

IDAPA 37 – DEPARTMENT OF WATER RESOURCES

Water Allocations Bureau

37.03.01 – Adjudication Rules

Who does this rule apply to?

General public.

What is the purpose of this rule?

These rules implement statutes governing the filing of notices of claims to water rights acquired under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications.

What is the legal authority for the agency to promulgate this rule?

This rule implements the following statutes passed by the Idaho Legislature:

Adjudication of Water Rights:

- [Section 41-1409, Idaho Code](#) – Notice of Claim
- [Section 42-1410, Idaho Code](#) – Examination of Water System and of Claims
- [Section 42-1414, Idaho Code](#) – Fees for Filing Notice of Claims with the Director
- [Section 42-1415, Idaho Code](#) – Enforcement of Filing Fees

Who do I contact for more information on this rule?

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37.03.01 – ADJUDICATION RULES

000. LEGAL AUTHORITY.

These rules are adopted under the legal authorities of Section 42-1414, and 42-1805(8), Idaho Code. (3-18-22)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 37.03.01, “Adjudication Rules.” (3-18-22)

02. Scope. These rules implement statutes governing the filing of notices of claims to water rights acquired under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications, as provided in Sections 41-1409, 42-1414 and 42-1415, Idaho Code. (3-18-22)

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Amendment Fee. The additional fee payable at the time of filing an amendment to a claim, as provided in Section 42-1414(2), Idaho Code. (3-18-22)

02. Aquaculture. The use of water for propagation of fish, shell fish, and any other animal or plant product naturally occurring in an underwater environment. (3-18-22)

03. Aquaculture Fee. The variable fee payable for aquaculture use, as provided in Section 42-1414(1)(b)(iii), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. (3-18-22)

04. Claim. A notice of claim to a water right acquired under state law, as provided in Section 42-1409(4), Idaho Code. (3-18-22)

05. Department. The Idaho Department of Water Resources. (3-18-22)

06. Director. The Director of the Idaho Department of Water Resources. (3-18-22)

07. Domestic Use. Domestic use as defined in Section 42-1401A(4), Idaho Code. (3-18-22)

08. Flat Fee. The per claim fee for filing claims, as provided in Section 42-1414(1)(a), Idaho Code. (3-18-22)

09. Late Fee. The additional fee payable for the filing of late claims, as provided in Section 42-1414(3), Idaho Code. (3-18-22)

10. Per Acre Fee. The variable fee for irrigation use, as provided in Section 42-1414(1)(b)(i), Idaho Code, which shall be calculated for each acre and fraction thereof rounded to the next whole acre. (3-18-22)

11. Per Cfs Fee. The variable fee payable for other uses, as provided in Section 42-1414(1)(b)(iii), (iv) and (v), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. (3-18-22)

12. Per Kilowatt Fee. The variable fee payable for power generation use, as provided in Section 42-1414(1)(b)(ii), Idaho Code, which shall be calculated for each kilowatt and fraction thereof. (3-18-22)

13. State Law Claim Form. The department’s form entitled “Notice of Claim to a Water Right Acquired Under State Law as provided in Section 42-1409(4), Idaho Code. (3-18-22)

14. Stock Watering Use. Stock watering use as defined in Section 42-1401A(11), Idaho Code. (3-18-22)

15. Total Fee. The fee payable for filing a claim, which consists of the flat fee plus any applicable variable fee and late fee. (3-18-22)

16. Variable Fee. The fee payable for filing claims in addition to the flat fee, as provided in Section 42-1414(1)(b), Idaho Code. (3-18-22)

17. Water Delivery System. All structures and equipment used for diversion, storage, transportation, and use of water from the water source to and including each place of use. (3-18-22)

18. Water Delivery Organization. An irrigation district, a water utility, a municipality, or any similar claimant of a water right who diverts water pursuant to the water right claimed and delivers the water to others who make beneficial use of the water diverted by the water delivery organization pursuant to the water right claimed by the water delivery organization. (3-18-22)

011. ABBREVIATIONS.

01. AF. An acre foot (feet). (3-18-22)

02. CFS. Cubic foot (feet) per second. (3-18-22)

03. NA. Not applicable. (3-18-22)

04. PIN. Parcel identification number. (3-18-22)

012. -- 024. (RESERVED)

025. GENERAL.

01. Requirement to Pay. All persons filing claims to water rights acquired under state law or amendments to claims to water rights acquired under state law shall be required to pay filing fees as set forth by statute and these rules. (3-18-22)

02. Method of Payment. Fees shall be paid in legal tender of the United States; or by money order, certified check, cashier's check, personal check, or by electronic payment on-line payable to the department in legal tender of the United States. Two-party checks will not be accepted. (3-18-22)

03. Personal Check. If a personal check in payment of a flat fee, a variable fee, or a late fee, is returned unpaid to the department or the debit or credit card payment is rejected by the financial institution, the claims covered by the returned check or the rejected debit or credit card will be rejected and returned to the claimant. If a personal check in payment of an amendment fee is returned unpaid to the department or the debit or credit card payment is rejected by the financial institution, the amended claim will be rejected and returned to the claimant, but the original claim will still be in effect. (3-18-22)

04. Time of Payment. Flat fees and variable fees shall be payable to the department at the time of filing a claim. Amendment fees shall be payable to the department at the time of filing the amended claim. Late fees shall be payable at the time of filing the late claim. (3-18-22)

05. Government Voucher. Fees payable by government agencies (other than agencies of foreign governments) may be paid when due by government voucher. If full payment of the voucher is not received within forty-five (45) days of the date the voucher is received, the unpaid voucher will be treated as a returned check as provided in Subsection 025.03. (3-18-22)

06. Rejection of Claim. Claims submitted without the correct filing fee shall be rejected and returned to the claimant. (3-18-22)

07. Fire-Fighting. A claim is not required to be filed for water used solely to extinguish an existing fire on private or public lands, structures, or equipment, or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire pursuant to Section 42-201(3), Idaho Code. A claim is required for the use of water for domestic purposes in regularly maintained firefighting stations and for the storage of water for fighting future fires. (3-18-22)

026. -- 029. (RESERVED)

030. FLAT FEES.

01. Small Domestic and Stock Water. A flat fee of twenty-five dollars (\$25) shall be payable for each claim for domestic use and/or stock watering use meeting the definition of domestic use and/or stock watering use in Rule 010. (3-18-22)

02. Other Claims. A flat fee of fifty dollars (\$50) shall be payable for each claim that does not meet the criteria of Subsection 030.01. (3-18-22)

031. -- 034. (RESERVED)

035. VARIABLE FEES.

01. General. For each claim not meeting the criteria of Subsection 030.01, there may be a variable fee in addition to the flat fee. (3-18-22)

02. Per Acre Fee. (3-18-22)

a. A fee of one dollar (\$1.00) per acre shall be required for claims for irrigation use. (3-18-22)

b. The per acre fee shall only be charged once against a particular acre, regardless of the number of claims filed for the irrigation of that acre or the number of claimants filing claims for the irrigation of that acre. (3-18-22)

c. The per acre fee shall be payable by the first person to file a claim for the irrigation of a particular acre. (3-18-22)

d. The per acre fee for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres shall be determined based upon the acreage claimed to be irrigated by the project or irrigation district within the boundaries of the project or irrigation district. (3-18-22)

03. Per Kilowatt Fee. (3-18-22)

a. A per kilowatt of capacity (manufacturer's nameplate rating) fee of three dollars and fifty cents (\$3.50) per kilowatt, or two hundred fifty thousand dollars (\$250,000.00), whichever is less, shall be required for claims for power use. (3-18-22)

b. The per kilowatt fee shall be determined based upon the total generating capacity of all generators in which the water right claimed is used. (3-18-22)

c. The total per kilowatt fee for all claims filed for a single hydropower facility shall not exceed the per kilowatt fee for the total generating capacity of all generators in the hydropower facility. (3-18-22)

04. Per CFS Fee. (3-18-22)

a. A fee of ten dollars (\$10) per cfs for aquaculture shall be required. A fee of one hundred dollars (\$100) per cfs for all other uses shall be required except for irrigation, power, and domestic and stock watering uses meeting the definition of domestic and stock watering use in Section 010. (3-18-22)

b. For a claim to water for more than one (1) public purpose, the per cfs fee shall only be charged once per cfs claimed. Public purposes shall include public in-stream flows, lake level maintenance, wildlife, aesthetic beauty, and recreation. (3-18-22)

c. If there is a seasonal variation in the number of cfs claimed, the per cfs fee shall be based upon the maximum number of cfs claimed for any period during a single calendar year. (3-18-22)

d. The per cfs fee shall apply to claims for water quality improvement, recreation, aesthetic purposes, and any other purpose not expressly listed at Section 42-1414(1), Idaho Code, except as otherwise provided by these rules. (3-18-22)

05. Claims Including Storage. (3-18-22)

a. The variable fee for a claim that includes storage shall be based upon the ultimate use of the water stored. If the claim states purposes other than diversion to storage, storage, and diversion from storage, the total variable fee will be determined as provided in Subsection 035.06. (3-18-22)

b. No variable fee shall be payable for water claimed for ground water recharge purposes. (3-18-22)

c. For purposes of determining the per cfs fee for amounts of water claimed in af, one (1) cfs equals one and ninety-eight one-hundredths (1.98) af per day of diversion to storage. (3-18-22)

d. No variable fee shall be payable for minimum by-pass flows. (3-18-22)

06. Multiple Purpose Claims. If a claimant claims more than one (1) purpose of use on a single claim, the variable fee will be the total of the variable fees payable for each purpose of use. (3-18-22)

07. Exceptions. No variable fee shall be payable for claims or portions of claims for fire-fighting purposes if a claim is required under Subsection 025.07 or for domestic use and/or stock watering use meeting the definitions of domestic use and stock watering use in Section 010. (3-18-22)

036. -- 044. (RESERVED)

045. AMENDMENT FEES.

When a claimant files an amendment to a claim, the total fee shall be recalculated as if the amended claim were the original claim. If the total fee as recalculated is greater than the total fee paid at the time the claim was filed, the amendment fee shall be the difference between the two (2) amounts. No refund shall be made if the total fee as recalculated is less than the total fee paid at the time the claim was filed. (3-18-22)

046. -- 049. (RESERVED)

050. LATE FEES.

01. Late Fee Payable. A late fee shall be payable when a claim is filed after the date set forth in the first commencement notice mailed to the claimant or the claimant's predecessor in interest pursuant to Sections 42-1414(3), Idaho Code. (3-18-22)

02. Waiver. The late fee may be waived by the director for good cause shown. (3-18-22)

051. -- 054. (RESERVED)

055. REFUNDS.

Fees shall not be refunded or returned except where the fee was miscalculated at the time the claim was filed or as expressly provided in these rules. (3-18-22)

056. -- 059. (RESERVED)

060. SUFFICIENCY OF CLAIMS.

01. Single Claim. Except for claims based on both state law and federal law, a single claim may describe only one (1) water right. A claim that describes more than one (1) water right will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (3-18-22)

02. State Law Claim Form -- Minimum Requirements. Claims filed on the state law claim form shall contain the following information: (3-18-22)

a. Name, Address and Phone Number of Claimant. The name, address, and phone number of the claimant and all co-claimants claiming the water right jointly with the claimant shall be listed at item one (1) of the form. (3-18-22)

b. Date of Priority. The date of priority shall be listed at item two (2) of the form, and shall include month, day and year. Only one (1) priority may be stated unless the claim is based upon both state and federal law as provided in Subsection 060.01. If more than one (1) priority date is stated, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (3-18-22)

i. Within thirty (30) days, unless an extension by the director or his designee is approved, the claimant shall provide evidence of the priority date to support the water right claimed. If the claimant fails to provide evidence of priority, the form may be rejected and returned with no refund of the fees paid. (3-18-22)

c. Source of Water Supply. The source of water supply shall be stated at item three (3) of the form. (3-18-22)

i. For surface water sources, the source of water shall be identified by the official name listed on the U.S. Geological Survey Quadrangle map. If no official name has been given, the name in local common usage should be listed. If there is no official or common name, the source should be described as "unnamed stream" or "spring." The first named downstream water source to which the source is tributary shall also be listed. For ground water sources, the source shall be listed as "ground water." (3-18-22)

ii. Only one (1) source shall be listed unless the claim is for a single water delivery system that has more than one (1) source, or the claim is for a single licensed or decreed right that covers more than one (1) water delivery system. If more than one (1) source is listed and the claim is not for a single water delivery system that has more than one (1) source, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (3-18-22)

d. Location of Point of Diversion. For claims other than in-stream flows, the location of the point(s) of diversion shall be listed at item four (4) part (a) of the form. For claims to in-stream flows, the beginning and ending points of the claimed in-stream flow shall be listed at item four (4) part (b) of the form. (3-18-22)

i. The location of the point of diversion shall be described to nearest forty (40) acre tract (quarter-quarter section) or government lot number, and shall include township number (including north or south designations), range number (including east or west designations), section number, and county. (3-18-22)

ii. The claimant shall also list the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor's office for the parcel where the water is diverted unless no Parcel Number or PIN is recorded for the property at the point of diversion. (3-18-22)

iii. If the point of diversion is located in a platted subdivision, a plat of which has been recorded in the county recorder's office for the county in which the subdivision is located, the claimant shall also list the subdivision name, block number and lot number in item thirteen (13) of the form (remarks section). (3-18-22)

iv. A claim to a water right that includes storage shall state the point at which water is impounded (applicable only to on-stream reservoirs) or the point at which water is diverted to storage (applicable only to off-stream reservoirs), the point at which water is released from storage into a natural stream channel (applicable only where a natural stream channel is used to convey stored water), and the point at which water is rediverted (applicable only where a natural channel is used to convey stored water). (3-18-22)

v. Only one (1) point of diversion shall be listed unless the claim is for a single water delivery system that has more than one (1) point of diversion, or the claim is for a single licensed or decreed water right that covers more than one (1) water delivery system. If more than one (1) point of diversion is listed and the claim is not for a

single water delivery system that has more than one (1) point of diversion, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (3-18-22)

e. Description of Diversion Works. The diversion works shall be described at item five (5) of the form. (3-18-22)

i. The description shall include all major components of the water delivery system, such as dams, reservoirs, ditches, pipelines, pumps, wells, headgates, etc. The description shall also include those dimensions of major components which affect the diversion capacity of the water delivery system. The description shall also state whether the ditches are lined and/or covered, the depth of wells, the horsepower capacity of pumps, and whether headgates are automatic or equipped with locks and/or measuring devices. (3-18-22)

ii. The description shall include the dates and a description of any changes in use (including change in point of diversion, place of use, purpose of use, and period of use) or enlargements in use (including an increase in the amount of water diverted, the number of acres irrigated, or additional uses of water), and as to those dimensions required to be described above, the dimensions as originally constructed and as enlarged. (3-18-22)

iii. Water delivery organizations shall describe the water delivery system up to and including the point where responsibility for water distribution is assumed by entities other than the water delivery organization. (3-18-22)

f. Purpose of Use and Period of Use. Each purpose for which water is claimed, the period of use for each purpose for which water is claimed, and the amount of water claimed for each purpose for which water is claimed shall be listed at item six (6) of the form. Period of use shall include the month and day of the first and last day of use. For example, the period of use for domestic use is often January 1st through December 31st. (3-18-22)

i. The purpose may be described in general terms such as irrigation, industrial, municipal, mining, power generation, fish propagation, domestic, stock watering, etc. (3-18-22)

ii. A claim to a water right that includes storage shall be broken down into component purposes with the ultimate use(s) of the stored water indicated. The component purposes of a storage right are diversion to storage (not applicable to on-stream reservoirs), storage, and diversion from storage (not applicable where the ultimate use is an in-reservoir public purpose). Detention of water in a holding pond that can be filled in less than twenty-four (24) hours at the claimed diversion rate is not required to be claimed as storage. The amount of water claimed shall be limited to the active storage capacity of the reservoir unless a past practice of refilling the reservoir during the water year (October 1 to September 30) is shown or the claim is for a licensed or decreed right that includes refill. If a past practice of refilling the reservoir is shown or if the claim is for a licensed or decreed right that includes refill, the total amount of water claimed for the calendar year and the entire period during which diversion to storage or impoundment occurs shall be indicated. (3-18-22)

iii. The amount of water claimed for each purpose for which water is claimed shall not exceed the amount of water beneficially used for the purpose claimed, and the period of use for each purpose claimed shall not exceed the period in which water is beneficially used for the purpose claimed. (3-18-22)

iv. The amount of water diverted shall be listed in cfs, and the amount of water stored shall be listed in af per annum. (3-18-22)

g. Amount of Water Claimed. The total amount of water claimed shall be listed at item seven (7) of the form. The total amount of water claimed shall not exceed the total of the amounts listed at item six (6) of the form, or the total diversion capacity of the diversion system, whichever is less. (3-18-22)

h. Description of Non-Irrigation Uses. Non-irrigation uses shall be fully described at item eight (8) of the form. For domestic uses, the number of households served shall be described; for stock watering uses, the type of stock and number of each type of stock shall be described. (3-18-22)

i. If the claimant's domestic use does not meet the definition of domestic use in Subsection 010.07,

the form will be rejected and returned unless the appropriate variable fee is paid. (3-18-22)

ii. The claimant shall also state whether the stock watering use is in-stream, or whether water is diverted from the source for stock watering. Both types of stock watering cannot be filed on the same claim form; each type requires a separate claim. (3-18-22)

iii. Domestic use for organization camps and public campgrounds shall be fully described, including but not limited to the number of camp units, water faucets, flush toilets, showers, and sewer connections. Description of domestic use for organization camps and public campgrounds shall also include the average and peak number of individuals using the facility, and the periods when peak or average rates of usage occur. (3-18-22)

i. Place of Use. The place of use for each purpose for which water is claimed shall be listed at item nine (9) of the form, except that the place of use for in-stream flows for public purposes need not be listed if the place of use is fully described as the stream between the beginning and ending points listed as the points of diversion. (3-18-22)

i. Except claims for irrigation projects and irrigation districts meeting the criteria described in Subsection 060.i.ii. below, the number of acres irrigated shall be described by entering the appropriate numbers in the appropriate boxes for each forty (40) acre tract or government lot on the form. For other uses, a symbol or letter corresponding to the purpose for which water is claimed shall be placed in the appropriate box for each forty (40) acre tract or government lot on the form. (3-18-22)

ii. Claims for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres shall be accompanied by a map showing the boundaries of the project or irrigation district, and shall state the total number of acres irrigated within the boundaries of the project or irrigations district. The project or district shall submit a map of the boundary of the place of use and, when available, a digital boundary defined in Section 42-202(B)(2), Idaho Code. (3-18-22)

iii. The claimant shall also list the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor's office for the parcel where the water is used unless no Parcel Number or PIN is recorded for the property at the place of use or the PIN is the same as the PIN shown in item four (4) for the point of diversion. (3-18-22)

j. County of Place of Use. The county(ies) in which the place(s) of use is (are) located shall be listed at item ten (10) of the form. (3-18-22)

k. Authority to Assert Claim. The claimant shall indicate at item eleven (11) of the form whether the claimant is the owner of the place(s) of use. If the claimant is not the owner of the place(s) of use, the claimant shall describe in the remarks section of the form the claimant's authority to assert the claim. Unless the claimant is a water delivery organization, the claimant shall also state the name, address, and phone number of the owner(s) of the place of use in item thirteen (13) (remarks section) of the form. (3-18-22)

l. Other Water Rights. The claimant shall describe at item twelve (12) of the form any other water rights used at the same place and for the same purpose as the right claimed. If there are no other water rights used at the same place and for the same purpose as the right claimed, the claimant shall state "NA" or "none." (3-18-22)

m. Remarks. At item thirteen (13) of the form, the claimant may submit any additional, relevant information not specifically requested. If the space provided is not sufficient, remarks shall be set forth on a separate piece of paper and attached to the form. All separate attachments must be specifically referenced in the remarks section of the form. (3-18-22)

n. Maps. An aerial photograph or USGS quadrangle map shall be included with the claim, unless the claim meets the definition of domestic use and stock watering use as defined in Section 010 or unless the claim is submitted electronically through the department's online claim filing website. The point(s) of diversion, place(s) of use, and the water delivery system shall be identified on the aerial photograph or USGS quadrangle map. (3-18-22)

o. Basis of Claim. The basis of the claim shall be indicated at item fourteen (14) of the form. If a water right number has been assigned by the department to the right claimed, the water right number shall also be indicated. If a water right number has not been assigned and the water right is based upon a decree, the claimant shall list the title and date of the decree, the case number, and the court that issued the decree. If the basis of claim is a beneficial use (also known as the constitutional method of appropriation), the claimant shall provide a short description of events or history of the development of the water right. (3-18-22)

p. Signature. Each claim must be signed by the claimant at item fifteen (15) of the form, unless the claim is submitted electronically through the department's online claim filing website. Each claimant, through submission of a signed claim or through submission of a claim by means of the department's online claim filing website, solemnly swears or affirms under penalty of perjury that the statements contained in the notice of claim are true and correct. (3-18-22)

i. For claims submitted through the department's online claim filing website, the form shall be submitted by a person listed as the claimant at item one (1) of the form unless the person submitting the form has authority to submit the form for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be submitted by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to submit the form. (3-18-22)

ii. For claims that are not submitted by means of the internet, the form must be signed by each of the persons listed as claimants at item one (1) of the form unless the signatory has authority to sign for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be signed by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to sign the form. The signatory's title shall be indicated with the signature. (3-18-22)

q. Notice of Appearance. If notices to be sent by the director to the claimant are to be sent to the claimant's attorney, the claimant's attorney shall list the attorney's name and address and sign and date the form at item sixteen (16) of the form. (3-18-22)

03. State Law Claim Form -- Insufficient Claims, Waivers. (3-18-22)

a. Claims filed on the state law claim form that do not contain the information required by Subsection 060.02 shall be rejected and returned along with any fees paid, unless otherwise provided by these rules. (3-18-22)

b. The director may waive the minimum information requirements of Subsection 060.02 and accept the claim for good cause shown. (3-18-22)

04. Further Information. This Rule 060 sets forth minimum requirements for the filing of claims. The director may request further information in support of the assertions contained in a claim as part of the investigation of the water system and the claims pursuant to Section 42-1410, Idaho Code. (3-18-22)

061. -- 064. (RESERVED)

065. REJECTED AND RETURNED CLAIMS.

01. Rejected Claims. Rejected claims shall be returned to the claimant by ordinary mail at the most recent address shown by department records. The rejected claim shall be accompanied by a notice of rejection that states generally the reason(s) for rejection. (3-18-22)

02. Refiled Claims. Claims that have been rejected and returned to the claimant may be refiled with the appropriate fees and appropriate information at any time prior to the deadline for filing the original claim. Claims refiled after the deadline for filing the original claim will be subject to the late fee, unless the claim is refiled within thirty (30) days from the date of mailing the rejected claim by the department. (3-18-22)

066. -- 999. (RESERVED)