherwise required by context as used in these regulations: (10-14-75)

01. Act. The Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. (7-1-96)
02. Acceptable Tree Species. Any of the tree species normally marketable in the region, which are suitable to meet stocking requirements. Acceptable trees must be of sufficient health and vigor to assure growth and harvest. (7-1-96)
03. Additional Hazard. The debris, slashings, and forest fuel resulting from a forest practice. (10-14-75)
04. Average DBH. Average diameter in inches of trees cut or to be cut, measured at four and one-half (4.5) feet above mean ground level on standing trees. All trees to be cut that do not have a measurable DBH will fall in the one inch class. (7-1-96)
05. Best Management Practice (BMP). A practice or combination of practices determined by the board, in consultation with the department and the forest practices advisory committee, to be the most effective and practicable means of preventing or reducing the amount of nonpoint pollution generated by forest practices. BMPs shall include but not be limited to those management practices included in these rules. (9-11-90)
06. Board. The Idaho State Board of Land Commissioners or its designee. (10-14-75)
07. Buffer Strip. A protective area adjacent to an area requiring special attention or protection. (10-14-75)
08. Chemicals. Substances applied to forest lands or timber to accomplish specific purposes and includes pesticides, ~~rodenticides, plant growth regulators, fungicides, fertilizers, desiccants, fire retardants other than water, salt,~~ as defined in the Idaho Pesticide Law, Title 22, Chapter 34, Idaho Code, fertilizers, soil amendments, road dust abatement products and other materials that may present hazards to the environment. (~~10-14-75~~)()
09. Constructed Skid Trail. A skid trail created by the deliberate cut and fill action of a dozer or skidder blade resulting in a road-type configuration. (7-1-96)
10. Commercial Products. Salable forest products of sufficient value to cover cost of harvest and transportation to available markets. (10-14-75)
11. Condition of Adjoining Area. Those fuel conditions in adjoining areas that relate to spread of fire and to economic values of the adjoining area. (1-24-78)
12. Contaminate. To introduce into the atmosphere, soil, or water sufficient quantities of substances that are injurious to public health, safety, or welfare or to domestic, commercial, industrial, agriculture or recreational uses or to livestock, wildlife, fish or other aquatic life. (10-14-75)
13. Cross-ditch. A diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation, duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion. (3-13-90)
14. Cull. Nonmerchantable, alive, standing trees of greater height than twenty (20) feet. (1-24-78)
15. Department. The Idaho Department of Lands. (10-14-75)
16. Deterioration Rate. Rate of natural decomposition and compaction of fuel debris which decreases

- the hazard and varies by site. (1-24-78)
17. Director. The Director of the Idaho Department of Lands or his designee. (10-14-75)
18. Emergency Forest Practice. A forest practice initiated during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event to minimize damage to forest lands, timber, or public resources. (10-14-75)
19. Fertilizers. Any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment. (10-14-75)
20. Fire Trail. Access routes that are located and constructed in a manner to be either useful in fire control efforts or deterring the fire spread in the hazard area. (10-14-75)
21. Forest Land. Federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes federal, state and private land from which forest tree species have been removed but have not yet been restocked. It does not include land affirmatively converted to uses other than the growing of forest tree species. (7-1-96)
22. Forest Practice. (10-14-75)
- a. The harvesting of forest tree species including felling, bucking, yarding, decking, loading and hauling; road construction, improvement or maintenance including installation or improvement of bridges, culverts or structures which convey stream flows within the operating area; also including the clearing of forest land for conversion to non-forest use when harvest occurs; (10-14-75)(____)
- b. Road construction, reconstruction or maintenance of existing roads including installation or improvement of bridges, culverts or structures which convey streams not within the operating area associated with harvesting of forest tree species; (10-14-75)(____)
- c. Reforestation; (10-14-75)
- d. Use of chemicals or fertilizers for the purpose of growing or managing forest tree species or forest land; (7-1-96)(____)
- e. The management of slashings resulting from harvest, management or improvement of forest tree species or the use of prescribed fire on forest land. (7-1-96)(____)
- f. "Forest Practice" shall not include preparatory work such as tree marking, surveying, and road flagging or removal or harvesting of incidental vegetation from forest lands; such as berries, ferns, greenery, mistletoe, herbs, mushrooms, or other products which cannot normally be expected to result in damage to forest soils, timber, or public resources. (10-14-75)
23. Forest Regions. Two (2) regions of forest land: one being north of the Salmon River and one being south of the Salmon River. (7-1-96)
24. Fuel Quantity. The diameter, the number of stems and the predominate species to be cut or already cut, and the size of the continuous thinning block all of which determine quantity of fuel per unit of area. (1-24-78)
25. Ground Based Equipment. Mobile equipment such as tractors, dozers, skidders and mechanized harvesters used for harvesting, site preparation or hazard reduction. This does not include cable systems associated with stationary yarding equipment. (7-1-96)
26. Habitat Types. Forest land capable of producing similar plant communities at climax. (7-1-96)
27. Harvesting. A commercial activity related to the cutting or removal of forest tree species to be used

as a forest product. A commercial activity does not include the cutting or removal of forest tree species by a person for his own personal use. (10-14-75)

28. Hazard. Any vegetative residue resulting from a forest practice which constitutes fuel. (1-24-78)
29. Hazard Offset. Improvements or a combination of practices which reduces the spread of fire and increases the ability to control fires. (10-14-75)
30. Hazard Points. The number of points assigned to certain hazardous conditions on an operating area, to actions designed to modify conditions on the same area or to actions by the operator, timber owner or landowner to offset the hazardous conditions on the same area. (1-24-78)
31. Hazard Reduction. The burning or physical reduction of slash by treatment in some manner which will reduce the risk from fire after treatment. (10-14-75)
- ~~32. Herbicide. Any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any weed including algae and other aquatic weeds. (10-14-75)~~
- ~~33. Insecticide. Any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropod, or mollusk. (10-14-75)~~
342. Lake. A body of perennial standing open water, natural or human-made, larger than one (1) acre in size. Lakes include the beds, banks or wetlands below the ordinary high water mark. Lakes do not include drainage or irrigation ditches, farm or stock ponds, settling or gravel ponds. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)
353. Landowner. A person, partnership, corporation, or association of whatever nature that holds an ownership interest in forest lands, including the state. (10-14-75)
364. Large Organic Debris (LOD). Live or dead trees and parts or pieces of trees that are large enough or long enough or sufficiently buried in the stream bank or bed to be stable during high flows. Pieces longer than the channel width or longer than twenty (20) feet are considered stable. LOD creates diverse fish habitat and stable stream channels by reducing water velocity, trapping stream gravel and allowing scour pools and side channels to form. (3-13-90)
375. Merchantable Material. That portion of forest tree species suitable for the manufacture of commercial products which can be merchandised under normal market conditions. (10-14-75)
386. Merchantable Stand of Timber. A stand of trees that will yield logs and fiber (7-1-96)
- a. Suitable in size and quality for the production of lumber, plywood, pulp, or other forest products; (10-14-75)
- b. Of sufficient value at least to cover all costs of harvest and transportation to available markets. (10-14-75)
397. Noncommercial Forest Land. Habitat types not capable of producing twenty (20) cubic feet per acre per year. (7-1-96)
- ~~4038.~~ Operator. A person who conducts or is required to conduct a forest practice. (10-14-75)
- ~~4139.~~ Operating Area. That area where a forest practice is taking place or will take place. (1-24-78)
420. Ordinary High Water Mark. That mark on all water courses, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter.

(10-14-75)

~~431.~~ Outstanding Resource Water. A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. ORW constitutes as outstanding national or state resource that requires protection from nonpoint activities, including forest practices, that may lower water quality. (7-1-96)

~~442.~~ Partial Cutting. The well distributed removal of a portion of the merchantable volume in a stand of timber. This includes seed tree, shelterwood, or individual tree selection harvesting techniques. (10-14-75)

~~453.~~ Prescribed Fire. The controlled application of fire to wildland fuels in either their natural or modified state, under such conditions of weather, fuel moisture and soil moisture, to allow the fire to be confined to a predetermined area and at the same time to produce the intensity of heat and rate of spread required to meet planned objectives. (7-1-96)

~~464.~~ Present Condition of Area. The amount or degree of hazard present before a thinning operation commences. (1-24-78)

~~475.~~ Public Resource. Water, fish, and wildlife, and in addition means capital improvements of the state or its political subdivisions. (10-14-75)

~~486.~~ Reforestation. The establishment of an adequately stocked stand of trees of species acceptable to the department to replace the ones removed by a harvesting or a catastrophic event on commercial forest land. (10-14-75)

~~497.~~ Relief Culvert. A structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity. (10-14-75)

~~50.~~ Rodenticide. Any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the Director of the State Department of Agriculture may declare by regulation to be a pest. (10-14-75)

~~5148.~~ Rules. Rules adopted by the board pursuant to Section 38-1304, Idaho Code. (7-1-96)

~~5249.~~ Slash. Any vegetative residue three (3) inches and under in diameter resulting from a forest practice or the clearing of land. (7-1-96)

~~530.~~ Site. An area considered as to its ecological factors with reference to capacity to produce forest vegetation; the combination of biotic, climatic, and soil conditions of an area. (10-14-75)

~~541.~~ Site Factor. A combination of percent of average ground slope and predominate aspect of the forest practice area which relate to rate of fire spread. (1-24-78)

~~552.~~ Site Specific Best Management Practice. A BMP that is adapted to and takes account of the specific factors influencing water quality, water quality objectives, on-site conditions, and other factors applicable to the site where a forest practice occurs, and which has been approved by the department, or by the board in consultation with the department and the forest practices advisory committee. (7-1-96)

~~563.~~ Size of Thinning Block. Acres of continuous fuel creating an additional hazard within a forest practice area. Distance between the perimeter of thinning blocks containing continuous fuel must be a minimum of six (6) chains apart to qualify as more than one (1) block. (1-24-78)

~~574.~~ Snags. Dead, standing trees twenty (20) feet and greater in height. (1-24-78)

~~585.~~ Soil Erosion. Movement of soils resulting from forest practices. (10-14-75)

~~596.~~ Soil Stabilization. The minimizing of soil movement. (10-14-75)

~~6057.~~ State. The state of Idaho or other political subdivision thereof. (10-14-75)

~~6158.~~ Stream. A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously or intermittently flowing water. Definite beds are defined as having a sandy or rocky bottom which results from the scouring action of water flow. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)

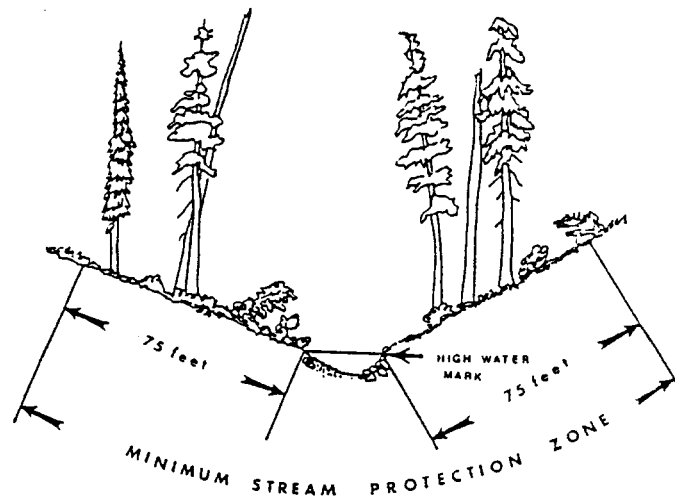
a. Class I streams are used for domestic water supply or are important for the spawning, rearing or migration of fish. Such waters shall be considered to be Class I upstream from the point of domestic diversion for a minimum of one thousand three hundred and twenty (1,320) feet. (11-7-86)

b. Class II streams are usually headwater streams or minor drainages that are used by only a few, if any, fish for spawning or rearing. Where fish use is unknown, consider streams as Class II where the total upstream watershed is less than two hundred and forty (240) acres in the north forest region and four hundred and sixty (460) acres in the south forest region. Their principle value lies in their influence on water quality or quantity downstream in Class I streams. (7-1-96)

c. Class I Stream Protection Zone means the area encompassed by a slope distance of seventy-five (75) feet on each side of the ordinary high water marks. (Figure 1)

Figure 1

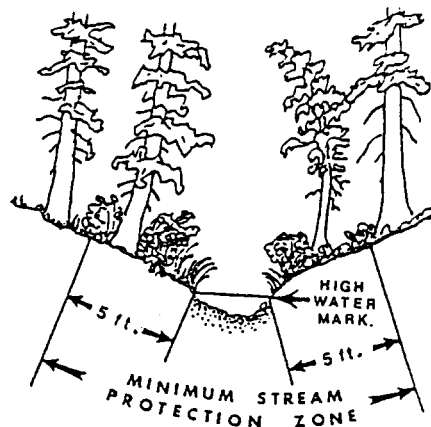
CLASS 1 STREAM PROTECTION ZONE



d. Class II Stream Protection Zone means the area encompassed by a minimum slope distance of thirty (30) feet on each side of the ordinary high water marks. (Figure 2) For Class II streams that do not contribute surface flow into Class I streams, provide soil stabilization and water filtering effects by leaving undisturbed soils in widths sufficient to prevent washing of sediment. In no case shall this width be less than five (5) feet slope distance on each side of the ordinary high water marks. (7-1-96)

FIGURE 2

CLASS II STREAM PROTECTION ZONE



6259. Timber Owner. A person, partnership, corporation, or association of whatever nature, other than the landowner, that holds an ownership interest in forest tree species on forest land. (10-14-75)

630. Time of Year of Forest Practice. Those combinations of months during which time the forest practice is taking place. Points assigned are: October through December - two (2) points; August through September - four (4) points; January through April - seven (7) points; May through July -ten (10) points. (1-24-78)

(BREAK IN CONTINUITY OF SECTIONS)

020. GENERAL RULES

01. Compliance. Practices contained within a rule shall be complied with to accomplish the purpose to which the rule is related. (8-13-85)

a. If conditions of sites or activities require the application of practices which differ from those prescribed by the rules, the operator shall obtain a variance according to the following procedure: (8-13-85)

i. The operator shall submit a request for variance to the department in writing. The request shall include a description of the site and particular conditions which necessitate a variance, and a description of proposed practices which, if applied, will result in a violation of the rules. (8-13-85)

ii. Within fourteen (14) calendar days the department shall evaluate the request and notify the operator in writing of the determination to allow or disallow the variance request. (7-1-96)

iii. All practices authorized under this procedure shall provide for equivalent or better results over the

long term than the rules which are superseded to insure site productivity, water quality and fish and wildlife habitat. A variance can be applied only at approved sites. (8-13-85)

b. Practices shall also be in compliance with the Stream Channel Alteration Act (title 42, chapter 38, Idaho Code), Idaho Water Quality Standards and Waste Water Treatment Requirements (title 39, chapter 1, Idaho Code), the Idaho Pesticide Law (title 22, chapter 34, Idaho Code), and the Hazardous Waste Management Act of 1983 (title 39, chapter 44, Idaho Code), and rules and regulations pursuant thereto. (8-13-85)

02. Conversion of Forest Lands. Conversions require a notification be filed, and compliance with all rules except those relating to reforestation. On converted parcels larger than one (1) acre, plant acceptable vegetative cover sufficient to maintain soil productivity and minimize erosion. Cover shall be established within one (1) year of completion of the forest practice except that the director may grant an extension of time if weather or other conditions interfere. Within three (3) years of completion of the forest practice, the director shall determine if the conversion has been accomplished by: (7-1-96)

a. The presence or absence of improvements necessary for use of land for its intended purpose; (7-1-96)

b. Evidence of actual use of the land for the intended purpose. (10-14-75)

c. If the conversion has not been accomplished within three (3) years of the completion of harvest, supplemental reforestation Subsection 050.06 applies. (7-1-96)

03. Annual Review and Consultation. The director shall, at least once each year, meet with other state agencies and the Forest Practices Advisory Committee and review recommendations for amendments to rules, new rules, or repeal of rules. He shall then report to the board a summary of such meeting or meetings, together with recommendations for amendments to rules, new rules, or repeal of rules. (10-14-75)

04. Consultation. The director shall consult with other state agencies and departments concerned with the management of forest environment where expertise from such agencies or departments is desirable or necessary. (10-14-75)

a. The Idaho Water Quality Standards and Waste water Treatment Requirements (Title 39, Chapter 1, Idaho Code) reference the Forest Practice Rules as approved best management practices and describe a procedure of modifying the practices based on monitoring and surveillance. The director shall review petitions from Idaho Department of Health and Welfare for changes or additions to the rules according to Administrative Procedures Act (Title 67, Chapter 52, Idaho Code) and make recommendations for modification to the Board of Land Commissioners. (9-20-88)

05. Notification of Forest Practice. (10-14-75)

a. Before commencing a forest practice or a conversion of forest lands the department shall be notified as required in Subsection 020.02.b. The notice shall be given by the operator. However, the timber owner or landowner satisfies the responsibility of the operator under this subsection. When more than one forest practice is to be conducted in relation to harvesting of forest tree species, one notice including each forest practice to be conducted shall be filed with the department. (7-1-96)

b. The notification required by Subsection 020.05.a. shall be on forms prescribed and provided by the department and shall include the name and address of the operator, timber owner, and landowner; the legal description of the area in which the forest practice is to be conducted; whether the forest practice borders an outstanding resource water and other information the department considers necessary for the administration of the rules adopted by the board under Section 38-1304, Idaho Code. All notifications must be formally accepted by the department before any forest practice may begin. Promptly upon formal acceptance of the notice but not more than fourteen (14) calendar days from formal acceptance of the notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notification. The department shall make available to the operator, timber owner, and landowner a copy of the rules. (7-1-96)

c. An operator, timber owner, or landowner, whichever filed the original notification, shall notify the department of any subsequent change in the information contained in the notice within thirty (30) calendar days of the change. Promptly upon receipt of notice of change, but not to exceed fourteen (14) calendar days from receipt of notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notice of change. (7-1-96)

d. The notification is valid for the same period as set forth in the certificate of compliance under Section 38-122, Idaho Code. At the expiration of the notification, if the forest practice is continuing, the notification shall be renewed using the same procedures provided for in this section. (4-21-92)

e. If the notification required by subsection a. of this section indicates that at the expiration of the notification that the forest practice will be continuing, the operator, timber owner, or landowner, at least thirty (30) calendar days prior to the expiration of the notification, shall notify the department and obtain a renewal of the notification. Promptly upon receipt of the request for renewal, but not to exceed fourteen (14) calendar days from receipt of the request, the department shall mail a copy of the renewed notification to whichever of the operator, timber owner, or landowner that did not submit the request for renewal. (7-1-96)

~~06. Types of Operations for Which Notification Shall Be Required. The notification shall be required for the following types of forest practices: (4-21-92)~~

~~a. The harvesting of forest crops including felling, bucking, yarding, decking, loading, and hauling; road construction or improvement, including installation or improvement of bridges, culverts, or structures which convey stream flows within the area described; (7-1-96)~~

~~b. Road construction or reconstruction of existing roads including installation or replacement of bridges, culverts, or structures which convey streams not within operation areas associated with harvesting of forest tree species; (7-1-96)~~

~~e. Reforestation; (7-1-96)~~

~~d. Application of insecticides, herbicides, rodenticides, and fertilizer for the purpose of growing or managing forest tree species. (10-14-75)~~

~~e. Pre-commercial thinning. (10-14-75)~~

~~f. A woodlot management plan prepared by a forest practice advisor of the department or approved by the board of supervisors of a soil conservation district shall constitute a notification of a forest practice when filed with the department, provided it contains the information required in Subsection 020.05.b. (7-1-96)~~

~~g. Clearing forest land for conversion to non-forest use. (9-20-88)~~

~~076. Types of Operation for Which Notice Will Not Be Required. A Notification of Forest Practice Is Required Except for: (10-14-75)()~~

a. Routine road maintenance, recreational uses, grazing by domestic livestock, cone picking, culture and harvest of Christmas trees on lands used solely for the production of Christmas trees, or harvesting of other minor forest products. (10-14-75)

b. Non-commercial cutting and removal of forest tree species by a person for his own personal use. (10-14-75)

c. Clearing forest land for conversion to surface mining or dredge and placer mining operations under a reclamation plan or dredge mining permit. (9-20-88)

087. Emergency Forest Practices. No prior notification shall be required for emergency forest practices necessitated by and commenced during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event. Within forty-eight (48) hours after commencement of such practice, the operator, timber owner, or

landowner shall notify the director with an explanation of why emergency action was necessary. Such emergency forest practices are subject to the rules herein, except that the operator, timber owner, or landowner may take any reasonable action to minimize damage to forest lands, timber, or public resource from the direct or indirect effects of the catastrophic event. (7-1-96)

098. **Duty of Purchaser.** The initial purchaser of forest tree species which have been harvested from forest lands shall, before making such purchase or contract to purchase or accepting delivery of the same, receive and keep on file a copy of the notice required by Section 38-1306, Idaho Code relating to the harvesting practice for which the forest tree species are being acquired by the initial purchaser. Such notice shall be available for inspection upon request by the department at all reasonable times. (7-1-96)

~~10. **Leakage or Accidental Spillage of Petroleum Products.** Petroleum product storage containers with capacities of more than two hundred (200) gallons, stationary or mobile, will be located no closer than one hundred (100) feet from stream, water course or area of open water. Dikes, berms or embankments will be constructed to contain the volume of petroleum products stored within the tanks. Diked areas will be sufficiently impervious and of adequate capacity to contain spilled petroleum products. In the event any leakage or spillage enters any stream, water course or area of open water, the operator will immediately notify the director. (7-1-96)~~

~~a. **Transferring Petroleum Products:** During fueling operations or petroleum product transfer to other containers, there shall be a person attending such operations at all times. (9-20-88)~~

~~b. **Equipment used for transportation or storage of petroleum products shall be maintained in a leakproof condition. If the Forest Practice Advisor determines there is evidence of petroleum product leakage or spillage that person shall have the authority to suspend the further use of such equipment until the deficiency has been corrected. (7-1-96)**~~

~~1109. **State Divided into Regions.** For the purpose of administering this Act, the State is divided into two (2) forest regions: one north of the Salmon River and one south of the Salmon River. (7-1-96)~~

~~120. **Regions Divided into Forest Habitat Types.** For the purpose of further refining the on-the-ground administration of the Act, the forest regions can be divided into Habitat Types. (7-1-96)~~

(BREAK IN CONTINUITY OF SECTIONS)

030. TIMBER HARVESTING

01. **Purpose.** Harvesting of forest tree species is a part of forest management by which wood for human use is obtained and by which forests are established and tended. It is recognized that during harvesting operations there will be a temporary disturbance to the forest environment. It is the purpose of these rules to establish minimum standards for forest practices that will maintain the productivity of the forest land and minimize soil and debris entering streams and protect wildlife and fish habitat. (10-14-75)

02. **Quality of Residual Stocking.** Reforestation is required if harvesting reduces stocking of acceptable trees below minimums of Subsection 050.04. (7-1-96)

03. **Soil Protection.** Select for each harvesting operation the logging method and type of equipment adapted to the given slope, landscape and soil properties in order to minimize soil erosion. (8-13-85)

a. **Ground based skidding** shall not be conducted if it will cause rutting, deep soil disturbance, or accelerated erosion. On slopes exceeding forty-five percent (45%) gradient and which are immediately adjacent to a class I or II stream, ground based skidding shall not be conducted except with an approved variance. Where slopes in the area to be logged exceed forty-five percent (45%) gradient the operator, landowner or timber owner shall notify the department of these steep slopes upon filing the notification as provided for in Subsection 020.05. (7-1-96)

b. Limit the grade of constructed skid trails on geologically unstable, saturated, or highly erodible or easily compacted soils to a maximum of thirty percent (30%). (7-1-96)

c. In accordance with appropriate silvicultural prescriptions, skid trails shall be kept to the minimum feasible width and number. Tractors used for skidding shall be limited to the size appropriate for the job. (8-13-85)

d. Uphill cable yarding is preferred. Where downhill yarding is used, reasonable care shall be taken to lift the leading end of the log to minimize downhill movement of slash and soils. (8-13-85)

04. Location of Landings, Skid Trails, and Fire Trails. Locate landings, skid trails, and fire trails on stable areas to prevent the risk of material entering streams. (10-14-75)

a. All new or reconstructed landings, skid trails, and fire trails shall be located on stable areas outside the appropriate stream protection zones. Locate fire and skid trails where sidecasting is held to a minimum. (3-13-90)

b. Minimize the size of a landing to that necessary for safe economical operation. (8-13-85)

c. To prevent landslides, fill material used in landing construction shall be free of loose stumps and excessive accumulations of slash. On slopes where sidecasting is necessary, landings shall be stabilized by use of seeding, compaction, riprapping, benching, mulching or other suitable means. (8-13-85)

05. Drainage Systems. For each landing, skid trail or fire trail a drainage system shall be provided and maintained that will control the dispersal of surface water to minimize erosion. (4-21-92)

a. Stabilize skid trails and fire trails whenever they are subject to erosion, by water barring, cross draining, outsloping, scarifying, seeding or other suitable means. This work shall be kept current to prevent erosion prior to fall and spring runoff. (8-13-85)

b. Reshape landings as needed to facilitate drainage prior to fall and spring runoff. Stabilize all landings by establishing ground cover or by some other means within one year after harvesting is completed. (8-13-85)

06. Treatment of Waste Materials. All debris, overburden, and other waste material associated with harvesting shall be left or placed in such a manner as to prevent their entry by erosion, high water, or other means into streams. (10-14-75)

a. Wherever possible trees shall be felled, bucked, and limbed in such a manner that the tree or any part thereof will fall away from any Class I streams. Continuously remove slash that enters Class I streams as a result of harvesting operations. Continuously remove other debris that enters Class I streams as a result of harvesting operations whenever there is a potential for stream blockage or if the stream has the ability for transporting such debris. Place removed material five (5) feet slope distance above the ordinary high water mark. (3-13-90)

b. Remove slash and other debris that enters Class II streams whenever there is a potential for stream blockage or if the stream has the ability for transporting the debris immediately following skidding and place removed material above the ordinary high water mark or otherwise treat as prescribed by the department. No formal variance is required. (11-7-86)

c. Deposit waste material from construction or maintenance of landings and skid and fire trails in geologically stable locations outside of the appropriate Stream Protection Zone. (8-13-85)

~~d. Waste resulting from logging operations, such as crankcase oil, filters, grease and oil containers, shall not be placed inside Class I or Class II Stream Protection Zones. (8-13-85)~~

07. Stream Protection. During and after forest practice operations, stream beds and streamside vegetation shall be protected to leave them in the most natural condition as possible to maintain water quality and aquatic habitat. (8-13-85)

- a. Lakes require an approved site specific riparian management prescription prior to conducting forest practices within the stream protection zone. (7-1-96)
- b. Ground based skidding in or through streams shall not be permitted. When streams must be crossed, adequate temporary structures to carry stream flow shall be installed. Cross the stream at right angles to its channel if at all possible. (Construction of hydraulic structures in stream channels is regulated by the Stream Channel Protection Act - title 42, chapter 38, Idaho Code). Remove all temporary crossings immediately after use and, where applicable, water bar the ends of the skid trails. (7-1-96)
- c. Operation of ground based equipment shall not be allowed within the Stream Protection Zone except at approaches to stream crossings. (7-1-96)
- d. When cable yarding is necessary, across or inside the Stream Protection Zones it shall be done in such a manner as to minimize stream bank vegetation and channel disturbance. (8-13-85)
- e. Provide for large organic debris (LOD), shading, soil stabilization, wildlife cover and water filtering effects of vegetation along streams. (7-1-96)
- i. Leave hardwood trees, shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream. (10-14-75)
- ii. Leave seventy-five percent (75%) of the current shade over the Class I streams. (7-1-96)
- iii. Carefully remove timber from the Stream Protection Zone in such a way that shading and filtering effects are not destroyed. (7-1-96)
- iv. Standing trees, including conifers, hardwoods and snags will be left within fifty (50) feet of the ordinary high water mark on each side of all Class I streams, and within thirty (30) feet on each side of those Class II streams that require thirty (30) feet stream protection zones, in the following minimum numbers per one thousand (1000) feet of stream: (7-1-96)

Minimum Standing Trees per One Thousand (1000) Feet Required (each side)

Tree Diameter (DBH)	-- Stream Width --		
	Over 20'	10'- 20'	Under 10'
3 - 7.9"	200	200	200
8 - 11.9"	42	42	42
12 - 19.9"	21	21	--
20"+	4	--	--

*For those Class II streams that require a minimum five (5) foot stream protection zone, no standing trees are required. (7-1-96)

- v. Snags will be counted as standing trees in each diameter class if snag height exceeds one and one-half (1.5) times the distance between the snag and the stream's ordinary high water mark. Not more than fifty percent (50%) of any class may consist of snags. (7-1-96)
- vi. As an alternative to the standing tree and shade requirements, the operator may notify the department that a site specific riparian management prescription is requested. The department and operator may jointly develop a plan upon consideration of stream characteristics and the need for large organic debris, stream shading and wildlife cover which will meet the objective of these rules. (3-13-90)

vii. Where the opposite side of the stream does not currently meet the minimum standing tree requirements of the table, the department and the operator should consider a site specific riparian prescription that meets the large organic debris needs of the stream. (3-13-90)

viii. Stream width shall be measured as average between ordinary high water marks. (3-13-90)

08. Maintenance of Productivity and Related Values. Harvesting practices will first be designed to assure the continuous growing and harvesting of forest tree species by suitable economic means and also to protect soil, air, water, and wildlife resources. (10-14-75)

a. Where major scenic attractions, highways, recreation areas or other high-use areas are located within or traverse forest land, give special consideration to scenic values by prompt cleanup and regeneration. (10-14-75)

b. Give special consideration to preserving any critical wildlife or aquatic habitat. Wherever practical, preserve fruit, nut, and berry producing trees and shrubs. (10-14-75)

c. Avoid conducting operations along bogs, swamps, wet meadows, springs, seeps, wet draws or other sources where the presence of water is indicated, protect soil and vegetation from disturbance which would cause adverse affects on water quality, quantity and wildlife and aquatic habitat. (7-1-96)

d. Whenever practical, as determined by the department, plan clear cutting operations so that adequate wildlife escape cover is available within one-quarter (1/4) mile. (10-14-75)

031. CUMULATIVE WATERSHED EFFECTS.

01. Purpose. In accordance with Section 38-1305(8), Idaho Code, the department has developed methods for controlling cumulative watershed effects (CWE). The methods and procedures are described in the department manual entitled "Forest Practices Cumulative Watershed Effects Process for Idaho." Proper application of this process will help ensure watersheds are managed to protect water quality so that beneficial uses are supported. This rule describes how the process is to be implemented on forest land. ()

02. Process Application. ()

a. Application of the CWE process and any resulting site-specific BMPs are encouraged but not mandatory. ()

b. The process may be initiated by either the department, a watershed advisory group (WAG), or an individual landowner or group of landowners that collectively own at least twenty-five percent (25%) of the forested land in a watershed. In any case, a reasonable effort will be made to notify forest landowners within the watershed, and the landowners will be given the opportunity to participate in the process. ()

c. The department shall be notified prior to the initiation of the CWE process. ()

d. The department will review and approve the watershed assessment and CWE site-specific BMPs for compliance with the Forest Practices Act. ()

03. Site-Specific BMP Implementation. ()

a. Approved CWE site-specific BMPs are encouraged and applied on a voluntary basis. ()

04. Site-Specific BMPs on former Stream Segments of Concern. Practices approved by the department from 1989 through 1995 under former stream segments of concern rules remain in effect until revised by a CWE analysis, at which point the CWE site-specific BMPs would be mandatory. ()

0342. -- 039. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

060. USE OF CHEMICALS AND PETROLEUM PRODUCTS.

01. Purpose. Chemicals perform an important function in the growing and harvesting of forest tree species. The purpose of these rules is to regulate handling, storage and application of chemicals in such a way that the public health and aquatic and terrestrial habitats will not be endangered by contamination of streams or other bodies of water. In addition, the application of chemicals ~~pesticides is regulated by Rules of the Idaho Pesticide Law (title 22, chapter 34, Idaho Code)~~ are regulated by the Commercial Fertilizer Law, Title 22, Chapter 6; the Soil and Plant Amendment Law, Title 22, Chapter 22, and the Idaho Pesticide Law, Title 22, Chapter 34, Idaho Code and IDAPA 02.03.03, "Rules Governing Pesticide Use and Application." (7-1-96)()

02. Petroleum Products. Petroleum storage containers with capacities of more than two hundred (200) gallons, stationary or mobile, will be located no closer than one hundred (100) feet from any stream, water course, lake, or area of open water. Dikes, berms or embankments will be constructed to contain at least one hundred ten percent (110%) of the volume of petroleum products stored within the tanks. Diked areas will be sufficiently impervious and of adequate capacity to contain spilled petroleum products. In the event any leakage or spillage enters any stream, water course, lake, or area of open water, the operator will immediately notify the department. ()

a. Transferring Petroleum Products. During fueling operations or petroleum product transfer to other containers, there shall be a person attending such operations at all times. Fueling operations should not take place where, if spillage occurs, the fuel will enter streams, lakes or other areas of open water. ()

b. Equipment and containers used for transportation, storage or transfer of petroleum products shall be maintained in a leakproof condition. If the department determines there is evidence of petroleum product leakage or spillage, the use of such equipment shall be suspended until the deficiency has been corrected. ()

c. Waste resulting from logging operations, such as crankcase oil, filters, grease, oil containers, or other nonbiodegradable waste shall be removed from the operating area and disposed of properly. ()

023. Licensing. Any person acting as a commercial applicator or operator, limited applicator, or private applicator applying restricted-use pesticides, applying, mixing or loading pesticides shall comply with the licensing requirements of the Rules of Idaho Pesticide Law and IDAPA 02.03.03, "Rules Governing Pesticide Use and Application." This requirement does not pertain to individuals applying ~~non-restricted~~ general use pesticides on their own property. (7-1-96)()

034. Maintenance of Equipment. (10-14-75)

a. Equipment used for transportation, storage or application of chemicals shall be maintained in leakproof condition. If, in the Director's judgment, there is evidence of chemical leakage, he shall have the authority to suspend the further use of such equipment until the deficiency has been corrected. (10-14-75)

b. The storage of ~~chemical~~ pesticide shall also be conducted in accordance with the requirements Rules of the Idaho Pesticide Law and IDAPA 02.03.03, "Rules Governing Pesticide Use and Application." (7-1-96)()

045. Mixing. (10-14-75)

a. When water is used in mixing chemicals: (10-14-75)

i. Provide an air gap or reservoir between the water source and the mixing tank. (10-14-75)

- ii. Use uncontaminated tanks, pumps, hoses and screens to handle and transfer mix water for utilization in pesticide operations. ~~(10-14-75)~~(____)
- b. Mixing and landing areas: (10-14-75)
- i. Mix chemicals and clean tanks and equipment only where spills will not enter any water source or streams. (10-14-75)
- ii. Landing areas shall be located where spilled chemicals will not enter any water source or stream. (8-13-85)
- iii. Rinsate and wash water should be recovered and used for make-up water, be applied to the target area, or disposed of according to state and federal laws. (____)
056. Aerial Application (10-14-75)
- a. With the exception of pesticides approved for aquatic use and applied according to labeled directions, when applying pesticide leave at least one (1) swath width (minimum one hundred (100) feet) untreated on each side of all Class I streams, flowing Class II streams and other areas of open water. When applying pelletized fertilizer, leave a minimum of fifty (50) feet untreated on each side of all Class I streams, flowing Class II streams, and other areas of open water. ~~(7-1-96)~~(____)
- b. Use a bucket or spray device capable of immediate shutoff. (10-14-75)
- c. Shut off chemical application during turns and over open water. (10-14-75)
- d. Aerial application of ~~chemical~~ pesticides shall also be conducted according to the Rules of the Idaho Pesticide Law and IDAPA 02.03.03, "Rules Governing Pesticide Use and Application." ~~(7-1-96)~~(____)
067. Ground Application with Power Equipment. (10-14-75)
- a. With exception of pesticides approved for aquatic use and applied according to labeled directions, when applying pesticide, leave at least twenty-five (25) feet untreated on each side of all Class I streams, flowing Class II streams and areas of open water. ~~(7-1-96)~~(____)
- b. When applying fertilizer, leave at least ten (10) feet untreated on each side of all streams and areas of open water. (10-14-75)
078. Hand Application. (10-14-75)
- a. Apply only to specific targets; such as, a stump, burrow, bait, or trap. (10-14-75)
- b. Keep chemicals out of all water sources or streams. (10-14-75)
089. Limitations on Applications. (10-14-75)
- a. Chemicals shall be applied in accordance with all limitations and instructions printed on the container product registration labels, supplemental labels, and others established by regulation of the director. ~~(10-14-75)~~(____)
- b. Do not exceed ~~intended or~~ allowable ~~dosages~~ rates. ~~(8-13-85)~~(____)
- c. Prevent direct entry of chemicals into any water source or stream. (8-13-85)
0910. Daily Records of Chemical Applications. (10-14-75)

a. When ~~insecticide or herbicide sprays~~ pesticides are applied on forest land, the operator shall maintain a daily record of spray operations which includes: (10-14-75)(____)

- i. Date and time of day of application. (8-13-85)
- ii. Name and address of owner of property treated. (8-13-85)
- iii. Purpose of the application (control of vegetation, control of Douglas-fir tussock moth, etc.). (8-13-85)
- iv. Contractor's name and pilot's name when applied aerially. Contractor's name or applicator's name for ground application. (7-1-96)
- v. Location of project (section, township, range and county). (10-14-75)
- vi. Air temperature (hourly). (10-14-75)
- vii. Wind velocity and direction (hourly). (10-14-75)
- viii. ~~Insecticides and herbicides~~ Pesticides used including trade or brand name, EPA product registration number, mixture, application rate, carrier used and total amounts applied. (8-13-85)(____)

b. Whenever ~~rodenticides or fertilizers or soil amendments~~ are applied, the operator shall maintain a daily record of such application which includes Subsections ~~060.09.a.i., 060.09.a.ii., 060.09.a.iv., and 060.09.a.v.~~ 060.10 and the name of the ~~chemical fertilizer or soil amendment~~ and application rate. (7-1-96)(____)

c. The records required in Subsections ~~060.109.a. and 060.09.b.~~ shall be kept for ~~three (3) years~~ shall be maintained in compliance with the record-keeping requirements of IDAPA 02.03.03, "Rules Governing Pesticide Use and Application." (7-1-96)(____)

d. ~~The records required in Subsection 060.09.a. and 060.09.b. shall not be required for ground application on less than twenty (20) acres. All records required in Subsection 060.10 shall be retained for three (3) years.~~ (7-1-96)(____)

101. Container Disposal. Chemical containers shall be: cleaned and removed from the forest and disposed of in a manner approved by the director in accordance with applicable local, state and federal regulations; or ~~(2) removed and cleaned~~ for reuse in a manner consistent with label directions and applicable regulations of a state or local health department. Open burning of containers is prohibited. (7-1-96)(____)

142. Spills. Spills shall be reported and appropriate cleanup action taken in accordance with applicable state and federal laws and rules and regulations. (8-13-85)

a. All ~~potentially damaging~~ chemical accidents and spills shall be reported immediately to the director. (8-13-85)(____)

b. If chemical is spilled, appropriate procedures shall be taken immediately to ~~contain or neutralize it~~ control the spill source and contain the released material. (8-13-85)(____)

c. It is the applicator's responsibility to collect, remove, and dispose of the spilled material in accordance with applicable local, state and federal rules and regulations and in a manner approved by the director. (8-13-85)(____)

123. ~~Applicator's Responsibility to Report Contamination: Misapplications.~~ Whenever chemicals are applied to ~~forest land, the wrong site or pesticides are applied outside of the directions on the product label,~~ it is the responsibility of the applicator to report ~~suspected chemical contamination of streams or other bodies of water these misapplications~~ immediately to the director. (8-13-85)(____)

IDAPA 20 - DEPARTMENT OF LANDS
20.03.02 - RULES GOVERNING EXPLORATION AND SURFACE MINING IN IDAHO
DOCKET NO. 20-0302-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action is authorized pursuant to Idaho Code Title 47, Chapter 15.

PUBLIC HEARING SCHEDULE: public hearing(s) concerning this rulemaking will be held as follows:

Public hearings concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 17, 1997.

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

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

1. Exemption for county or governmental agencies complying with plan provisions of statute.
2. Requirement for notifying cities and counties of proposed mining operations within their boundaries.
3. Public and governmental agency exemption from bonding of surface mining plans when using materials from public projects.
4. Provide new bond rates and bonding provisions.
5. Add language to address requirement of operating plan in certain instances.
6. Provide clarification and information in BMP requirements.

NEGOTIATED RULEMAKING: The proposed rule changes were necessitated by statute changes and were a result of informal negotiations including industry and environmental organizations, however, pursuant to IDAPA 04.11.01.811, formal negotiated rulemaking was not conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Scott H. Nichols, Mined-Land Reclamationist, Telephone: (208) 334-0261.

Anyone may submit written comments regarding this proposed rulemaking,. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 23rd day of July 1997

Stanley F. Hamilton, Director
Idaho Department of Lands
954 Jefferson Street
P.O. Box 83720
Boise, Idaho 83720-0050
(208) 334-0200 -- Telephone
(208) 334-398 -- Fax

TEXT OF DOCKET NO. 20-0302-9701

001. TITLE AND SCOPE.

01. Purpose. It is the purpose of these rules to provide for the protection of the public health, safety, and welfare, through measures to reclaim the surface of all the lands within the state disturbed by exploration operations and surface mining operations and thereby conserve natural resources, aid in the protection of wildlife, domestic animals, aquatic resources, and reduce soil erosion. It is also the purpose of these rules to implement the State of Idaho's antidegradation policy as set out in Executive Order No. 88-23 as it pertains to exploration operations and surface mining operations on lands within the state. These rules are not intended to require reclamation activities in addition to those required by the act. (11-1-89)

02. Scope. In general, these rules establish: (11-1-89)

a. Requirements for exploration operations; (11-1-89)

b. Procedures for approval of a surface mining reclamation plan, including an operating plan, when required by Section 47-1506(b), Idaho Code; (~~11-1-89~~)()

c. Requirements for performance bonds for postmining reclamation to be posted prior to beginning surface mining operations; (11-1-89)

d. Reclamation requirements; and (11-1-89)

e. Procedures for ensuring compliance with the Idaho Surface Mining Act and these rules. (11-1-89)

03. Other Laws. Exploration operations and surface mining operations shall comply with all applicable rules and regulations and laws of the State of Idaho including, but not limited to the following: (11-1-89)

a. Idaho water quality standards and waste water treatment requirements (Title 39, Chapter 1, Idaho Code) and the Hazardous Waste Management Act of 1983 (Title 39, Chapter 44, Idaho Code) and rules promulgated pursuant thereto as administered by the Idaho Department of Health and Welfare, Division of Environmental Quality ("DEQ"). (11-1-89)

b. Section 39-118A, Idaho Code, and applicable rules for ore processing by cyanidation as promulgated and administered by the DEQ. (11-1-89)

c. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. (11-1-89)

d. Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. (11-1-89)

04. Applicability. (7-1-93)

a. These rules apply to surface mining operations or exploration operations conducted on all lands within the state, regardless of ownership, commenced after the effective date of these rules. Provided further that these rules shall in no way affect, alter, or modify the terms or conditions of any approved reclamation plan or previously approved amendment thereto, or performance bond for reclamation obtained prior to ~~the effective date of these rules~~ January 1, 1997. If a material change in circumstances arises and is regulated in accordance with Subsection 090.01, then the operator shall submit a supplemental reclamation plan. All public or governmental agencies who extract minerals to be used by or for the benefit of such agency must comply with these rules. (~~11-1-89~~)()

b. Surface mining operations, conducted by a public or governmental agency for maintenance, repair, or construction of a public highway, which disturb less than two (2) acres, shall comply with the provisions of Section 069. ()

c. Surface mining operations, conducted by a public or governmental agency for maintenance, repair, or construction of a public highway, which disturb less than two (2) acres, are exempt from provisions of Section 069, but must comply with Subsections 060.06.a., 060.06.b., and 060.06.c. ()

d. Extraction of minerals from within the right-of-way of a public highway by a public or governmental agency for maintenance, repair or construction of a public highway shall not be deemed surface mining operations under these rules, provided that the affected land is an integral part of the public highway. ()

be. These rules do not apply to any surface mining operations performed prior to May 31, 1972, and further, an operator shall not be required to perform such reclamation activities as to any pit or overburden pile as it existed prior to May 31, 1972. However, if an operator elects to re-affect an area mined prior to May 31, 1972, the newly disturbed lands shall be subject to the act and these rules. (11-1-89)

ef. These rules do not apply to surface mining operations for which the Idaho Dredge and Placer Mining Protection Act requires a permit, or which are otherwise regulated by that act, nor to surface disturbances caused by an underground mining operation. (11-1-89)

eg. Sand and gravel mining operations in state owned beds of navigable lakes, rivers, or streams shall constitute an approved surface mining plan for the purpose of these rules, if they: (11-1-89)

i. Are covered by a valid lease granted by the board in accordance with the board's Rules Governing Riverbed Mineral Leasing (IDAPA 20.03.05); (11-1-89)

ii. Have a valid stream channel alteration permit issued by the Department of Water Resources; (11-1-89)

iii. Have a plan of operation for the mineral lease approved by the Department of Lands; and (11-1-89)

iv. Are covered by a valid mineral lease bond. (11-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Act. The Idaho Surface Mining Act, title 47, chapter 15, Idaho Code. (11-1-89)

02. Affected Land. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at the surface mining operation site. (11-1-89)

03. Approximate Previous Contour. A contour that is reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (11-1-89)

04. Best Management Practices ("BMPs"). Methods, measures, or practices to prevent or reduce nonpoint source (NPS) water pollution, including, but not limited to, structural and nonstructural controls, and operation and maintenance procedures. Usually, BMPs are applied as a system of practices rather than a single practice. BMPs are selected on the basis of site-specific conditions that reflect natural background conditions; political, social, economic, and technical feasibility; and stated water quality goals. (11-1-89)

05. Board. The State Board of Land Commissioners or any department, commission, or agency that may lawfully succeed to the powers and duties of such board. (11-1-89)

06. DEQ. The Department of Health and Welfare, Division of Environmental Quality. (11-1-89)

07. Department. The Idaho Department of Lands. Its business address is ~~1215 W. State St., PO Box 83720, Boise, Idaho, 83720-0050~~ 954 West Jefferson Street, Boise, Idaho 83720. (11-1-89)()

08. Director. The head of the Department of Lands or such officer as may lawfully succeed to the powers and duties of said director. It shall also mean such representative as may be designated by the director. (11-1-89)

09. Exploration Drill Holes. Holes drilled from the surface to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

10. Exploration Operations. Activities performed on the surface of lands to locate mineral bodies and to determine the mineability and merchantability thereof. These activities include, but are not limited to, construction of roads, trenches, and exploration drill holes. (11-1-89)

11. Exploration Roads. Roads constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

12. Exploration Trenches. Trenches constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)

13. Final Order of the Board. A written notice of rejection, the order of a hearing officer at the conclusion of a hearing, or any other order of the board where additional administrative remedies are not available. (11-1-89)

14. Hearing Officer. That person selected by the board to hear proceedings under Section 47-1513, Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 110 or Section 160 of these rules. (11-1-89)

15. Material Change. A change which deviates from the approved reclamation plan and causes one (1) of the following to occur: ()

i. Results in a substantial adverse affect to the geotechnical stability of overburden disposal areas, topsoil, stockpiles, roads, embankments, tailings facilities or pit walls; ()

ii. Substantially modifies surface water management, not to include routine implementation and maintenance of best management practices; ()

iii. Exceeds the permitted acreage; or ()

iv. Increases overall estimated reclamation costs by more than fifteen percent (15%). ()

156. Mine Panel. That area designated by the operator as a panel of a surface mine on the map submitted pursuant to Section 47-1506, Idaho Code. (11-1-89)

167. Mined Area. Surface of land from which overburden or minerals have been removed other than by drilling of exploration drill holes. (11-1-89)

178. Mineral. Coal, clay, stone, sand, gravel, metalliferous and non-metalliferous types of ores, and any other similar, solid material or substance of commercial value to be excavated from natural deposits on or in the earth. (11-1-89)

189. Mineral Stockpile. Mineral extracted during surface mining operations and retained at the surface mine for future rather than immediate use. (11-1-89)

1920. Motorized Earth-Moving Equipment. Backhoes, bulldozers, front-loaders, trenchers, core drills, and other similar equipment. (11-1-89)

201. Operator. Any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including but not limited to every public or governmental agency engaged in surface mining or exploration operations, whether individually, jointly, or through subsidiaries, agents,

employees, or contractors and shall mean every governmental agency owning or controlling the use of any surface mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any such governmental agency with respect to those surface mining or exploration operations as to which it grants mineral leases or prospecting permits or similar contracts, but nothing herein shall relieve the operator acting pursuant to a mineral lease, prospecting permit or similar contract from the terms of the act. (11-1-89)

242. Overburden. Material extracted by an operator which is not a part of the material ultimately removed from a surface mine and marketed by an operator, exclusive of mineral stockpiles. (11-1-89)

223. Overburden Disposal Area. Land surface upon which overburden is piled or planned to be piled. (11-1-89)

234. Peak. A projecting point of overburden. (11-1-89)

245. Pit. An excavation created by the extraction of minerals or overburden during surface mining operations. (11-1-89)

256. Reclamation. The process of restoring an area affected by a surface mining operation to its original or another beneficial use, considering previous uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (11-1-89)

267. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by surface mining operations. (11-1-89)

278. Ridge. A lengthened elevation of overburden. (11-1-89)

289. Road. A way constructed on a surface mine for the passage of vehicles, including the bed, slopes and shoulders thereof. (11-1-89)

2930. Surface Mine. An area where minerals are extracted by removing the overburden lying above and adjacent to natural deposits thereof and mining directly from the natural deposits thereby exposed. (11-1-89)

301. Surface Mining Operations. The activities performed on a surface mine in the extraction of minerals from the ground, including the excavation of pits, removal of minerals, disposal of overburden, and the construction of haulage roads, exclusive of exploration operations, except that any exploration operations which, exclusive of exploration roads; (11-1-89)

a. Result during a period of twelve (12) consecutive months in more than five (5) contiguous acres of newly affected land; or (11-1-89)

b. Which, exclusive of exploration roads, results during a period of twelve (12) consecutive months in newly affected lands consisting of more than ten (10) noncontiguous acres, if such affected land constitutes more than fifteen percent (15%) of the total area of any circular tract which includes such affected land, shall be deemed to be a surface mining operation for the purposes of the act. (11-1-89)

342. Surface Waters. The surface waters of the state of Idaho. (11-1-89)

323. Tailings Pond. An area on a surface mine enclosed by a man-made or natural dam onto which has been discharged the waste material resulting from the primary concentration of minerals in ore excavated from a surface mine. (11-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

061. -- 0698. (RESERVED).

069. APPLICATION PROCEDURE AND REQUIREMENTS FOR QUARRIES, DECORATIVE STONE, BUILDING STONE, AND AGGREGATE MATERIALS INCLUDING SAND, GRAVEL AND CRUSHED ROCK.

01. No Operator Shall Conduct Surface Mining Operations. No operator shall conduct surface mining operations, as defined in these rules, on any lands in the state of Idaho until the surface mining reclamation plan has been approved by the director, and the department has received a bond meeting the requirements of these rules. ()

02. Application Package. The operator must submit five (5) copies of the surface mining application package, for each separate surface mine or mine panel, before the reclamation plan will be granted approval. Separate surface mines are individual, physically disconnected operations. The complete application package consists of: ()

a. An application provided by the director; ()

b. A map or maps of the proposed mining operation which includes the information required under Subsection 069.03; ()

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 069.04. The map and reclamation plan may be combined on one (1) sheet if practical; ()

d. An out-of-state operator shall designate an in-state agent authorized to act on behalf of the operator. In case of an emergency requiring action to be taken to prevent environment damage, the authorized agent will be notified as well as the operator. ()

03. Requirements of Maps. A vicinity map shall be prepared on standard United States Geological Survey, seven and one-half (7.5) minute quadrangle maps, or equivalent. A map of the proposed surface mining operation site shall be of sufficient scale to adequately show the following: ()

a. The location of existing roads, access, and main haulage roads to be constructed or reconstructed, in conducting the surface mining operation, along with approximated dates for construction, reconstruction, and abandonment; ()

b. The approximate location, and the names, if known, of drainages, streams, creeks, or bodies of water within one thousand (1,000) feet of the surface mining operation; ()

c. The approximate boundaries of the lands to be utilized in the surface mining operations, including legal description to the quarter-quarter section; ()

d. The approximate boundaries and acreage of the lands that will become affected land as a result of the surface mining operation during the first year of operations following approval of a surface mining reclamation plan; ()

e. The currently planned storage locations of fuel, equipment maintenance products and wastes, and chemicals, which will be utilized in the surface mining operation; ()

f. The currently planned location and configuration of pits, overburden piles, crusher reject materials, topsoil storage, wash plant ponds and sediment ponds which will be utilized in surface mining operations; ()

g. Scaled cross-sections by length and height showing surface profiles prior to mining; and ()

h. A surface and mineral control or ownership map of appropriate scale for boundary identification;

()

i. On a map, operators shall identify the best management practices which will be implemented to control erosion and such nonpoint source water quality impacts during surface mining and reclamation; ()

04. Requirements for Reclamation Plan. A reclamation plan must be submitted in map and narrative form and include the following: ()

a. Where surface waters are likely to be impacted, and when requested by the director, the operator shall provide document(s) identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices the operator will take to control such nonpoint source impacts during surface mining and reclamation. ()

() b. Scaled cross-sections by length and height, showing planned surface profiles and slope after reclamation.

c. Roads to be reclaimed; ()

d. A plan for revegetation of affected lands including soil types, slopes, precipitation, seed rates, species, handling of topsoil or other growth medium, time of planting, method of planting and, if necessary, fertilizer and mulching rates; ()

e. The planned reclamation of wash plant or sediment ponds. ()

05. Approval Required. Approval of a reclamation plan must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. ()

070. APPLICATION PROCEDURE AND REQUIREMENTS FOR ~~A~~ OTHER SURFACE MINING RECLAMATION PLAN OPERATIONS INCLUDING HARDROCK AND PHOSPHATE MINING.

01. Reclamation Plan Required. No operator shall conduct surface mining operations, as defined in these rules, on any lands in the state of Idaho until the surface mining reclamation plan has been approved by the director, and the department has received a bond meeting the requirements of these rules. Any operator who is not required to submit an operating plan for a surface mining operation to an entity of the federal government shall submit to the board, as part of the reclamation plan, an operating plan with regards to that surface mining operation. No operator who is required to submit an operating plan for a surface mining operation to an entity of the federal government shall be required to submit all operating plans to the board. This provision shall apply to all lands, regardless of surface or mineral ownership, covered by the operating plan submitted to the entity of the federal government. (11-1-89)()

02. Application Package. The operator must submit five (5) copies of the surface mining application package, for each separate surface mine or mine panel, before the reclamation plan will be granted approval. Separate surface mines are individual, physically disconnected operations. The complete application package consists of: (11-1-89)

a. An application provided by the director; (11-1-89)

b. A map or maps of the proposed mining operation which includes the information required under Subsection 070.03; (11-1-89)

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 070.04. The map and reclamation plan may be combined on one sheet if practical; (11-1-89)

d. ~~Document(s) identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices the operator will take to control such nonpoint source impacts; and~~ An operating plan, if required, in map and narrative form which includes the

information required under Subsections 070.05 and 070.06.

~~(11-1-89)~~()

e. An out-of-state operator shall designate an in-state agent authorized to act on behalf of the operator. In case of an emergency requiring action to be taken to prevent environmental damage, the authorized agent will be notified as well as the operator. (11-1-89)

03. Requirements of Maps. Vicinity maps shall be prepared on standard United States Geological Survey, seven and one-half (7.5) minute quadrangle maps, or equivalent. Maps of the proposed surface mining operation site shall be of sufficient scale to adequately show the following: (11-1-89)

a. The location of existing roads, access, and main haulage roads to be constructed or reconstructed, in conducting the surface mining operation, along with approximated dates for construction, reconstruction, and abandonment; (11-1-89)

b. The approximate location, and the names, if known, of all streams, creeks, or bodies of water within one thousand (1,000) feet of the surface mining operation; (11-1-89)

c. The approximate boundaries of the lands to be utilized in the surface mining operations, including legal description to the quarter-quarter section; (11-1-89)

d. The approximate boundaries and acreage of the lands that will become affected land as a result of the surface mining operation during the first year of operations following approval of a surface mining reclamation plan; (11-1-89)

e. The currently planned location of all tailings ponds and other ancillary structures including storage locations for fuel; equipment maintenance products and wastes; and chemicals; which will be utilized in the surface mining operation; ~~(11-1-89)~~()

f. The currently planned location and configuration of pits, mineral stockpiles, and overburden pits disposal areas, and topsoils/growth medium storage which will be utilized in surface mining operations; ~~(11-1-89)~~()

g. Scaled cross-sections by length and height showing surface profiles prior to mining; and (11-1-89)

h. A surface and mineral control or ownership map of appropriate scale for boundary identification. (11-1-89)

04. Requirements for Reclamation Plan. A reclamation plan must be submitted in map and narrative form and include the following: (11-1-89)

a. Scaled cross-sections by length and height, showing planned surface profiles before and after mining and reclamation; (11-1-89)

b. On a drainage control map, show the best management practices to be utilized to minimize erosion on affected lands; (11-1-89)

c. Roads to be reclaimed; (11-1-89)

d. A plan for revegetation of affected lands including soil types, slopes, precipitation, seed rates, species, handling of topsoil or other growth medium, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (11-1-89)

e. The planned reclamation of tailings or sediment ponds; and (11-1-89)

f. An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent costs. (11-1-89)

g. Document(s) identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices the operator will take to control such nonpoint source impacts during surface mining and reclamation. ()

h. A description of foreseeable, site-specific impacts from acid rock drainage and the best management practices that will be used to mitigate the impacts, if any, from such acid rock drainage. ()

05. ~~Limitation. Nothing herein shall be construed to require the submission of a mining plan to the director for approval, except to the extent required to comply with Subsection 070.02.d. Requirements For Operating Plan. (11-1-89)~~()

a. Maps showing the location of existing roads and anticipated access and main haulage roads planned to be constructed for surface mining operations. ()

b. The boundaries and acreage of the lands to be utilized in the process of surface mining operations. ()

c. Maps showing the planned location of pits, mineral stockpiles, overburden piles and tailings ponds for the surface mining operation. ()

d. The location and, if known, the names of all streams, creeks, or bodies of water within the area where surface mining operations shall take place. ()

e. The drainage adjacent to the area where the surface is being utilized by surface mining operations. ()

f. The approximate boundaries and acreage of the lands that will become affected during the first year of construction of surface mining operations. ()

g. If an operator proposes to utilize coarse and durable rock armor for reclamation of mine facilities, the director may, after considering the type, size, and potential environmental impact of the facility, require the operator to verify the quantifies, size, class, and durability of the materials which will be used for final reclamation and armoring. The operator may also be required to specify their plans to schedule, handle, and/or stockpile the coarse and durable materials to ensure that adequate quantifies of these materials are available during reclamation. ()

h. If an operator proposes to construct waste rock or overburden storage facilities, or excavate pit walls in excess of one hundred (100) feet high, and failure of the facilities or pit would reasonable be expected to adversely impact adjacent surface waters or adjacent private or state lands, the director may, after considering the type, size, and potential environmental impact of the facility, require the operator to prepare a geotechnical analysis and report, signed by a registered engineer which shows these features would be constructed to meet accepted safety standards. The analysis may be required to consider the long-term strength of the stored materials and rock, the potential for groundwater buildup, and expected seismic accelerations at the site. ()

06. Approval Required. Approval of a reclamation plan must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. (11-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

080. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION.

01. Return of Application. Within thirty (30) days after receipt by the department, an application for a surface mining reclamation plan may be returned for correction and resubmission if either the reclamation plan or

mine map(s) are incomplete. Return of an application by the director shall constitute a rejection pursuant to Section 47-1507(b), Idaho Code. (11-1-89)

02. Agency Comments. Nonconfidential materials submitted under Sections 069 and 070 shall be forwarded by the director to the Departments of Water Resources, Health and Welfare (DEQ), and Fish and Game for review and comment. Such review and comment shall not extend the legal time limit for the director to notify the applicant of a decision on the application. The director may decide not to circulate applications ~~for sand and gravel mining operations submitted under Section 069~~ if the impacts of such proposed activities are minor and do not involve surface waters. The director may provide public notice on receipt of a reclamation plan. In addition, a copy of an application will be provided to individuals who request the information in writing. (~~11-1-89~~)()

03. Notification of Cities and Counties. Upon receipt of a proposed reclamation plan or amended or supplemental reclamation plan, the director shall notify the cities and counties in which the surface mining operation is proposed. The notice shall include the name and address of the operator and shall describe the procedure and the schedule by which the plan may be approved or denied. This notification requirement shall not apply to exploration operations. ()

a. Cities and counties may review the nonconfidential portions of the plan at the department's office and may provide comments to the director concerning the plan. Nothing in this section shall extend the time limit for the board to deliver to the operator a notice of rejection or approval of the plan or affect the confidentiality provisions of Idaho Code Title 47, Chapter 15. ()

b. No city or county shall enact or adopt any ordinance, rule or resolution to regulate exploration or surface mining operations in this state which conflicts with any provision of this chapter or the rules promulgated thereunder. This subpart shall not affect the planning and zoning authorities available to cities and counties pursuant to Idaho Code Title 67, Chapter 65. ()

034. Decision on Application in Sixty (60) Days. The director must notify the applicant in writing of approval or denial within sixty (60) days of receipt of the application, unless prevented from inspecting the proposed surface mining site as provided in Subsection 080.0910. If the director fails to deliver a notice of approval or denial within this time period, the application shall be deemed to comply with these rules, and the applicant may proceed, with bonding requirements under Section 120, as though approval for the application had been received. (~~11-1-89~~)()

045. Approval. Following review of an application for approval of a new reclamation plan, or for amendment of an existing plan, the director shall approve the application if it meets the requirements of the rules, the act, and other pertinent laws and regulations, and shall deliver written notice of the decision to the operator. Operations may then commence after the bonding requirements of Section 120 are met. (11-1-89)

056. Inspections. If the director deems a field inspection of the proposed surface mining operations site necessary in processing an application, the applicant will be contacted and asked that he or his duly authorized employee or agent be present. The applicant shall make such persons available for the purpose of inspection. This rule shall not prevent the department from making an inspection of the site if the applicant does not appear. (11-1-89)

067. Nonpoint Pollution. When the director determines, after consultation with DEQ, that there is a reasonable potential for nonpoint source pollution of adjacent surface waters, the director shall request, and the operator shall provide to the director, baseline preproject surface water monitoring information and furnish ongoing monitoring data during the life of the project. This provision shall not require any additional baseline preproject surface water monitoring information or ongoing monitoring data where such information or data is already required to be provided pursuant to any federal or state law and is available to the director. (11-1-89)

078. Reasons for Denial. If the director rejects an application, the director must also deliver in writing to the applicant a statement of the reasons the application was rejected, the factual findings upon which the rejection was based (if applicable), a statement of the rule(s) involved, the manner in which the application failed to fulfill the requirements of these rules, and the action that must be taken or conditions that must be satisfied in order to meet the requirements of these rules. The applicant may then submit an amended application which will be processed as described in Subsection 080. (11-1-89)

089. Public Hearing. The director may, at his discretion, call a public hearing to determine whether a proposed application complies with these rules. The hearing shall be conducted according to Section 110. A hearing may not cause the director's action on a plan to extend beyond sixty (60) days from time the plan was received by the director. (11-1-89)

0910. Notification of Decision. The applicant will be notified in writing of the director's decision to approve or reject the application within sixty (60) days of its receipt. If weather conditions prevent the director from inspecting the proposed surface mining site to acquire the information required to evaluate the application, the application may be placed in suspense, pending improved weather conditions. The director's decision upon the application must be given to the applicant in writing within thirty (30) days of the date that weather conditions permit inspection. If the director fails to take action within the statutory time limits, the plan shall be deemed to comply with the act and the operator may commence operations upon furnishing a bond to the department that meets the requirements of these rules. (11-1-89)

101. Approved Plan. Notice of approval shall constitute an approval of the reclamation plan and such approved plan shall govern and determine the nature and extent of the reclamation obligations of the operator. A bond in accord with Section 120 must be received by the department before mining operations can begin. (11-1-89)

142. Referral to Board. The director may refer the decision concerning approval or rejection of an application to the board. This action will not operate to extend the time allowed the director for review and decision under these rules. (11-1-89)

123. Additional Reclamation. The operator and the director may agree, in writing, to do any act with respect to reclamation above and beyond the requirements set forth in these rules. (11-1-89)

134. Appeal of Final Order. Any final order of the board regarding an application for approval of a surface mining reclamation plan may be appealed pursuant to Subsection 160.07. (11-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

090. AMENDING AN APPROVED PLAN.

01. Application for Amendment. ~~If circumstances~~ In the event that a material change arises which the operator, or the director believes require a change in the reclamation plan, the operator will submit an application to amend the plan and state the reasons therefor. An amendment refers to changes in the plan or the addition of acreage. If the director identifies a material change which the director believes requires a change in the reclamation plan, the director must deliver in writing, to the operator, a detailed statement identifying the material change. The director must also identify in writing, the action(s) that must be taken to amend the plan and address the material changes. (11-1-89)(____)

02. Review of Amendment. The director will process an application to amend a plan in accord with Section 080 and Section 110; provided, however, that no (1) land, or (2) aspect or provision of an approved reclamation plan, that would not be affected by the proposed amendment, shall be subject to such amendment or to review or reapproval in connection with the processing of an application for such an amendment; nor may approval of an amendment to the reclamation plan be conditioned upon the performance of any act not required by the reclamation plan or the proposed amendment itself, unless the operator agrees to perform that act. (11-1-89)

03. Minor Amendments. Minor amendments to an approved reclamation plan may be made by agreement between the director and the operator, if the amendment is consistent with the overall objectives of the approved reclamation plan and so long as water quality standards will be met and existing beneficial uses will be protected. (11-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

110. PUBLIC HEARING.

01. Public Concern. The director may call for a public hearing following the preliminary review of the application and any concern registered with the director by the public, affected landowners, or any governmental entity which may be affected. The sole purpose of the hearing under this subsection shall be to gather written and oral statements as to whether the proposed reclamation plan meets the requirements of the act and these rules. (11-1-89)

02. Agency Concern. The director shall call for a public hearing when the director determines, after consultation with the Departments of Water Resources, Health and Welfare (DEQ), Fish and Game, and affected Indian tribes (pursuant to Subsection 080.067), that proposed surface mining operations can reasonably be expected to significantly degrade adjacent surface waters. A hearing held under this subsection will be conducted to receive comment on the measures the operator will use to protect surface water quality from nonpoint source water pollution. (~~11-1-89~~)()

03. Consolidation. If the director determines that a hearing should be held under ~~both~~ Subsections 110.01, ~~and~~ 110.02, and 120.01, the director shall order that such proceedings be consolidated. The applicant and the public must be advised of the specific subjects to be discussed at the hearing at least twenty (20) days prior to the hearing. (~~11-1-89~~)()

04. Hearing Location. A hearing shall be held in the locality of the proposed surface mine at a reasonably convenient time and place for public participation. The director may call for more than one hearing when conditions warrant. (11-1-89)

05. Notice. The director shall give notice of the date, time, and place of the hearing to the applicant, to federal, state, local agencies, and Indian tribes which may have an interest in the decision, as shown on the application; to all persons petitioning for the hearing, if any; and to any person identified by the applicant pursuant to Subsection 070.02.e. as an owner of the specific acreage to be affected by the reclamation plan. Notice to the applicant must be sent by certified mail and postmarked not less than twenty (20) days before the scheduled date of the public hearing. (11-1-89)

06. Publication of Notice. The director shall provide at least twenty (20) days advance notice to the general public of the date, time, and place of the hearing. A newspaper advertisement will be placed once a week, for two (2) consecutive weeks, in the locale of the area covered by the application. (11-1-89)

a. In the event a hearing is ordered under Subsection 110.03, the notice to the public shall describe the potentially significant surface water quality degradation and shall contain the operator's description of the measures that will be taken to prevent degradation of adjacent surface waters from nonpoint sources of pollution. The foregoing shall be discussed at the public hearing. (11-1-89)

b. A copy of the application shall be placed for review in a public place in the local area of the proposed mining operation, in the closest Department of Lands' area office, and the Department of Lands administrative offices in Boise. (11-1-89)

07. Hearing Officer. The hearing shall be conducted by the director or his designated representative. Both oral and written testimony will be accepted. Proceedings of the hearing will be tape recorded and, if requested, a verbatim transcript will be prepared. (11-1-89)

08. Consideration of Hearing Record. The department shall consider the hearing record when reviewing reclamation plans for final approval or rejection. (11-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

120. PERFORMANCE BOND REQUIREMENTS.

01. Submittal of Bond Before Mining. Prior to beginning any surface mining on a mine panel covered by a plan, an operator shall submit to the director, on a surface mining reclamation bond form, a performance bond meeting the requirements of this rule. The amount shall be the amount necessary to pay the estimated reasonable costs of reclamation required under the reclamation plan for each acre of land to be affected during the first year of operation, plus ten (10%) percent, ~~but in no event shall any bond exceed one thousand eight hundred dollars (\$1,800) for a given acre of affected land.~~ No performance bond shall exceed two thousand five hundred (\$2,500) for a given acre of affected land except as provided by the rules. A performance bond in excess of two thousand five hundred (\$2,500) for any given acres of affected land may be required by the board only when the following conditions have been met: (11-1-89)(____)

a. The board has determined that such performance bond is necessary to meet the requirements of Sections 060, 068, 069, 070, and 140. (____)

b. The board has delivered to the operator, in writing, a notice setting forth the reasons the director believes such performance bond is necessary. (____)

c. The board has conducted a hearing where the operator is allowed to give testimony concerning the amount of the proposed bond. The hearing shall be held under such rules as promulgated by the board. This requirement for a hearing may be waived in writing, by the operator. Any hearing shall not extend the period of time limit in which the board must act on a plan submitted. (____)

02. Notwithstanding any other provision of law to the contrary, the bonding provisions of these rules shall not apply to any surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway. (____)

023. Limits. Only bonds obtained subsequent to ~~June 30, 1985~~ January 1, 1997, may be assessed at actual costs plus ten percent (10%), not to exceed ~~one thousand eight hundred dollars (\$1,800) per acre~~ two thousand five hundred dollars (\$2,500) per acre except as provided by Subsection 120.01, or if a material change arises in accordance to Subsection 090.01. Any revision to the amount, term and conditions of a performance bond due to a material change in the reclamation plan shall apply only to the affected lands covered by the material change in the reclamation plan. (11-1-89)(____)

034. Annual Bond Review. At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land which will result from planned surface mining activity within the next twelve (12) months. A correlative increase in the bond will be required for an increase in affected acreage. (11-1-89)

a. The bond shall be submitted on the appropriate bond form within ninety (90) days of operator's receipt of notice that additional bond is required, but in no event shall surface mining operations be conducted that would affect such additional acreage until the appropriate bond form has been submitted. Acreage on which reclamation is complete shall be reported in accord with Subsection 120.089 and after release of this acreage from the plan by the director, the bond may be reduced by the amount appropriate to reflect the completed reclamation. (11-1-89)(____)

b. Any bond provided to the federal government that also meets the requirements of this section shall be sufficient for the purposes of these rules. (11-1-89)

04. Form of Performance Bond. (11-1-89)

a. Corporate surety bond; This is an indemnity agreement executed for the operator and a corporate surety licensed to do business in the state of Idaho, on a surface mine bond form supplied by the director. The bond is to be conditioned that the operator shall faithfully perform all requirements of these rules in effect as of the date of approval of the reclamation plan, and will be payable to the state of Idaho. (11-1-89)

b. Collateral bond; This is an indemnity agreement executed by or for the operator, and payable to the State of Idaho, pledging cash deposits, governmental securities, or negotiable certificates of deposit of any financial

institution authorized to do business in Idaho. Collateral bonds shall be subject to the following conditions: (11-1-89)

- i. The director shall obtain possession, and upon receipt of such collateral bonds, deposit such cash or securities with the state treasurer to hold in trust for the purpose of bonding reclamation performance; (11-1-89)
 - ii. The director shall value collateral at its current market value, not face value; (11-1-89)
 - iii. Certificates of deposit shall be issued or assigned to the state of Idaho, in writing, and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand, to the operator, or other person which posted the collateral bond; (11-1-89)
 - iv. Amount of an individual certificate shall not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors; (11-1-89)
 - v. Financial institutions issuing such certificates shall waive all rights of set-off or liens which it has or might have against such certificates; (11-1-89)
 - vi. Any such certificates shall be automatically renewable; and (11-1-89)
 - vii. The certificates of deposit shall be of sufficient amount to ensure that the director would be able to liquidate such certificates prior to maturity, upon forfeiture, for the amount of the required bond, including any penalty for early withdrawal. (11-1-89)
- c. Letters of credit: (11-1-89)
- i. A letter of credit is an instrument executed by a bank doing business in Idaho, made at the request of a customer, which states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit; (11-1-89)
 - ii. All credits shall be irrevocable and prepared in a format prescribed by the director; (11-1-89)
 - iii. All credits must be issued by an institution authorized to do business in the state of Idaho or through a correspondent bank authorized to do business in the state of Idaho; and (11-1-89)
 - iv. The account party on all credits must be identical to the entity identified on the surface mining reclamation plan as the party obligated to do the reclamation. (11-1-89)

~~056.~~ Blanket Bond. Where an operator is involved in numerous surface operations, the director may accept a blanket bond in lieu of separate bonds under approved plans. The amount of such bond shall comply with other applicable provisions of Section 120 and shall be equal to the total of the penalties of the separate bonds being combined into a single bond. The bonded principal shall be liable for an amount not to exceed ~~one thousand eight hundred (\$1,800)~~ the approved bond rate per affected acre multiplied by the number of affected acres should action be taken against the bond under Subsection 120.101. (11-1-89)()

~~067.~~ Notice of Cancellation. Any surety company cancelling a bond shall give the department at least ninety (90) days notice prior to cancellation. The director shall not release a surety from liability under an existing bond until the operator has submitted to the director an acceptable replacement bond or reclaimed the site. Replacement bonds shall cover any liability accrued against the bonded principal on the surface mined area covered by the previous bond. If an operator fails to submit an acceptable replacement bond prior to the effective date of cancellation of the original bond, or within thirty (30) days following written notice of cancellation by the director, whichever is later, the director may issue a cease and desist order and seek injunctive relief to stop the operator from conducting surface mining operations on the lands covered by the bond until such replacement has been made. (11-1-89)

~~078.~~ Revocation of Surety License. If a surety's Idaho business license is suspended or revoked, the operator shall, within thirty (30) days after notice by the department, find a substitute for such surety. The substitute surety must be licensed to do business in Idaho. If the operator fails to secure such substitute surety, the director may

issue a cease-and-desist order and seek injunctive relief to stop the operator from conducting surface mining operations on the lands covered by the bond until a substitution has been made. (11-1-89)

089. Bond Reduction. Upon finding that any land bonded under a reclamation plan will not be affected by mining, the operator shall notify the director. The amount of the bond shall be reduced by the amount being held to reclaim those lands. (11-1-89)

a. Any request for bond reduction shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (11-1-89)

0910. Bond Release. Upon completion of the reclamation specified in the plan, the operator shall notify the director of his desire to secure release from bonding. When the director has verified that the requirements of the reclamation plan have been met as stated in the plan, the bond shall be released. (11-1-89)

a. Any request for bond release shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (11-1-89)

b. If the director finds that a specific portion of the reclamation has been satisfactorily completed, the bond may be reduced to the amount required to complete the remaining reclamation. The following schedule will be used to complete these bond reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule: (11-1-89)

i. Sixty percent (60%) of the bond may be released when the operator completes the required backfilling, regrading, topsoil replacement, and drainage control of the bonded area in accordance with the approved reclamation plan; and (11-1-89)

ii. After revegetation activities have been performed by the operator on the regraded lands, according to the approved reclamation plan, the department may release an additional twenty-five percent (25%) of the bond. (11-1-89)

c. The remaining bond shall not be released: (11-1-89)

i. As long as the affected lands are contributing suspended solids to surface waters outside the affected area in excess of state water quality standards and in greater quantities than existed prior to the commencement of surface mining operations; (11-1-89)

ii. Until final removal of equipment and structures related to the mining activity or until any remaining equipment and structures are brought under an approved reclamation plan and bond by a new operator; and (11-1-89)

iii. Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved reclamation plan and bond by a new operator. (11-1-89)

101. Criteria for Forfeiture. A bond may be forfeited in accordance with Section 47-1513, Idaho Code, when the operator has not conducted the reclamation in accord with the approved reclamation plan and the applicable requirements of these rules. (11-1-89)

142. Cooperative Agreements. The director may through private conference, conciliation, and persuasion reach a cooperative agreement with the operator to correct deficiencies in complying with the reclamation plan and thereby postpone action to forfeit the bond and cancel the reclamation plan if all deficiencies are satisfactorily corrected within the time specified by the cooperative agreement. (11-1-89)

123. Bonding Rate. An operator may petition the director for a change in the initial bond rate. The director will review the petition, and if satisfied with the information presented, a special bond rate will be set based upon the estimated cost that the director would incur should a forfeiture of bond occur and it became necessary for the director, through contracting with a third party, to complete reclamation to the standards established in the plan. (11-1-89)

134. Liabilities for Unbonded Reclamation Costs. An operator who: (11-1-89)
- a. Departs from his approved reclamation plan by performing an act or omission and such deviation is not subsequently approved; (11-1-89)
 - b. Does not furnish a bond required by these rules; and (11-1-89)
 - c. Is not required to furnish a bond by these rules, but fails to reclaim; is in violation of these rules and may be subject to civil penalty under Section 47-1513(c), Idaho Code. The amount of civil penalty shall be the estimated cost of reasonable reclamation of affected lands as determined by the director. Reasonable reclamation of the site shall be presumed to be in accordance with the standards established in the approved reclamation plan. The amount of the civil penalty shall be in addition to those described in Subsection 160.06. (11-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

140. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR SURFACE MINING OPERATION INTRODUCTION:

The use of the word "shall" with respect to any practice, act, or result specified in this rule means that employment of such practice, doing of such act, or the attainment of such result is mandated by these rules. The use of the word "should" with respect to any act or result specified in these rules means that the utilization of such practice, the doing of such act, or the attainment of such result is advisable and will constitute compliance with these rules, but does not mandate utilization of such practice, the doing of such act, or the attainment of such result if other acceptable practices, acts, or results are available. Enumeration of a practice, act, or result in Section 140 shall not be construed to require its specific inclusion in a reclamation plan submitted for approval under Subsection 070.04. (11-1-89)

01. Nonpoint Source Sediment Control. (11-1-89)

a. Appropriate best management practices for nonpoint source sediment controls shall be designed, constructed, and maintained with respect to site-specific surface mining operations. Operators shall utilize best management practices designed to achieve state water quality standards and protect existing beneficial uses of adjacent surface waters, but shall not be required to do more than is necessary to preserve the condition of water runoff from the affected land prior to commencement of the subject surface mining or exploration operations. These measures shall be among the first to be taken, if necessary, to protect water quality. State water quality standards including protection of existing beneficial uses, shall be the standard that must be achieved by best management practices unless the operator can show, and the director determines, that a lesser standard of surface water quality had existed, in the area to be affected, prior to the commencement of the subject surface mining or exploration operations. In addition to proper mining techniques and reclamation measures, the operator shall take necessary steps at the close of each operating season to assure that sediment movement associated with surface runoff over the area is minimized in order to achieve water quality standards, or to preserve the condition of water runoff from the mined area prior to commencement of the subject surface mining or exploration operations, whichever is the lesser standard. Sediment control measures refer to best management practices carried out within and, if necessary, adjacent to the disturbed area and consist of utilization of proper mining and reclamation measures, as well as specific necessary sediment control methods, separately or in combination. Specific sediment control methods may include, but are not limited to: (11-1-89)

- i. Keeping the disturbed area to a minimum at any given time through progressive reclamation; (11-1-89)
- ii. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; (11-1-89)
- iii. Retaining sediment within the disturbed area; (11-1-89)
- iv. Diverting surface runoff around the disturbed area; (11-1-89)

v. Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load; (11-1-89)

vi. Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and (11-1-89)

vii. Use of adequate sediment ponds, with or without chemical treatment. (11-1-89)

b. If best management practices utilized by the operator do not result in compliance with Subsection 140.01.a., the director shall require the operator to modify or improve such best management practices to meet the controlling standard of surface water quality as determined by the director under Subsection 140.01.a., or as water quality standards are adjusted pursuant to law. (11-1-89)

02. Clearing and Grubbing. Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Operators are cautioned to keep such areas as small as possible (preferably no more than one year's mining activity) as the operator shall be required to meet the controlling standard of surface water quality established in Subsection 140.01.a. on all such areas. Where practicable, trees and slash should be stockpiled for use in seedbed protection and erosion control. (11-1-89)

03. Overburden/Topsoil. To aid in the revegetation of affected land where surface mining operations result in the removal of substantial amounts of overburden, including any topsoil, the operator should remove the available topsoil or other growth medium as a separate operation for such area. Unless there are previously affected lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium shall be stockpiled and protected from erosion and contamination until such areas become available. (11-1-89)

a. Overburden/topsoil removal: (11-1-89)

i. Any overburden/topsoil to be removed should be removed prior to any other mining activity to prevent loss or contamination; (11-1-89)

ii. Where overburden/topsoil removal exposes land area to potential erosion, the director, under the reclamation plan, may require best management practices necessary to prevent violation of water quality standards; and (11-1-89)

iii. Where the operator can show that an overburden material other than topsoil is equally conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. (11-1-89)

b. Topsoil storage -- Topsoil stockpiles shall be placed to minimize rehandling and exposure to excessive wind and water erosion. Topsoil stockpiles shall be protected as necessary from erosion by use of temporary vegetation or by other methods which will control erosion, including, but not limited to, silt fences, chemical binders, seeding, and mulching. (11-1-89)

c. Overburden storage -- Stockpiled ridges of overburden shall be leveled in such a manner as to have a minimum width of ten (10) feet at the top. Peaks of overburden shall be leveled in such a manner as to have a minimum width of fifteen (15) feet at the top. The overburden piles shall be reasonably prepared to control erosion using best management practices; such as activities may include terracing, silt fences, chemical binders, seeding, ~~and mulching or slope reduction.~~ (11-1-89)(____)

d. Abandoned affected lands shall be topped with topsoil or other type of overburden conducive to the growth of vegetation to achieve a general stable uniform thickness to the extent that such materials are reasonably available from the mine. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution shall be timed so that seeding, or other protective measures, can be readily applied to prevent compaction and erosion. (11-1-89)

- e. Backfill and fill materials should be compacted in a manner to ensure stability of the fill. ~~(11-1-89)~~(____)
04. Roads. (11-1-89)
- a. Roads shall be constructed to minimize soil erosion. Such construction may require, but is not limited to, restrictions on length and grade of roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. (11-1-89)
- b. All access and haul roads shall be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. (11-1-89)
- c. Culverts that are to be maintained for more than one (1) year shall be designed to pass peak flows from not less than a twenty (20) year, twenty-four (24) hour precipitation event and have a minimum diameter of eighteen (18) inches. (11-1-89)
- d. Roads and water control structures shall be maintained at periodic intervals as needed. Water control structures serving to drain roads shall not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. (11-1-89)
- e. Roads which ~~are to~~ will not be recontoured to approximate original contour upon abandonment shall be cross-ditched and revegetated, as necessary, to control erosion. ~~(11-1-89)~~(____)
- f. Roads, not abandoned, which are to continue in use under the jurisdiction of a governmental or private landowner, shall comply with the nonpoint source sediment control provisions of Subsection 140.01.a. until the successor assumes control. (11-1-89)
05. Backfilling and Grading. (11-1-89)
- a. Every operator who conducts surface mining operations which disturb less than two (2) acres shall, where possible, contour the disturbed land to its approximate previous contour. These lands shall be revegetated in accordance with Subsection 140.10. For showing discovery on federal mining claims, unless otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches shall be reclaimed within one (1) year of verification. (11-1-89)
- b. An operator who conducts surface mining operations which disturb two (2) acres or more shall reduce all waste piles and depressions to the lowest practicable grade. This grade shall not exceed the angle of repose or maximum slope of natural stability for such waste or generate erosion in which sediment enters waters of the state of Idaho. For showing discovery on federal mining claims, unless otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches shall be reclaimed within one (1) year of verification. ~~(11-1-89)~~(____)
- c. Backfill and fill materials should be compacted in a manner to ensure mass and surface stability of ~~the fill~~. ~~(11-1-89)~~(____)
- d. After the disturbed area has been graded, slopes will be measured for compliance with the reclamation plan. (11-1-89)
06. Disposal of Waste in Areas Other Than Mine Excavation. Waste material not used in backfilling mined areas shall be transported and placed in a manner designed to stabilize the waste piles and control erosion. (11-1-89)
- a. The available disposal area should be on a moderately sloped, naturally stable area. The site should be near the head of a drainage to reduce the area of watershed above the fill. (11-1-89)

b. All surface water flows within the disposal area shall be diverted and drained using accepted engineering practices such as a system of French drains, to keep water from entering the waste pile. These measures shall be implemented in accordance with standards prescribed by the Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (11-1-89)

c. The waste material not used in backfilling mined areas should be compacted, where practical, and should be covered and graded to allow surface drainage and ensure long-term stability. (11-1-89)

d. The operator may, if appropriate, use terraces or slope reduction to stabilize the face of any fill. Slopes of the fill material should not exceed angle of repose or generate erosion in which sediment enters waters of the state of Idaho. (~~11-1-89~~)()

e. Unless adequate drainage is provided through a fill area, all surface water above the fill shall be diverted away from the fill area into protected channels, and drainage shall not be directed over the unprotected face of the fill. (11-1-89)

f. The operator shall conduct revegetation activities with respect to such waste piles in accordance with Subsection 140.10. (11-1-89)

07. Settling Ponds; Minimum Criteria (11-1-89)

a. Sediment storage volume -- Settling ponds shall provide adequate sediment storage capacity to achieve compliance with applicable water quality standards and protect existing beneficial uses, and may require periodic cleaning and proper disposal of sediment. (11-1-89)

b. Water detention time -- Settling ponds shall have an adequate theoretical detention time for water inflow and runoff entering the pond, but theoretical detention time may be reduced by improvements in pond design, chemical treatment, or other methods. (11-1-89)

c. Emergency Spillway -- In addition to the sediment storage volume and water detention time, settling ponds shall be designed to withstand and release storm flows as required by the Idaho Dam Safety Act, Section 42-1710 through 42-1721 and Safety of Dams Rules and Regulations, where applicable. (11-1-89)

08. Tailings Impoundments. All tailings, dams, or other types of tailings impoundments shall be designed, constructed, operated, and decommissioned so that upon their abandonment, the dam and impoundment area will not constitute a hazard to human or animal life. (11-1-89)

a. Design criteria, construction techniques, and decommission techniques for tailings dams and impoundments shall comply with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations. (11-1-89)

b. Topsoil shall be removed from the area to be affected by the impounding structure and tailings reservoir in accord with Subsection 140.03. (11-1-89)

c. Abandonment and decommissioning of tailings impoundments: (11-1-89)

i. Dewatering -- Tailings ponds shall be dewatered to the extent necessary to provide an adequate foundation for the approved post-mining use. (11-1-89)

ii. Control of surface waters -- Surface waters shall either be channeled around the reservoir and impoundment structure or through the reservoir and breached structure. Permanent civil structures shall be designed and constructed to implement either method of channeling. The structure shall provide for erosion-free passage of waters and adequate energy dissipation prior to entry into the natural drainage below the impounding structure. (11-1-89)

iii. Detoxification -- Hazardous chemical residues within the tailings pond shall be detoxified or

covered with an adequate thickness of non-toxic material, to the extent necessary to achieve water quality standards in adjacent surface waters. (11-1-89)

iv. Reclamation -- Following the required dewatering, detoxification, and surface drainage control measure operations, the reservoir and impounding structure shall be retopped with stockpiled topsoils or other soils conducive to plant growth. Where such soils are limited in quantity or not available, physical or chemical methods of erosion control may be used. All such areas are to be revegetated in accord with Subsection 140.10, unless otherwise specified in the reclamation plan. (11-1-89)

d. Tailings impoundment structures and reservoirs retained as fresh water reservoirs after abandonment of the mining operation, shall be required at the time the operator requests termination of the reclamation plan, to conform with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (11-1-89)

09. Permanent Cessation and Time Limits for Planting. (11-1-89)

a. Seeding and planting of affected lands should be conducted during the first normal period for favorable planting conditions after final seedbed preparation. (11-1-89)

b. Reclamation activities, where possible, are encouraged to be concurrent with the mining operation and may be included in the approved reclamation plan. Final reclamation shall begin within one (1) year after the surface mining operations have permanently ceased on a mine panel. If the operator permanently ceases disposing of overburden on a waste area or permanently ceases removing minerals from a pit or permanently ceases using a road or other affected land, the reclamation activity on each given area shall start within one (1) year of such cessation, despite the fact that all operations as to the mine panel, which included such pit, road, overburden pile, or other affected land, has not permanently ceased. (11-1-89)

c. An operator shall be presumed to have permanently ceased surface mining operations on a given portion of affected land when no substantial amount of mineral or overburden material has been removed or overburden placed on an overburden dump, or no significant use has been made of a road during the prior three (3) years. If an operator does not plan to use an affected area for three (3) or more years but intends thereafter to use the affected area for surface mining operations and desires to defer final reclamation until after its subsequent use, the operator shall submit a notice of intent and request for deferral of reclamation to the director, in writing. If the director determines that the operator plans to continue the operation within a reasonable period of time, the director shall notify the operator and may require actions to be taken to reduce degradation of surface resources until operations resume. If the director determines that use of the affected land for surface mining operations will not be continued within a reasonable period of time, the director shall proceed as though the surface mining operation has been abandoned, but the operator shall be notified of such decision at least thirty (30) days before taking any formal administrative action. (11-1-89)

10. Revegetation Activities. (11-1-89)

a. The operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands prior to surface mining operations. Certified weed free seed should be used in revegetation. The operator may use available technical data and results of field tests for selecting seeding practices and soil amendments which will result in viable revegetation. These practices of selection may be included in an approved reclamation plan. (~~11-1-89~~)(____)

b. Standards for success of revegetation -- Revegetative success, unless otherwise specified in the approved reclamation plan, shall be measured against the existing vegetation on site prior to mining, or against an adjacent reference area supporting similar types of vegetation. (11-1-89)

i. The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on the adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation. (11-1-89)

ii. For purposes of this rule, ground cover shall be considered comparable if it has, on the area actually

planted at least seventy percent (70%) of the premining ground cover for the mined area or adjacent reference area;
(11-1-89)

iii. For locations with an average annual precipitation of more than twenty-six (26) inches, the director, in approving a reclamation plan, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species.
(11-1-89)

iv. As used in this section, "herbaceous species" means grasses, legumes, and other forbs; "woody plants" means woody shrubs, trees, and vines; and "ground cover" means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation.
(11-1-89)

v. For previously mined areas that were not reclaimed to the standards required by Section 140, and which are affected by the surface mining operations, vegetation should be established to the extent necessary to control erosion, but shall not be less than that which existed before redisturbance; and
(11-1-89)

vi. Vegetative cover shall not be less than that required to control erosion.
(11-1-89)

c. Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the affected land, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species shall not be used in revegetation.
(11-1-89)

d. By mutual agreement of the director, the landowner, and the operator, a site may be converted to a different, more desirable, or more economically suitable habitat.
(11-1-89)

e. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for mine revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable.
(11-1-89)

f. The operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to mining. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the landowner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs.
(11-1-89)

g. Reforestation -- Tree stocking of forestlands should meet the following criteria:
(11-1-89)

i. Trees that are adapted to the site should be planted on the area to be revegetated in a density which can be expected over time to yield a timber stand comparable to premining timber stands;
(11-1-89)

ii. Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and
(11-1-89)

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment.
(11-1-89)

h. Revegetation is not required on the following areas:
(11-1-89)

i. Affected lands, or portions thereof, where planting is not practicable or reasonable because the soil is composed of excessive amounts of sand, gravel, shale, stone, or other material to such an extent to prohibit plant growth;
(11-1-89)

ii. Any mined area or overburden piles proposed to be used in the mining operations for haulage roads,

so long as those roads are not abandoned; (11-1-89)

iii. Any mined area or overburden pile, where lakes are formed by rainfall or drainage run-off from adjoining lands; (11-1-89)

iv. Any mineral stockpile; (11-1-89)

v. Any exploration trench which will become a part of any pit or overburden disposal area; and (11-1-89)

vi. Any road which is to be used in mining operations, so long as the road is not abandoned. (11-1-89)

i. Mulching -- Mulch should be used on severe sites and may be required by the reclamation plan where slopes are steeper than three to one (3:1) or mean annual rainfall is less than twelve (12) inches. When used, straw or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. (~~11-1-89~~)()

11. Petroleum Base Products and Chemicals. All refuse, chemical and petroleum products and equipment should be stored and maintained in a designated location away from surface water and disposed of in such a manner as to prevent their entry into a waterway. ()

(BREAK IN CONTINUITY OF SECTIONS)

200. COMPLIANCE OF EXISTING PLANS.

These rules, upon their adoption, shall apply as appropriate to all existing surface mining operations, but shall not affect the validity or modify the duties, terms, or conditions of any existing approved reclamation plan or impose any additional obligations with respect to reclamation upon any operator conducting surface mining operations pursuant to a reclamation plan approved prior to adoption of these rules unless amended under Section 090. (~~11-1-89~~)()

IDAPA 20 - DEPARTMENT OF LANDS

**20.03.04 - RULES GOVERNING THE REGULATION OF BEDS, WATERS AND
AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO**

DOCKET NO. 20-0304-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rulemaking. The action authorized pursuant to Sections 39-105, 39-107, and 39-3601 et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: public hearing(s) concerning this rulemaking will be held as follows:

Thursday, September 4, 1997, 1:00 - 4:00 p.m.
Payette Lakes Area Office, Idaho Department of Lands
555 Deinhard Lane, McCall, Idaho

Wednesday, September 10, 1997, 1:00 - 4:00 p.m.
Pend Oreille Lake Area Office, Idaho Department of Lands
Highway 20 at Westwood, Sandpoint, Idaho

Tuesday, September 16, 1997, 1:00 - 4:00 p.m.
Eastern Idaho Area Office, Idaho Department of Lands
3563 Ririe Highway, Idaho Falls, Idaho

Wednesday, September 17, 1997, 1:00 - 4:00 p.m.
Southwest Idaho Area Office, Idaho Department of Lands
8355 West State Street, Boise, Idaho

Friday, September 19, 1997, 1:00 - 4:00 p.m.
P.O. Box 123
Coolin Civic Center, Coolin, Idaho

Monday, September 22, 1997, 1:00 - 4:00 p.m.
Idaho Department of Fish & Game
2750 Kathleen Ave., Coeur d'Alene, Idaho

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

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

This is a proposal to revise, add and delete provisions in the current Rules for Regulation of Beds, Waters and Airspace over Navigable Lakes, which were initially adopted in 1974.

Many of the proposed changes have been in use as written operations memorandum, and many changes have been in use as unwritten policy. The proposed changes adopt these policies as rules and clarify other requirements and procedures.

The proposed amendments include dock standards for single-family docks, two-family docks, and community docks; clarified definitions; requirements for float homes; clarification of the application procedure; clarification of the hearing and appeal process, and provisions for the revocation and withdrawal of permits.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There are no fees being imposed or increased as a result of this rule-making.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Carl Washburn, Navigable Waters Specialist, Idaho

Department of Lands, Coeur d'Alene, Idaho (208) 769-1535.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 15th day of August 1997

Stanley F. Hamilton, Director
Idaho Department of Lands
954 Jefferson Street
P.O. Box 83720
Boise, Idaho 83720-0050
(208) 334-0200 -- Telephone
(208) 334-398 -- Fax

TEXT OF DOCKET NO. 20-0304-9701

000. LEGAL AUTHORITY.

~~Following notice and hearing, and pursuant to the powers contained, inter alia, in The State Board of Land Commissioners is authorized by Sections 58-104(9) and 58-1301, et seq., Idaho Code, the State Board of Land Commissioners hereby to~~ adopts these rules for the regulation of the beds, waters and airspace over navigable lakes in the state of Idaho. (9-13-90)()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 20.03.04, "Rules for the Regulation of Beds, Waters and Airspace Over Navigable Lakes in the State of Idaho." IDAPA 20.03.04. These rules regulate encroachments on, in, or above navigable lakes in the state of Idaho. ()

002. WRITTEN INTERPRETATIONS.

The Department has no written interpretive statements pertaining to the interpretation of rules in this chapter. ()

003. ADMINISTRATIVE APPEALS.

Hearings and administrative appeals are available only as set forth herein under the rules governing the processing of applications for non-commercial single-family and two-family encroachments, Section 025; and the rules governing the processing of applications for all other types of encroachments, Section 030; and the rules governing revocation of encroachment permits, Section 040. ()

004. -- 009. (RESERVED).

010. DEFINITIONS.

01. Adjacent, Contiguous or touching, and with regard to land or land ownership having a common boundary. ()

042. Artificial High Water Mark. The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new an higher vegetation line. (9-13-90)

023. Beds of Navigable Lakes. The lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water

mark and the artificial high water mark, if there be one. (9-13-90)

034. Board. The Board of Land Commissioners of the State of Idaho or its authorized representative. (9-13-90)

045. Commercial Navigational Encroachment. A navigational encroachment for the use of which patrons pay a fee. (9-13-90)

06. Community Docks. Structures that provide moorage facilities for more than two (2) adjacent riparian owners, or for a homeowners' association that is a riparian owner owning a riparian common area including riparian rights. A community dock shall be considered a commercial navigational aid for purposes of processing the application.
()

07. Contested Case Hearing. A formal hearing conducted pursuant to these rules, Idaho Code Title 67, Chapter 52, and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners." This type of hearing requires the formal designation of parties as set forth in the board's Rules of Practice and Procedure, IDAPA 20.01.01, and is conducted like a trial. Members of the public not wishing to formally intervene in contested case hearings as a party may nevertheless participate in such hearings as public witnesses pursuant to IDAPA 20.01.01.
()

058. Department. The Department of Lands. (9-13-90)

069. Director. The director of the Department of Lands or his designee. (9-13-90)

0710. Encroachments in Aid of Navigation. ~~And includes, but is not limited to,~~ docks, piers, floats, pilings, breakwaters, boat ramps, channels or basins, and other such aids to navigability on, in or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments."
(9-13-90)()

0811. Encroachments Not in Aid of Navigation. Includes all other encroachments on, in or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It shall also include float homes moored permanently or in any one place for a substantial period of time and used as either a permanent or temporary place of abode or residence and other encroachments permanently or temporarily moored or encroaching on the lake.
(9-13-90)()

0912. Line of Navigability. ~~A The dock line located at~~ established by existing docks or if no dock line exists then such distance below the low water mark as will afford sufficient draft for water craft customarily in use on that particular body of water.
(9-13-90)()

103. Low Water Mark. That line or elevation on the bed of a lake marked or located by the average low water elevations over a period of years, ~~and marks the point to which the riparian or littoral rights of adjoining land owners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation.~~
(9-13-90)()

144. Natural or Ordinary High Water Mark. ~~The high water elevation in a lake over a period of years, uninfluenced by man-made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. The line which the water impresses upon the soil covering it for a sufficient period of time to deprive the soil of its vegetation and destroys its value for agricultural purposes. When the soil, configuration of the surface, or vegetation has been altered by human activity, the ordinary high water mark shall be located where it would have been if this alteration had not occurred.~~
(9-13-90)()

125. Navigable Lake. Any permanent body of relatively still or slack water, not privately owned and not a mere marsh and capable of accommodating boats or canoes and includes man-made reservoirs except where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. (9-13-90)

136. Party. Each person or agency named or admitted as a party, or property seeking and entitled as of

right to be admitted as a party to a hearing on an application for an encroachment. (9-13-90)

147. Person. Any individual, partnership, association, company, corporation, municipality, county, state or federal agency, or other entity. (9-13-90)

158. Plans. Maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same. (9-13-90)

19. Public Meeting Hearing. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who shall act as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the department by tape recorder. The hearing coordinator shall exercise such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. ()

20. Public Trust Doctrine. The perpetual duty of the state to its people the use of the navigable waters of the state, related submerged lands and formerly submerged lands for navigation, commerce, fisheries, recreation and other public trust uses. The doctrine is dynamic and continually evolving as articulated by decisions of the Idaho Supreme Court or the Idaho Court of Appeals and Title 58, Chapter 13, Idaho Code. ()

1621. Riparian or Littoral Rights. Only the rights of owners or lessees of land adjacent to navigable lakes and to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters or to remove bed materials from state-owned lake. (9-13-90)

22. Riparian Owner. The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian rights that have been segregated from the fee specifically by deed or grant. ()

23. Single-family Dock. A structure providing moorage facilities that serves one waterfront lot having frontage of no less than twenty-five (25) feet. ()

1724. Submerged Lands. The state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks. (9-13-90)

25. Two-family Dock. A structure providing moorage facilities that serves two (2) adjacent waterfront lots having a combined frontage of no less than fifty (50) feet. Usually the structure is located on the common riparian property line. ()

1826. Uplands. The land bordering on navigable lakes, rivers and streams. (9-13-90)

(BREAK IN CONTINUITY OF SECTIONS)

012. -- 0194. (RESERVED).

015. DOCK STANDARDS AND FLOAT HOME REQUIREMENTS.

01. Single-family and Two-family Docks. The following parameters govern the size and dimensions of single-family docks and two-family docks. ()

a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed six (6) feet in width. ()

b. Total surface area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. ()

c. No portion of the docking facility shall extend more than one hundred (100) feet waterward of the natural or ordinary high water mark or if applicable the artificial high water mark or further than three (3) feet of water depth at low water. Shorter docks are encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks. ()

d. Where feasible, all docks, piers or similar structures shall be constructed to protrude as nearly as possible perpendicular to the general shoreline. ()

02. Variance. A variance to the standards contained in Subsection 015.01 may be approved by the director where it can be justified by site specific considerations such as the distance to the established line of navigation. ()

03. Community Docks. ()

a. No part of the structure waterward of the natural or ordinary high water mark of artificial high water mark shall exceed six (6) feet in width. No part of the fixed portion of the dock shall exceed six (6) feet in width. This includes fixed piers and approach ramps. ()

b. Moorage facilities will be limited to size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock shall be limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal feet or a minimum of seven hundred (700) square feet. However, the department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. ()

04. Breakwater. The breakwater shall be designed to counter wave actions of known wave heights and wave lengths. ()

05. Mooring Buoys. Buoys shall be installed a minimum of thirty (30) feet sway from riparian right lines of adjacent riparian owners and shall be located within dock line. One (1) mooring buoy per riparian owner shall be allowed. ()

06. Float Home Construction, Alteration or Relocation. ()

a. Applications for permits to construct new float homes will not be accepted. ()

b. Applications for relocation of float homes existing prior to April 5, 1974, shall be subject to the following requirements: ()

i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the department. ()

ii. The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Health and Welfare or the appropriate local health authority. ()

c. Applications and approved local permits are required for replacement or enlargement of float homes. Adding another story to a float home shall require a permit. ()

016. -- 019. (RESERVED)

020. APPLICATIONS.

01. Encroachment Applications. No person shall hereafter make or cause to be made any encroachment

on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the director. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the director is required. (9-13-90)

02. Signature Requirement. Only persons who are riparian owners or lessees of a riparian owner shall be eligible to apply for encroachment permits. A person who has been specifically granted riparian rights or dock rights from a riparian owner shall also be eligible for an encroachment permit; the grantor of such riparian rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit.()

023. Other Permits. Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies. (9-13-90)

034. Repairs, Replacement. Approval is not required to clean, maintain or to make repairs to an existing encroachment, but approval is required to replace, enlarge or extend an existing encroachment. Replacing the top or deck of a dock, wharf or similar structure shall be considered a repair; replacing of winter damaged or wind and water damaged pilings or float logs used to maintain existing encroachments in position shall be considered a repair. Redredging a channel or basin shall be considered a replacement and a permit is necessary unless redredging is authorized by the outstanding permit. Dredging of a channel or basin will require a new permit. Complete replacement of the entire dock at one time exactly to the same specifications of the currently existing dock is considered a repair and will not require a new permit so long as dock is made of same materials and same configuration in the same location. (9-13-90)()

045. Forms, Filing. Applications must be in writing on forms provided by the department or copies. Applications and plans shall be filed in the office of the department in Boise Coeur d'Alene, together with filing fees and costs of publication where required by these rules, except that applications and plans for noncommercial navigational encroachments may be filed at any supervisory field office. Plans shall include references to the relationship of the proposed encroachments to the various water surface elevations of the lake, the line of navigability, and the use to be made of the bed as well as the relationship of the proposed encroachment to the lake boundary and vicinity thereof at the place of encroachment. If plans are larger than eight and one-half (8 1/2) by fourteen (14) inches, a transparent copy must be furnished a lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. The plan shall show, where possible, the lengths of adjacent docks as an indication of the line of navigability. The plans shall show the relationship of the proposed encroachment in the lake and indicate a general vicinity map. The plans shall be presented on paper no larger than eight and one-half (8 1/2) by fourteen (14) inches. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. (9-13-90)()

a. Applications for nonnavigational encroachments and commercial navigational encroachments must be submitted or approved by the riparian or littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. Where the owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing. (9-13-90)

b. Applications for noncommercial navigational encroachments associated with private or public uplands must be signed by the riparian or littoral owner or his lessee, or by the owner or lessee of private lands between the natural or ordinary high water mark, and the artificial high water mark, seeking approval to make the encroachment. Owners of riparian or littoral lands or of the aforesaid private lands not making or joining in the application shall be considered adjacent ~~property~~ riparian owners entitled to notice under Subsection ~~006.02~~ 025.02, where the encroachment is on or over such riparian or littoral or other private lands. (9-13-90)()

c. Applications for noncommercial ~~navigational~~ encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public ~~may~~ must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements. (9-13-90)()

d. The following applications shall be accompanied by a nonrefundable filing fee of two hundred-fifty

dollars (\$250), together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing: (9-13-90)

- i. Nonnavigational encroachments; (9-13-90)
- ii. Commercial navigational encroachments; ~~and~~ (9-13-90)()
- iii. Community navigational encroachments; and ()
- ~~iii.~~ iv. Navigational encroachments extending beyond the line of navigability. (9-13-90)
- e. Applicants shall pay any balance due on publication costs before written approval will be issued. The department shall refund any excess at or before final action on the application. (9-13-90)
- f. Application for a permit for ~~any noncommercial navigational encroachment~~ single-family and joint two-family docks not extending beyond the line of navigability or nonnavigational encroachment for bank stabilization and erosion control or for fisheries and wildlife habitat improvements shall be accompanied by a nonrefundable filing fee of fifty dollars (\$50). (9-13-90)()
- g. No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. (9-13-90)
- h. Applications and plans shall be stamped with the ~~time and~~ date of filing. (9-13-90)()
- i. ~~Incomplete applications and applications not in proper form or not accompanied where required by filing fees and costs of publication shall not be accepted for filing~~ Applications that are incomplete, not in the proper form, not containing the required signature, or not accompanied by filing fees and costs of publication where required, shall not be accepted for filing. The director shall notify the applicant of any deficiency. The applicant may reapply provided the required information is submitted. (9-13-90)()

(BREAK IN CONTINUITY OF SECTIONS)

025. PROCESSING OF APPLICATIONS FOR NONCOMMERCIAL SINGLE-FAMILY AND JOINT TWO-FAMILY NAVIGATIONAL ENCROACHMENTS WITHIN LINE OF NAVIGABILITY.

01. Noncommercial Navigational Encroachments. Applications for navigational encroachments not extending beyond the line of navigability ~~and not intended primarily for commercial use~~ will be processed with a minimum of procedural requirements and shall not be denied except in the most unusual of circumstances. No newspaper publication, formal appearance by the applicant, or hearing is contemplated. (9-13-90)()

02. Adjacent Riparian Owners. If a proposed encroachment referred to in Subsection 025.01 may infringe upon the riparian or littoral rights of an adjacent ~~property~~ riparian owner, the director shall require the applicant to secure the written consent of the adjacent riparian owner, ~~or require the applicant to serve notice of the pending application upon the adjacent owner by personal service, or by registered or certified mail return receipt requested, to his usual place of address, which, if not otherwise known, shall be the address shown on the records of the county treasurer or assessor. Satisfactory evidence of consent or service to the proper mailing address shall be filed with the department.~~ (9-13-90)()

03. Notification of Adjacent Riparian Owners. If the signature of the adjacent riparian owner is not required, the department shall a copy of such application to the riparian owners immediately adjacent the applicant's property. Such adjacent riparian owner shall have twenty-one (21) days from the date of the mailing to provide comments to the department. This notice will be sent by regular mail to the adjacent riparian owners usual place of address, which, if not known, shall be the address shown on the records of the county treasurer or assessor. The

applicant may submit the adjacent riparian owners' signatures as concurring with the application in lieu of the twenty-one (21) day notice period. ()

034. Written Objections. If an adjacent property riparian owner files written objections to the application with the director within ~~ten (10)~~ twenty-one (21) days from the date of service or receipt of notice of the completed application, the director shall fix a time and a place for hearing. In computing the time to object, the day of service or receipt of notice of the application shall not be counted. Objections must be received within the ~~ten (10)~~ twenty-one (21) day period by mail or hand delivery in the office of the department in Boise Coeur d'Alene. If the last day of the period is Saturday, Sunday or a legal holiday, the time within which to object shall run until the end of the first business day thereafter. (9-13-90)()

045. Unusual Circumstances. Even though no objection ~~be is~~ filed by an adjacent property riparian owner to a noncommercial navigational encroachment, if the director deems it advisable because of the existence of unusual circumstances, he may require a hearing. (9-13-90)()

056. Hearings. Hearings fixed by the director following an objection pursuant to Subsection 025.03 or the Director's own determination pursuant to Subsection 025.04 shall be fixed as to time and place, but no later than sixty (60) days from date of acceptance for filing of the application. At the hearing the applicant and any adjacent riparian owner filing timely objections may appear personally or through an authorized representative and present evidence. Said hearing shall be in the nature of a formal contested case hearing as defined herein by Subsection 010.07. In such hearings the Department shall act as the fact finder and not a party. The Director, at his discretion, shall designate a Department representative to sit as the hearing officer. Provided, however, that the parties may agree to informal disposition of an application by stipulation, agreed settlement, consent order, or other informal means. (9-13-90)()

067. Decision. The director shall, within forty-five (45) days after close of the hearing provided for in Subsections 025.034 or 025.045 render a final decision and give notice thereof to the parties appearing before him either personally or by certified or registered mail. The final decision shall be in writing and shall include findings of fact and conclusions of law, separately stated. (9-13-90)()

08. Reconsideration. The applicant, if dissatisfied with the Director's decision, or other aggrieved party who participated at a hearing, shall have twenty (20) days from the date of the Director's decision to required reconsideration thereof. If reconsideration is requested, the director shall set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the person requesting reconsideration and the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his decision. ()

079. Judicial Review. Any party applicant aggrieved by the Director's final decision on reconsideration, or other aggrieved party appearing at a reconsideration hearing, ~~who is adversely affected by a final decision of the director~~ shall have a right to have the proceedings and final decision reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. An adjacent property riparian owner shall be required to deposit with the court a five hundred dollars (\$500) appeal bond insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. The applicant need post no bond with the court to prosecute an appeal. (9-13-90)()

08. Informal Disposition. ~~Informal disposition may be made of an application by stipulation, agreed settlement or consent order entered into with the consent of the applicant and objecting adjacent property owners.~~ (9-13-90)

0910. Formal Disposition. ~~If notice to an adjacent owner is not required or if the adjacent owner has consented to the proposed encroachment under Subsection 025.02 and if an adjacent owner has failed to file objection to the proposed encroachment within the time allowed following service of notice under Subsection 025.03; and if the director does not set the application down following hearing under Subsection 025.04; the director shall act upon an application filed under Subsection 025.01 as expeditiously as possible but no later than sixty (60) days from receipt of the application and failure to act within such time shall constitute approval of the application. Disposition Without~~

Hearing. In the event no objection to the proposed encroachment and request for hearing is filed with the director by an adjacent riparian owner under Subsection 025.04, or hearing ordered by the director under Subsection 025.05, then the director shall act upon an application filed under Subsection 025.01 as expeditiously as possible but no later than sixty(60)daysfromacceptanceoftheapplicationandfailuretoactwithinsuchtimeshallconstituteapprovaloftheapplication.
(9-13-90)()

026. -- 029. (RESERVED).

030. PROCESSING OF APPLICATIONS FOR ALL OTHER TYPES OF ENCROACHMENTS.

~~401.~~ Nonnavigational, Community and Commercial Navigational Encroachments. Upon receipt of an application for a nonnavigational encroachment, a community dock, or a commercial navigational encroachment, or for a navigational encroachment extending beyond the line of navigability, the director shall, within ten (10) days of acceptance for filing of the application, cause notice of the application to be published once a week for two (2) consecutive weeks in a newspaper of general circulation in the county in which the encroachment is proposed, however, that if the director orders a hearing on the application in the first instance within the time for publication of the notice, the director shall dispense with publication of the notice of the application and shall proceed instead to publish notice of the hearing as provided in Subsection 025.1306. Applications for installation of buried or submerged water intake lines and utility lines shall be exempt from the newspaper publication process unless it is of a size that it requires an easement from the state of Idaho.
(9-13-90)()

02. Encroachments Not in Aid of Navigation. Encroachments not in aid of navigation in navigable lakes will normally not be approved by the department and will be considered only in cases involving major environmental, economic, or social benefits to the general public. Approval under these circumstances is authorized only when consistent with the public trust doctrine and when there is not other feasible alternative with less impact on public trust values.
()

~~403.~~ Agency Comments. Upon request or when the director deems it appropriate, the director may furnish copies of the application and plans to federal, state and local agencies and to adjacent ~~property~~ riparian owners, requesting comment on the likely effect of the proposed encroachment upon adjacent riparian property and lake value factors of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality. Within thirty (30) days following receipt of a copy of the application and plans, such agencies shall notify the director of their opinions and recommendation, if any, for alternate plans determined by such agencies to be economically feasible to accomplish the purpose of the proposed encroachment without adversely affecting unreasonably adjacent riparian property or other lake value factors and public trust values.
(9-13-90)()

~~404.~~ Written Objections. Any resident of the state of Idaho, or a nonresident owner or lessee of real property adjacent to the lake in question, or any state, federal or local agency may, within thirty (30) days of the first date of publication file with the director written objections to the proposed encroachment and a request for a public hearing on the application. Any person or agency requesting a hearing on the application shall deposit and pay to the director an amount sufficient to cover the cost of publishing notice of hearing provided in Subsection 025.13.
(9-13-90)()

~~405.~~ Hearing. Notice of the time and place of public hearing on the application shall be published by the director once a week for two (2) consecutive weeks in a newspaper in the county in which the encroachment is proposed, which hearing shall be held within ninety (90) days from the date the application is accepted for filing.
(9-13-90)()

~~406.~~ Hearing Participants. Any person may ~~petition the director to appear and participate as a party in the hearing. Parties may present evidence, cross-examine witnesses and make argument on all issues involved subject to authority of the director to limit the same so as to prevent undue repetition or delay. Parties may appear in person or by an authorized representative. All hearings shall be open to the public appear at the public hearing and present oral testimony.~~ Written comments shall also be received by the Department.
(9-13-90)()

~~15. Informal Disposition. Informal disposition may be made of an application set down for hearing by stipulation, agreed settlement or consent order entered with the approval of the parties.~~
(9-13-90)

~~1607.~~ Decision After Hearing. The director shall render a decision within forty-five (45) days after close of the public hearing, and a A copy of his decision, ~~together with findings of fact and conclusions of law, separately stated,~~ shall be mailed to the applicant and to each person or agency appearing at the hearing and giving oral or written testimony in support of or in opposition to the proposed encroachment. (9-13-90)()

~~1808.~~ Decision Where No Hearing; ~~Reconsideration.~~ In the event no objection to the proposed encroachment is filed with the director and no hearing is requested under Subsection ~~025-12030.04,~~ or ordered by the director under Subsection ~~025-10~~ 030.01, the director, based upon his investigation and considering the economics of the navigational necessity, justification or benefit, public or private, of such proposed encroachment as well as its detrimental effects, if any, upon adjacent real property, ~~and lake value factors~~ and public trust values such as of navigation, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty or water quality, shall prepare and forward to the applicant either personally or by registered or certified mail, his decision. ~~The applicant, if dissatisfied therewith, shall have twenty (20) days from the date if he requests reconsideration thereof. If reconsideration is requested, the director shall set a time and place for reconsideration, not to exceed thirty (30) days from receipt of the request, at which time and place the applicant may appear in person or through an authorized representative. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his consideration.~~ (9-13-90)()

09. Reconsideration. The applicant, if dissatisfied with the Director's decision, or other aggrieved persons who appeared at a the public hearing and gave oral or written testimony, shall have twenty (20) days from the date of the Director's decision to requires reconsideration thereof. If reconsideration is required, the director shall set a time and place for a reconsideration hearing, not to exceed thirty (30) days from receipt of the request, at which time and place the person requesting reconsideration and the applicant may appear in person or through an authorized representative and present briefing and oral argument. Upon conclusion of reconsideration, the director shall by personal service or by registered or certified mail notify the applicant of his decision. ()

1710. Judicial Review. Any applicant aggrieved by the Director's final decision on reconsideration or other aggrieved party ~~so~~ appearing at a reconsideration hearing shall have the right to have the proceedings and final decision of the director reviewed by the district court in the county in which the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the final decision. The applicant need post no bond with the court to prosecute an appeal. Any other aggrieved party shall be required to deposit with the court a five hundred dollar (\$500) appeal bond insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. (9-13-90)()

~~19.~~ Judicial Review. ~~If aggrieved by the reconsidered decision, the applicant may appeal to the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of the director's reconsidered decision. An appeal bond need not be posted with the court.~~ (9-13-90)

2011. Factors in Decision. In recognition of continuing private property ownership of lands lying between the natural or ordinary high water mark and the artificial high water mark, the director shall consider unreasonable adverse effect upon adjacent property and undue interference with navigation the most important factors to be considered in granting or denying an application for either a nonnavigational encroachment or a commercial navigational encroachment not extending below the natural or ordinary high water mark. If no objections have been filed to the application and no hearing has been requested or ordered by the director, or, if upon reconsideration of a decision disallowing a permit, or following a hearing, the director determines that the benefits, whether public or private, to be derived from allowing such encroachment exceed its detrimental effects, he shall grant the permit. (9-13-90)

031. -- 039. (RESERVED).

040. PERMIT REVOCATION OR WITHDRAWAL.

2401. Revocation Administrative Action on Revocation of Lake Encroachment Permit. ~~Revocation or withdrawal of a permit shall conform to the requirements of Section 67-5214(e), Idaho Code~~ The department may institute an administrative action to revoke a lake encroachment permit for violation of the conditions of a permit, or for any other reason authorized by law. All such proceedings shall be conducted as contested case hearings subject to

the provisions of Idaho Code Title 67, Chapter 52 and IDAPA 20.01.01. (9-13-90)()

02. Notice of Noncompliance/Proposed Permit Revocation. When the department determines that cause exists for revocation of a lake encroachment permit, it shall provide the permittee with a "Notice of Noncompliance/Proposed Permit Revocation," which shall consist of a short and plain statement of the reason for the proposed revocation, including any pertinent legal authority. ()

03. Request for Contested Case Hearing. If the permittee disputes the department's basis for revocation, the permittee shall, within thirty (30) days of receipt of the notice of noncompliance, request a contested case hearing in which to request a contested case hearing, the department may proceed to revoke the permit administratively. If the permittee requests a contested case hearing, the department shall proceed to schedule and conduct the hearing in accordance with these rules, Idaho Code Title 67, Chapter 52 and IDAPA 20.01.01. ()

04. Recommended Findings of Fact and Conclusions of Law. A hearing officer appointed to conduct the revocation hearing shall prepare recommended findings of fact and conclusions of law and forward them to the Director for final adoption or rejection. ()

02641. -- 049. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

055. LEASES AND EASEMENTS.

01. Lease or Easement Required. As a condition of the permit, the director may require a lease or easement for use of any part of the state-owned bed of the lake. ~~NOTE: where such lease or easement is required in accordance with "Rules Governing Leases on State-owned Submerged Lands and Formerly Submerged Lands," IDAPA 20.03.17, or "Rules For Easements On State-owned Submerged Lands And Formerly Submerged Lands," IDAPA 20.03.09. A lease or easement may be required for uses including, but not limited to, commercial uses. Construction of an encroachment authorized by permit without first obtaining the required lease or easement shall constitute a trespass upon state-owned public trust lands.~~ This rule is intended to grant the state recompense for the use the state-owned bed of a navigable lake where reasonable and it is not intended that the director withhold or refuse to grant such lease or easement if in all other respects the proposed encroachment would be permitted. (9-13-90)()

~~02. Cost. Cost of a lease or easement to the applicant may be based on the value of the property and the impairment of the state's right to control it, severance damage, or upon a flat rate fee but shall be reasonable and as a recompense to the state for the use of its property (9-13-90)~~

~~03. Commercial Uses. Occupancy and use of state-owned beds by commercial encroachments, marinas, log storage, condominium docks, or other commercial uses will be authorized, if at all, only by a permit and lease if determined by the director to be an appropriate use of submerged lands and in accordance with approved zoning use set by the proper authority for that area. (9-13-90)~~

~~04. Seawalls, Breakwaters, Quays. Seawalls, breakwaters and quays on or over state-owned beds, designed primarily to create additional land surface, will be authorized, if at all, by a permit and lease or easement, upon determination by the director to be an appropriate use of submerged lands. (9-13-90)~~

~~05. Submerged Land Leases. The policy, procedure and consideration for leases shall be governed by Rules for Leases on State-owned Submerged Lands, IDAPA 20.03.17. (9-13-90)~~

~~06. Submerged Land Easements. The policy, procedure and consideration for easements shall be governed by Rules for Easements on State-owned Submerged Lands and Formerly Submerged Lands, IDAPA 20.03.09. (9-13-90)~~

(BREAK IN CONTINUITY OF SECTIONS)

060. INSTALLATION.

01. Installation Only After Permit Issued. Installation or construction of an encroachment may commence only when the permit is issued or when the director notifies the applicant in writing that installation may be commenced or when the director has failed to act in accordance with section 025.09. (9-13-90)

02. Construction. Where feasible, all docks, piers or similar structures shall be constructed so as to protrude as nearly as possible at right angles to the general shoreline and shall be constructed so as not to interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent properties. (9-13-90)

03. Water Access. Docks, piers or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, after public hearing, designate a line of navigability for the purpose of effective administration of these rules. (9-13-90)

04. Excavated or Dredged Channels. ~~Excavated or dredged channels or basins may be authorized to facilitate access to navigable waters. Whenever practical, such channels and basins shall be located to serve more than one riparian or littoral owner. Excavation or dredging normally shall be carried on during the low water period, unless exceptions are approved by the director on a showing of reasonable necessity for work to proceed at some other time. Material removed during excavation or dredging shall be carried and deposited at a point above normal flood water levels, except in cases where an applicant can satisfy the director that an alternative plan for disposition of such material is feasible and will not have an unreasonably adverse effect upon other lake values, including water quality. Additional conditions may be called for in the permit. An excavated or dredged channel or basin to provide access to navigable waters may be authorized only when the applicant can show that it will provide a clear environmental, economic, or social benefit to the people of the state and will not result in any appreciable environmental degradation. A channel or basin shall not be approved if it appears that the cumulative effect of the proposed channel or basin plus all reasonably foreseeable future basins or channels in the same navigable lake would be adverse to fisheries or water quality. Whenever practical, such channels or basins shall be located to serve more than one (1) riparian owner; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonriparian owners.~~ (9-13-90)()

05. Presumed Adverse Effect. It will be presumed, subject to rebuttal, that commercial navigational encroachments, community docks or nonnavigational encroachments will have an adverse effect upon adjacent riparian property if located closer than twenty-five (25) feet to adjacent riparian property lines and that ~~noncommercial single-family and two-family~~ navigational encroachments will have a like adverse effect upon adjacent riparian property if located closer than ten (10) feet from adjacent riparian property lines. Consent of the adjacent owner or owners will automatically rebut the presumption. ~~These distance limits shall not apply to excavated or dredged channels or basins.~~ (9-13-90)()

06. Upland Vehicle Parking. Commercial navigational encroachments shall provide upland vehicle parking equivalent to one parking space per two (2) watercraft moorages. Local city or county ordinances governing parking requirements for marinas will apply if such have been enacted. ()

067. Weather Conditions. Encroachments shall be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers and similar structures shall be adequately secured to pilings or anchors to prevent displacement due to ice, wind and waves. (9-13-90)

078. Markers. If the director determines that an encroachment is not of sufficient size to be readily seen

or which poses a hazard to navigation, he shall specify in the permit approved markers be used to identify clearly the extent and size of the encroachment. ~~(9-13-90)~~()

~~08~~9. Removal of Waste. Pilings, anchors and other structures, or material or waste at the site of the installation or reinstallation and not used as a part of the encroachment shall be removed from the water at the time of the installation or reinstallation to a point above normal flood water levels; provided, however, that this shall not be construed to prevent the use of trash booms for the temporary control of floatable piling ends and other floatable materials in a securely maintained trash boom, but approval for a trash boom shall be required as part of a permit. (9-13-90)

~~09~~10. Seawalls or Breakwaters. Seawalls or breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need; provided, however that this shall not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave or ice damage, or used to control traffic in busy areas of lakes. (9-13-90)

101. Compliance With Permit. All work shall be done ~~in a workman-like manner~~, in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit. ~~(9-13-90)~~()

~~11~~2. Overhead Clearance. Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed twenty (20) feet unless the director shall determine after hearing that it is in the overall public interest that the clearance be in excess of twenty (20) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The director shall specify in the permit the amount of overhead clearance and markings required. (9-13-90)

~~12~~3. Overhead Clearance; Other Requirements. ~~In providing in~~ When the permit provides for overhead clearance or safety markings under Subsection 060.07, the director shall consider the applicable requirements of the U.S. Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state or local regulations. ~~(9-13-90)~~()

14. Sunset Clause. All activities authorized within the scope of the encroachment permit must be completed within three (3) years of issuance date. If the activities are not completed within three (3) years, the permit shall automatically expire unless it was previously revoked or otherwise extended. ()

IDAPA 35 - STATE TAX COMMISSION
35.0.01 - RULES GOVERNING INCOME TAX
DOCKET NO. 35-0101-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

RULE 580 - Special Rules -- Special Industries. Rule 580 was amended to state that copies of the MTC special industry regulations can be obtained from Tax Commission offices. It also references new Rule 582 that discusses the apportionment of income by a financial institution.

RULE 582 - Special Rules -- Financial Institutions. Rule 582 was promulgated to adopt the MTC recommended formula for financial institutions. It defines financial institution.

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

No fees applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the apportionment formula was drafted by a national coalition of states and financial institutions affected by the rule as a uniform nationwide proposal.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 23rd day of July, 1997.

Janice Boyd, Tax Policy Specialist
State Tax Commission
800 Park, Plaza IV
P.O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0101-9701

580. SPECIAL RULES -- SPECIAL INDUSTRIES (Rule 580).
Section 63-3027(s), Idaho Code.

(3-20-97)

01. Adoption of MTC Special Industry Regulations. This rule incorporates by reference the MTC special industry regulations found in "Model Regulations, Statutes and Guidelines, Uniformity Recommendations to the States," May, 1996 Edition," published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. Copies of the MTC special industry regulations may also be obtained from the Tax Commission offices. The following special industries shall apportion income in accordance with the applicable MTC regulation:

(3-20-97)()

a. Construction Contractors. The apportionment of income derived by a long-term construction contractor shall be computed in accordance with MTC Regulation IV.18.(d). as adopted July 10, 1980; (3-20-97)

b. Airlines. The apportionment of income derived by an airline shall be computed in accordance with MTC Regulation IV.18.(e). as adopted July 14, 1983; (3-20-97)

c. Railroads. The apportionment of income derived by a railroad shall be computed in accordance with MTC Regulation IV.18.(f). as adopted July 16, 1981; (3-20-97)

d. Trucking Companies. The apportionment of income derived by motor common carriers, motor contract carriers, or express carriers that primarily transport tangible personal property of others shall be computed in accordance with MTC Regulation IV.18.(g). as amended July 27, 1989; for taxable years beginning on or after January 1, 1997. (3-20-97)()

e. Television and Radio Broadcasting. The apportionment of income derived from television and radio broadcasting shall be computed in accordance with MTC Regulation IV.18.(h). as amended April 25, 1996, for taxable years beginning on or after January 1, 1995. (3-20-97)

f. Publishing. The apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material shall be computed in accordance with MTC Regulation IV.18.(j). as adopted July 30, 1993, for taxable years beginning on or after January 1, 1995. (3-20-97)

g. Financial Institutions. See Rule 582 of these rules for the apportionment of income by a financial institution for taxable years beginning on or after January 1, 1998. ()

02. References. See Rule 581 of these rules for the applicability of references used in the MTC special industry regulations. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

582. SPECIAL RULES -- FINANCIAL INSTITUTIONS (Rule 582).

Section 63-3027(s), Idaho Code.

()

01. Adoption of MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. This rule incorporates by reference the Multistate Tax Commission's "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" as adopted November 17, 1994, and found in "Model Regulations, Statutes and Guideline, Uniformity Recommendation to the States," May, 1996 Edition, published by the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, D.C. 20001. A copy of this regulation may be obtained from the Tax Commission offices. ()

02. Definition of Financial Institution. For purposes of Section 2(h) of the "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions" the term financial institution means a person subject to taxation under Chapter 30, Title 63, Idaho Code, except a person described in Section 63-3023(b), Idaho Code, which predominantly deals in money or moneyed capital in substantial competition with the business of national banks. For purposes of this rule, the following definitions apply: ()

a. Predominantly means over fifty percent (50%) of a taxpayer's gross income is attributable to dealings in money or moneyed capital in substantial competition with the business of national banks. Generally, the determination of predominance will be made based upon the division of gross income for the year in issue. However, the classification of a taxpayer as a financial institution or as a nonfinancial institution will not be changed based upon an occasional year in which its gross income does or does not exceed the fifty percent (50%) level. For the classification of a taxpayer as a financial or nonfinancial institution to be changed, there must be a shift in the predominant character of the gross income for two (2) consecutive years and the average of the corporation's gross income in the current and the immediately preceding two (2) years must fail or satisfy the predominance test. If substantial amounts of gross income arise from an incidental or occasional sale of an asset of the taxpayer, such gross income shall be excluded for purposes of this subsection. For example, gross income from the sale of a headquarters building shall be excluded. ()

b. Deals in means conducting transactions in the course of a trade or business on its own account as opposed to brokering the capital of others. ()

c. Money or moneyed capital includes, but is not limited to, coin, cash, currency, mortgages, deeds of trust, conditional sales contracts, loans, commercial paper, installment notes, credit cards, and accounts receivable. ()

d. In substantial competition means that a corporation and national banks both engage in seeking and securing in the same locality capital investment of the same class which are substantial in amount, even though the terms and conditions of the business transactions of the same class are not identical. It does not mean there must be competition as to all phases of the business of national banks, or competition as to all types of loans or all possible borrowers. The activities of a corporation need not be identical to those performed by a national bank in order to constitute substantial competition; It is sufficient if there is competition with some, but not all, bases of the business of national banks, or capital is invested in particular operations or investments like those of national banks. ()

03. Entities Presumed to Be Financial Institutions. The following entities are presumed to be financial institutions as defined in Subsection 582.02: ()

a. Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended; ()

b. A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, Title 12, Sections 21 et seq., United States Code; ()

c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, 12 Section 1813(b)(1), United States Code; ()

d. Any bank or thrift institution incorporated or organized under the laws of any state; ()

e. Any corporation organized under the provisions of Title 12, Sections 611 to 631, United States Code; ()

f. Any agency or branch of a foreign depository as defined in Title 12, Section 3101, United States Code; ()

g. Any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in Subsections 582.03.a. through 582.03.f. other than an insurance company exempted from tax by Section 41-405, Idaho Code; and ()

h. A corporation or other business entity that, in the current tax year and immediately preceding two (2) tax years, derived more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a finance lease shall mean any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase shall include any direct financing lease or leverage lease that meets the criteria

of Financial Accounting Standards Board Statement No. 13, Accounting for Leases or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. ()

04. Exclusion from Rule. The Tax Commission is authorized to exclude any person from the application of Subsection 582.01 upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in Subsections 582.03.a. through 582.03.f. and 582.03.h. ()

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - RULES GOVERNING PROPERTY TAX
DOCKET NO. 35-0103-9701
NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rules was published in the June 4, 1997, Idaho Administrative Bulletin, Volume 97-6, pages 165 through 168.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 9th day of July, 1997.

Alan Dornfest, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

IDAPA 35
TITLE 01
Chapter 03

RULES GOVERNING PROPERTY TAX

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 97-6, June 4, 1997,
pages 165 through 168.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature for final adoption.**

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - RULES GOVERNING PROPERTY TAX
DOCKET NO. 35-0103-9702
NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective upon adjournment of the legislature, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rules was published in the June 4, 1997, Idaho Administrative Bulletin, Volume 97-6, pages 169 and 170.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 9th day of July, 1997.

Alan Dornfest, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

IDAPA 35
TITLE 01
Chapter 03

RULES GOVERNING PROPERTY TAX

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

**The original text was published in the Idaho
Administrative Bulletin, Volume 97-6, June 4, 1997,
pages 169 and 170.**

**This rule has been adopted as Final by the Agency
and is now pending review by the
1998 Idaho State Legislature for final adoption.**

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - RULES GOVERNING PROPERTY TAX
DOCKET NO. 35-0103-9703
NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the agency and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective January 1, 1998, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

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

That the advertised proposed Property Tax Rule 300, be amended as follows:

In the third sentence of Subsection 300.02.d. following the words "who is" add "known to be."

Strike the fourth sentence of Subsection 300.02.f.

The proposed rules have been amended in response to public comment and to make typographical, transcriptional, and clerical corrections to the rules, and are being amended pursuant to Section 67-5227, Idaho Code.

Only the sections that have changes are printed in this bulletin. The original text of the proposed rules was published in the Idaho Administrative Bulletin, Volume 97-6, pages 171 - 173.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 16th day of July, 1997.

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IDAPA 35
TITLE 01
Chapter 03

RULES GOVERNING PROPERTY TAX

**There are substantive changes
from the proposed rule text.**

Only those sections that have changed from the original proposed text are printed in this Bulletin following this notice.

The complete original text was published in the Idaho Administrative Bulletin, Volume 97-6, June 4, 1997, pages 171 through 173.

This rule has been adopted as Final by the Agency and is now pending review by the 1998 Idaho State Legislature for final adoption.

TEXT OF DOCKET NO. 35-0103-9703

300. PROGRAM OF EDUCATION.

01. Administration. The education program shall be the responsibility of the State Tax Commission (Commission) through its education director. ~~The structure of the annual appraisal school shall be planned with the education committee of the Idaho Association of County Assessors. The assessors' education committee and the Commission's education director shall structure schools and seminars, so that each student may plan an annual schedule to set the curriculum of classes for the annual education program. This curriculum shall include all courses classes important to providing training to appraise appraising property for assessment purposes.~~ (7-1-93)(____)

02. Education and Certification Requirements. An applicant for certification must ~~satisfactorily complete~~ have passed Commission Course No. 1, IAAO Course No. 2, or equivalent courses, and must have a minimum of twelve (12) months experience appraising for tax assessment purposes in Idaho or equivalent property tax appraisal experience approved by the examination committee. These requirements must be completed in the five (5) year period immediately preceding application. (7-1-93)(____)

~~b.a.~~ Equivalency for Course No. 1 and No. 2 shall be established by the Commission and approved by the examination committee. (7-1-93)

~~ab.~~ Beginning January 1, 1998 and on or before each January 1 thereafter, to maintain certification, each "certified property tax appraiser," who became certified on or before December 31, 1995, shall have be required to completed thirty-two (32) hours of appraisal education during each the previous two (2) years period following certification as described in Subsection 300.02.d. of this rule. Beginning January 1, 1998, to maintain certification, each "certified property tax appraiser," who became certified during the two (2) year period prior to each January, shall have completed sixteen (16) hours of appraisal education during the calendar year following the year of certification. By January 1 of each year thereafter, said "certified property tax appraiser" shall have completed thirty-two (32) hours of appraisal education during the previous two (2) years as described in Subsection 300.02.d. (7-1-93)(____)

c. The examination committee shall ~~determine~~ decide which ~~courses, seminars, or workshops~~ classes meet the requirements for maintaining certification ~~maintenance~~ and the hours of ~~credit~~ appraisal education awarded for each. ~~To receive credit, each course must be completed with a passing grade. For Commission administered classes, the Commission's staff will monitor attendance and hours of appraisal education to be awarded to each "certified property tax appraiser" in attendance. For these classes, the education director shall provide certificates of attendance showing the number of hours of appraisal education to be awarded. For those not administered by the Commission, the "certified property tax appraiser" has the responsibility to report education hours completed. The~~

report shall be on a form provided by the Commission and shall be submitted to the education director. To receive education hours for any classes not administered by the Commission, a copy of a record verifying attendance must be submitted with the report of education hours completed. (7-1-93)()

d. ~~The Commission shall maintain such reports records~~ to show the number of hours completed during the current year and ~~each the previous two (2) years period.~~ By June and November each year, the education director shall send an appraisal certification status report to each county assessor. This report will list each "certified property tax appraiser," who is known to be employed by or under contract with said assessor, and show the number of hours of appraisal education completed during the previous and current years. (7-1-93)()

e. For Commission developed classes in which a test is given, the education director will notify the appropriate county assessor of the grades achieved on the test. ()

~~df.~~ Any "certified property tax appraiser" failing to meet the continuing education requirements shall be placed on six (6) month probation by the examination committee. Any "certified property tax appraiser" failing to meet the continuing education requirements within the probationary period shall forfeit certification or may, on a one (1) time only basis, submit a written petition in writing to the examination committee for a six (6) month extension of probation. This petition must be made at least thirty (30) days prior to the expiration date of the first probationary period. (7-1-93)()

~~eg.~~ For recertification, ~~the appraiser an applicant~~ must apply to the examination committee within five (5) years of the date certification was canceled. An applicant for recertification must satisfactorily complete a written examination approved by the committee. The time and place of the examination ~~is are to be determined decided~~ by the committee. If more than five (5) years have lapsed since certification was canceled, recertification shall not be granted. After the five (5) year period, an applicant must apply for certification under the same conditions as required for initial certification. (7-1-93)()

~~fh.~~ The county shall reimburse ~~the appraiser for its employees'~~ expenses ~~necessary~~ for registration, tuition, fees, texts, travel, food, and lodging required to comply with these rules. (7-1-93)()

~~gi.~~ Any independent appraisers working under contracting with state or county governments to appraise for tax assessment purposes must be a "certified property tax appraiser." (7-1-93)()

~~hj.~~ Each Ppersons, except the county assessor, members of the county board of equalization and State Tax Commissioners, making decisions regarding final values for assessment purposes shall be a "certified property tax appraiser." (7-1-93)()

03. Examination Committee -- Establishment and Procedures. The examination committee shall be composed of three assessors, one member of the Idaho Association of Assessment Personnel, and the Commission's education director. Committee appointments shall be made by the Commission. The committee will operate by majority rule. (7-1-93)()

a. Terms. The term of the Commission's education director shall be continuous. The other members shall serve four (4) year terms. The education director shall maintain records of dates of appointments. (7-1-93)

b. If any member fails to serve the full appointed term, the Commission shall appoint another person for the remainder of the unexpired term. The appointee shall be from the same category as the one who failed to serve. (7-1-93)

c. The committee shall elect a chairman each year. (7-1-93)

~~d. The committee shall administer and grade the courses required for certification.~~ (7-1-93)

~~e. The committee shall: notify applicants of time, place, and the order in which examinations will be given; and outline a uniform method of grading and notification.~~ (7-1-93)

~~fd.~~ The examinee Any applicant may appeal to a review board any complaints concerning matters

involving examination structure, grading, or grievances concerning the committee. The review board shall consist of four (4) persons: the president of the Idaho Assessors' Association; a person appointed by the president of the Idaho Assessors' Association; a person appointed by the examination committee; and a person appointed by the Commission. No board member may be an assessor of the ~~examinee's~~ applicant's county; or a member of the examination committee. (7-1-93)()

~~ge.~~ The applicant may request, in writing to the Commission's education director, permission to take the examination for Commission Course No. 1. The director shall set the time and place for the examination. (7-1-93)

04. Incentives for Certification. The legislature and Commission recommend that counties offer pay incentives to encourage ~~appraisers~~ employees to obtain prompt certification. These pay incentives should include at least three parts: state certification; successful completion of additional professional appraisal courses or seminars; and designation from a recognized professional appraisal organization. (7-1-93)()

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - RULES GOVERNING PROPERTY TAXATION
DOCKET NO. 35-0103-9705
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: 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 September 17, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Rule 225 - This rule is being deleted because it restates a statutory requirement requiring a copy of assessment notice be furnished to the taxpayer.

Rule 320 - This rule is being deleted because it restates statutory provisions regarding contents of the assessment notice.

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

No fee is applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed change is of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest, at (208) 334-7530.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 23rd day of July, 1997.

Alan Dornfest, Tax Policy Specialist
State Tax Commission
800 Park Blvd. Plaza IV
P. O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

TEXT OF DOCKET NO. 35-0103-9705

~~219. - 224.~~ ~~(RESERVED).~~

~~225. COPY OF TAXPAYER'S VALUATION ASSESSMENT NOTICE TO BE FURNISHED TAXPAYER.~~

01. Taxpayer's Valuation Assessment Notice shall be referred to as the Assessment Notice. The original shall be retained in the office of the assessor. (7-1-93)

a. This notice must meet minimum standards set by the Commission. (7-1-93)

b. This notice must state the market value and dates and place the county Board of Equalization meets. (7-1-93)

e. Notices for property on the real and personal assessment roll shall be furnished to the taxpayer by the first (1st) Monday of June. Notices for property on the personal assessment roll shall be furnished to the taxpayer before the first (1st) Monday of June. Notices for property on the subsequent assessment roll shall be furnished to the taxpayer before the second (2nd) Monday of November. Notices for property on the missed property assessment roll shall be furnished to the taxpayer by the last day of December. (7-1-93)

d. In order to be heard by the County Board of Equalization, a taxpayer must file an appeal with the clerk of the Board on or before the fourth (4th) Monday in June. (7-1-93)

~~226~~19. -- 228. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~302. -- 319. (RESERVED).~~

~~320. RULES.~~

01. The Commission may meet with county Boards of Equalization. (7-1-93)

02. The Commission's district supervisors will act as a liaison between county officials and the Commission. (7-1-93)

03. The Commission shall study categories of property for ad valorem purposes. (7-1-93)

04. The Commission may challenge assessment procedures which do not appear to conform to the statutes or rules. (7-1-93)

05. Hearings may be held by the Commission for investigation of assessments. (7-1-93)

06. For operating property assessment procedure, refer to ISTC 49. (7-1-93)

~~321~~02. -- 326. (RESERVED)

IDAPA 38 - DEPARTMENT OF ADMINISTRATION
38.04.05 - RULES GOVERNING THE MANAGEMENT OF STATE-OWNED DWELLINGS
DOCKET NO. 38-0405-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1) Idaho Code, notice is hereby given that this agency proposed rule-making. The action is authorized pursuant to Section(s) 67-5707A.

PUBLIC HEARING SCHEDULE: 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 October 15, 1997.

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rule-making:

Per Idaho Code section 67-5707A, the Administrator of the Division of Public Works is mandated to adopt rules governing the management of state-owned dwellings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Joanna L. Guilfooy, Deputy Attorney General, Department of Administration, 334-3388.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 5th day of August, 1997.

Joanna L. Guilfooy
Deputy Attorney General
Department of Administration
650 W. State Street, Room 100
P.O. Box 83720
Boise, ID 83720-0003
Phone: (208) 334-3388
Fax: (208) 334-2307

TEXT OF DOCKET NO. 38-0405-9701

IDAPA 38
TITLE 04
Chapter 05

38.04.05 - RULES GOVERNING THE MANAGEMENT OF STATE-OWNED DWELLINGS

000. LEGAL AUTHORITY.

In accordance with Section 67-5707A, Idaho Code, the Administrator for the Division of Public Works hereby promulgates the following rules implementing the provisions of Chapter 57, Title 67, Idaho Code pertaining to the procedure governing the management of state-owned dwellings. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 38, Title 04, Chapter 05, "Rules Governing the Management of State-owned Dwellings." ()

02. Scope. These rules constitute the procedures which govern the manner by which the various state agencies shall be required to manage the acquisition, rental, tax status and recordkeeping of state-owned dwellings. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(16)(b)(iv), Idaho Code, an agency may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost in the office of the agency. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for administrative appeals of the procedures set forth in this chapter. ()

004. CITATION.

The official citation of this chapter is IDAPA 38.04.05, Section 000 et sequence. For example, this section's citation is IDAPA 38.04.05, Section 004. ()

005. -- 009. (RESERVED).

010. DEFINITIONS.

01. Agency. All officers, departments, divisions, bureaus, boards, commissions and institutions of the state, but excluding the legislative and judicial branches of government. ()

02. Division. The Division of Public Works of the Department of Administration as established by Idaho Code Section 67-5705. ()

() 03. Employee. A person in the employ of the state of Idaho or an agency thereof who is paid a salary or wages. ()

04. Employer. The agency that employs the employee. ()

05. Fair Rental Value. The amount at which the dwelling would rent or lease as between a willing lessor and a willing lessee, neither being under any compulsion to rent or lease and both having reasonable knowledge of the relevant facts. ()

06. Furnished Lodging. An employer's provision of a state-owned dwelling to an employee in connection with his employment. Furnished lodging also may include such items as necessary utilities (heat, water, electricity and sewage services). ()

07. IRC. The most recent enactment of the Internal Revenue Code, as amended. ()

08. IRS. The Internal Revenue Service, an agency or office of the federal government. ()

09. Lease. A contract or agreement for the use of property under which the state, in its capacity as lessee or tenant, obtains exclusive possession and use of real or personal property for a determinate period of time. ()

10. Lease Purchase Option. A lease that provides an option for the state to purchase the property at a predetermined price or fair market value during or at the end of the lease period. ()

11. State. The state of Idaho including each agency therein unless the context clearly implies another state of the United States. ()

12. State-owned Dwelling. Any house, duplex, apartment, manufactured housing, trailer/mobile home pad or other structure, or any part thereof, owned, purchased, leased or operated by an agency of the state which is used for the purpose of furnishing lodging to a state employee in connection with his employment. ()

011. -- 099. (RESERVED).

100. AUTHORITY OF THE DEPARTMENT.

In accordance with Section 67-5707A, Idaho Code, the Department of Administration, by and through the Division, is authorized to adopt the procedures to be followed by each state agency in managing the acquisition, rental, tax status and recordkeeping of state-owned dwellings. ()

101. ACQUISITION OF STATE-OWNED DWELLINGS.

The state or an agency thereof may acquire a state-owned dwelling by purchase (including installment purchases), lease, lease purchase option, exchange, gift or in any other manner which affords the state or agency the exclusive use and possession of the dwelling. In addition to complying with those requirements set forth in these rules, the state or any agency must comply with all other statutes and rules regarding the acquisition of state property or state land. ()

102. -- 120. (RESERVED).

121. PERMISSIBLE USES OF STATE-OWNED DWELLINGS.

At its sole and absolute discretion, an agency may furnish a state-owned dwelling to an employee subject to these rules. An employee who is furnished with a state-owned dwelling shall only be entitled to use the dwelling as lodging for himself and his immediate family and for the conduct of state business. An agency may require an employee to accept and reside in a state-owned dwelling as a condition of his employment. ()

122. -- 130. (RESERVED).

131. INCOME TAX IMPLICATIONS RELATING TO EMPLOYER-FURNISHED LODGING.

The matter of whether the value, or a portion thereof, of employer-furnished lodging will constitute income to an employee will be determined in accordance with federal law (IRC) and regulation. The IRC and related regulations establish standards which an agency shall apply to determine whether the value of the furnished lodging must be included in the employee's income. ()

01. General Standard. Section 119 of the IRC and the related federal regulations as promulgated by the IRS state that the value of lodging furnished to an employee, his spouse and his dependents shall be excluded from his gross income for tax purposes if: the lodging is furnished on the business premises of the employer; the lodging is furnished for the convenience of the employer; and if the employee is required to accept the lodging as a condition of his employment. The factual circumstances surrounding each instance of employer-furnished lodging dictate the applicable income tax treatment. If the circumstances of the furnished lodging do not satisfy the stated standards, the fair rental value of the furnished lodging shall be included in the amount of the employee's gross income for both federal and state income tax purposes as well as for purposes of other payroll deductions or withholdings based upon amounts of gross income. ()

02. Business Premises of the Employer. For purposes of the federal standards, the business premises of the employer has been defined generally to mean the place of employment of the employee. ()

03. Lodging Furnished for the Convenience of the Employer. For purposes of the federal standards, lodging is considered to be furnished for the convenience of the employer when a direct nexus exists between the lodging furnished to the employee and the business interests of the employer which are being served or advanced. ()

04. Employee Required to Accept Lodging as a Condition of Employment. For purposes of the federal standards, the requirement that an employee be required to accept lodging as a condition of employment means that the employee must accept the lodging in order to enable him to properly perform the duties of his employment. ()

05. Payment of Fair Rental Value of Furnished Lodging by the Employee. If the factual circumstances associated with the furnished lodging do not qualify for the income tax exclusion, the agency is encouraged to collect rent from the employee in the fair rental value of the furnished lodging. At an agency's discretion, an employee who is furnished lodging which does not qualify for the income tax exclusion may be afforded a rent discount. However, in such instance, the difference between the fair rental value and the amount of the rent actually paid by the employee shall be income to the employee. ()

132. -- 140. (RESERVED).

141. EMPLOYER DETERMINATION OF FAIR RENTAL VALUE OF FURNISHED LODGING.

01. Determination of Fair Rental Value. The determination of the fair rental value of furnished lodging shall be the responsibility of the agency. An agency shall review the fair rental value of each furnished lodging at least every five (5) years or sooner if the relevant market conditions or the employee's terms of employment have changed. To determine fair market rental value of a furnished lodging, the agency may utilize comparable dwelling rent information. ()

02. Treatment of Utilities. If the employee does not directly pay the cost of necessary utilities in connection with the furnished lodging, the value of such necessary utilities should be included in the fair rental value of the furnished lodging. If the value of the furnished lodging is excludable from the employee's income in accordance with the IRC, any furnished necessary utilities will be excluded from the employee's income. ()

142. -- 150. (RESERVED).

151. AGENCY RESPONSIBILITIES REGARDING FURNISHED LODGING.

If the state-owned dwelling is owned by the agency, the agency (employer) shall be responsible for all repairs and improvements to the dwelling. If the state-owned dwelling is leased by the agency from a third party, the lease agreement should provide that the dwelling's owner (lessor) is obligated to insure the dwelling and to undertake all repairs and improvements to the dwelling. ()

152. -- 160. (RESERVED).

161. EMPLOYEE RESPONSIBILITIES REGARDING FURNISHED LODGING.

Generally, the employee shall be responsible for the general upkeep and maintenance of the furnished dwelling and associated grounds. Whether or not the employee pays directly for necessary utilities, the employee shall be responsible for the payment of all utilities which are not necessary utilities (television cable, etc.). The employee shall be responsible for insuring all personal property located within or upon the furnished lodging. An employee who fails to abide by the terms of a furnished lodging agreement shall not be allowed to continue to reside in a state-owned dwelling. ()

162. -- 170. (RESERVED).

171. AGENCY RECORDKEEPING RESPONSIBILITY.

Each agency having state-owned dwellings shall provide, annually, the Division with a list which identifies the location of each dwelling, its general characteristics, approximate value and fair rental value. Each agency shall maintain all information relied upon in determining the fair rental value of any state-owned dwelling. Each agency shall maintain records regarding the cost of repair, maintenance, improvement or upkeep of each state-owned dwelling. ()

172. -- 180. (RESERVED).

181. FURNISHED LODGING AGREEMENT.

Every agency is strongly advised to enter into a written agreement with any employee being furnished lodging. Such written agreement should delineate the employee's responsibilities regarding such matters as the payment of rent and maintenance of the state-owned dwelling. ()

182. -- 999. (RESERVED).

IDAPA 43 - IDAHO CANOLA AND RAPESEED COMMISSION
43.01.01 - RULES GOVERNING THE IDAHO CANOLA AND RAPESEED COMMISSION

DOCKET NO. 43-0101-9701

NOTICE OF PENDING RULE

EFFECTIVE DATE: These rules have been adopted by the commission and are now pending review by the 1998 Idaho State Legislature for final adoption. The pending rule becomes final and effective July 1, 1997, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code notice is hereby given that this commission has adopted a pending rule. The action is authorized pursuant to Sections 67-5206(1) and 22-4710(3)(I), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule.

These pending rules are to promulgate rules for the operation of the Idaho Canola and Rapeseed Commission to conform to the new statutory requirements and to set procedures for levying and collection assessments and the procedure for potential refund.

The pending rules are being adopted as proposed. The original text of the proposed rules was published in the July 2, 1997, Idaho Administrative Bulletin, Volume 97-7, pages 207 through 209.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Doug Scoville at (208) 858-2132.

DATED this 17th day of July, 1997.

Kevin D. Satterlee, Deputy Attorney General
Office of the Attorney General
Statehouse, Room 114
P. O. Box 83720
Boise, Idaho 83720-0010
(208)322-3081
(208) 334-3107 (FAX)

IDAPA 43
TITLE 01
Chapter 01

RULES GOVERNING THE IDAHO CANOLA AND RAPESEED COMMISSION

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

**The original text was published in the Idaho Administrative Bulletin,
Volume 97-7, July 2, 1997, pages 207 through 209.**

**This rule has been adopted as Final by the Agency and is now pending review
by the 1998 Idaho State Legislature for final adoption.**

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION

47.01.02 - RULES GOVERNING FIELD SERVICES

DOCKET NO. 47-0102-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5203(c), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Sections 33-2301 through 33-2306, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rule-making will be held at:

**8:00 a.m., or as soon thereafter as practicable, on Thursday, September 18, 1997
Idaho State University, 1065 S Student Union Building Salmon River Suite, Pocatello, Idaho.**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact Vicki Barker at (208) 334-2270.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule-making:

Removal of Instructions for Completing the Individual Financial Needs Assessment form because it is not policy.

Inclusion of policy regarding Authorization for Services because federal regulations no longer include this information and the Division wishes to assure that our customers are aware of our policy regarding purchase of services.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kenneth M. Jones at 1-800-856-2720.

This proposed rule may be reviewed at the Regional Offices of the Agency located in Coeur d'Alene, Lewiston, Caldwell, Boise, Twin Falls, Pocatello and Idaho Falls and at the State Office located in the Len B. Jordan Building, Room 150, 650 West State Street, Boise, Idaho.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 23rd day of July, 1997.

F. Pat Young
Interim Administrator
Idaho Division of Vocational Rehabilitation
650 West State Street, Room 150
P.O. Box 83720
Boise, Idaho 83720-0096
(208) 334-3390
(208) 334-5305 (fax)

TEXT OF DOCKET NO. 47-0102-9701

010. DEFINITIONS.

01. Applicant. Any individual who certifies to their intent to apply for Vocational Rehabilitation

services by either signing an application form or verbally or in other communication modes notes their intent to immediately apply. P.L. 102-569 Section 101 (9) (D) (7-1-94)

02. Authorization. An authorization for services is a purchase order issued on behalf of the Division (IDVR Form R-37). ()

023. CARF. Commission on Accreditation of Rehabilitation Facilities. (7-1-94)

034. Client. Any individual who has applied for Vocational Rehabilitation services and has been found to meet the eligibility requirement as outlined by P.L. 102-569 Section 7(8)(A), Section 102(a)(1)(A) and (B). (7-1-94)

045. Core Vocational Rehabilitation Services. Services that reduce the impact of functional limitations on the ability to achieve an employment outcome (i.e. medical restoration services, training services, assistive technology, job placement, etc.). (2-1-95)

056. Division, State Unit. The Idaho Division of Vocational Rehabilitation (or where it is self-evident, officers, employees, or agents of the same). (2-1-95)

067. Extended Period of Time. An anticipated six (6) or more months within which time rehabilitation services are being provided on an active and ongoing basis. (2-1-95)

078. HEW. Health, Education and Welfare. (2-1-95)

089. IFNA. Individualized Financial Needs Assessment. (2-1-95)

0910. Most Severely Disabled. An individual who meets the criteria of severely disabled and is further defined as: (2-1-95)

a. Having a severe physical, mental, cognitive or sensory impairment which seriously limits two or more functional capacities (such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance or work skills) in terms of an employment outcome; and (2-1-95)

b. Whose vocational rehabilitation can be expected to require multiple core vocational rehabilitation services (as opposed to supportive services) over an extended period of time. (2-1-95)

101. OJT. On-the-job training. (2-1-95)

142. PA. Public Assistance. (2-1-95)

123. Public Safety Officer. For the purposes of this rule, the definition of public safety officer is found at Public Law 103-73 Sec 7 Sub 12 (A) through (D). (2-1-95)

134. Representative. The applicant or client's parent, legal guardian, spouse, legal representative, or an individual who has the Power of Attorney to represent the client in legal situations or another person designated by the individual. (2-1-95)

145. RSA-PI. Rehabilitation Services Administration - Program Instruction. (2-1-95)

156. RSA-PQ. Rehabilitation Services Administration - Policy Question. (2-1-95)

167. Severely Disabled. For purposes of this rule, the definition of severely disabled is found at Public Law 103-73 Sec 7 Sub 15 (A) (i) through (iii). (2-1-95)

178. SSDI. Social Security Disability Insurance. (2-1-95)

189. SSI. Supplemental Security Income. (2-1-95)

~~1920.~~ Supportive Services. Services that compliment the provision of core services and are provided only to insure that the eligible recipient of the core services can benefit from the same (i.e. maintenance, transportation, services to family members). (2-1-95)

201. VRC. Vocational Rehabilitation Counselor. (2-1-95)

(BREAK IN CONTINUITY OF SECTIONS)

300. CLIENT SERVICES.

01. Provision of Purchased Services Contingent Upon Financial Need of the Recipient. (7-1-93)

a. There is no Federal requirement that the financial need of a person with a disability be considered in the provision of any vocational rehabilitation services. It is allowed at state discretion. With exceptions noted below, the Idaho Division of Vocational Rehabilitation will apply a Financial Needs Assessment in all cases where projected services are expected to be purchased by the Division. Financial need will not be a consideration in the determination of eligibility for Vocational Rehabilitation, but only in allocating the cost of specific services. The Financial Needs Assessment will be applied uniformly as allowed for by the discussion of the process that follows. In all cases the applicant/client of Vocational Rehabilitation shall be allowed to expend their own funds on planned services if they choose to do so - even in those cases where there is no law, or rule, requiring that they do so. (7-1-94)

i. Financial Needs Assessment. The primary mission of the Idaho Division of Vocational Rehabilitation is the return of the Idaho disabled to productive activity - i.e., employment. The identification and proper use of resources is a critical step in achieving this goal. (7-1-93)

ii. Resources generally fall into three (3) major areas: (7-1-93)

(1) Client resources; (7-1-93)

(2) Comparable benefits; and (7-1-94)

(3) Division monies. (7-1-93)

b. It is the position of IDVR that client involvement and client financial participation significantly increase the likelihood of successful rehabilitation. This fact and the reality that Division resources and similar benefits are insufficient to serve all the eligible citizens in Idaho has led IDVR to develop an Individualized Financial Needs Assessment (IFNA). This Individualized Financial Needs Assessment (Form R-52) is to be used by the VRC and the client in conjunction with the development of any IWRP or program Amendment which includes services paid for by IDVR, following the decision of eligibility. (Exception: See IDAPA 47.01.02.300.01.f.). (7-1-94)

c. Client resources and similar benefit resources shall be used prior to IDVR expenditures unless their use would create significant, untimely delay in the provision of services, and thus significantly jeopardize the chances of the success of the rehabilitation outcome. (7-1-93)

d. Client resources are private, and often symbolic of client independence; therefore, it is critical that the VRC be sensitive and wise in the use of these resources. It is not the intention of IDVR to drive the client into abject poverty prior to providing services. In fact, this type of direction could easily be counter-productive to achieving the appropriate vocational rehabilitation goal. However, it is not the intention of the Division, the Legislature, or the taxpayer to support the disabled in areas where they are capable of doing so themselves. To do otherwise would be fiscally irresponsible and in the long run, detrimental to the client's own search for independence. The IDVR counselor is charged with the responsibility of sound rehabilitation planning and guidance of the clients to the achievement of sound rehabilitation goals. This will be accomplished only when there is a thorough

understanding of the philosophy, intent, and rules of the Division. As already noted, it is the philosophy of the Division that client participation, both personally and financially, is central to a successful rehabilitation outcome. It is the Division's intent that the VRC become skilled at counseling and guiding the client in the proper use of resources and successful rehabilitation outcomes. However, there are some activities of the Division that, by the rules, preclude the Division from demanding client financial participation. (7-1-93)

f. A financial needs test will not be applied as a condition for providing the following services (clients may volunteer their finances however): (7-1-93)

i. Diagnostics and evaluation of rehabilitation potential; (7-1-93)

ii. Counseling, guidance, referral; and (7-1-93)

iii. Placement. (7-1-93)

g. Additionally, the Division has determined that the training cost of OJT placement shall not be applied against the individual client's surplus resources (if any exist) since this is actually a pre-placement activity. None of the above should be construed as to preclude client financial involvement if they should voluntarily choose to participate. Remember: Client involvement significantly increases the chance of success. (7-1-93)

h. Once eligibility has been established, the Individualized Financial Needs Assessment (IDVR Form R-52) shall be taken in conjunction with the development of the IWRP or program Amendment, or at any other time the VRC believes that the client's financial status has changed materially. (7-1-94)

02. Allowed Exceptions. (7-1-93)

a. While all clients can benefit from the completion of the Financial Needs Assessment, common sense interpretation of this requirement suggests that a client who has already demonstrated financial indigence should not be required to report that experience. Therefore, it is not required that an Individualized Financial Needs Assessment be completed on a client receiving Supplemental Security Income (SSI) and Public Assistance. Should a VRC determine not to complete the IFNA in either of these cases, documentation of their beneficiary status is required. Examples of acceptable documentation are SSI and public assistance letter of eligibility; copy of SSA Form 831 or 833 showing receipt of benefits; statement from SSA district office; Disability Determinations Service or Public Assistance office; counselor visual inspection of the SSI or PA benefit check with RCR recording the date of issuance, name as shown on the check and Social Security number on check; SSI verification document; and copy of Health and Welfare financial need document for PA recipients. (7-1-94)

b. A second circumstance for which the VRC may choose not to take an IFNA is in the case of the development of a no cost plan. The VRC may judge that the IFNA will not have significant value when there are no financial requirements for either the client or the Division. (7-1-94)

i. It should be noted that the VRC may choose to complete an IFNA on these clients if the VRC feels that to do so would enhance the likelihood of a successful rehabilitation outcome. (7-1-93)

ii. The use of client resources is called for from a "common sense" perspective, allowed by Federal regulation, and required by state legislative intent; but what does one do when resources available to the client may not be legally controlled by the client? (7-1-94)

iii. Utilization of the Parents' or Guardians' Financial Resources in the Development of the Plan or Program Amendment. (7-1-94)

~~iv. It is obvious from a rather quick reading of the following section on construction of the IFNA that all excess resources held by the client must be used prior to any IDVR involvement. What do we do, however, with These are resources that are potentially available to the client but not legally controlled by him/her e.g., a parents' or guardians' income resources or financial holdings. Can IDVR demand that a client commit his/her parent's or guardian's income toward the Plan before the Division becomes financially involved? The answer is No!~~
(7-1-94)()

iv. In cases where the VRC determines that the client has not been emancipated from the parents or guardians, and through a financial assessment determines that the client's only potential excess resources are legally the parents or guardians, then the VRC will explain our IFNA requirements to the parent/guardian and complete a thorough IFNA on them (assuming they agree to complete one). (7-1-94)

vi. Any excess resources isolated from the parent/guardian IFNA will be considered as potentially available to pay for planned services. However, since the client does not legally control these resources, the VRC cannot deny a service based solely upon a parent's or guardian's unwillingness to pay. Therefore, the VRC should negotiate to the best interest of the Division in determining the level of participation by the parent or guardian. Remember, when a client is a minor, the parents or guardians have certain legal obligations, and the VRC will not assist them in avoiding these obligations by offering Division financial assistance when the IFNA does not indicate the need for this assistance. The parent/guardian IFNA, negotiations on the utilization of excess resources, and the parent's or guardian's refusal to contribute shall be duly noted in the case file of the client (RCR). In short, when a client has not become emancipated from his/her parents or guardians, the parents' or guardians' financial status will be investigated through the completion of an IFNA unless they refuse. Any refusal shall be noted in the RCR. (7-1-94)

vii. Excess resources of the client's parents or guardians shall be considered as a similar benefit to the client at whatever level the source of these similar benefits makes them available (0-100%). The VRC shall negotiate to the best interest of the Division. (7-1-93)

c. The VRC will not shoulder the responsibility of paying for things that are the legal responsibility of the parents/guardians regarding their minor child (the client). (7-1-93)

d. Failure of the parents/guardians to contribute shall not be used as reason to preclude services to the client since the client cannot legally control the disbursement of these "similar benefits". (7-1-93)

e. All negotiations and their resultant outcomes will be recorded in the RCR. (7-1-93)

f. The VRC shall, in all cases, present the IFNA philosophy to the parents or guardians in a positive light so that they do not assume that the VRC is urging them to not participate. (7-1-93)

g. Resources legally controlled by the client will be used prior to IDVR financial involvement. Resources legally controlled by the parents or guardians - i.e., beyond the control of the client - will be used to the degree that they are made available by the parents or guardians. (7-1-93)

h. Additionally, in those cases where clients have established independence from their parents/guardians, but the parents/guardians are willing to contribute, the VRC should encourage their contribution on a "first dollar" basis. Remember, the goal of the VRC is to foster independence, allow the client to practice independence to the fullest extent possible, and assist the client where they do not have the capacity to do for themselves, through the use of similar benefits and Division resources.

03. Authorization for Services. The Division requires that when purchasing services from a vendor, an authorization must be issued prior to, or in concert with, the beginning date of service. If services are provided without a Division approved authorization, the Division reserves the right to not honor the vendor's invoice. Exception: A verbal authorization may be issued only by an assistant regional manager, regional manager, chief of field services or the administrator. A verbal authorization must be followed, as soon as possible, with a written authorization.
()

Ref: (1) 34 CFR 361.47(a) Volume 46, Number 12, January 19, 1981
(2) P.L. 102-569, Section 12(c)
(3) State Plans for Vocational Rehabilitation Section 6.3(a)(b)(c) Section 6.6(a)(b)
(4) Title 33-2301, Idaho Code (7-1-94)

301. -- ~~3499.~~ (RESERVED).

400. INSTRUCTIONS FOR COMPLETING THE INDIVIDUAL FINANCIAL NEEDS ASSESSMENT (IDVR FORM R-52, REVISED 7-82).

01. Background. (7-1-93)

a. Financing of the Vocational Rehabilitation program is not keeping pace with the increase of disabled people in the community. Both federal and state appropriations are experiencing this problem. Thus the VRC must insure that all monies spent on his/her clients are spent wisely. This will insure that those who can pay will, so those who cannot will have Division dollars available to assist them. The use of IDVR Form R-52 should assist the VRC in making complex decisions about the disbursement of these limited funds. (7-1-94)

b. The R-52 is completed for a period of time approximately equal to the length of the time covered by the IWRP or program Amendment. It is a statement of all obligations and income available to the client during that specific planning period. It allows the VRC to determine a surplus or deficit that the client brings to the planning process. The resources will include all income and assets that the client will have during the planning period. The obligations for the period will be subtracted from the resources available for the same period. Any surplus will be first used to meet the client's normal and prudent subsistence needs for the period. Monies then left over will be used to pay for the purchase of the actual service(s) being arranged for. If the client can pay for all of the service(s), then IDVR will not pay for any of it. IDVR will only pay for those things where the law or rule specifically preclude requiring the client's involvement, or for those non-precluded items which the client cannot pay for. (7-1-93)

e. Any exceptions to the above must be clearly noted and fully justified in the client's file in the Running Case Record (RCR). Exceptions will be rare, and probably will relate to the untimely provision of services or other issues where the failure to spend IDVR funds would have a deleterious effect on the client's welfare and rehabilitation potential. (7-1-93)

02. Client Identification Section. The client's name as it appears on the R-911 will be included. The Number in Household Dependent Upon the IFNA is the number of individuals contributing to and drawing subsistence from the household that the client is a member of. This number would not normally include renters or boarders. It would most likely include members of the client's family who live in the same house or members whose welfare is paid for by the client's resources even though they may not reside at the same residence (e.g., away to college). Number of Months in Plan is the number of calendar months from the beginning date of the first planned service to the ending date of the last planned service. Services lasting less than one month shall be considered as a full month for IFNA purposes (partial months shall be considered as one (1) month). (7-1-93)

03. Section I A - Policy Statement. (7-1-93)

a. This section will include all income received into the household each and every month during the planning period. Income that is sporadic, i.e., received less than monthly, will be included in Section I B. Section I A deals with net monthly income, i.e., income after taxes, and retirement contributions, and it will include automatic deposits into savings accounts and similar accounts. It will also include any automatic payments made into banks and other institutions to pay off loans. The counselor should include any wages earned by the client while involved in a rehabilitation Plan as earned income (e.g., work adjustment wages, CETA payments, and OJT wages). (7-1-93)

b. The monthly receipts for each of the categories must be multiplied by the number of months covered by the Plan. This total goes into the far right hand column, and this column is then added to reach the Total Available During Plan Period. (7-1-94)

e. Note: Food stamps will not be considered as income and will not be included in this section. (See IDAPA 47.01.02.400.08.f.) (7-1-93)

04. Section I B - Policy Statement. Not all income is generated on a strict monthly basis. Any income of this nature will be reported in this section. The dates received and the amount per receipt will be listed. Again, the total amount available during the Plan will be computed for each category and a grand total for the section will be determined. (7-1-93)

05. Section I C - Policy Statement. (7-1-93)

a. The intent of this section is to capture information on other resources that the client holds. These may be cash or equivalents (checking accounts for example) or personal or real property that can be converted (directly or indirectly) to cash. The actual fair market value of real or personal property will be stated (not just the equity) since debts owed on the real or personal property will be listed under Section II, et. al. All non-excludable assets will be listed in this section and they will be considered at the listed value when determining the client's total available resources in Section I-D. The average monthly balance after all bills have been paid will be used when considering resources available in a checking account. (7-1-94)

b. ~~Definition—Excludable Asset. "Any asset that is exempted from inclusion on this form in determining the client's total resources available during the Plan period". Exclusions included for the purpose of completing the R-52 include, but are not limited to, the client's primary residence, one car for use by members of the household, additional cars used to generate income or facilitate the economy of the household unit, any income producing vehicles, property or other holdings (income produced will be listed in other subsections on income). Additionally, any real or personal property which is non-excludable, but is legally owned by other members of the household is exempt from consideration. Real or personal property of a documentable medical necessity shall not be included on the form. Non-excludable assets jointly held by the client and spouse are not exempt from consideration. All other real or personal property shall be considered a client resource and shall be listed on the form at its fair market value. The total available during the Plan should be itemized per category and then a grand total should be ascertained.~~ (7-1-93)

06. Section I-D. This is the total that will be used in the determination of client participation in the cost of the Plan. It represents all of the client's income and non-excludable assets capturable during the planning period. (7-1-93)

07. Section II A—Policy Statement. This includes a listing of all cash outlays on a monthly basis to pay for either legal or reasonable and prudent obligations. (7-1-93)

08. Definitions. (7-1-93)

a. Legal Obligation. Any payments due as the result of a signed contract, court order, lease agreement, or lawful requirement will be considered a non-negotiable, binding obligation of the client and will be given full credit in this section. (7-1-93)

b. Reasonable and Prudent Obligation. Payments made for items or services not legally required, but reflecting such items or services that are normally a part of living a normal life. For example, Utilities. One need not heat their house, but it is reasonable and prudent to do so. Certain forms of entertainment and other activities may be pursued under medical advise. Expenditures for these types of activities may also be considered reasonable and prudent. (It is the intention of IDVR that the normal monthly service for telephones is reasonable and prudent—long distance charges of a personal nature are not). (7-1-93)

c. Elective Obligations. Payments which are neither required by law nor reasonable and prudent (in terms of expecting the taxpayer to subsidize them) shall not be included as an obligation to be met by the client. For example: Tithing or cash contributions to a church or paying for a child's violin lessons are commendable activities but, by Division definition, it is not considered reasonable and prudent to expect the agency to pay in full or in part for any deficits in Plan cost created by the continued payment for these types of items on the part of the client. (7-1-93)

d. In computing the monthly cost of items listed in Section II A, the minimum monthly payment allowed by the contract will be used. This is especially pertinent when considering credit card and other payments where a minimum is established, but where the client could pay more if he so desired. (7-1-93)

e. The budget for utilities, food and clothing, transportation, and entertainment may not exceed the limits established in the chart shown below. The monthly payment should be a best guess estimate of the average monthly charge over a year period. The only exceptions to these maximums must be justified by receipts and copies of bills. Again, 'normal and prudent' considerations must be taken into account when justifying cost in excess of the guidelines as listed. (7-1-93)

f. When calculating the cost of food and clothing for this section, only the amount that is expended by the client, out of pocket, shall be recorded. Example: If the client were to purchase food stamps with a face value of one hundred dollars (\$100), but his/her cost was sixty dollars (\$60), he/she would record the sixty dollars (\$60).

Category	Number of Individuals in Household					
	One	Two	Three	Four	Five	Six or More
Utilities-Electricity Gas/Oil, Phone, Sewer, Trash	\$120	\$135	\$150	\$165	\$180	\$195
Clothing/Food (Combined)	\$160	\$240	\$320	\$400	\$480	See g. below
Transportation	\$80	\$105	\$125	\$135	\$145	\$145
Entertainment	\$40	\$50	\$60	\$70	\$80	\$80

(7-1-94)

g. Family – Six (6) or More. Families or households with six (6) members or more will be allowed to utilize eighty dollars (\$80) per person for number over five (5) for calculation of the food and clothing maximums. Example: Client shows ten (10) members in the family which includes children, husband and wife. You will multiply five (5) by eighty (80) – four hundred dollars (\$400) – which will then be added to the four hundred eighty dollars (\$480) allowed for a family of five (5), thus showing the maximum allowed for food and clothing to be eight hundred eighty dollars (\$880).

(7-1-94)

h. All outstanding loans, notes payable, and credit card balances will be listed in order to determine the total amount to be paid during the Plan period. Again, each category will show the amount owed during the Plan period and a grand total will be figured from this.

(7-1-93)

i. Costs associated with the rehabilitation Plan shall not be recorded in this section. Client obligations in regard to the IWRP or Amendments will appear under the client participation section of the IWRP or Amendment as a dollar amount, and for what purpose. Maintenance and transportation will appear only in dollar amounts under client participation if there is an increased cost as a result of IWRP development.

(7-1-93)

09. Section II B – Policy Statement.

(7-1-93)

a. This section is used to capture legal and normal and prudent obligations which are due on something less frequently than a monthly basis. Taxes, insurance payments, and balloon payments on mortgages are examples. Again, a grand total of outlays during the Plan period will be shown. In the case of large, one shot payments falling due during the Plan (e.g., property taxes, fire insurance, and mortgage insurance), documentation shall be required. This may take the form of property tax assessment notices, insurance statements, or similar documents.

(7-1-93)

b. If the client has a non-excludable asset listed in Section I C, and there is a debt owed against that asset, then the VRC should record the entire amount of that debt in Section II B.

(7-1-93)

e. The VRC should exercise caution to ensure that non-excludable asset payments are not recorded in Section II A as this will be accomplished in Section II B when the VRC records the total amount of debt for that item.

(7-1-93)

10. Section II C. This figure is derived by adding the total figures found in II A and II B. This total is what the client states are his/her legal and normal and prudent obligations during the time period to be covered by the Plan being developed.

(7-1-94)

11. Section III – Policy Statement.

(7-1-93)

a. Basically, this tells the VRC if the client, over the period of the Plan, will have a budget surplus, a budget deficit, or a break-even budget. Precede this number with a minus (-) if the figure is a negative (deficit) amount. Precede the number with a plus (+) if the figure represents a positive (surplus) amount. If a budget surplus exists, similar benefits and the client's surplus resources must be applied to the cost of the service(s) prior to IDVR becoming financially involved. IDVR will be involved only to the extent that the similar benefits and client's resources do not cover the total cost of the Plan. (7-1-93)

b. If a budget deficit exists, the VRC will counsel the client regarding proper financial management. Maintenance is a supportive service. The cost of maintenance may not exceed the amount of increased expenses that the rehabilitation program causes for the individual or his/her family. It is not intended to pay for those living costs that exist irrespective of the individual's status as a vocational rehabilitation client. Maintenance must be tied to the achievement of specific vocational rehabilitation intermediate outcomes which must be stated and documented in the case record and IWRP to justify payments. Maintenance may be provided during diagnosis and evaluation when cost of food and shelter represent out-of-ordinary or extra cost imposed by reason of the diagnostic or evaluative services. (7-1-94)

e. Transportation. Prior to providing transportation to an individual with a disability, the VRC must assure that no comparable services or benefits under any other program are available to the individual. Transportation is only available due to increased cost as a result of the rehabilitation process. Transportation is not available to supplant deficit spending. (7-1-94)

12. Section IV - Policy Statement. Under this section, any exclusions of surplus resources, on a specific dollar basis, must be noted. In other words, any surplus noted in Section III which will not be used toward the cost of the Plan or program Amendment will be listed here with a brief justification. A more detailed explanation will be recorded in the RCR. Any surplus not excluded must be shown on the face of the Plan or program Amendment on a dollar for dollar basis, e.g., if one hundred dollars (\$100) surplus exists and it is not excluded, one hundred dollars (\$100) worth of client expenditures must be shown on the Plan. (7-1-93)

13. Signature Section. (7-1-93)

a. The VRC must take positive steps to ensure that the client and parent or legal guardian understands the contents of the certification statement. The appropriate signatures must be secured. (7-1-93)

b. Completing the IFNA is an essential step toward assisting the client toward achieving independence. However, there are clients whose income may not be easily ascertained such as persons engaging in farming activities. (7-1-93)

e. The following steps should be helpful in arriving at the income level for these clients. (7-1-93)

d. Persons engaged in farming operations. (7-1-93)

e. The VRC may use the most current Federal Tax 1040 Return to complete Sections I A and I B of the IFNA. (7-1-93)

f. The annual income is calculated by the following formula: (7-1-93)

i. Adjusted gross income minus (-) total tax equals (=) annual income. (7-1-93)

ii. In other words, the amount of money on the line entitled Total Tax subtracted from the amount of money on the line entitled Adjusted Gross Income equals the annual income for the IFNA purposes. (7-1-93)

g. If there is an annual income, then divide by twelve (12) in order to calculate the monthly average income for Sections I A and I B of the IFNA. Complete the IFNA as required, beginning with Section I C. (7-1-93)

h. Be careful with Section II. Do not allow farming expenses to be recorded in Section II. The tax forms have already considered these expenses. (7-1-93)

- i. ~~In Section II, allow only those expenses and obligations for personal use to be recorded. (7-1-93)~~
 - j. ~~Utilities and transportation costs must be analyzed and only non-farming related costs should be listed. (7-1-93)~~
- ~~401. - 499. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

600. POLICY ON PROVISION OF SERVICES.

Purchase of Work Evaluation, Work Adjustment, Community Based Job Placement and Job Coaching, and Placement and Follow-Along Services. (7-1-93)

01. General Provisions. The Idaho Division of Vocational Rehabilitation will purchase subject services only from duly certified, licensed, or accredited firms, businesses, facilities, or individuals. The definition of subject services will be those established by the Commission on Accreditation of Rehabilitation Facilities (CARF). Facilities, businesses or firms wishing to sell the subject services to the Division must show appropriate certification, accreditation, or licensure. Those facilities, businesses or entities holding CARF (or comparable) accreditation will receive priority recognition. (7-1-94)

~~02. Special Provision for Interim Accreditation. The Division maintains the latitude to provide interim certification to new or existing facilities, businesses or entities who wish to provide subject services to the Division. Interim certification will require documentation that the facility, business, or firm meets all relevant certification requirements imposed by the CARF (or other comparable accrediting organizations) accreditation standards in place at the time of the Division's review for interim certification. This certification will be effective for one year. During that year the facility, business or firm will apply for and receive a full review and certification from CARF or an acceptable and comparable accrediting organization. In its absence (after the year is over), the Division will no longer purchase said services. If during the interim year the facility, business, or firm demonstrates diminished capacity, the Division retains its right to de-certify. (7-1-94)~~

~~03. Geographic Considerations. The Division maintains its right to choose not to provide interim certification in areas of the state where subject services are already easily accessible to the population of clients that the Division serves. Thus the priority for interim certification will be given to geographic areas where said services are not available without moving the client undue distances.~~

- Ref: (1) 34 CFR 361.42(b), 361.45, 361.52 and 361.53
(2) P.L. 102-569
(3) State Plan for Vocational Rehabilitation Section 6.2(d)
(4) Title 33-2301, Idaho Code (7-1-94)

IDAPA 47 - DIVISION OF VOCATIONAL REHABILITATION
47.01.03 - RULES GOVERNING MANAGEMENT SERVICES
DOCKET NO. 47-0103-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5203(c), Idaho Code, notice is hereby given that this agency has proposed rule-making. The action is authorized pursuant to Sections 33-2301 through 33- 2306, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rule-making will be held at:

8:00 a.m., or as soon thereafter as practicable, on Thursday, September 18, 1997
Idaho State University, 1065 S Student Union Building Salmon River Suite, Pocatello, Idaho.

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact Vicki Barker at (208) 334-2270.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rule-making:

Increase the maximum fee amounts by \$15 each for Ophthalmologist/optometrist and audiology services. It is becoming more and more difficult to purchase services at the current rate.

Inclusion of Medicaid Allowable allowing the Division to use the Medicaid allowable on payment for services where applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kenneth M. Jones at 1-800-856-2720.

This proposed rule may be reviewed at the Regional Offices of the Agency located in Coeur d'Alene, Lewiston, Caldwell, Boise, Twin Falls, Pocatello and Idaho Falls and at the State Office located in the Len B. Jordan Building, Room 150, 650 West State Street, Boise, Idaho.

Anyone may submit written comments regarding this proposed rule-making. All written comments must be directed to the undersigned and must be delivered on or before September 24, 1997.

DATED this 23rd day of July, 1997.

F. Pat Young
Interim Administrator
Idaho Division of Vocational Rehabilitation
650 West State Street, Room 150
P.O. Box 83720
Boise, Idaho 83720-0096
(208) 334-3390
(208) 334-5305 (fax)

TEXT OF DOCKET NO. 47-0103-9701

100. RATES OF PAYMENT.

01. Policy. It is the policy of the Division to pay the prevailing "usual and customary" charges for

services provided to itself or to its applicants/clients by providers of goods or services. The only exception to the "prevailing usual and customary" considerations is listed herein or addressed as a result of state purchasing rules or superseding Idaho Statute. Division financial involvement will be considered in light of the issues addressed by IDAPA 47.01.02, Subsection 300.01. (7-1-94)

02. Private In-State Colleges, Vocational Technical Schools and Universities. Maximum educational expenses (fees and tuition charges) will be based upon the current maximum cost set for resident students by the Idaho State Board of Education for the colleges and universities under their jurisdiction. The exception is if the course of study is not available at the public institution. A book and supply allowance may be provided. (See IDAPA 47, Title 01, Chapter 03, Subsection 100.04, Table - Book and Supply Allowance). (7-1-94)

03. Out-of-State Colleges and Universities. Maximum educational expenses (fees and tuition charges) will be based upon the maximum current cost set for resident students by the Idaho State Board of Education for the colleges and universities under their jurisdiction. A book and supply allowance may be provided. (See Book and Supply Allowance). An exception to this maximum will exist when the student must attend an out-of-state college or university because the course of study he/she is involved in is not offered within the college and university system of the State of Idaho, or it can be demonstrated that it is more cost beneficial to attend such a college or university rather than a State of Idaho supported institution. The amount authorized by the Division will be negotiated with the client. (7-1-94)

04. Book and Supply Allowance.

\$210 Per Semester	(2 Per Year = \$420 Maximum)
\$140 Per Quarter	(3 Per Year = \$420 Maximum)
\$100 Per Session	

Note: Actual cost if less than above should be considered. Actual cost in excess of allowances may be approved if specific documentation can be provided. (2-1-95)

05. Medical Exams and Written Report. (7-1-93)

a. Specialist Exams (those addressing a specialty area and provided by an M.D. or licensed psychologist) - one hundred fifty dollars (\$150) maximum plus actual cost of related procedures (e.g., x-rays). (7-1-93)

b. Psychological. Usual and customary up to one hundred forty dollars (\$140) based upon test needed. (7-1-93)

c. Ophthalmologist/Optomtrist - Table. The following fees will be the maximums for general visual exam and accompanying test for ophthalmologist/optometrist. The fee also includes frames and glasses. Tinted glasses require a prescription for IDVR payment. The specialist fee for ophthalmologist will be authorized when diseases of the eye are prevalent and cannot be dealt with by an optometrist.

PROPOSED FEE SCHEDULE		
Procedure	Code	Fee
Visual Exam	92004	\$55 <u>70</u>
Tonometry	92120	\$10 <u>25</u>

PROPOSED FEE SCHEDULE		
Visual Fields	92082	\$3348
Fundus Photos	92250	\$2540
Spectacle Frames	V2020	\$4560
Single Vision Lenses (per pair)	V2100	\$4560
Bifocals (per pair)	V2200	\$7085

(7-1-93)()

d. Audiologist. ~~Fifty-five~~ Seventy-five dollars (\$~~55~~ 75) maximum. (7-1-93)()

e. General Basic Medical. Fifty-five dollars (\$55) maximum. (7-1-93)

06. Provisions. Provision of purchased services contingent upon financial need of the recipient; computation of budget limits by family size for allowable monthly cost for utilities, clothing/food, transportation, and entertainment. On an annual basis the Division will secure from the Idaho Department of Health and Welfare the information they utilize to calculate allowable cost for the four family budget categories listed above in qualifying for either ADC or AABD. ~~The Division will use this information on an annual basis to modify its provisions under the relevant section of IDAPA 47, Title 01, Chapter 02, Subsection 400.08.~~ (2-1-95)()

07. ~~Self-Employment Endeavors. Five thousand dollars (\$5,000) or as negotiated by review at the Chief, Bureau of Field Services level. Medicaid Allowable. The Division will only pay the Medicaid rate for those vendors who accept Medicaid. If the vendor only accepts a limited number of Medicaid claims and is beyond that number, then the Division will consider that as not accepting Medicaid for that particular claim only.~~ (7-1-93)()

08. Transportation. Transportation is not a primary service. It will be considered only to support and insure the success of diagnostic, evaluation, or rehabilitation services and not as a stand-alone service. (7-1-93)

a. Public Conveyance - Actual Cost (7-1-93)

b. Private Vehicle (7-1-93)

i. One-time use at allowable reimbursement rate established in travel rules by the State Board of Examiners. (7-1-93)

ii. Multiple use (e.g., to attend school) at ninety dollars (\$90) per month maximum. (7-1-93)

iii. Extraordinary travel related to medical services may be reimbursed at the rate established by the Board of Examiners. (7-1-93)

09. Maintenance. The maximum allowable monthly maintenance payment will not exceed the monthly maximums allowed for individual SSI payments as established by the Social Security Administration. Maintenance is not a primary service. Maintenance is a supportive service. The cost of maintenance may not exceed the amount of increased expenses that the rehabilitation program causes for the individual or his/her family. It is not intended to pay for those living costs that exist irrespective of the individual's status as a vocational rehabilitation client. Maintenance must be tied to the achievement of specific vocational rehabilitation intermediate outcomes which must be stated and documented in the case record and IWRP to justify payments. Maintenance may be provided during diagnosis and evaluation when cost of food and shelter represent out-of-ordinary or extra cost imposed by reason of the diagnostic or evaluative services. (7-1-94)

10. Copy Fees. The Division will pay a maximum of fifteen dollars (\$15) per incident to agencies, organizations, or individuals providing copies of records to be used for Division purposes. (7-1-93)

11. Rehabilitation Facility Fees. Negotiated on an annual basis. (7-1-93)

12. Sandimmune. Effective January 1, 1993, the Idaho Division of Vocational Rehabilitation will no longer cover the cost of Sandimmune (anti-rejection) drug for post-transplant clients in the State Kidney program as established in Idaho Code 33-2307 and 2308. The Idaho Division of Vocational Rehabilitation in its General State Federal Program (P.L. 102-569) will continue the pursuit of comparable benefits in the acquisition of Sandimmune and will only purchase this service subject to the laws and policies governing the State and Federal Rehabilitation program.

Ref: (1) P.L. 102-569
(2) 34 CFR 361.46
(3) State Plan for Vocational Rehabilitation (Section 6.3.c.)
(4) IDAPA 47, Title 01, Chapter 02, Sections 300 and 500.

(7-1-94)

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