

IDAHO ADMINISTRATIVE BULLETIN

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IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.05 - RULES AND STANDARDS FOR HAZARDOUS WASTE

DOCKET NO. 16-0105-9701

NOTICE OF TEMPORARY RULE

EFFECTIVE DATE: The temporary rule is effective July 3, 1997.

AUTHORITY: In compliance with Idaho Code Section 67-5226, notice is hereby given that this agency has adopted a temporary rule. The action is authorized by Idaho Code Sections 39-4401 et seq. and 39-5801 et seq. In addition, 40 CFR 271.21 and Idaho Code Section 39-4404 require the Idaho Department of Health and Welfare to promulgate rules consistent with amendments to federal law.

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

The Rules and Standards for Hazardous Waste are updated annually to maintain consistency with the U.S. Environmental Protection Agency's federal regulations governing hazardous waste as directed by the Idaho Hazardous Waste Management Act. In November 1996 the Board of Health and Welfare (Board) adopted by reference federal hazardous waste regulations revised as of July 1, 1996.

The federal expanded public participation rule was adopted by the Board as part of the November 1996 rulemaking. That rule allows the public an earlier opportunity to become involved in the hazardous waste permitting process. It has become apparent that the public participation rule as adopted is not as clear as it could be. This temporary rule amends the language in Idaho's rules to clarify that the enhanced public participation requirements are applicable to Idaho's hazardous waste program.

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

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

DATED this 6th day of August, 1997.

Paula Junae Saul
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255

TEXT OF DOCKET NO. 16-0105-9701

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, 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)~~(7-3-97)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.01.11 - GROUND WATER QUALITY RULE

DOCKET NO. 16-0111-9701

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 39-105, 39-107, 39-120, and 39-126, Idaho Code and requested by the Legislature under House Concurrent Resolution (HCR) No. 8.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this proposed rulemaking will be held as follows: No hearings have been scheduled. Pursuant to Idaho Code Section 67-5222(2), public hearings will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency. Written requests for hearing must be received by the undersigned on or before August 22, 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:

During its First Regular Session, the Fifty-fourth Idaho Legislature adopted HCR No. 8 requesting the Director of the Department of Health and Welfare (Department) to amend the Ground Water Quality Rules, IDAPA 16.01.11, to specifically recognize the uniqueness of mining when implementing the Ground Water Quality Rules and to eliminate the concept of sensitive ecological systems from the Ground Water Quality Rules. This rulemaking is in response to the Legislature's request under HCR No. 8.

Negotiated rulemaking has not been conducted because the Legislature requested that the Department make specific amendments to the Ground Water Quality Rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rulemaking, contact Susan Burke at (208) 373-0502.

Anyone can submit written comment regarding this proposed rule. All written comments must be received by the undersigned on or before September 5, 1997.

DATED this 6th day of August, 1997.

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

TEXT OF DOCKET NO. 16-0111-9701

006. POLICIES.

It is the intent of the Department to implement, through this rule, the following policies from the Protection and Prevention Sections of the Idaho Ground Water Quality Plan, adopted by the legislature, 1992 Session Law, Chapter 310, Page 922. These policies are: (3-20-97)

01. Ground Water Quality Protection. It is the policy of the state of Idaho to maintain and protect the existing high quality of the state's ground water. (3-20-97)

02. Existing and Projected Future Beneficial Uses. The policy of the state of Idaho is that existing and projected future beneficial uses of ground water shall be maintained and protected, and degradation that would impair existing and projected future beneficial uses of ground water and interconnected surface water shall not be allowed. (3-20-97)

03. Categorization of Ground Water. The policy of the state of Idaho is to provide differential protection for the state's ground water resources. A ground water categorization system should be established for aquifers or portions of aquifers. The categorization system should be based on vulnerability of the ground water, existing and projected future beneficial uses of the ground water, existing quality of the ground water, and social and economic considerations. (3-20-97)

04. Ground Water Quality Standards. The policy of the state of Idaho is to establish ground water quality standards for biological, radiological, and chemical constituents. (3-20-97)

05. Prevention of Ground Water Contamination. The policy of the state of Idaho is to prevent contamination of ground water from all regulated and nonregulated sources of contamination to the maximum extent practical. (3-20-97)()

06. Mining. The policy of the state of Idaho is to protect ground water and allow for the extraction of minerals above and within ground water. ()

007. DEFINITIONS.

01. Agricultural Chemical. Any pesticide, nutrient or fertilizer used for the benefit of agricultural production or pest management. (3-20-97)

02. Aquifer. A geological unit of permeable saturated material capable of yielding economically significant quantities of water to wells and springs. (3-20-97)

03. Beneficial Uses. Various uses of ground water in Idaho including, but not limited to, domestic water supplies, industrial water supplies, agricultural water supplies, aquacultural water supplies, and mining. A beneficial use is defined as actual current or projected future uses of ground water. (3-20-97)

04. Best Available Method. Any system, process, or method which is available to the public for commercial or private use to minimize the impact of point or nonpoint sources of contamination on ground water quality. (3-20-97)

05. Best Management Practice. A practice or combination of practices determined to be the most effective and practical means of preventing or reducing contamination to ground water and interconnected surface water from nonpoint and point sources to achieve water quality goals and protect the beneficial uses of the water. (3-20-97)

06. Best Practical Method. Any system, process, or method that is established and in routine use which could be used to minimize the impact of point or nonpoint sources of contamination on ground water quality. (3-20-97)

07. Board. The Idaho Board of Health and Welfare. (3-20-97)

08. Cleanup. The removal, treatment or isolation of a contaminant from ground water through the directed efforts of humans or the removal or treatment of a contaminant in ground water through management practice or the construction of barriers, trenches and other similar facilities for prevention of contamination, as well as the use of natural processes such as ground water recharge, natural decay and chemical or biological decomposition. (3-20-97)

09. Constituent. Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance occurring in ground water. (3-20-97)

10. Contaminant. Any chemical, ion, radionuclide, synthetic organic compound, microorganism, waste or other substance which does not occur naturally in ground water or which naturally occurs at a lower concentration. (3-20-97)
11. Contamination. The direct or indirect introduction into ground water of any contaminant caused in whole or in part by human activities. (3-20-97)
12. Crop Root Zone. The zone that extends from the surface of the soil to the depth of the deepest crop root and is specific to a species of plant, group of plants, or crop. (3-20-97)
13. Degradation. The lowering of ground water quality as measured in a statistically significant and reproducible manner. (3-20-97)
14. Department. The Idaho Department of Health and Welfare. (3-20-97)
15. Ground Water. Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-20-97)
16. Ground Water Quality Standard. Values, either numeric or narrative, assigned to any constituent for the purpose of establishing minimum levels of protection. (3-20-97)
17. Highly Vulnerable Ground Water. Ground water characterized by a relatively high potential for contaminants to enter and/or be transported within the flow system. Determinations of ground water vulnerability will include consideration of land use practices and aquifer characteristics. (3-20-97)
18. Irreplaceable Source. A ground water source serving a beneficial use(s) where the reliable delivery of comparable quality and quantity of water from an alternative source in the region would be economically infeasible or precluded by institutional constraints. (3-20-97)
19. Natural Background Level. The level of any constituent in the ground water within a specified area as determined by representative measurements of the ground water quality unaffected by human activities. (3-20-97)
20. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity which is recognized by law as the subject of rights and duties. (3-20-97)
21. Practical Quantitation Level. The lowest concentration of a constituent that can be reliably quantified among laboratories within specified limits of precision and accuracy during routine laboratory operating conditions. Specified limits of precision and accuracy are the criteria listed in the calibration specifications or quality control specifications of an analytical method. (3-20-97)
22. Projected Future Beneficial Uses. Various uses of ground water, such as drinking water, aquaculture, industrial, mining or agriculture, that are practical and achievable in the future based on hydrogeologic conditions, water quality, future land use activities and social/economic considerations. (3-20-97)
23. Recharge Area. An area in which water infiltrates into the soil or geological formation from, including but not limited to precipitation, irrigation practices and seepage from creeks, streams, and lakes, and percolates to one or more aquifers. (3-20-97)
24. Remediation. Any action taken (1) to control the source of contamination, (2) to reduce the level of contamination, (3) to mitigate the effects of contaminants, and/or (4) to minimize contaminant movement. Remediation includes providing alternate drinking water sources when needed. (3-20-97)
- ~~25. Sensitive Ecological System. A habitat or ecosystem containing or supporting one or more of the following: threatened or endangered species; Idaho Department of Fish and Game species of special concern; other rare species; or species or assemblages of species of unique ecological or historical significance. (3-20-97)~~

265. Site Background Level. The ground water quality at the hydraulically upgradient site boundary. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

150. IMPLEMENTATION.

This rule establishes minimum requirements to maintain and protect ground water quality. This rule applies to all activities with the potential to degrade ground water quality. (3-20-97)

01. Ground Water Quality Standards. The numerical and narrative standards in Sections 200 and 301 identify minimum levels of protection for ground water quality and shall be used as a basis for: (3-20-97)

- a. Evaluating or comparing ground water quality when developing or modifying best available methods, best management practices, or best practical methods; (3-20-97)
- b. Identifying permit conditions; (3-20-97)
- c. Establishing cleanup levels; and (3-20-97)
- d. Determining appropriate actions when ground water quality standards are exceeded. (3-20-97)

02. Aquifer Categorization. Aquifers of the state shall be categorized based on vulnerability of the ground water, existing and projected future beneficial uses of the ground water, existing water quality, and social and economic considerations. There shall be three aquifer categories, Sensitive Resource, General Resource, and Other Resource, to provide different levels of protection. The level of protection required for each category and application of standards to these categories are shown in Table I.

Table I. Level of Protection and Application of Standards to Aquifer Categories		
Category	Level of Protection	Application of Standards
Sensitive Resource	Apply best management practices and best available methods. This category provides the highest level of ground water protection.	May apply sticker <u>stricter</u> standards than in Section 200.
General Resource	Apply best management practices and best practical methods.	Apply numerical and narrative standards in Section 200.
Other Resource	Apply best management practices and best practical methods.	May apply less strict standards than in Section 200.

(3-20-97)()

a. All aquifers where there are activities with the potential to degrade ground water quality are categorized in Section 300. Those aquifers where no activities with the potential to degrade ground water quality are occurring will remain uncategorized until such activities are commenced. If no action is taken to categorize an aquifer when an activity(ies) with the potential to degrade ground water quality is initiated, the aquifer will automatically be categorized as General Resource. (3-20-97)

b. Categorization should be considered when an activity with the potential to degrade ground water quality is proposed over an aquifer or portion of an aquifer which presently has no such activities and, based on the criteria in Section 350, the aquifer may be most appropriately categorized as Sensitive Resource or Other Resource.

(3-20-97)

c. Recategorization should be considered when information on vulnerability of the ground water, existing and projected future beneficial uses of the ground water, existing quality of the ground water, and social and economic considerations, in conjunction with one or more of the criteria in Section 350, demonstrates that the aquifer or portion of an aquifer may be more appropriate in another category. (3-20-97)

03. Ground Water-Surface Water Interconnection. The beneficial uses of interconnected surface water shall be recognized when evaluating ground water quality protection. The implementation of water quality programs shall ensure that the quality of ground water that discharges to surface water does not impair the identified beneficial uses of the surface water and that surface water infiltration does not impair beneficial uses of ground water. (3-20-97)

04. Interagency Coordination. The Department will coordinate with other federal, state, and local agencies to pursue interagency agreements when necessary to ensure implementation of this rule for activities which have the potential to degrade ground water quality. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

350. PROCEDURES FOR CATEGORIZING OR RECATEGORIZING AN AQUIFER.

The following process shall be used for categorizing or recategorizing an aquifer. (3-20-97)

01. Criteria for Aquifer Categories. The following criteria shall be considered when a petition to categorize or recategorize aquifers or portions of aquifers is submitted to the Board: (3-20-97)

a. For Sensitive Resource aquifers: (3-20-97)

i. The ground water in an aquifer or portion of an aquifer is of a better quality than the ground water quality standards in Section 200 and maintenance of this quality is needed to protect an identified beneficial use(s); (3-20-97)

ii. The ground water in an aquifer or portion of an aquifer is considered highly vulnerable; (3-20-97)

iii. The ground water in an aquifer or portion of an aquifer represents an irreplaceable source for the identified beneficial use(s); (3-20-97)

iv. The ground water quality in an aquifer or portion of an aquifer has been degraded and there is a need for additional protection measures to maintain or improve the water quality or prevent impairment of a beneficial use; (3-20-97)

v. The ground water within an aquifer or portion of an aquifer is shown to be hydrologically interconnected with surface water and additional protection is needed to maintain the quality of either surface or ground water, ~~or a sensitive ecological system~~. Hydrologic interconnections can include either natural or induced ground water recharge or discharge areas; or (3-20-97)()

vi. The ground water within an aquifer or portion of an aquifer demonstrates other criteria which justify the need for additional protection. (3-20-97)

b. For General Resource aquifers: (3-20-97)

i. An activity with the potential to degrade ground water quality is initiated over an aquifer or portion of an aquifer which presently has no such activities; (3-20-97)

ii. The ground water in an aquifer or portion of an aquifer is currently being used for drinking water or

another beneficial use which requires similar protection; or (3-20-97)

iii. The ground water in an aquifer or portion of an aquifer has a projected future beneficial use of drinking water or another beneficial use which requires similar protection. (3-20-97)

c. For other resource aquifers: (3-20-97)

i. The ground water quality within an aquifer or portion of an aquifer does not meet one or more of the ground water quality standards in Section 200; and allowing the ground water quality to remain at this level does not impair existing or projected future beneficial uses within the aquifer or portion of an aquifer; (3-20-97)

ii. The projected ground water quality within an aquifer or portion of an aquifer will not meet one or more of the ground water quality standards in Section 200 as a result of activities over or within the aquifer or portion of an aquifer; and allowing the proposed degradation will not impair existing or projected future beneficial uses; (3-20-97)

iii. Human caused conditions or sources of contamination have resulted in ground water quality standards in Section 200 being exceeded, and the contamination cannot be remedied for economical or technical reasons, or remediation would cause more environmental damage to correct than to leave in place; or (3-20-97)

iv. The ground water within an aquifer or portion of an aquifer demonstrates other criteria which justify the need for categorization as an Other Resource. (3-20-97)

02. Petition Process. The Department or any other person may petition the Board to initiate rulemaking to categorize or recategorize an aquifer or portion of an aquifer pursuant to IDAPA 16.05.03 Rules of the Department of Health and Welfare, IDAPA 16, Title 05, Chapter 03, Rules Governing Contested Cases and Declaratory Hearings. In addition to the information required in a rulemaking Petition pursuant to IDAPA 16.05.03, the following information shall be submitted in writing by the Petitioner for the identified aquifer or portion of an aquifer: (3-20-97)

a. Current category, if applicable; (3-20-97)

met; b. Proposed category and an explanation of how one or more of the criteria in Subsection 350.01 are (3-20-97)

c. An explanation of why the categorization or recategorization is being proposed; (3-20-97)

d. Location, description and area extent; (3-20-97)

e. General location and description of existing and projected future ground water beneficial uses; (3-20-97)

f. Documentation of the existing ground water quality; (3-20-97)

g. Documentation of aquifer characteristics, where available, including, but not limited to: (3-20-97)

i. Depth to ground water; (3-20-97)

ii. Thickness of the water bearing section; (3-20-97)

iii. Direction and rate of ground water flow; (3-20-97)

iv. Known recharge and discharge areas; and (3-20-97)

v. Geology of the area; (3-20-97)

h. Identification of any proposed standards, for specified constituents, which would be stricter or less

strict than the ground water quality standards in Section 200, or any standards to be applied in addition to those in Section 200; and a rationale for the proposed standards. (3-20-97)

03. Preliminary Department Review. Prior to submission of a petition to the Board to categorize or recategorize an aquifer, any person may seek a preliminary review of the petition from the Department. The Department shall respond to the petitioner with comments within forty-five (45) days. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

400. GROUND WATER CONTAMINATION.

01. Releases Degrading Ground Water Quality. No person shall cause or allow the release, spilling, leaking, emission, discharge, escape, leaching, or disposal of a contaminant into the environment in a manner that: (3-20-97)

a. Causes a ground water quality standard to be exceeded; (3-20-97)

b. Injures a beneficial use of ground water; or (3-20-97)

c. Is not in accordance with a permit, consent order or applicable best management practice, best available method or best practical method. (3-20-97)

02. Prevention Measures. (3-20-97)

a. When a numerical standard is not exceeded, but degradation of ground water quality is detected and deemed significant by the Department, the Department shall take one or more of the following actions: (3-20-97)

i. Require a modification of regulated activities to prevent continued degradation; (3-20-97)

ii. Coordinate with the appropriate agencies and responsible persons to develop and implement prevention measures for activities not regulated by the Department; (3-20-97)

iii. Allow limited degradation of ground water quality for the constituents identified in Subsections 200.01.a. and 200.01.c., if it can be demonstrated that: (3-20-97)

(1) Best management practices, best available methods or best practical methods, as appropriate for the aquifer category, are being applied; and (3-20-97)

(2) The degradation is justifiable based on necessary and widespread social and economic considerations; or (3-20-97)

iv. Allow degradation of ground water quality up to the standards in Subsection 200.01.b., if it can be demonstrated that: (3-20-97)

(1) Best management practices are being applied; and (3-20-97)

(2) The degradation will not adversely impact a beneficial use. (3-20-97)

b. The following criteria shall be considered when determining the significance of degradation: (3-20-97)

i. Site specific hydrogeologic conditions; (3-20-97)

ii. Water quality, including seasonal variations; (3-20-97)

- iii. Existing and projected future beneficial uses; (3-20-97)
- iv. Related public health issues; and (3-20-97)
- v. Whether the degradation involves a primary or secondary constituent in Section 200. (3-20-97)

03. Contamination Exceeding a Ground Water Quality Standard. The discovery of any contamination exceeding a ground water standard that poses a threat to existing or projected future beneficial uses of ground water shall require appropriate actions, as determined by the Department, to prevent further contamination. These actions may consist of investigation and evaluation, or enforcement actions if necessary to stop further contamination or clean up existing contamination, as required under the Environmental Protection and Health Act, Section 39-108, Idaho Code. (3-20-97)

04. Agricultural Chemicals. Agricultural chemicals found in intermittently saturated soils within the crop root zone will not be considered ground water contaminants as long as the chemicals remain within the crop root zone, and have been applied in a manner consistent with all appropriate regulatory requirements. (3-20-97)

05. Site-Specific Ground Water Quality Levels. The Department may allow site-specific ground water quality levels, for any aquifer category, that vary from a standard(s) in Section 200 or Section 300, based on consideration of effects to human health and the environment, for: (3-20-97)

- a. Remediation conducted under the Department's oversight; (3-20-97)
- b. Permits issued by the Department; (3-20-97)
- c. Situations where the site background level varies from the ground water quality standard; or (3-20-97)
- d. Other situations authorized by the Department in writing. (3-20-97)

06. Mineral Extraction. Naturally occurring constituents found in ground water within a specified area surrounding an active mineral extraction area, as determined by the Department, will not be considered contaminants as long as all applicable best management practices, best available methods or best practical methods, as approved by the Department, are applied. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN ACCOUNT
DOCKET NO. 16-0120-9701
NOTICE OF TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective July 3, 1997.

AUTHORITY: In compliance with Idaho Code Sections 67-5226(1) and 67-5221(1), notice is hereby given that this agency has adopted a temporary rule and is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Idaho Code Sections 39-105, 39-107, and 39-7602(5). In addition, Section 1452 of the federal Safe Drinking Water Act (SDWA) (42 U.S.C. Section 300j-12) requires the Department of Health and Welfare (Department) to adopt this rule in order to maintain primacy of the drinking water program.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this proposed rulemaking will be held as follows:

Wednesday, August 27, 1997, 7:00 p.m.
Division of Environmental Quality Conference Center
1410 N. Hilton, Boise, Idaho

The hearing site will be accessible to the physically disabled. Interpreters for persons with hearing impairments and brailled or taped information for persons with visual impairments can be provided upon five days' notice. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: The following is the required finding and a concise statement of the supporting reasons for temporary adoption of the rule and a nontechnical explanation of the substance and purpose for proposing the rule for final adoption.

This rulemaking creates a new rule chapter to be cited as IDAPA 16.01.20, Rules of the Idaho Department of Health and Welfare, Title 01, Chapter 20, Rules for Administration of Drinking Water Loan Account. This rulemaking implements the provisions of the 1997 legislation enacted under S. 1036 (Section 105(3)(e), Idaho Code, and Chapter 76, Title 39, Idaho Code) and the 1996 amendments to the SDWA. As proposed, the Rules for Administration of Drinking Water Loan Account promote public health by providing low interest loans to eligible public drinking water systems for needed infrastructure improvements. As money is paid back into the revolving loan account, new loans are made to other recipients that need assistance in maintaining their facilities in order to meet state and federal safe drinking water standards. The Department will begin accepting loan applications by fall of 1997.

Negotiated rulemaking was not appropriate for this rulemaking because, in order to maintain primacy of the drinking water program, the state is required to adopt and initiate the 1996 amendments to the SDWA.

TEMPORARY RULE JUSTIFICATION: Pursuant to Idaho Code Sections 67-5226(1)(a) and (b), the Governor has found that temporary adoption of the rule is appropriate in that the rule protects the public health and safety and complies with deadlines in amendments to governing law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact Lance Nielsen at (208)373-0502.

Anyone may submit written comments regarding this proposed rule. All written comments must be received by the undersigned on or before August 27, 1997.

Dated this 6th day of August, 1997.

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

TEXT OF DOCKET NO. 16-0120-9701

IDAPA 16
TITLE 01
Chapter 20

RULES FOR ADMINISTRATION OF DRINKING WATER LOAN ACCOUNT

000. LEGAL AUTHORITY.

The Idaho Board of Health and Welfare, pursuant to authority granted in Chapters 01 and 76, Title 39, Idaho Code, adopted the following rules for the administration of a Drinking Water Loan Account in Idaho. (7-3-97)T

001. TITLE AND SCOPE.

01. Title. These rules shall be known and cited as IDAPA 16.01.20, Rules of the Idaho Department of Health and Welfare, IDAPA 16, Title 01, Chapter 20, "Rules for Administration of Drinking Water Loan Account." (7-3-97)T

02. Scope. The provisions of these rules shall establish administrative procedures and requirements for establishing, implementing, and administering a state loan program to provide financial assistance to qualifying entities of public water system facilities. The U.S. Environmental Protection Agency provides a capitalization grant to the state of Idaho for this program. Financial assistance projects must be in conformance with the requirements of the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). (7-3-97)T

002. WRITTEN INTERPRETATIONS.

As described in Idaho Code Section 67-5201(19) (b) (iv), the Department of Health and Welfare may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Health and Welfare, Division of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. (7-3-97)T

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal final Division of Environmental Quality actions authorized under these rules pursuant to IDAPA 16.05.03, Rules of the Department of Health and Welfare, IDAPA 16, Title 05, Chapter 03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (7-3-97)T

004. POLICY.

It is the policy of the Idaho Board of Health and Welfare, through the Idaho Division of Environmental Quality, to administer the Drinking Water Loan Account Program. The Drinking Water Loan Account Program provides assistance to eligible public drinking water systems for the planning, design, and construction of facilities to ensure safe and adequate drinking water. It is also the intent of the Board of Health and Welfare to assign a priority rating to those projects which shall facilitate the compliance of any eligible public water system with national primary drinking water regulations applicable to the system or to otherwise significantly further the health protection objectives of these rules and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). (7-3-97)T

005. SYSTEM ELIGIBILITY.

01. Eligible Systems. Public and private community water systems and nonprofit noncommunity water systems. (7-3-97)T

02. Systems Not Eligible. The following public drinking water systems will not be considered eligible for project loans: (7-3-97)T

a. Systems that do not have the technical, managerial, and financial capability to ensure compliance with the requirements of the Idaho Rules for Public Drinking Water Systems (IDAPA 16.01.08) and the Safe Drinking

- Water Act (42 U.S.C. Section 300f et seq.); (7-3-97)T
- b. Systems in significant noncompliance with any requirement of the Idaho Rules for Public Drinking Water Systems (IDAPA 16.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); (7-3-97)T
 - c. Systems under disapproval designation as outlined in the Idaho Rules for Public Drinking Water Systems (IDAPA 16.01.08); (7-3-97)T
 - d. Systems under current drinking water enforcement action by the Division; or (7-3-97)T
 - e. Systems delinquent in payment of the annual state drinking water fee assessment. (7-3-97)T
03. Assistance to Ensure Compliance. Public water systems not eligible for project loans as described in Subsections 005.02.a. and 005.02.b., may receive assistance if: (7-3-97)T
- a. The use of the assistance will ensure compliance; (7-3-97)T
 - b. The owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures); (7-3-97)T
 - c. The Division determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with state and federal drinking water requirements over the long term; and (7-3-97)T
 - d. Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of the Idaho Rules for Public Drinking Water Systems (IDAPA 16.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) or variance, the Division conducts a review to determine whether this section applies to the system. (7-3-97)T

006. -- 009. (RESERVED).

010. DEFINITIONS.

- For the purpose of the rules contained in this chapter, the following definitions apply: (7-3-97)T
- 01. Administrator. The Administrator of the Division of Environmental Quality. (7-3-97)T
 - 02. Applicant. Any qualifying entity making application for loan funds. (7-3-97)T
 - 03. Board. The Idaho State Board of Health and Welfare. (7-3-97)T
 - 04. CE. "Categorical exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. (7-3-97)T
 - 05. Community Water System. A public water system that: (7-3-97)T
 - a. Serves as least fifteen (15) service connections used by year round residents of the area served by the system; or (7-3-97)T
 - b. Regularly serves at least twenty-five (25) year-round residents. (7-3-97)T
 - 06. Construction. The building, erection, acquisition, alteration, reconstruction, improvement, or extension of public water system facilities, including planning to determine the economic and engineering feasibility

of public water system facilities, the engineering, architectural, legal, fiscal, and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, and other action necessary in the construction of public water system facilities and the inspection and supervision of the construction. (7-3-97)T

07. Department. The Idaho Department of Health and Welfare. (7-3-97)T
08. Director. The Director of the Idaho Department of Health and Welfare or his/her designee. (7-3-97)T
09. Disadvantaged Community. The service area of a public water system that meets affordability criteria established by the Division of Environmental Quality after public review and comment. (7-3-97)T
10. Disadvantaged Loans. Loans made to a disadvantaged community. (7-3-97)T
11. Division. The Division of Environmental Quality. (7-3-97)T
12. EID. Environmental Information Document. (7-3-97)T
13. EIS. Environmental Impact Statement. (7-3-97)T
14. Eligible Costs. Costs which are necessary for planning, designing, and/or constructing public water system facilities. To be eligible, costs must be reasonable, allowable, and allocable. (7-3-97)T
15. Eligible Systems. Public and private community water systems and nonprofit noncommunity water systems. (7-3-97)T
16. Engineering Report. A report which compares public water system facility alternatives and identifies the most cost effective, environmentally sound alternative. (7-3-97)T
17. Financial Management System. Uniform method of recording, summarizing, and analyzing financial information about the public water system facility. (7-3-97)T
18. FNSI. Finding of no significant impact. (7-3-97)T
19. Ineligible Costs. Costs which are not necessary for the planning, designing, and/or construction of public water system facilities or which are not reasonable, allowable, or allocable. (7-3-97)T
20. MCL. Maximum Contaminant Level. The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. (7-3-97)T
21. Municipality. A city, town, or other public entity created pursuant to state law. (7-3-97)T
22. Noncommunity Water System. A public water system that is not a community water system. (7-3-97)T
23. Nonprofit Noncommunity Water System. A public water system that is not a community water system and is governed by Section 501 of the U. S. Internal Revenue Code and includes but is not limited to: state agencies, municipalities, and nonprofit organizations such as churches and schools. (7-3-97)T
24. Nontransient Noncommunity Water System. A public water system that is not a community water system and that regularly serves at least 25 (twenty-five) of the same persons over six (6) months per year. (7-3-97)T
25. O & M Manual. Operation and Maintenance Manual is a guidance and training manual outlining the optimum operation and maintenance of the public water system facility or its components. (7-3-97)T
26. Person. An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state

agency, municipality, or federal agency). (7-3-97)T

27. Plan of Operation. A schedule of specifications and completion dates for construction, start-up, and operation of the public water system facility. (7-3-97)T

28. Priority List. A list of proposed drinking water projects rated by severity of risk to public health, the necessity to ensure compliance with the Safe Drinking Water Act (42 U.S.C. 300f Section et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. (7-3-97)T

29. Public Water Systems. A system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least fifteen (15) service connections or regularly serves at least twenty-five (25) individuals. Such term includes: (7-3-97)T

a. Any drinking water source, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such systems, and (7-3-97)T

b. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A connection to a system that delivers water by a constructed conveyance shall not be considered a connection if: (7-3-97)T

i. The water is used exclusively for purposes other than residential uses (consisting of drinking, cooking, and bathing, or other similar uses); (7-3-97)T

ii. The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking, cooking, or bathing, or other similar uses; or (7-3-97)T

iii. The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations. (7-3-97)T

30. Qualifying Entity. Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, which owns or operates a public water system and which establishes and maintains a dedicated loan repayment source. (7-3-97)T

31. Scope of Project. Those portions of the proposed facility including administration, engineering, and physical components that constitute a complete project as determined from the most cost effective, environmentally sound public water system facility alternative identified in an engineering report and approved by the Division. (7-3-97)T

32. State. The State of Idaho. (7-3-97)T

33. Supplier or Provider of Water. Any person who owns and/or operates a public water system. (7-3-97)T

34. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (7-3-97)T

35. Termination. An action by the Administrator to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts shall not be reinstated. (7-3-97)T

36. URTH. Unreasonable risks to health. Refers to a level of contamination that presents an "unreasonable risk to health" and is determined on a contaminant by contaminant basis by the U.S. Environmental Protection Agency. (7-3-97)T

37. User Charge System. A system of rates and service charges applicable to specific types of users,

including any legal enforcement mechanism as may be required, which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the public water system facility. (7-3-97)T

38. Water System Protection Ordinance. An ordinance adopted pursuant to Chapter 32, Title 42, Idaho Code, or other applicable law which requires new connections to be properly designed and constructed, which prohibits cross-connections with non-potable water sources (and in all ways protects the water system from injection of contaminants), and which provides for fees for service from users or classes of users. (7-3-97)T

011. FINANCIAL TECHNICAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for the construction of projects unless the applicant has demonstrated and certified that it has the legal, technical, institutional, managerial, and financial capabilities to ensure construction, operation and maintenance (including equipment replacement of the proposed public water system facility), and to repay principal and interest which would be due on a loan from the state revolving loan fund. (7-3-97)T

01. Information Needed. Before an application shall be considered complete, the applicant must submit all necessary information on a form prescribed by the Division along with an analysis of that information. The information shall include, but not be limited to, demographic information of the applicant, estimated construction costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project. (7-3-97)T

02. Incorporated Nonprofit Applicants. (7-3-97)T

a. In addition to all other information required to be submitted by these rules and regulations, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Division by its articles of incorporation and/or bylaws, that: (7-3-97)T

i. The corporation is nonprofit and lawfully incorporated pursuant to Chapter 03, Title 30, Idaho Code; (7-3-97)T

ii. The corporation is authorized to incur indebtedness to construct, improve, or repair public water systems facilities; (7-3-97)T

iii. The corporation is authorized to secure indebtedness by pledging corporation property, including any revenues raised through a user charge system; (7-3-97)T

iv. The corporation exists either perpetually or for a period long enough to repay a public water system facility loan; and (7-3-97)T

v. The corporation is capable of raising revenues by fixing and collecting user charges. (7-3-97)T

b. The Division may impose conditions on the making of a public water system facility loan to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and regulations and the provisions of Chapter 76, Title 39, Idaho Code. (7-3-97)T

03. Cost Allocation. An applicant proposing to construct public water system facilities designed to serve two (2) or more qualifying entities must show how the costs shall be allocated among the participating entities. Such applicants must provide an executed inter-municipal service agreement which, at a minimum, incorporates the following information: (7-3-97)T

a. The basis upon which the costs are allocated; (7-3-97)T

b. The formula by which the costs are allocated; and (7-3-97)T

c. The manner in which the cost allocation system shall be implemented. (7-3-97)T

04. Waivers. The requirement in Subsection 011.03 may be waived by the Department if the applicant

- can demonstrate: (7-3-97)T
- a. Such an agreement is already in place; (7-3-97)T
 - b. There is documentation of a service relationship in the absence of a formal agreement; or (7-3-97)T
 - c. The entity providing public drinking water exhibits sufficient financial strength to continue the project if one (1) or more of the entities supplying drinking water fails to participate. (7-3-97)T

012. -- 019. (RESERVED).

020. PRIORITY SYSTEM.

01. Purpose. A priority rating system shall be utilized by the Division to annually allot available funds to projects determined eligible for funding assistance under the Drinking Water Loan Account Program in accordance with these rules. Projects considered for priority rating shall first be evaluated by Division regional staff. (7-3-97)T

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system. Priority criteria shall contain the following points: (7-3-97)T

a. Public Health Emergency. Certified by the Division. Such emergencies shall be related to a waterborne outbreak, chemical or radiological contamination levels above URTH, or a failed water source. (100 points) (7-3-97)T

b. Public Health Hazard. Identified and verified by the Division. Points shall be given based on the presence and severity of waterborne illnesses. (19 points) (7-3-97)T

c. Water Quality Violations. Identified and verified by the Division. Points shall be given, based on maximum contaminant levels (MCLs) or based on treatment technique violations, for microbiological and chemical constituents. (71 points) (7-3-97)T

d. General Conditions of Existing Facilities. Points shall be given based on deficiencies with facilities for pumping, treating, and delivering drinking water. (61 points) (7-3-97)T

e. Overall Urgency. Points shall be given to entities that need a new source of water to assure safety and adequate supply. (10 points) (7-3-97)T

f. Consent or Administrative Orders. Points shall be given if the system is operating under an order. (30 points) (7-3-97)T

g. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring. (16 points) (7-3-97)T

03. Priority List. A list shall be developed annually from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval and adoption. (7-3-97)T

04. Priority Reevaluation. Whenever significant changes occur, which in the Division's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for, or scope of any project, a reevaluation of that priority rating shall be conducted. (7-3-97)T

05. Priority Target Date. A qualifying entity, whose project is on the adopted priority list, and for which funding is available, shall be contacted by the Division and a target date for submission of a completed loan application shall be established. (7-3-97)T

06. Project Bypass. A project that does not or shall not meet the project target date or a Division schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest

ranking project or projects that are ready to proceed. A project that is bypassed shall be notified in writing of the reasons for being bypassed. (7-3-97)T

021. DISADVANTAGED LOANS.

Disadvantaged Loan Awards. In conjunction with the standard loans, the Division may award disadvantaged loans to applicants deemed disadvantaged using the following criteria: (7-3-97)T

01. Qualifying For a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have a median household income that does not exceed eighty percent (80%) of the statewide non-metropolitan median household income from the most recent census data, and an annual cost of drinking water service for residential customers which exceeds two percent (2%) of the median household income. (7-3-97)T

a. The annual cost includes all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades) being financed with state revolving funds. If the applicant's service area is not within the boundaries of a municipality, the applicant may use the census data for the county in which it is located. (7-3-97)T

b. For disadvantaged applicants for which the annual cost exceeds two percent (2%) of the median household income, those applicants must have been either declined assistance or received only partial assistance from all other available state and federal agencies offering grants before loan terms can be adjusted. (7-3-97)T

02. Denied or Partial Assistance. If assistance has been denied or only partial assistance given by other agencies, loan terms may be adjusted in the following sequence: (7-3-97)T

a. First, the length of the loan repayment may be extended in increments of years from twenty (20) years up to a maximum of thirty (30) years until the annual cost equals two percent (2%) of median household income. (7-3-97)T

b. If at a thirty (30) year repayment, the annual cost still exceeds two percent (2%) of the median household income, the loan interest rate may be reduced from the rate established by the Administrator for standard loans to a rate that results in an annual charge equal to two percent (2%) of median household income. (7-3-97)T

c. The interest rate reduction may be as low as zero percent (0%). If even at zero percent (0%) interest and a thirty (30) year repayment, the annual charge per residential user still exceeds two percent (2%) of median household income, the principal which causes the user charge to exceed two percent (2%) may be reduced except the principal reduction cannot exceed an amount greater than fifty percent (50%) of the total project cost. (7-3-97)T

022. -- 029. (RESERVED).

030. PROJECT FUNDING.

01. Project Step Funding. Projects may be funded in steps: (7-3-97)T

a. Step 1. Engineering report prepared by an engineer licensed in the state of Idaho who carries professional liability indemnification in accordance with Subsection 050.50.d., and in a format prescribed by the Division; (7-3-97)T

b. Step 2. Design, which includes the preparation by an engineer licensed in the State of Idaho of the detailed engineering plans and specifications necessary for the bidding and construction of the project; (7-3-97)T

c. Step 3. Construction, which includes bidding and actual construction of the project; or (7-3-97)T

d. Step 4. A combination of Step 2 and Step 3. (7-3-97)T

02. Combination Step Funding. Projects may be funded in any combination of the steps with approval of the Division. Separate loans may be awarded for Step 1 or Step 2 projects. If a Step 1 or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not

proceed to construction, outstanding Step 1 and Step 2 loans shall be amortized and a repayment schedule prepared by the Division. (7-3-97)T

03. Cost Effective Requirement. Step 2, Step 3, or Step 4 loans shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 engineering report as approved by the Division. The cost effective alternative may be selected based on the comments received from at least one (1) public hearing attended by affected users within the jurisdiction of the qualifying entity and conducted in accordance with state law. (7-3-97)T

04. Funding for Reserve Capacity. Funding for reserve capacity of a drinking water system shall not exceed a twenty (20) year population growth. (7-3-97)T

05. Eligible Project Costs. Costs eligible for funding shall be determined from the scope of the project and may include, but not be limited to: (7-3-97)T

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses of local government such as salaries and expenses of a mayor; city council members; board; or a city, district, or board attorney; (7-3-97)T

b. Costs for construction contract bids and executed in compliance with state public works construction laws; (7-3-97)T

c. Professional and consulting services; (7-3-97)T

d. Engineering directly related to the public water system facilities; (7-3-97)T

e. Financial, technical, and management capability analysis if it shall ensure compliance; (7-3-97)T

f. Preparation of construction drawings, specifications, estimates, and construction contract documents; (7-3-97)T

g. Landscaping; (7-3-97)T

h. Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay; (7-3-97)T

i. Material acquired, consumed, or expended specifically for the project; (7-3-97)T

j. A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (7-3-97)T

k. Preparation of an operation and maintenance manual; (7-3-97)T

l. Preparation of a plan of operation; (7-3-97)T

m. Start-up services; (7-3-97)T

n. Public participation for alternative selection; (7-3-97)T

o. Development of user charge and financial management systems; (7-3-97)T

p. Development of water system protection and backflow prevention ordinance or rule; (7-3-97)T

q. Initial staffing plans and budget development; (7-3-97)T

r. Costs of assessing and defending contractor claims determined unmeritable by the Division; (7-3-97)T

- or
- s. Site acquisition costs, including right of way, well lot site, system site, and finished water storage; (7-3-97)T
 - t. Certain direct and other costs as determined eligible by the Division; (7-3-97)T
06. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (7-3-97)T
- a. Basin or area wide planning not directly related to the project; (7-3-97)T
 - b. Bonus payments not legally required for completion of construction before a contractual completion date; (7-3-97)T
 - c. Personal injury compensation or damages arising out of the project; (7-3-97)T
 - d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (7-3-97)T
 - e. Costs outside the scope of the approved project; (7-3-97)T
 - f. Ordinary operating expenses of local government, such as salaries and expenses of a mayor, city council members, board, or city or board attorney; (7-3-97)T
 - g. Cost of land in excess of that needed for treatment or storage of finished water; (7-3-97)T
 - h. Costs of condemnations; or (7-3-97)T
 - i. Engineering costs prepared without professional liability indemnification. (7-3-97)T

031. LIMITATION OF PRE-LOAN ENGINEERING REVIEWS.

Division of Environmental Quality staff may review engineering documents for any drinking water system. However, in order for the costs of preparation of pre-loan engineering documents to be loan eligible, the consulting engineer must submit a certificate of professional liability indemnification in accordance with Subsection 050.05.d. (7-3-97)T

032. -- 039. (RESERVED).

040. LOAN APPLICATION AND REVIEW.

01. Submission of Application. The applicant shall submit to the Division, a completed application on a form as prescribed by the Division. (7-3-97)T

02. Application Requirements. Applications shall contain a completed state loan application form and the following documentation, as applicable, approved, or approvable by the Division in both form and content: (7-3-97)T

- a. All loan applications: (7-3-97)T
 - i. A lawful resolution passed by the governing body authorizing an elected official or chief financial officer of the qualifying entity to execute a loan contract and sign subsequent loan disbursement requests; (7-3-97)T
 - ii. Contracts for architectural/engineering services, including justification for the firm selected and a certification of liability indemnification, as described in Subsection 050.05.d., which covers all such services rendered for all project phases which are state funded; (7-3-97)T
 - iii. Preliminary plan of system revenue and loan repayment schedule; (7-3-97)T

iv. A legal opinion from the loan applicant's lawyer stating that the loan applicant has complied with all applicable federal, state, and local laws including, if applicable, laws relating to the issuance of bonds and the incurrence of debt. The costs of such an opinion can be included as eligible project costs; and (7-3-97)T

v. In the case of a privately owned system, demonstrate that there is adequate security for the repayment of the loan. (7-3-97)T

b. Step 1, Engineering Report. Plan of study describing the work tasks to be performed in the engineering report, a schedule for completion of the work tasks, and an estimate of man hours and costs to complete the work tasks. (7-3-97)T

c. Step 2, Design. (7-3-97)T

i. Engineering report including a final environmental document and decision in accordance with Section 041; (7-3-97)T

ii. Financial, technical, and management capability analysis as provided in Subsection 011.01; (7-3-97)T

iii. Inter-municipal service agreements between all qualifying entities within the scope of the project, if applicable; and (7-3-97)T

iv. Documented evidence of all necessary easements and land acquisition. (7-3-97)T

d. Step 3, Construction. (7-3-97)T

i. Biddable plans and specifications of the approved public water system facility alternative; (7-3-97)T

ii. A plan of operation and project schedule; (7-3-97)T

and iii. A user charge system, water use system protection ordinance, and financial management system; (7-3-97)T

iv. A staffing plan and budget. (7-3-97)T

e. Step 4, Design and Construction. Loan applicants must submit all documentation specified in Subsection 040.02.d. prior to advertising for bids on construction contracts. (7-3-97)T

03. Acceptance of Application. Applications shall be accepted in accordance with the state priority list target dates. No applications shall be accepted for projects not rated on the original priority list unless the priority list is amended and approved by the Administrator. Incomplete applications lacking information may be returned to the applicant. Once complete information is provided, the application may be resubmitted. (7-3-97)T

04. Notification of Disapproval. Written notification of application rejection with the reasons for denial shall be sent to the applicant. (7-3-97)T

05. Reapplication for Loan. The action of disapproving, recalling, or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. (7-3-97)T

041. ENVIRONMENTAL REVIEW.

01. Overview of Process. The applicant shall consult with the Division at an early stage in the preparation of the engineering report to determine the required level of environmental review. Based on review of existing information, the Division shall assess potential environmental impacts and shall instruct the applicant to either: (7-3-97)T

a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Division; (7-3-97)T

b. Prepare an Environmental Information Document (EID) in a format specified by the Division; or (7-3-97)T

c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Division. (7-3-97)T

02. Categorical Exclusions. At the request of an applicant, the Division shall determine from existing information whether an action is consistent with categories eligible for exclusion where upon the Division shall issue a notice of Categorical Exclusion from substantive environmental review. Once the Categorical Exclusion is granted for the proposed project and a notice of Categorical Exclusion has been published in a local newspaper to inform the public of this action, the engineering report can be approved and the loan award can proceed. (7-3-97)T

03. Environmental Review Process. When issuance of a Categorical Exclusion is not appropriate, the applicant shall prepare an environmental information document (EID). In accordance with Division procedures: (7-3-97)T

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. (7-3-97)T

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or inevitable commitment of resources. (7-3-97)T

c. The Division shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a "finding of no significant impact" (FNSI). (7-3-97)T

04. Final Finding of No Significant Impact. The final FNSI shall be published in a newspaper of general circulation in the geographical area of the proposed project in accordance with state policies on public participation. Following the required period of public review and comment and after any public concerns about project impacts are resolved, the FNSI shall become final and the engineering report can be approved and the loan can be awarded. (7-3-97)T

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant shall: (7-3-97)T

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (7-3-97)T

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (7-3-97)T

c. Conduct a public hearing which may be in conjunction with an engineering report hearing; and (7-3-97)T

d. Prepare and submit a final EIS incorporating all agency and public input for Division review and approval. (7-3-97)T

06. Final EIS. Upon completion of the EIS by the applicant and approval by the Division of all requirements listed in Subsection 041.04.d., the Division shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant. The loan agreement can be completed once the final EIS has Division approval. (7-3-97)T

07. Mitigation Measures. Prior to approval of a facilities plan, the Division must ensure that effective mitigation measures identified in the FNSI and EID shall be implemented by the applicant. (7-3-97)T

08. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a drinking water system may be justified in advance of all environment review requirements for the remainder of the system. The Division shall approve partitioning the environment review in accordance with established procedures. (7-3-97)T

09. Federal Environmental Review Use. If environmental review for the project has been conducted by another state, federal, or local agency, the Division may, in its discretion, issue its own determination by adopting the document of the federal agency. (7-3-97)T

10. Validity of Review. Environmental reviews are valid for five (5) years. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Division shall reevaluate the project, environmental conditions, and public views and shall: (7-3-97)T

a. Reaffirm the earlier decision; or (7-3-97)T

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Division shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (7-3-97)T

042. -- 049. (RESERVED).

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers shall be delivered to successful applicants by representatives of the Division or by registered mail. (7-3-97)T

02. Acceptance of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Division. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period, the loan funds may be offered to the next project on the priority list. (7-3-97)T

03. Acceptance Executed as a Contract Agreement. Upon signature by the Administrator or his/her designee and upon signature by the authorized representative of the qualifying entity, the loan offer shall become a contract. Upon accepting a loan offer, a qualifying entity becomes a loan recipient. The disbursement of funds, pursuant to a loan contract, is subject to a finding by the Administrator that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Administrator may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who shall be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. (7-3-97)T

04. Estimate of Reasonable Cost. All loan contracts shall include an estimate of the reasonable eligible costs of the project. (7-3-97)T

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Division including, but not limited to: (7-3-97)T

a. Terms consistent with the rules and regulations set out in this document, the project step to be funded under the loan offer, and Chapter 76, Title 39, Idaho Code; (7-3-97)T

b. Special clauses as determined necessary by the Division for the successful investigation, design, construction, and management of the project; (7-3-97)T

c. Terms consistent with applicable state and federal laws pertaining to engineering reports, design,

and construction (including the Public Works Contractors License Act (Idaho Code Sections 54-1901 through 54-1924)); the Public Contracts Bond Act (Idaho Code Sections 54-1925 through 54-1930); and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) requirements for projects funded with loan moneys of federal origin; (7-3-97)T

d. Requirement for the prime architectural/engineering firm(s), and their principals retained for architectural/engineering services, to carry professional liability indemnification to protect the public from negligent acts of the architect/engineer and errors of omission of a professional nature. The total aggregate of the professional liability of the architect/engineer indemnification shall be one hundred thousand dollars (\$100,000) or twice the amount of the fee of the architect/engineer, whichever is greater. Professional liability indemnification must cover all such services rendered for all project phases which are state funded; (7-3-97)T

e. The project shall be bid, contracted, and constructed according to the Idaho Standards for Public Works Construction and the Idaho Rules for Public Drinking Water Systems (IDAPA 16.01.08) unless the qualifying entity has approved and adopted acceptable public works construction standards; (7-3-97)T

f. The loan interest rate for loans made during the state fiscal year beginning July 1 shall be established by the Administrator by January 1 prior to the beginning of the state fiscal year. The interest rate shall be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; (7-3-97)T

g. All loans, except disadvantaged loans, must be fully amortized within a period not to exceed twenty (20) years after project completion. Disadvantaged loans must be fully amortized within a period not to exceed thirty (30) years. The borrower may elect for either a schedule of semi-annual repayments or annual repayments at the time the loan is finalized; and (7-3-97)T

h. Repayment default shall occur when a scheduled loan repayment is ten (10) days past due. If default occurs, the Division may invoke appropriate loan contract provisions and/or bond covenants. (7-3-97)T

051. ACCOUNTING AND AUDITING PROCEDURES.

Loan recipients must maintain project accounts in accordance with generally accepted government accounting standards. These standards are usually defined as, but not limited to, those contained in the U.S. General Accounting Office (GAO) publication "Standards for Audit of Governmental Organization, Programs, Activities, and Functions," published February 27, 1981. (7-3-97)T

052. -- 059. (RESERVED).

060. DISBURSEMENTS.

01. Loan Disbursements. The loan contract shall include a schedule of estimated disbursements to be made to the borrower. The schedule shall include the anticipated dates and amounts of disbursements. Requests to the Division for actual disbursement of loan proceeds shall be made by the loan recipient on forms provided by the Division. (7-3-97)T

02. Loan Increases. An increase in the loan amount as a result of an increase in eligible project costs shall be considered, provided funds are available. Documentation supporting the need for an increase must be submitted to the Division for approval prior to incurring any costs above the eligible cost ceiling. (7-3-97)T

03. Loan Decreases. If the actual eligible cost is determined by the Division to be lower than the estimated eligible cost, the loan amount shall be reduced proportionately. (7-3-97)T

04. Project Review to Determine Final Eligible Costs. A project review by the Division shall determine the final eligible costs. (7-3-97)T

05. Final Disbursement. The final loan disbursement consisting of five percent (5%) of the total loan amount shall not be made until final inspection, final review, and a final loan repayment schedule have been completed. (7-3-97)T

061. -- 079. (RESERVED).

080. SUSPENSION OR TERMINATION OF LOAN CONTRACTS.

01. Causes. The Administrator may suspend or terminate any loan contract prior to final disbursement for failure by the loan recipient or its agents including architectural/engineering firm(s), contractor(s), or subcontractor(s) to perform. A loan contract may be suspended or terminated for good cause including, but not limited to, the following: (7-3-97)T

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification, or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; (7-3-97)T

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years of imprisonment or any crime involving or affecting the project; (7-3-97)T

c. Violation(s) of any term of the loan contract; (7-3-97)T

d. Any willful or serious failure to perform within the scope of the project, plan of operation, project schedule, terms of architectural/engineering sub-agreements, or contracts for construction; or (7-3-97)T

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (7-3-97)T

02. Notice. The Administrator shall notify the loan recipient in writing, and forwarded by certified mail, of the intent to suspend or terminate the loan contract. The notice of intent shall state: (7-3-97)T

a. Specific acts or omissions which form the basis for suspension or termination; and (7-3-97)T

b. Availability of a hearing conducted by the Administrator, hearing officer, or his/her designee as hearing officer, and said hearing being conducted in an informal manner at a time and in a place specified by the Administrator. (7-3-97)T

03. Determination. Upon the proof of the existence of cause(s) for suspension or termination by substantial evidence or by proof of judgment or conviction of offense(s), the Administrator shall make a written determination and send the determination to the loan recipient by certified mail within seven (7) days of the hearing. (7-3-97)T

04. Reinstatement of Suspended Loan. Upon written request by the loan recipient with evidence that the causes(s) for suspension no longer exist(s), the Administrator may, if funds are available, reinstate the loan contract. If a suspended loan contract is not reinstated, the loan shall be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (7-3-97)T

05. Reinstatement of Terminated Loan. No terminated loan shall be reinstated. Terminated loans shall be amortized and a repayment schedule prepared in accordance with provisions of the loan contract. (7-3-97)T

081. -- 994. (RESERVED).

995. WAIVERS.

Waiver from the requirements of these rules may be granted by the Division Administrator or his/her designee, on a case-by-case basis, upon full demonstration by the loan applicant/recipient requesting the waiver that the following conditions exist. (7-3-97)T

01. Health Hazard. A significant public health hazard exists; (7-3-97)T

02. Affordability Criteria Exceeded. The project shall exceed affordability criteria adopted by the Division in the event the waiver is not granted; or (7-3-97)T

03. Availability of Federal Funds. The waiver shall not affect the availability of federal funds for the project where such funding is required by the entity requesting the waiver. (7-3-97)T

996. CONFIDENTIALITY.

Information submitted to the Division by loan applicants and recipients may be made available to the public subject to the provisions of Idaho Code Section 9-337 et seq. (7-3-97)T

997. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.02.19 - RULES GOVERNING FOOD SAFETY AND SANITATION
STANDARDS FOR FOOD ESTABLISHMENTS

DOCKET NO. 16-0219-9701

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 Chapter 16, Title 39, Idaho Code.

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

- **August 19, 1997, at 7:00 p.m., in the Coeur d'Alene Inn**
414 West Appleway Ave., Syringa Room, Coeur d'Alene, Idaho
- **August 20, 1997, at 7:00 p.m., in the Boise State University**
1910 University Dr., the Forum Room on the 1st Floor of the Student Union Building, Boise, Idaho
- **August 21, 1997, at 7:00 p.m., in the Holiday Inn**
1399 Bench Rd., Madeira Room, Pocatello, 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: During the first regular session of the 1997 Legislature, Idaho's Food Establishment Act (Chapter 16, Title 39, Idaho Code) was modified by Senate Bill No. 1003 to provide for the collection of fees to cover a portion of the cost of the food safety inspection program. Several other modifications were made to the Act as guidance for implementing the fees provisions.

This rule change is to incorporate the statutory changes into the rules and make minor additions.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs.

FEE SUMMARY: The 1997 Legislature passed Senate Bill 1003 which imposes a \$55 license fee. The purpose of this legislation is to cover a portion of the cost of the food safety inspection program.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Donald R. Brothers at (208) 334-5938.

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 August 27, 1997.

DATED this 6th day of August, 1997.

STACI WELSH
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. 16-0219-9701

005. DEFINITIONS AND ABBREVIATIONS.

For the purpose of these rules, the following terms are used, as defined herein. (6-30-95)

01. Accessible. Easily and readily exposed for cleaning or inspection, with or without the use of simple tools such as those normally used by maintenance personnel. (6-30-95)

02. Adequate. Satisfactory or sufficient to accomplish the intended purpose in compliance with good public health practice. (6-30-95)

03. Adulterated. Food will be considered adulterated if: (6-30-95)

a. It bears or contains any poisonous or deleterious substance: (6-30-95)

i. In quantities which may render it injurious to health; or (6-30-95)

ii. For which no safe level of tolerance has been established; or (6-30-95)

iii. In excess of FDA established safe levels of tolerance which have been established under articles incorporated in these rules under Section 997; or (6-30-95)

b. It consists in whole or in part of any filthy or decomposed substance or is otherwise unfit for human consumption; (6-30-95)

c. It has been processed, prepared, packed or held under unsanitary conditions where it may have been contaminated with filth or rendered injurious to health; or (6-30-95)

d. It is in whole or in part the product of a diseased animal or an animal which died from causes other than slaughter; or (6-30-95)

e. Its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (6-30-95)

f. It is potentially hazardous and it has been held for more than four (4) hours at a temperature above forty-five degrees Fahrenheit (45F) and below one hundred and forty degrees Fahrenheit (140F), except as specified in Subsection 320.05.a. (6-30-95)

04. Agricultural Market. Any fixed or mobile retail food establishment engaged in the sale of raw or fresh fruits, vegetables and nuts in the shell, but may include as a minor portion of the operation the sale of factory-sealed, nonpotentially hazardous foods. (6-30-95)

05. Approved. Acceptable to the regulatory authority based on a determination of conformity with principles, practices and generally recognized standards that protect public health. (6-30-95)

06. "aw". Means water activity. (6-30-95)

07. Base of Operations. A fixed food establishment or commissary from which caterers, mobile food units, vendors and pushcarts operate. (6-30-95)

08. Bain Maries. A sink-like basin in a table top with a one hundred and forty degree Fahrenheit (140F) or above hot-water bath for keeping foods hot. (6-30-95)

09. Bed and Breakfast. Any private residence which has been adapted or converted to offer a homestyle place of lodging with ten (10) or fewer beds, is occupied by the owner of the facility as the owner's place of residence

during any time that the facility is used for the lodging of guests, does not offer food to the general public and in which the only meal served to guests is breakfast. (6-30-95)

10. Beverage. All liquids intended for human consumption. (6-30-95)
11. Board. Idaho State Board of Health and Welfare. (6-30-95)
12. Bottled Water. Water, including mineral water, which is sealed in bottles, packages or other containers and offered for sale for human consumption. (6-30-95)
13. Bulk Food. Unpackaged or unwrapped, processed or unprocessed food in aggregate containers from which quantities desired by the consumer are withdrawn or vended. The term does not include fresh fruits, fresh vegetables, nuts in the shell, food at salad bars, buffets and family style servings. (6-30-95)
14. Caterer. A person or food service establishment that prepares food in an approved facility for service at another location. (6-30-95)
15. Certification Number. A unique combination of letters and numbers assigned by a shellfish control authority to a molluscan shellfish dealer according to the provisions of the National Shellfish Sanitation Program. (6-30-95)
16. CIP. CIP means cleaned in place by the circulation or flowing by mechanical means through a piping system of a detergent solution, water rinse, and sanitizing solution onto or over equipment surfaces that require cleaning. "CIP" does not include the cleaning of equipment such as band saws, slicers or mixers that are subjected to in-place manual cleaning without the use of a CIP system. (6-30-95)
17. Code of Federal Regulations (CFR). The compilation of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government. Specific references incorporated by reference herein are made available in accordance with Section 997. (6-30-95)
18. Comminuted. The reduction in size by methods including chopping, flaking, grinding, or mincing. Comminuted foods include fish or meat products that are reduced in size and restructured or reformulated such as gefilte fish, formed roast beef, gyros, ground beef, and sausage; and a mixture of two or more types of meat that have been reduced in size and combined, such as sausages made from two or more meats. (6-30-95)
19. Commissary. A place where food, containers or supplies are stored, prepared or packaged for transit, sale or service at other locations. (6-30-95)
20. Common Dining Area. A central location in a group residence where people gather to eat at mealtime. Common dining area does not apply to a kitchenette or dining area located within a resident's private living quarters. (6-30-95)
21. Condiment. Any food such as, but not limited to, chutney, ketchup, mayonnaise, mustard and relish that is used to enhance the flavor of other foods. (6-30-95)
22. Consumer. Any person who receives, purchases or obtains food or food product in any form from a food establishment or operation. Consumer does not apply to a person who is functioning in the capacity of an operator of a food establishment. (6-30-95)
23. Container. Package, bottle, can, carton, bag, or securely wrapped. (6-30-95)
24. Corrosion Resistant Materials. Those materials that maintain acceptable surface cleanability characteristics under prolonged influence of the food to be contacted, the normal use of cleaning compounds and sanitizing solutions and other conditions of the use environment. (6-30-95)
25. Critical Control Point (CCP). A point or procedure in a specific food system where loss of control may result in an unacceptable health risk. (6-30-95)

26. Critical Violations. A provision of these rules that, if in noncompliance, is more likely than other violations to contribute to food contamination, illness, or environmental degradation of the premises. Critical violations are identified with a "C" in the violation code at the end of appropriate statements in these rules. Critical violation examples are as follows: (6-30-95)

a. Food from an unapproved source or food which is or may be adulterated, contaminated or otherwise unfit for human consumption and is found in a food establishment; (6-30-95)

b. Potentially hazardous food that is held longer than necessary for preparation or service at a temperature which is greater than forty five degrees Fahrenheit (45F) and less than one hundred and forty degrees Fahrenheit (140F); (6-30-95)

c. Insufficient facilities to maintain product temperature; (6-30-95)

d. Reservice of potentially hazardous food or unwrapped food that has been served to consumers, unless such reservice is in accordance with Subsection 200.04.g. and 200.04.h.; (6-30-95)

e. A person infected with a communicable disease that can be transmitted by or through food is working as a food handler in a food establishment; (6-30-95)

f. A person employed or working in a food establishment is not practicing strict standards of cleanliness and personal hygiene which may result in the potential transmission of illness through food; (6-30-95)

g. Equipment, utensils and food contact surfaces are not constructed of safe material, cleaned and sanitized effectively and may contaminate food; (6-30-95)

h. The supply of water is not from an approved source or is not hot or under pressure and the food establishment does not use bottled water from an approved source; (6-30-95)

i. Sewage or liquid waste is not disposed of in an approved and sanitary manner, or the sewage or liquid waste contaminates or may contaminate any food, areas used to store or prepare food, or any areas frequented by consumers or employees; (6-30-95)

j. A defect exists in the system supplying potable water that may result in the contamination of the water; (6-30-95)

k. Toilets and facilities for washing hands are not provided, properly installed, designed, or accessible; (6-30-95)

l. Insects, rodents or other animals are present on the premises, except as allowed by Subsection 700.16; (6-30-95)

m. Toxic items are improperly labeled, stored or used; (6-30-95)

n. Any other violation of these rules so designated by the regulatory authority after written notice to the permit holder that the violation has the potential to seriously affect the public health. (6-30-95)

27. Critical Limit. The maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to minimize the risk that the identified food safety hazard may occur. (6-30-95)

28. Cross-Connection. Any physical connection between a potable water supply and any waste pipe, soil pipe, sewer, drain, or any unapproved source or system or any potable water supply outlet which is submerged or can be submerged in waste water or any other source of contamination. (6-30-95)

29. Cross-Contamination. The process by which disease causing organisms are transferred from raw or

- other foods to foods which are ready-to-eat or which receive no heat treatment in subsequent processing. (6-30-95)
30. Department. Idaho Department of Health and Welfare. (6-30-95)
31. Designee. See Director's designee. (6-30-95)
32. Director. The director of the Idaho Department of Health and Welfare. (6-30-95)
33. Director's Designee. Any individual, partnership, corporation, association, governmental agency or public or private organization designated by the director to enforce these rules. (6-30-95)
34. Distressed Merchandise. Any food, as defined in Subsection 005.48~~2~~, which has had the label lost and is unidentifiable or which has been subjected to possible damage due to accident, fire, flood, adverse weather or to any other similar cause, or which may have been rendered unsafe or unsuitable for human consumption. ~~(6-30-95)~~(7-1-97)T
35. Dry Storage Area. A room or area designated for the storage of packaged or containerized bulk food that is not potentially hazardous and dry goods such as single-service and single-use items. (6-30-95)
36. Easily Cleanable. Surfaces that are readily accessible and are fabricated, finished and made of materials that permit effective removal of soil by normal cleaning methods. (6-30-95)
37. Easily Movable. Small equipment weighing eighty (80) pounds or less; or mounted on casters, gliders or rollers, or provided with a mechanical means of safely tilting a unit of equipment for cleaning; and has no utility connection, has a utility connection that disconnects quickly or has a flexible utility connection line of sufficient length to permit the equipment to be moved for thorough cleaning of the area. (6-30-95)
38. Employee. The license holder, person in charge, person having supervisory or management duties, person on the payroll, person performing work under contractual agreement or other persons working in a food establishment. (6-30-95)
39. Enforcement Action. Specific action, as identified in these rules, taken by the regulatory authority to achieve compliance with these rules. (6-30-95)
40. EPA. United States Environmental Protection Agency. (6-30-95)
41. Equipment. Articles that are used in the operation of a food establishment such as, but not limited to, stoves, ovens, hoods, slicers, grinders, mixers, scales, meat blocks, tables, food shelving, reach-in refrigerators, freezers, sinks, ice makers, transport vehicles, vending machines and similar items. The term does not include utensils. (6-30-95)
42. Extensively Altered. A major change in a food establishment's mechanical, plumbing, electrical or structural systems. (6-30-95)
43. Factory-sealed Nonpotentially Hazardous Foods. Foods which have been processed, packaged, and labeled by a food processing establishment under regulatory surveillance by a state or federal agency responsible for food safety. The term shall also apply to nonpotentially hazardous foods which have been prepared from such factory-sealed packages. The term shall not apply to foods which are nonpotentially hazardous in package form which are potentially hazardous upon opening the package or adding other ingredients. (7-1-97)T
434. FDA. United States Food and Drug Administration. (6-30-95)
445. Federal Food, Drug and Cosmetic Act. Title 21, Sections 1 through 903, United States Code, incorporated in these rules under Section 997. (6-30-95)
456. Fishery Products. Fresh or saltwater fish, molluscan shellfish, crustaceans and other forms of aquatic animal life other than birds or mammals and includes any edible human food product derived in whole or in

part from fishery products, including fishery products that have been processed in any manner. (6-30-95)

467. Fixed Facility. A structure mounted on a foundation or superstructure, or when not mounted on a foundation or superstructure, the facility is not a mobile food unit or a temporary food establishment by definition or operation, except this definition shall not apply to a kiosk which does not prepare, store, serve or sell potentially hazardous food. (6-30-95)

478. Flatware. Eating and serving utensils that are more or less flat such as forks, knives and spoons. (6-30-95)

489. Food. Any raw, cooked or processed edible substance, ice, water, beverage or ingredient used or intended for use, or for sale in whole or in part for human consumption. (6-30-95)

4950. Food Additives. Substances, the intended use of which results, or may reasonably be expected to result, directly, or indirectly, either in their becoming a component of food or otherwise affecting the characteristics of food. However: (6-30-95)

a. This term does not include substances exempted by 21 CFR 201(s), incorporated in these rules under Section 997; and (6-30-95)

b. A material used in the production of containers and packages is subject to the definition if it may reasonably be expected to become a component or to affect the characteristics, directly or indirectly, of food packed in the container or package. If there is no migration of a packaging component from the package to the food, it does not become a component of the food and thus is not a food additive. (6-30-95)

501. Foodborne Disease Outbreak. An incident in which: (6-30-95)

a. Two (2) or more persons experience a similar illness after ingestion of a common food; or (6-30-95)

b. A single case of illness from botulism or chemical poisoning; and (6-30-95)

c. Epidemiological analysis implicates the food as the source of the illness. The outbreak is confirmed when laboratory analysis of appropriate specimens identifies a causative organism, agent or chemical. (6-30-95)

512. Food Contact Surfaces. Those surfaces of equipment and utensils with which food normally comes into contact and those surfaces from which food may drain, drip or splash back onto surface normally in contact with food. (6-30-95)

523. Food Establishment. Those operations in the food business such as, but not limited to, food processing establishments, canning factories, salvage processing facilities, food service establishments, cold storage plants, commissaries, warehouses, food vending machine operations and locations, caterers, mobile food units and retail food stores. Such operations include all activities under the control of the license holder, including preparation, processing, storage, service, transportation vehicles, satellite locations, divisions and departments and remote feeding sites. The term includes operations which are conducted in permanent, temporary or mobile facilities or locations. It includes any food operation regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. Individual divisions and departments on one (1) premise and under common ownership shall as a whole be considered a single food establishment. The term "food establishment" does not include: (6-30-95)(7-1-97)T

a. Private homes where food is prepared or served for individual family consumption; (6-30-95)

b. Fraternal, benevolent or nonprofit charitable organizations which do not prepare or serve food on a regular basis. Food shall not be considered to be served on a regular basis if the food is served for a period not to exceed ~~three (3)~~ five (5) consecutive days on no more than three (3) occasions per year for foods which are not potentially hazardous, or if the food is served no more than one (1) meal a week for all other foods; (6-30-95)(7-1-97)T

- c. Bed and breakfast establishments with ten (10) or fewer beds; (6-30-95)
- d. Low-risk food establishments and Establishments which offer only factory-sealed nonpotentially hazardous foods; ~~(6-30-95)~~(7-1-97)T
- e. Agricultural markets; (6-30-95)
- f. Licensed outfitters and guides. (6-30-95)
- g. Day-care provider. (6-30-95)
- h. Food processing establishments, canning factories, warehouses and other food establishments under routine regulatory surveillance by other state or federal agencies responsible for food safety. This exemption does not apply to: ~~(6-30-95)~~(7-1-97)T
- i. Such food establishments whose operations are only partially regulated by other agencies; (6-30-95)
- ii. Such food establishments regulated by other agencies when it is the opinion of the regulatory authority that additional inspections are warranted; and (6-30-95)
- iii. Any such food establishments from Title 37, Chapter 1, Idaho Code, Idaho Food, Drug and Cosmetic Act, incorporated in these rules under Section 997. (6-30-95)
534. Food Establishment Risk Criteria. The criteria identified in Appendix A of these rules which establishes an enforcement protocol for obtaining compliance with these rules. (6-30-95)
545. Food Establishment Supervisor. An employee at a specific location where a license has been issued who is responsible for compliance of these rules. (6-30-95)
556. Food Processing Establishment. A commercial or private food establishment or operation, canning factory or other operation in which food is manufactured, packaged, labeled or stored for human consumption and does not provide food directly to a consumer. (6-30-95)
567. Food Service Establishment. Any fixed facility or place where food is prepared and intended for individual portion service including the site at which individual portions are provided. The term includes any such place regardless of whether consumption is on or off the premises and regardless of whether there is a charge for the food. (6-30-95)
- a. The term includes, but is not limited to, eating and drinking establishments, restaurants, bars, taverns, school lunch facilities, convenience stores, hospitals, nursing homes, group residences, and delicatessens that offer prepared food in individual service portions and catering operations. (6-30-95)
- b. The term does not include private homes where food is prepared or served for individual family consumption; fraternal, benevolent or nonprofit charitable organizations which do not prepare or serve food on a regular basis; bed and breakfast establishments with ten (10) or fewer beds, day-care provider; and licensed outfitters and guides. (6-30-95)
578. Food Worker. An employee working with unpackaged food, food equipment or utensils, or food-contact surfaces. (6-30-95)
589. Frozen Food. Any item of food that has been subjected to rapid freezing to a solid state and is kept frozen until used. (6-30-95)
5960. General Use Pesticide. A pesticide that is not classified by EPA for restricted use as specified in 40 CFR 152.175, incorporated in these rules under Section 997. (6-30-95)

601. Group Residence. A private or public housing corporation or institutional facility that provides domicile for unrelated persons. A group residence may be a retirement home or a long-term health care facility. (6-30-95)
612. HACCP. Acronym for Hazard Analysis Critical Control Point. (6-30-95)
623. HACCP Plan. A written document accepted by the regulatory authority that delineates the formal procedures for following the HACCP principles identified in Appendix B of these rules. (6-30-95)
634. Hazard. A biological, chemical, or physical property that may cause a consumer health risk. (6-30-95)
645. Hermetically Sealed Container. A container that is designed and intended to be secure against the entry of microorganisms and, in the case of low acid canned foods, to maintain the commercial sterility of its contents after processing. (6-30-95)
656. Highly Susceptible Population. A group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or elderly and in a facility that provides health care or assisted living services; or preschool age children in a facility that provides custodial care. (6-30-95)
67. High-Risk Food Establishment. A food establishment or a portion of a food establishment's operation which includes the following: (7-1-97)T
- a. Extensive handling of raw ingredients; (7-1-97)T
- and b. Preparation processes includes the cooking, cooling, and reheating of potentially hazardous foods; (7-1-97)T
- c. A variety of processes requiring hot and cold holding of potentially hazardous food. (7-1-97)T
668. Hollowware. Eating and serving utensils that have a significant depth and volume such as bowls, cups and serving dishes. (6-30-95)
679. IDAPA. Administrative rules adopted in accordance with the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. (6-30-95)
- Code. 6870. Idaho Food, Drug and Cosmetic Act. Title 37, Chapter 1, Sections 37-101 through 37- 134, Idaho (6-30-95)
6971. IPS. Iron Pipe Size. (6-30-95)
702. Imminent Health Hazard. Conditions such as, but not limited to, the following: (6-30-95)
- a. An extended loss of a potable water supply; (6-30-95)
- b. An extended power outage; (6-30-95)
- c. Sewage backup into the establishment or onto the grounds of the establishment; (6-30-95)
- d. Employees sick with a disease which can be transmitted by or through food; (6-30-95)
- e. A major vector problem; (6-30-95)
- f. A foodborne or waterborne disease outbreak; or (6-30-95)
- g. Any other condition that has the potential to pose an imminent threat to public health. (6-30-95)

743. Injected. The manipulation of meat so that infectious or toxigenic microorganisms may be introduced from its surface to its interior through tenderizing with deep penetration (including "needling") or injecting the meat such as with juices which may be referred to as "injecting," "pinning," or "stitch pumping."
(6-30-95)

724. Inspection Follow-up Risk Value. The specified value identified in Appendix A of these rules which establishes required on-site follow-up inspections based on the food establishment risk category.
(6-30-95)

735. Kiosk. A movable food service establishment generally constructed on a superstructure; without permanent water and sewer connections; does not prepare, store, serve, or sell potentially hazardous food; and is not a mobile food unit or a temporary food establishment by definition or operation. The term generally applies to such operations involving shaved ice and espresso.
(6-30-95)

746. Kitchenware. Multi-use food preparation, cooking, and storage utensils.
(6-30-95)

757. Law. Local, state and federal statutes, regulations, rules and ordinances.
(6-30-95)

768. License. The document issued by the regulatory authority which authorizes a person to operate a food establishment or operation.
(6-30-95)

779. License Holder. Any person, as defined in Subsection 005.946., whose name appears on the license as the primary responsible party of the establishment or operation.
(6-30-95 7-1-97T)

7880. Liquid Waste. The discarded fluid discharge from any fixture, appliance, equipment, area or appurtenance which does not contain human body waste.
(6-30-95)

81. Low-Risk Food Establishment. An establishment or food establishment which provides factory-sealed (pre-packaged) nonpotentially hazardous foods and which may have limited preparation of nonpotentially hazardous foods only.
(7-1-97T)

7982. Meat. The edible soft parts of any animal.
(6-30-95)

83. Medium-Risk Food Establishment. A food establishment or a portion of a food establishment's operation which includes the following:
(7-1-97T)

a. Provides a limited menu (one (1) or two (2) main items);
(7-1-97T)

b. Pre-packaged raw ingredients are cooked or prepared to order;
(7-1-97T)

c. Raw ingredients require minimal assembly;
(7-1-97T)

d. Most products are cooked or prepared and served immediately;
(7-1-97T)

e. Hot and cold holding of potentially hazardous foods is restricted to single meal service; and
(7-1-97T)

f. Preparation processes requiring cooking, cooling and reheating are limited to one (1) or two (2) potentially hazardous foods.
(7-1-97T)

804. Misbranded. Lacking, false or misleading written, printed or graphic matter upon or accompanying food or containers of food or a container or package so made, formed or filled as to be misleading as identified in Section 37-123, Idaho Code, incorporated in these rules under Section 997.
(6-30-95)

845. MG/L. Milligrams Per Liter, which is the metric equivalent of parts per million (ppm).
(6-30-95)

826. Mobile Food Unit or Mobile Facilities. Any movable food service establishment, truck, van, trailer,

pushcart, bicycle, watercraft or other movable unit with or without wheels, including hand-carried, portable containers in or on which food or beverage is transported, stored or prepared for sale or given away at temporary locations. (6-30-95)

837. Molluscan Shellfish. Any edible species of fresh or frozen oysters, clams, mussels, and scallops or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle. (6-30-95)

848. NAMA. National Automated Merchandising Association. (6-30-95)

859. Noncritical Violations. Those violations which are not critical violations and pertain to sanitation, design, operation and maintenance of the food establishment or operation. Noncritical violations are identified with a "N" in the violation code at the end of appropriate sections of these rules. (6-30-95)

90. Nonpotentially Hazardous Food. See potentially hazardous food. (7-1-97)T

8691. Nonfood Contact Surfaces. Exposed surfaces other than food contact surfaces. (6-30-95)

8792. NSF. The National Sanitation Foundation. (6-30-95)

8893. NSSP. The National Shellfish Sanitation Program. (6-30-95)

8994. On-site. The premises of the food establishment. (6-30-95)

905. Package or Packaged. Bottled, canned, cartoned, bagged or securely wrapped. (6-30-95)

946. Person. Any individual, partnership, corporation, association, governmental subdivision or public or private organization. (6-30-95)

927. Person in Charge. The individual present at the food establishment who is the supervisor of the establishment during any hour of operation and at the time of inspection. If there is no apparent supervisor at the time of an inspection, any employee present can be considered to be the person in charge. (6-30-95)

938. Personal Care Items. Items or substances that may be poisonous, toxic, or a source of contamination and are used to maintain or enhance a person's health, hygiene or appearance. Such items include, but not limited to, medicines, first aid supplies, cosmetics and toiletries such as toothpaste and mouthwash. (6-30-95)

949. Pest. An animal detrimental or annoying to man. (6-30-95)

95100. Pet. Dog, cat or any other animal kept for pleasure or for purposes other than support animals. (6-30-95)

96101. pH. A means of expressing the degree of acidity or alkalinity of a food or solution. Values between zero and seven (0 and 7) indicate acidity and values between seven and fourteen (7 and 14) indicate alkalinity. The value for pure distilled water is seven (7), which is considered neutral. (6-30-95)

97102. Physical Facility or Facilities. The structure and interior parts of a food establishment including accessories such as, but not limited to, soap and towel dispensers and attachments such as, but not limited to, light fixtures and heating or air conditioning system vents. (6-30-95)

98103. Plumbing Fixture. A receptacle or device that is permanently or temporarily connected to the water distribution system of the premises and demands a supply of water from the system; or discharges used water, waste materials, liquid waste or sewage directly or indirectly to the drainage system of the premises. (6-30-95)

99104. Plumbing System. The water supply and distribution pipes; plumbing fixtures and traps; soil, waste, and vent pipes; sanitary and storm sewers and building drains, including their respective connections, devices, and appurtenances within the premises; and water-treating equipment. (6-30-95)

1005. Poisonous/Toxic Materials. Materials which are capable of being harmful or hazardous to employees and other persons when they are in contact with food or food contact surfaces and which are divided into the following categories: (6-30-95)

- a. Pesticides; and (6-30-95)
- b. Detergents, sanitizers and related cleaning or drying agents; and (6-30-95)
- c. Caustics, acids, polishes and similar toxic chemicals; and (6-30-95)
- d. Substances necessary for the operation and maintenance of the establishment such as, but not limited to, nonfood grade lubricants; and (6-30-95)
- e. Personal care items that may be deleterious to health; and (6-30-95)
- f. Substances that are not necessary for the operation and maintenance of the establishment and are on the premises for retail sale, such as, but not limited to, petroleum products, paints and veterinary supplies. (6-30-95)

1046. Potable Water. Water suitable for drinking purposes; safe water supply; water in compliance with Subsection 600.01.b. (6-30-95)

1027. Potentially Hazardous Food. Any food or ingredient, natural or synthetic, in a form capable of supporting the rapid and progressive growth of infectious or toxigenic microorganisms or the slower growth of Clostridium botulinum. Included is any food of animal origin, either raw or heat treated and any food of plant origin which has been heat treated or which is raw seed sprouts; cut melons; and garlic and oil mixtures. ~~Excluded are the following. The following foods are excluded and considered nonpotentially hazardous:~~ (6-30-95)(7-1-97)T

- a. Air-dried hard-boiled eggs with shells intact; (6-30-95)
- b. Foods with a water activity (aw) value of eighty-five hundredths (0.85) or less; (6-30-95)
- c. Foods with a pH (hydrogen ion concentration) level of four and six tenths (4.6) or below when measured at seventy-five degrees Fahrenheit (75F); (6-30-95)
- d. Foods, in unopened hermetically-sealed containers, which have been commercially processed to achieve and maintain commercial sterility under conditions of nonrefrigerated storage and distribution; and (6-30-95)
- e. Foods for which laboratory evidence (acceptable to the regulatory authority) demonstrates that rapid and progressive growth of infectious and toxigenic microorganisms or the slower growth of Clostridium botulinum cannot occur. (6-30-95)
- f. Pasteurized milk, half-and-half, cream, butter products, frozen dairy desserts and other fluid milk products, in the original unopened container; and (7-1-97)T
- g. Any other foods determined by the Department not to be potentially hazardous. (7-1-97)T

1038. PPM. Parts Per Million. (6-30-95)

1049. Premises. The physical food establishment, its contents, and the contiguous land or property under the control of the ~~permit~~ license holder. The term premises does not apply to malls and other similar businesses, temporary food establishments or activities which may have multiple food operations on contiguous land or property and the person of ownership of such contiguous land or property is not the primary responsible party for the food establishment and does not have direct impact on the personnel or day-to-day operations. (6-30-95)(7-1-97)T

10510. Product Module. A multi-use or single-service food container designed for customer self- service of bulk food by either direct or indirect means. This term does not mean a vending machine. (6-30-95)

~~106~~11. Product Thermometer. A thermometer, thermocouple, thermistor or other device that when the sensor is inserted into food indicates the temperature of the food. This term does not include nonproduct or ambient temperature sensing devices. (6-30-95)

~~107~~12. Ready-to-Eat Food. Food that is in a form that is edible without washing, cooking, or additional preparation by the food establishment or the consumer and that is reasonably expected to be consumed in that form. Ready-to-eat foods includes the following: (6-30-95)

a. Unpackaged potentially hazardous food that have been cooked to the temperature and time required for the specific food in Section 300; (6-30-95)

b. Raw, washed, cut fruits and vegetables; (6-30-95)

c. Whole, raw fruits and vegetables that are presented for consumption without the need for further washing, such as, but not limited to, buffet; and (6-30-95)

d. Other food presented for consumption for which further washing or cooking is not required and from which rinds, peels, husks, or shells are removed. (6-30-95)

~~108~~13. Reconstitute. Recombining dehydrated food products with water or other liquids. (6-30-95)

~~109~~14. Reduced Oxygen Packaging. The reduction of the amount of oxygen in a package by mechanically evacuating the oxygen; displacing the oxygen with another gas or combination of gases; or otherwise controlling the oxygen content in a package to a level below that normally found in the surrounding atmosphere, which is twenty-one percent (21%) oxygen. Reduced oxygen packaging includes methods that may be referred to as altered atmosphere, modified atmosphere, controlled atmosphere, low oxygen and vacuum packaging including sous vide. (6-30-95)

~~110~~5. Refrigeration Unit. Equipment, regardless of its size or construction, which is utilized for cooling or freezing food or maintaining food cold or frozen. (6-30-95)

~~114~~6. Refuse. Garbage, rubbish, litter and other solid waste not carried by water through the sewage system. (6-30-95)

~~112~~7. Regulatory Authority. The Director of the Idaho Department of Health and Welfare or the Director's designee. (6-30-95)

~~113~~8. Responsible Program Agency. The agency within the Department designated by the Director for the purpose of supervision and oversight for insuring proper enforcement of these rules. (6-30-95)

~~114~~9. Restricted Use Pesticide. A pesticide product that contains the active ingredients specified in 40 CFR 152.175, incorporated in these rules under Section 997, and classified for restricted use, and that is limited to use by or under the direct supervision of a certified applicator. (6-30-95)

~~145~~20. Retail Food Store. Any food establishment or portion of an establishment where food and food products are offered to the consumer and intended for off-premise consumption. (6-30-95)

~~146~~21. Safe Materials. Articles manufactured from or composed of materials that may not reasonably be expected to result, directly or indirectly, in becoming a component of or otherwise affecting the characteristics of any food. (6-30-95)

a. If materials are food additives or color additives as defined in Section 201(s) or (t) of the Federal Food, Drug and Cosmetic Act, incorporated in these rules under Section 997, are used, they are "safe" only if they are used in conformity with regulations established pursuant to Section 409 or Section 706 of Title 21, United States Code, Federal Food, Drug and Cosmetic Act, incorporated in these rules under Section 997. (6-30-95)

b. Other materials are "safe" only if, as used, they are not food additives or color additives as defined

in Section 201(s) or (t) of the Federal Food, Drug and Cosmetic Act, incorporated in these rules under Section 997, and are used in conformity with all applicable regulations of the Food and Drug Administration incorporated in these rules under Section 997. (6-30-95)

~~147~~22. Salvageable Merchandise. Any distressed merchandise, as defined in Subsection 005.34, which can be reconditioned to the satisfaction of the regulatory authority. (6-30-95)

~~148~~23. Salvage Processing Establishment or Operation. A facility or activity primarily engaged in the business of reconditioning or by other means salvaging distressed merchandise, as defined in Subsection 005.34, and which sells or distributes salvaged merchandise for human consumption. (6-30-95)

~~149~~24. Sanitization. The act of reducing microbial organisms on cleaned food contact surfaces to a safe level. A safe level is demonstrated by achieving a five (5) log reduction of representative disease microorganisms of public health importance. (6-30-95)

~~120~~5. SCBA. Self Contained Breathing Apparatus. (6-30-95)

~~124~~6. Sealed. Free of cracks or other openings that permit the entry or passage of moisture. (6-30-95)

~~122~~7. Servicing Area. A designated operating base location, or commissary, to which mobile food establishment(s) or transportation vehicles returns regularly for such things as refilling water tanks or containers and ice bins, boarding food, and for properly discharging liquid and solid wastes. (6-30-95)

~~123~~8. Sewage. Solid or liquid waste containing human, animal, vegetable or chemical matter in suspension or solution. (6-30-95)

~~124~~9. Shellfish Control Authority. A state, federal, foreign, or other government entity legally responsible for administering a program that includes certification of molluscan shellfish harvesters and dealers for interstate commerce. (6-30-95)

~~125~~30. Shellstock. Raw, in-shell molluscan shellfish. (6-30-95)

~~126~~31. Single-service Articles. Tableware, including flatware and hollowware, carry-out utensils and other items such as bags, containers, placemats, stirrers, straws, toothpicks and wrappers which are designed, fabricated and intended by the manufacturer for one (1) time, one (1) person use. (6-30-95)

~~127~~32. Single-use Articles. Bulk food containers and utensils intended by the manufacturer to be used once and discarded. The term includes items such as, but not limited to, formed aluminum, plastic or fiber food containers, jars, ketchup bottles, plastic buckets, barrels, cans, wax paper, butcher paper, plastic wrap, bread wrappers, aluminum foil and disposable gloves and aprons. (6-30-95)

~~128~~33. Slacking. The process of moderating the temperature of a food such as allowing a food to gradually increase from a deep-frozen state to twenty-five degrees Fahrenheit (25F) in preparation for deep-fat frying or to facilitate even heat penetration during the cooking of previously block-frozen food. (6-30-95)

~~129~~34. Slaughter. The killing of an animal for food by a butcher in a state or federal regulated food processing establishment. (6-30-95)

~~130~~5. Smooth. A surface texture defined as follows: (6-30-95)

a. Food contact surfaces having a uniform surface free of pits and inclusions with a cleanability equal to or exceeding that of number three (3) (one hundred (100) grit) stainless steel; (6-30-95)

b. Splash areas and nonfood contact surfaces of equipment having a surface equal to that of commercial grade hot-rolled steel free of visible scale; and (6-30-95)

c. Floors, walls and ceilings having an even or level surface with no roughness or projections that

- render it difficult to clean. (6-30-95)
1346. Support Animal. A trained animal that accompanies a person with a disability to assist in managing the disability and enables the person to perform functions that the person would otherwise be unable to perform. (6-30-95)
1327. Table-mounted Equipment. Equipment that is mounted off the floor on a structure such as a table, counter or shelf. (6-30-95)
1338. Tableware. Eating and drinking utensils for table use such as flatware, hollowware and plates. (6-30-95)
1349. Temperature Measuring Device. A thermometer, thermocouple, thermistor, or other device that indicates the temperature of food, air, or water. See Product Thermometer. (6-30-95)
13540. Temporary Food Establishment. A food establishment that operates at a fixed location for not more than fourteen (14) consecutive days in conjunction with a single event or celebration. (6-30-95)
13641. Transportation. Movement of food, while under the control of the person in charge, to a point elsewhere on the premises or from the food establishment to another site off the premises. (6-30-95)
13742. USDA. The United States Department of Agriculture. (6-30-95)
13843. Utensil. Any food-contact implement used in the storage, preparation, transportation, dispensing, service or sale of food, such as, but not limited to, kitchenware or tableware that is multi-use, single-service, or single-use; gloves used in contact with food; and product thermometer. (6-30-95)
13944. Vector. Insects, rodents and other animals which transmit disease by inoculation or by deposition of pathogenic organisms on the skin or on food or other objects. (6-30-95)
1405. Vending Machine. Any self-service device which, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food, either in bulk or in packages, without the necessity of replenishing the device between each vending operation. Vending machine also includes self-service dispensers equipped for optional manual operation. Unless otherwise stated, vending machine includes a controlled location vending machine. (6-30-95)
1416. Violation Code. A method for identifying the category and public health significance of violations in these rules, as follows: (6-30-95)
- a. The number represents the category item number which may be identified on the inspection report form for data entry purposes; (6-30-95)
- b. The term(s) after the number define the regulatory interpretation(s); and (6-30-95)
- c. The letter(s) after the interpretation term(s) represents the public health significance of the violation. Noncritical violations are identified with the letter "N" and critical violations are identified with the letter "C." A violation code containing both "N" and "C" indicate violations that could be noncritical or critical depending on the circumstances. See also Subsections 005.26 and 005.85. (6-30-95)
1427. Warewashing. The cleaning and sanitizing of the food contact surface of equipment and utensils such as kitchenware and tableware. (6-30-95)
1438. Water Activity. A measure of unbound, free water in a food available to support biological and chemical reactions. The term represents the quotient of the water vapor pressure of the substance divided by the vapor pressure of pure water at the same temperature, and is indicated by the symbol "aw." (6-30-95)
1449. Wildlife. Animals which are not commercially raised and processed in an operation under routine

regulatory surveillance. The term includes, but is not limited to, mammals such as antelope, deer, elk, buffalo, rabbit, squirrel and bear; birds such as waterfowl, quail and pheasant; fish; reptiles such as alligator, turtle and rattlesnake; and mollusks such as snail. (6-30-95)

14550. Wild Mushrooms. Mushrooms not grown, harvested and processed in an operation under routine regulatory surveillance. (6-30-95)

(BREAK IN CONTINUITY OF SECTIONS)

920. LICENSURE.

No person shall operate a food establishment who does not have a valid license issued to him by the regulatory authority, when no other state or federal food safety inspection or license is required. (~~6-30-95~~)(7-1-97)T

01. Application Procedure. Any person desiring to operate a food establishment shall make written application for a license on forms provided by the regulatory authority and pay a license fee in the amount of fifty-five dollars (\$55) as provided for by Title 39, Chapter 16, Idaho Code. (~~6-30-95~~)(7-1-97)T

a. An application for a license is to be made not less than fifteen (15) days before the date planned for opening a new establishment or change of ownership. (6-30-95)

b. The applicant for a license must be the legal owner or the agent of the legal owner of the food establishment. (6-30-95)

c. The application is to include the name and mailing address of the applicant; the form of ownership of the food establishment; the type of food establishment to be operated; the name, mailing address and location of the food establishment; the signature of the individuals comprising the legal ownership or the agent of the legal owner; ~~and~~ such other information as may be required by the regulatory authority; and the license fee. An application without the license fee is not complete and cannot be processed. (~~6-30-95~~)(7-1-97)T

d. Annual renewal of the food establishment license is required. The license shall expire December 31st of each year. A renewal application and license fee must be submitted by December 1st of each year for the forthcoming year which starts January 1st. (~~6-30-95~~)(7-1-97)T

02. License Issuance for a New Food Establishment. A license shall be issued to a new food establishment when: (6-30-95)

a. The required plans, specifications and information requested by the regulatory authority have been reviewed and approved; (6-30-95)

b. The properly completed application has been submitted and license fee receipted; and (~~6-30-95~~)(7-1-97)T

c. A preoperational inspection has shown that the establishment has been built or remodeled in accordance with approved plans and specifications, and it is ready for operation in accordance with all provisions of these rules. (6-30-95)

03. License Issuance for an Existing Establishment. A license shall be issued to an existing food establishment when: (6-30-95)

a. The properly completed application has been submitted and license fee receipted; and (~~6-30-95~~)(7-1-97)T

b. A preoperational inspection has shown that the establishment is in compliance with all provisions of these rules, except that an existing compliance schedule shall be recognized, and the establishment is ready for

operation in accordance with all provisions of these rules. (6-30-95)

04. Number of Licenses. No food establishment shall have more than one (1) license except:
(6-30-95)

a. ~~A restaurant and a bar or tavern under the same management shall have a license for each operation provided each operation is essentially separate and can function independently of the other;~~ (6-30-95)

b. ~~A retail food store with ten thousand (10,000) square feet or more of floor space shall have a license for each department provided;~~ (6-30-95)

i. ~~The activities of the departments are sufficiently large enough and each has a person in charge who is specifically responsible for the activities of the particular departments and none other;~~ and (6-30-95)

ii. ~~The number and type of retail food store departments do not exceed four (4) and consist of grocery, meat, bakery and delicatessen departments;~~ (6-30-95)

ea. Where more multiple licenses would be prudent and equitable as determined by the license holder and the regulatory authority; (6-30-95)

~~eb. Where more than one (1) license is allowed, such common operations and areas (restrooms, refuse disposal facilities, etc.) shall be recognized as part of each licensed establishment; and~~ (6-30-95)(7-1-97T)

e. ~~Should the license holder provide written request for a single license for more than one operation on the premises which is under the same management, such request shall be granted, provided that the enforcement of these rules shall be applicable to all operations under the license as a single food establishment.~~ (6-30-95)

c. Should the license holder of a food establishment, having more than one (1) operation, division or department on the premise and under the same ownership, wish to have all such operations, divisions or departments under one license, such request shall be granted, provided the following qualifications and requirements are met: (7-1-97T)

i. Each operation, division or department is essentially separate from any other operation, division or department in the food establishment and can function independently; (7-1-97T)

ii. Each operation, division or department is sufficiently large enough to have a manager who is specifically responsible for the activities of the particular operation, division or department and none other; (7-1-97T)

iii. Such common operations and areas (restrooms, refuse disposal facilities, etc.) shall be recognized as part of each operation, division or department; (7-1-97T)

iv. The license holder of the food establishment recognizes that each such operation, division or department will be inspected and regulated as a separate entity; (7-1-97T)

v. The license holder shall be ultimately responsible for regulatory action and enforcement fees associated with the enforcement of the rules should such operations, divisions or departments fail to comply with these rules. Such regulatory action shall be done in accordance with Sections 960, 970 and 976 of these rules; and (7-1-97T)

vi. Regulatory action against the license holder shall commence upon failure of the operation, division or department to satisfy Subsection 960.02.b. and it becomes necessary to enforce Subsection 960.02.c. (7-1-97T)

05. Terms and Conditions of a License. The license holder upon acceptance of the license issued by the regulatory authority shall: (6-30-95)

a. Comply with the provisions of these rules, technical waivers and modifications, and the directives of the regulatory authority; (6-30-95)

- b. Allow representatives of the regulatory authority warrantless access to the food establishment during hours of operation unannounced, in order to determine whether the food establishment is in compliance with these rules in accordance with Subsection 940.045; ~~(6-30-95)~~(7-1-97)T
- c. Accept notices issued and served by the regulatory authority in accordance with Section 970; (6-30-95)
- d. Be subject to the administrative, civil, injunctive and criminal remedies authorized by these rules for failure to comply with the provisions of these rules or an order, warning or directive of the regulatory authority; (6-30-95)
- e. Post the license in a conspicuous place of the food establishment; (6-30-95)
- f. Immediately contact the regulatory authority in the event of a foodborne or waterborne outbreak, fire, flood, extended interruption of potable water or electrical service or other emergency in the food establishment which may affect food safety; (6-30-95)
- g. Comply with any order, warning or directive issued by the regulatory authority in response to individual food establishment or community-wide emergencies; and (6-30-95)
- h. Replace any identified existing equipment or utensils allowed by Subsection 500.16, with equipment and utensils which fully comply with these rules when directed by the regulatory authority, or when replaced in normal course of operation. (6-30-95)
06. Copy of the Terms and Conditions. The regulatory authority shall provide a written copy of the terms and conditions applicable to a license at the time the license is issued, except that failure to provide this information will not prevent the regulatory authority from taking any authorized action upon the failure of the license holder to comply with these rules or any other order, warning or directive of the regulatory authority. (6-30-95)
07. Copy of Rules. The regulatory authority shall make available to the license holder a copy of these rules for his reference and compliance requirements. (6-30-95)
08. License Not Transferable. A license is not transferable. An application for a new license is required when there is a change in food establishment ownership, location or type of business or operation. (6-30-95)
09. Temporary Food Establishment License. License for a temporary food establishment, as defined in Subsection 005.13540, shall be valid for no more than fourteen (14) days. ~~(6-30-95)~~(7-1-97)T
10. Operation and Restrictions Specified. The type of operation or restrictions shall be specified on the license. (6-30-95)

(BREAK IN CONTINUITY OF SECTIONS)

940. INSPECTIONS.

01. The Regulatory Authority Shall Conduct Inspections. The regulatory authority shall conduct inspections of every food establishment not subject to other state or federal food safety inspections to determine compliance or lack of compliance with these rules, as provided for by Title 39, Chapter 16, Idaho Code. (7-1-97T)
- ~~02.~~ Frequency. An unannounced complete regular inspection of a food establishment is to be performed as follows (as based on the risk type identified in appendix A): (7-1-97)
- a. Medium-risk and high-risk food establishments shall be inspected ~~at least once every twelve (12)~~

~~months~~ as often as deemed necessary by the regulatory authority, unless otherwise designated in Subsection 940.023; and ~~(7-1-97)(7-1-97)T~~

b. ~~Low-risk food establishments will not have regular inspections, except as required for preoperational inspections, change of license holder or ownership, upon the receipt of a consumer complaint or for the purposes of an investigation. be regulated by these rules. However, nothing shall prohibit the regulatory authority from visiting such low-risk food establishments to determine their current status; and should any low-risk food establishment have expanded its operation to meet the criteria of a medium-risk or high-risk food establishment, the most responsible person shall be advised and appropriate action shall be taken to have the food establishment properly licensed and inspected.~~ ~~(7-1-97)(7-1-97)T~~

023. Additional and Other Inspections. Additional inspections shall be performed based upon assessments of potential risks of foodborne illness including a history of critical violations and numerous or repeat noncritical violations of these rules; the hazards associated with the particular foods being processed, prepared, stored or served; the methods and extent of food processing, preparation, storage and service; and the number and demographic characteristics of the food's consumers. Preoperational inspections, follow-up inspections, enforcement inspections, HACCP inspections and other investigations are to be conducted in accordance with the applicable provisions of these rules. Such inspections and investigations shall be unannounced, except as determined necessary by the regulatory authority for specific purposes in compliance with these rules. ~~(7-1-97)(7-1-97)T~~

034. Access. The regulatory authority representative, upon presentation of proper credentials, shall be permitted warrantless access to the premises of any food establishment during hours of operation unannounced in order to determine if it is in compliance with these rules. Failure to grant access is justifiable cause for the food establishment's operating license to be revoked pursuant to Subsection 960.01.b. (6-30-95)

045. Degree of Compliance Determination. The regulatory authority representative is to determine the degree of compliance by examining the food, including sampling as necessary; and by inspecting the equipment, the utensils, the facilities; the operations including storage, processing, preparation, cooking, holding, serving, cooling, cleaning and pest control; the employee's health and practices; HACCP records as applicable; the records related to foods processed or purchased and other records required by the regulatory authority; and confirm that employees with supervisory duties and food workers have satisfactorily complied with training requirements. (6-30-95)

056. Inspection Report Forms. Only inspection report forms approved by the responsible program agency are to be used to report the findings of food establishment inspections. (6-30-95)

067. Regular Inspection Report. The regular inspection report form shall be completed as follows: (6-30-95)

a. All remarks shall be referenced by the specific section number of these rules that have been violated; and (6-30-95)

b. Remarks shall list the violations and shall specify a reasonable period of time for the correction of the violations as provided in Section 950; and (6-30-95)

c. The inspection score shall consist of the total number of critical violations (a score of zero (0) being a perfect score), except that a score shall not be provided when: (6-30-95)

i. The inspection is a follow-up inspection or an enforcement inspection subsequent to a regular inspection and the only purpose of the inspection is to determine whether the violations have been corrected, in which case only those areas alleged to be in violation need be inspected; or (6-30-95)

ii. The regulatory authority has received a complaint about an alleged violation or violations, in which case the inspection need only cover the alleged violation(s); or (6-30-95)

iii. The inspection is to fulfill a specific purpose other than a routine inspection as determined by the regulatory authority. (6-30-95)

078. Follow-up Inspections. On-site follow-up inspections shall be conducted according to the following schedule: (6-30-95)

a. Following a regular inspection which revealed the number of critical or noncritical violations exceed the maximum number identified in the food establishment risk criteria of Appendix A of these rules; and (6-30-95)

b. An on-site follow-up inspection may not be required should the number of critical or noncritical violations not exceed the maximum number identified in the food establishment risk criteria of Appendix A and the regulatory authority chooses to accept a written report of correction from the license holder. When requested, it shall be the duty of the license holder to submit the written report, stating that specified violations have been corrected, to the regulatory authority within five (5) days after the correction date identified on the inspection report. (6-30-95)

089. Enforcement Inspections. Should a follow-up inspection reveal that critical or noncritical violations identified on the previous regular inspection have not been corrected or should a regular inspection reveal that critical or noncritical violations identified on the previous regular inspection have not been corrected or still exist, an enforcement inspection shall be made and the following subsections shall apply: (6-30-95)

a. The license holder shall receive written notice on the inspection form that an enforcement inspection shall be made on a specific date, which shall be within fifteen (15) days of the current regular or follow-up inspection and should the violations not be corrected at that time, regulatory action will be initiated to revoke or suspend the license issued to the food establishment in accordance with Section 960 of these rules; and (6-30-95)

b. The food establishment shall pay for such enforcement inspection(s) at the current Department/Director's designee rate and the monies collected shall be deposited to the Idaho General Fund. Such Department/Director's designee rate shall be posted in a conspicuous place in the offices of the responsible program agency and Director's designee; and (6-30-95)

c. Should additional enforcement inspections be necessary to correct such violations identified in Subsection 940.089, Subsection 940.089.b. shall apply to each and every enforcement inspection made. (6-30-95)(7-1-97)T

0910. HACCP Inspections. A HACCP inspection shall be made by the regulatory authority in lieu of a regular complete inspection as a result of a contractual agreement between the license holder and the regulatory authority for such inspections. The following shall apply to HACCP inspections: (6-30-95)

a. The license holder of the food establishment agrees to do the following: (6-30-95)

i. Prepare and follow, at all times, a HACCP plan, according to formal procedures identified in Appendix B of these rules, for each of the potentially hazardous foods processed, prepared or sold by the food establishment; and (6-30-95)

ii. Make, according to the license holder's own designated schedule, two (2) regular inspections annually, using forms provided by the responsible program agency, and making necessary corrections of violations found; and (6-30-95)

iii. Maintaining a file of such license holder inspections and HACCP records as identified in Appendix B of the rules in the food establishment and such file shall be made available to the regulatory authority upon request for inspection. (6-30-95)

b. The regulatory authority agrees to make a HACCP inspection which will consist of the following: (6-30-95)

i. Verify that the food establishment is following the approved HACCP plan for a potentially hazardous food being processed, prepared or sold at the time of the inspection; and (6-30-95)

ii. Review the license holder inspections and HACCP records on file. (6-30-95)

c. Should the HACCP inspection reveal noncompliance with the contractual agreement, a complete regular inspection shall be immediately conducted. (6-30-95)

11. Epidemiological Investigations. In accordance to Title 37, Chapter 1, Idaho Code, Idaho Food, Drug and Cosmetic Act and Idaho Reportable Diseases, IDAPA 16, Title 02, Chapter 10, incorporated in these rules under Section 997, any food establishment regulated by these rules or not shall be subject to epidemiological investigations when a foodborne disease outbreak is suspected. (7-1-97T)

102. Completed Inspection Report. A copy of the completed inspection report form shall be given to the license holder or person in charge at the conclusion of the inspection, except on a regular or follow-up inspection which requires an enforcement inspection, a copy of the report shall be mailed to the license holder if he is not present at time of the inspection. (6-30-95)

143. Inspection Report Public Record. Any completed inspection report is to be treated as a public document and shall be made available for public disclosure to any person who requests it according to law. (6-30-95)

124. Qualified Inspectors. Inspections of food establishments for regulatory purposes shall be made by Idaho licensed environmental health specialists or persons having appropriate professional training and who are authorized agents of the regulatory authority. (6-30-95)

(BREAK IN CONTINUITY OF SECTIONS)

APPENDIX A

**Food Establishment Risk Criteria
and Inspection Follow-up Risk Values**

Food Est. Risk Type	Risk Type Category Description	Critical violations	Non-critical violations
Low	Pre-packaged nonpotentially hazardous foods only. Limited preparation of nonpotentially hazardous food only.	2	4
Medium	Limited menu (1 or 2 main items). Pre-packaged raw ingredients are cooked or prepared to order. Retail food operations excluding deli or seafood operations. Raw assembly. Most products are cooked/prepared and served immediately. Hot and cold holding of potentially hazardous foods is restricted to single meal service. Preparation processes requiring cooking, cooling and reheating are limited to 1 or 2 potentially hazardous foods.	3	6
High	Extensive handling of raw ingredients. Preparation processes includes the cooking, cooling, and cooking, cooling, and reheating of potentially hazardous foods. A variety of processes require hot and cold holding of potentially hazardous food. Advance preparation for next day-service. Category includes deli and seafood departments of retail food stores, establishments doing food processing at retail level, and food processing establishments.	5	8

Violation numbers identified for the three food establishment risk types is the maximum number of violations which do not require on-site follow-up inspections. (7-1-97T)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.03 - RULES GOVERNING SUPPORT ENFORCEMENT MANUAL
DOCKET NO. 16-0303-9601

NOTICE OF VACATION OF RULE-MAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has vacated the RULE-MAKING previously initiated under this docket. The action is authorized pursuant to Section(s) 56-203, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for the vacation:

This chapter is being vacated in its entirety and rewritten under Docket Number 16-0303-9703, rules governing Child Support Services.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation, contact Jerry Spratt at (208) 334-5710 or Jennifer Peterson at (208) 334-5720.

DATED this 6th day of

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

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.03 - RULES GOVERNING SUPPORT ENFORCEMENT MANUAL
DOCKET NO. 16-0303-9701

NOTICE OF VACATION OF RULE-MAKING

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DATED this 6th day of

Sherri Kovach
Administrative Procedures Coordinator
DHW - Division of Legal Services
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P.O. Box 83720
Boise, Idaho 83720-0036
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IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.03 - RULES GOVERNING THE SUPPORT ENFORCEMENT MANUAL
DOCKET NO. 16-0303-9702
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) 56-202 and 56-203a, 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 August 20, 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: This chapter is being repealed in its entirety under this docket number. The chapter is being rewritten under docket number 16-0303-9703.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Jerry Spratt at (208) 334-5710.

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 August 27, 1997.

DATED this 6th day of August, 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

THIS RULE IS REPEALED IN ITS ENTIRETY

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.03 - RULES GOVERNING CHILD SUPPORT SERVICES

DOCKET NO. 16-0303-9703

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) 56-202 and 56-203a, 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 August 20, 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: This chapter is being rewritten under this docket number. The new chapter defines the eligibility requirements for Temporary Assistance for Families in Idaho (TAFI), Medicaid, Food Stamps and Child Support Services; defines the applicant's assignment of rights; defines cooperation with Child Support Services; outlines how any support payments received will be allocated, including support payments received in Title IV-E Foster Care cases; states Child Support Services' fees and cost reimbursement; outlines the circumstances for termination of services; defines procedures for review and modification of orders; implements the federally required form for income withholding; procedure for reporting arrears to credit reporting agencies; good cause determination in license suspension proceedings; and rescission of voluntary acknowledgments.

TEMPORARY RULE JUSTIFICATION: Temporary rules have been adopted in accordance with Section 67-5226, Idaho Code and are necessary in order to comply with deadlines in amendments to governing law or federal programs.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Jerry Spratt at (208) 334-5710.

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 August 27, 1997.

DATED this 6th day of August, 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. 16-0303-9703

IDAPA 16
TITLE 03
Chapter 03

16.03.03 - RULES GOVERNING CHILD SUPPORT SERVICES

000. LEGAL AUTHORITY.

The Department of Health and Welfare, Bureau of Child Support Services, is authorized to promulgate these rules under Sections 7-1206, 32-1209, 32-1217 and 56-203A, Idaho Code. (7-1-97)T

001. TITLE AND SCOPE.

These rules are known and will be cited as the "Idaho Department of Health and Welfare Rules Governing Child Support Services," IDAPA 16, Title 03, Chapter 03. These rules provide the standards for the administration of the child support program. (7-1-97)T

002. WRITTEN INTERPRETATIONS.

The responsible program agency within the Department may from time to time issue written interpretations and guidelines as necessary to promote uniform application of these rules. (7-1-97)T

003. ADMINISTRATIVE APPEAL.

Contested case appeals shall be governed by Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 03, "Rules Governing Contested Cases and Declaratory Rulings." (7-1-97)T

004. CONFIDENTIALITY OF RECORDS.

Any request for disclosure of information obtained by Child Support Services is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16, Title 05, Chapter 01, "Rules Governing the Protection and Disclosure of Department Records." (7-1-97)T

005. CHILD SUPPORT SERVICES.

The goal of Child Support Services is to ensure that both parents provide the financial support necessary to provide for their children. This program requires cooperation between families, employer and the community. (7-1-97)T

006. -- 009. (RESERVED).

010. DEFINITIONS.

01. Alleged Father. Any man who may be the father of a child on whose behalf an application for assistance or child support services has been made. (7-1-97)T

02. Applicant/Participant. Any person on whose behalf child support services are being provided as a result of the payment of assistance. (7-1-97)T

03. Applicant/Recipient. A person on whose behalf child support services are being provided as a result of an application for child support services. (7-1-97)T

04. Arrears. Any amount that is past due and owing. Any payment arrangement must be based on having all the arrears paid in full before the youngest child on the case turns twenty-three (23). When determining the amount owed prior to a court or administrative determination, the Child Support Guidelines will be used to determine the amount owed. (7-1-97)T

05. Assistance. Includes all types of assistance provided to a person including TAFI, Medicaid, Food Stamps and foster care costs. (7-1-97)T

06. Child Support. A judgment, decree, order, or administrative ruling directing a person or persons to provide for the support, including medical support, of a child or children. (7-1-97)T

07. Child Support Guidelines. The Idaho Child Support Guidelines, Idaho Rule of Civil Procedure 6(c)(6). (7-1-97)T

08. Child Support Services. The program administered by the Department of Health and Welfare and may be referred to as the IV-D Agency administered under the Social Security Act. (7-1-97)T
09. Custodian. The individual who is the physical custodian of any person on whose behalf child support services are being provided by the IV-D Agency. (7-1-97)T
10. Direct Payment. A support payment from a non-custodial parent which is received directly by a custodian. (7-1-97)T
11. FPLS. The Federal Parent Locator Service. (7-1-97)T
12. Legal Process. For purposes of income withholding, "legal process" means a writ, order, summons or other similar process in the nature of a garnishment, which is issued by a court of competent jurisdiction or by an authorized official pursuant to an order of such court or pursuant to state or local law. (7-1-97)T
13. Locate. The process of obtaining information concerning the physical whereabouts of the non-custodial parent, or the non-custodial parent's employer, other sources of income or assets, as appropriate, which is sufficient and necessary to take the next appropriate action in a case. (7-1-97)T
14. Medicaid. Medical assistance provided under a state plan approved under Title XIX of the Social Security Act, 42 USC 1396. (7-1-97)T
15. Non-Custodial Parent. An individual who: (7-1-97)T
- a. Is not the physical custodian of the child; and (7-1-97)T
- b. Is a parent or other person who has a legal duty to support a child on whose behalf an application has been made for assistance or child support services. (7-1-97)T
16. Spousal Support. A legally enforceable obligation assessed against an individual for the support, including medical support, of a spouse or former spouse who is living with a child or children for whom the individual also owes support. (7-1-97)T
17. Support Order. A judgment, decree, order or administrative ruling directing a person or persons to provide child support or child and spousal support. A support order shall also include a judgment, decree, order or administrative ruling directing the payment of fees and/or costs associated with the establishment, enforcement or modification of the obligation. (7-1-97)T
18. Temporary Assistance for Families in Idaho (TAFI). Temporary cash assistance provided pursuant to Chapter 2, Title 56, Idaho Code. (7-1-97)T
19. Title IV-A. Temporary Cash Assistance as provided under the Social Security Act, 42 USC 601. (7-1-97)T
20. Title IV-D. Child support services as provided under the Social Security Act, 42 USC 651. (7-1-97)T
21. Title IV-D Plan. The plan established under the conditions of 42 USC 654 and approved by the Secretary, Department of Health and Human Services and adopted by the state of Idaho. (7-1-97)T
22. Title IV-E. Federally Funded Foster Care Program as provided under the Social Security Act, 42 USC 670. (7-1-97)T

011. -- 099. (RESERVED).

100. NOTICE.

A monthly statement of payment activity shall be provided to the custodian and the non-custodial parent. (7-1-97)T

101. CHILD SUPPORT OBLIGATION AMOUNT.

The amount of support which must be provided by the non-custodial parent as specified in the support order, or if there is not yet a support order, then the amount is determined by using the Child Support Guidelines. (7-1-97)T

102. -- 199. (RESERVED).

200. COOPERATION IN ASSISTANCE CASES.

The applicant/participant must cooperate with Child Support Services. Cooperation includes, but is not limited to, assisting in: (7-1-97)T

01. Locate and Other Child Support Actions. The applicant/participant must assist in identifying and locating the non-custodial parent or alleged father; establishing the paternity of a child born out of wedlock; and the establishment, modification and enforcement of a support obligation. (7-1-97)T

02. Forwarding of Payments. Any direct payments received by the custodian must be paid to Child Support Services. Direct payments which are retained by the applicant/recipient are subject to recovery by the Department. (7-1-97)T

201. ELIGIBILITY FOR TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO(TAFI).

As a condition of eligibility, the applicants and participants must: (7-1-97)T

01. Assign Their Support Rights. Applicants and participants shall assign their right to receive support payments to Child Support Services while they receive temporary cash assistance. (7-1-97)T

02. Cooperate. Child Support Services is responsible for determining if the applicant/participant is cooperating and notifying TAFI of any non-cooperation. (7-1-97)T

202. ELIGIBILITY FOR MEDICAID.

As a condition of eligibility, the applicants and participants must: (7-1-97)T

01. Assign Their Medical Support Rights. Applicants and participants shall assign to Child Support Services all rights to any medical support available under an order of a court or an administrative agency. The assignment shall include the right to third party payments and the right to medical support that accrued prior the date of the assignment. The applicant/recipient shall not be required to assign rights to Medicare benefits. (7-1-97)T

02. Cooperate. If an applicant/participant fails to cooperate, Child Support Services shall notify Medicaid. (7-1-97)T

203. ELIGIBILITY FOR FOOD STAMPS.

As a condition of eligibility, the applicants and participants must: (7-1-97)T

01. Grant Limited Power of Attorney. Applicants and participants shall grant a limited power of attorney to Child Support Services to allow for collection, enforcement and legal activities while they receive food stamps. (7-1-97)T

02. Cooperate. If an applicant/participant fails to cooperate, Child Support Services shall notify the Food Stamp agency. (7-1-97)T

204. DISTRIBUTION OF SUPPORT PAYMENTS.

01. Monthly Application. The amounts collected as support in a month shall first be used to satisfy the current support obligation for that month. The amounts collected in excess of current support will be treated as payments on support arrears. (7-1-97)T

02. Date of Collection. The date of collection shall be the date on which the payment is received. (7-1-97)T

03. Distribution of Amounts Collected Through Income Tax Refund Offset. Amounts collected through federal and state income tax refund offset shall be distributed as payment on support arrears. (7-1-97)T

04. Distribution of Support in TAFI Cases. The amounts collected as current support shall be retained by the State to reimburse itself in whole or in part for the temporary cash assistance payment for that month. If the amount collected as current support is greater than the temporary cash assistance payment, the excess shall be paid to the family up to the amount of the current support obligation. Any amounts collected in excess of the current support obligation shall be retained by the State as reimbursement for past assistance payments. The State is limited to reimbursement of past assistance payments by the amount of the total support obligation owed. Any excess amount collected that remains after the State has been reimbursed for past assistance will be paid to the family. Collections will be applied to future payments only after all current support and arrears has been satisfied. (7-1-97)T

05. Distribution Upon Termination of Temporary Cash Assistance for Families in Idaho. When a family stops receiving temporary cash assistance, the assignment of support rights ends except as to the unpaid support that accrued prior to or during the assignment. (7-1-97)T

a. For those cases in which child support services continue after the termination of temporary cash assistance, priority shall be given to the collection of current support. (7-1-97)T

b. Through September 30, 1997, collections exceeding current support shall be retained by the State to reimburse any amounts of unpaid assistance that accrued prior to the termination of assistance. Any excess collected after the State has been reimbursed shall be paid to the family. (7-1-97)T

c. From and after October 1, 1997, collections exceeding current support shall first be distributed to the family for any arrears that accumulated after the termination of temporary cash assistance. Any excess collected that exceeds the arrears owed to the family shall be retained by the State for reimbursement of assistance. (7-1-97)T

06. Distribution of Assigned Medical Support. Any amounts collected which represent specific dollar amounts owed for medical support shall be forwarded to the Medicaid agency for distribution. (7-1-97)T

205. DISTRIBUTION OF SUPPORT COLLECTED IN TITLE IV-E FOSTER CARE MAINTENANCE CASES.

01. Payment of Support Obligation. The amount collected as current support shall first be retained by the State to reimburse itself for the foster care assistance payment for that month. Any amount collected in excess of the current month's foster care assistance payment, but less than the monthly support obligation, shall be paid to the state agency responsible for the child's placement and care. Any amount collected in excess of the monthly support obligation shall be retained by the State to reimburse any previous foster care assistance payments. The State is limited to reimbursement for past foster care assistance by the amount of the total support obligation owed. Any excess collected after the State has been reimbursed for past foster care assistance payments shall be paid to the state agency responsible for the child's placement and care. Collections shall be applied to future payments only after all current support and arrears have been satisfied. (7-1-97)T

02. Termination of Foster Care Payments. When a state stops providing foster care assistance under Title IV-E, the assignment of support rights ends except as to unpaid support which accrued prior to or during the assignment. (7-1-97)T

206. -- 299. (RESERVED).

300. CHILD SUPPORT SERVICES FOR CHILDREN NOT RECEIVING ASSISTANCE.

Any person may apply for child support services except when the person owing the duty to pay support is deceased, and no claim may be made against the estate, or the person owing support is eligible for or receiving old age assistance. (7-1-97)T

301. SERVICES UPON TERMINATION OF ASSISTANCE.

Whenever a family stops receiving assistance, Child Support Services must, within five (5) days of the termination of

assistance, notify the family of the option to continue receiving child support services. The notice shall include the fees charged for services, cost recovery and distribution policies. The family must be advised that services will be continued until Child Support Services is notified to the contrary. (7-1-97)T

302. APPLICATION.

01. Application Forms. An individual requesting child support services shall complete the appropriate forms applying for the services and granting a limited power of attorney to Child Support Services. Copies of divorce or dissolution decrees, support orders, modifications, and any related documents shall be supplied by the applicant/recipient. (7-1-97)T

02. Payment History. The applicant/recipient shall provide a history of any payments received from the non-custodial parent. The history shall include the date and the amount paid. A certified copy of any payment record maintained by a court is valid payment history. If there is a dispute about the payment history, a judgment may be required that determines all accrued arrears owed under an accruing order of support before further collection action is taken. (7-1-97)T

303. LIMITED POWER OF ATTORNEY.

01. Limited Power of Attorney. The applicant/recipient shall grant a limited power of attorney to Child Support Services to allow for collection, enforcement and legal activities. (7-1-97)T

02. Forwarding of Payments. The applicant/recipient must forward to Child Support Services any payments received from a non-custodial parent or alleged father. The non-custodial parent shall pay all support payments directly to Child Support Services, pursuant to Section 32-710A, Idaho Code. (7-1-97)T

304. FEES.

01. Application Fee. At the time of application for child support services, a written application must be completed and a fee of twenty-five dollars (\$25) must be paid. The fee must be paid in advance of any services to be provided and is not refundable. (7-1-97)T

02. Income Tax Offset Fees. A fee of twenty-five dollars (\$25) will be deducted each time child support is collected as a result of an income tax offset. (7-1-97)T

03. Internal Revenue Service (IRS) Referral Fees. A fee of one hundred twenty-two dollars and fifty cents (\$122.50) shall be charged for a referral to the IRS for full collection of the child support obligation. (7-1-97)T

04. Locate Fees. Child Support Services may charge an applicant/recipient a fee of ten dollars (\$10) for referral to FPLS for location of a non-custodial parent when no other child support services are being provided. Child Support Services may also charge a fee of four dollars (\$4) for referral to the FPLS for a social security number search. Child Support Services may charge a fee of seventy cents (\$.70) for referral to FPLS for location of a non-custodial parent. (7-1-97)T

305. LEGAL COSTS.

01. Deduction from Collections. An applicant/recipient shall be notified at the time of the application that legal costs incurred by Child Support Services will be deducted from any child support collected to reimburse the State. The applicant/recipient will be notified as to the legal costs being incurred. No more than twenty percent (20%) of any collection will be deducted for reimbursement of these costs. Child Support Services will attempt to obtain an order against the non-custodial parent in favor of the applicant/recipient for reimbursement of the legal costs incurred by Child Support Services. (7-1-97)T

306. TERMINATION OF SERVICES.

01. Applicant/Recipient's Request. Child support services will terminate upon receipt of the applicant/recipient's request for termination. Any support payments received which are owing to the applicant/recipient after

the termination shall be returned to the payor with the instructions to send all support monies directly to the applicant/recipient or as otherwise stated in the court order. (7-1-97)T

02. Applicant/Recipient Contact. Child support services may be terminated if Child Support Services is unable to contact the applicant/recipient within a thirty (30) calendar day period or applicant/recipient is not cooperating and cooperation by the applicant/recipient is essential for further action to be taken on the case. (7-1-97)T

03. Unenforceable Order. Child support services may be terminated when the support order is unenforceable or the order is no longer enforceable and the arrears owed are less than five hundred dollars (\$500). (7-1-97)T

307. NOTIFICATION OF TERMINATION.

Written notice of termination of service, including the reason for the discontinuation of services will be provided to the applicant/recipient. (7-1-97)T

308. -- 599. (RESERVED).

600. SECURING MEDICAL SUPPORT INFORMATION AND SECURING AND ENFORCING MEDICAL SUPPORT.

01. Obtaining Information. Child Support Services shall obtain information as to whether the non-custodial parent has a health insurance policy and, if so, the policy name(s) and number(s) and name(s) of person(s) covered in any case for which an assignment of support rights is in effect. The information will be provided to the applicant/recipient. (7-1-97)T

02. Securing and Enforcing Medical Support Obligations. Medical support enforcement services shall be provided in any case for which an assignment of medical support is in effect, including: (7-1-97)T

a. Petitioning the court to include health insurance that is available to the non-custodial parent at reasonable cost in new or modified court orders for support. Health insurance is considered reasonable in cost if it is employment related or other group health insurance, regardless of service delivery mechanism; (7-1-97)T

b. Taking any necessary action to ensure that the non-custodial parent secures and maintains medical insurance required by the support order. (7-1-97)T

601. REVIEW AND MODIFICATION OF SUPPORT ORDERS.

01. Notice. Each parent subject to a child support order in effect in the State that is being enforced by Child Support Services shall be notified of the right of the parent to request a review of the order by Child Support Services every thirty-six (36) months. Reviews are not to be done more frequently unless there has been a substantial and material change in circumstances. (7-1-97)T

02. Review. A support order shall be reviewed for possible modification at the request of either parent subject to the order or a state child support services agency. (7-1-97)T

03. After the Review. Each parent will be notified of the proposed adjustment or of the determination that there should be no change in the amount of child support. (7-1-97)T

04. Adjustment. A modification of a support order will only be sought upon a showing of substantial and material change in circumstances which results in an obligation under the Child Support Guidelines which differs from the existing order by at least fifteen percent (15%), but not less than fifty dollars (\$50) per month. The following criteria shall be applied by Child Support Services to determine whether there has been a substantial and material change of circumstances: (7-1-97)T

a. Whether there has been an increase or decrease in the income, as the term is defined in the Child Support Guidelines, of either parent or other person legally obligated for the support of a child; (7-1-97)T

- b. Whether there has been a substantial increase or decrease in the assets of either parent or other person legally obligated for the support of a child; (7-1-97)T
- c. Whether there has been a substantial change in the needs of the child; (7-1-97)T
- d. Whether there has been a change in the custody or visitation rights of the non-custodial parent; and (7-1-97)T
- e. Whether other factors exist indicating a substantial and material change in circumstances since the entry or modification of the support order. (7-1-97)T

602. FORM OF INCOME WITHHOLDING ORDER.

Income withholding orders issued pursuant to Section 7-1204, Idaho Code, shall be in substantially the following form set forth in Appendix A at the end of this chapter. (7-1-97)T

603. CONSUMER REPORTING AGENCIES.

01. Consumer Reporting Agency. Any person who for monetary fees, dues or on a cooperative basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports. (7-1-97)T

02. Reports. Reports are made to consumer reporting agencies once arrears accrue in excess of five hundred dollars (\$500). Notice will be provided to the non-custodial parent prior to the report being made available to the agencies and shall inform the non-custodial parent of the methods available for contesting the accuracy of the information. (7-1-97)T

604. GOOD CAUSE DETERMINATION IN LICENSE SUSPENSION PROCEEDINGS.

- 01. Definition. "Person" means an individual. (7-1-97)T
- 02. Res Judicata. No issues that have been previously litigated may be considered at the license suspension hearing. (7-1-97)T
- 03. Good Cause. A license suspension shall be denied or stayed if the obligor proves that one (1) of the following has resulted in a current inability to pay the child support obligation: (7-1-97)T
 - a. The obligor is physically disabled; (7-1-97)T
 - b. The obligor is experiencing the effects of an extended illness or accident; (7-1-97)T
 - c. The obligor is a student whose enrollment is a result of a referral from Vocational Rehabilitation, workman's compensation, or other competent authority working with disabled individuals; or (7-1-97)T
 - d. The obligor is incarcerated in any county or state facility, and proves that he or she has no assets. (7-1-97)T
- 04. Not Good Cause. Any factor not defined as good cause in Subsection 604.03 is not good cause for a denial or stay of a license suspension, including but not limited to the following: (7-1-97)T
 - a. The obligor is unemployed, underemployed, or has difficulty maintaining consistent employment; (7-1-97)T
 - b. The obligor is disabled but has not applied for disability or other benefits, or has been refused benefits; (7-1-97)T

- c. The obligor asserts that the child support obligation is too high; (7-1-97)T
- d. The obligor has been denied full visitation with the child or children; or (7-1-97)T
- e. The obligor alleges the obligee misuses the child support. (7-1-97)T

605. -- 699. (RESERVED).

700. RESCISSION OF VOLUNTARY ACKNOWLEDGMENTS.

A voluntary acknowledgment must be rescinded within sixty (60) days of the signing of the acknowledgment. (7-1-97)T

701. -- 999. (RESERVED).

APPENDIX A

ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT

State _____, Original Order/Notice
Co./City/Dist. of _____ Amended Order/Notice
Date of Order/Notice _____ Terminate Order/Notice
Court/Case Number _____

_____) RE: *
Employer/Withholder's Federal EIN Number) Employee/Obligor's Name (Last, First, MI)
_____) *
Employer/Withholder's Name) Employee/Obligor's Social Security Number
_____) *
Employer/Withholder's Address) Employee/Obligor's Case Identifier
_____) _____
_____) Custodial Parent's Name (Last, First, MI)
_____) _____

Child(ren)'s Name(s): DOB Child(ren)'s Name(s): DOB

ORDER INFORMATION: This is an Order/Notice to Withhold Income for Child Support based upon an order for support from _____. By law, you are required to deduct these amounts from the above-named employee's/obligor's income until _____ even if the Order/Notice is not issued by your State.

If checked, you are required to enroll the child(ren) identified above in any health insurance coverage available through the employee's/obligor's employment. _____

\$ _____ per _____ in current support
\$ _____ per _____ in past-due support Arrears 12 weeks or greater? yes no
\$ _____ per _____ in medical support
\$ _____ per _____ in other (specify)
_____ per _____ in other (specify)

for a total of \$ _____ per _____ to be forwarded to the payee below.

You do not have to vary your pay cycle to be in compliance with the support order. If your pay cycle does not match the ordered support payment cycle, use the following to determine how much to withhold:

\$_____ per weekly pay period. \$_____ per semimonthly pay period (twice a month).
\$_____ per biweekly pay period (every two weeks). \$_____ per monthly pay period.

REMITTANCE INFORMATION: Follow the laws and procedures of the employee's/obligor's principal place of employment even if such laws and procedures are different from this paragraph:

You must begin withholding no later than the first pay period occurring _____ working days after the date of this Order/Notice. Send payment within _____ working days of the payday date of withholding. You are entitled to deduct a fee of _____ to defray the cost of withholding. The total withheld amount, including your fee, cannot exceed _____% the employee/obligor's aggregate disposable weekly earnings. For the purpose of the limitation on withholding, the following information is needed (see #9 below):

When remitting payment provide the payday/date of withholding and the case identifier _____.
If remitting by EFT/EDI, use this FIPS code: *; _____; Bank routing code:* _____;
Bank account number:* _____.

Make it payable to: **Payee and case identifier**

Send check to: **Payee's Address**

Authorized by _____

Print Name _____

ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS

_ If checked you are required to provide a copy of this form to your employee.

1. **Priority:** Withholding under this Order/Notice has priority over any other legal process under State law against the same income. Federal tax levies in effect before receipt of this order have priority. If there are Federal tax levies in effect please contact the requesting agency listed below.

2. **Combining Payments:** You can combine withheld amounts from more than one employee/obligor's income in a single payment to each agency requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.

3. **Reporting the Paydate/Date of Withholding:** You must report the payday/date of withholding when sending the payment. The payday/date of withholding is the date on which the employee is paid and controls the income, i.e. the date the income check or cash is given to the employee, or the date in which the income is deposited directly in his/her account.

4. **Employee/Obligor with Multiple Support Withholdings:** If you receive more than one Order/Notice against this employee/obligor and you are unable to honor them all in full because together they exceed the withholding limit of the State of the employee's principal place of employment (see #9 below), you must allocate the withholding based on the law of the State of the employee's principal place of employment. If you are unsure of that State's allocation law, you must honor all Orders/Notices' current support withholdings before you withhold for any arrearages, to the greatest extent possible under the withholding limit. You should immediately contact the last agency that sent you an Order/Notice to find the allocation law of the state of the employee's principal place of employment.

5. **Termination Notification:** You must promptly notify the payee when the employee/obligor is no longer working for you. Please provide the information requested and return a copy of this order/notice to the agency identified below.

EMPLOYEE'S/OBLIGOR'S NAME: _____
EMPLOYEE'S CASE IDENTIFIER: _____ **DATE OF SEPARATION:** _____.

LAST KNOWN HOME ADDRESS _____.
NEW EMPLOYER'S ADDRESS _____.

6. **Lump Sum Payments:** You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. If you have any questions about lump sum payments, contact the person or authority below.

7. **Liability:** If you fail to withhold income as the Order/Notice directs, you are liable for both the accumulated amount you should have withheld from the employee/obligor's income and any other penalties set by State law.

8. **Anti-discrimination:** You are subject to a fine determined under State law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against any employee/obligor because of a child support withholding.

9. **Withholding Limits:** You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. Section 1673(b)); or 2) the amounts allowed by the State of the employee's/obligor's principal place of employment. The Federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as: State, Federal, local taxes; Social Security taxes; and Medicare taxes. The Federal CCPA limit is 50% of the ADWE for child support and alimony, which is increased by: 1) 10% if the employee does not support a second family; and/or 2) 5% if arrears are more than 12 weeks old. (see boxes on front)

10. _____

Requesting Agency _____

If you or your employee/obligor have any questions, contact:

by telephone at _____ or
by FAX at _____ or
by Internet _____.

(7-1-97)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING MEDICAL ASSISTANCE
DOCKET NO. 16-0309-9707

NOTICE OF VACATION OF TEMPORARY RULE-MAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has vacated the TEMPORARY RULE-MAKING previously initiated under this docket. The action is authorized pursuant to Section(s) 56-202 and 56-203, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for the vacation:

Docket No. 16-0309-9707 was published in error as a temporary rule in Volume 97-7 of the Idaho Administrative Bulletin. It should have been published as a permanent rule, only. Therefore, the temporary portion of this rule is being vacated. The proposed rule will continue through the regular rule-making process.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation, contact Lloyd Forbes at (208) 334-5795.

DATED this 6th day of August, 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

IDAPA 29 - IDAHO POTATO COMMISSION
29.01.01 - RULES OF PROCEDURE OF THE IDAHO POTATO COMMISSION
DOCKET NO. 29-0101-9701
NOTICE OF CORRECTION

CORRECTION: The following notice is being printed to correct an error made by the Office of Administrative Rules. The error was made during the publication of the final rule in the 1996 Administrative Code, IDAPA 29.01.01, Section 010. The original notice and final rule were published in the November 6, 1993, Administrative Bulletin, Volume 93-5. The text of Rule 10 (Section 010) is being republished as originally promulgated.

AUTHORITY: In compliance with Section 67-5228, Idaho Code, notice is hereby given that this agency, with the consent of the Administrative Rules Coordinator, is correcting a transcription and publication error. This action is authorized pursuant to Section 67-5228, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise statement of the correction being made:

IDAPA 29.01.01, Rules of Procedure of the Idaho Potato Commission, was published in Volume 8 of the Idaho Administrative Code, July 1, 1996, pages 1 through 36. A transcription error was made during the publication of this rule in Section 29.01.01.010 (Rule 10). Docket No. 29-0101-9301, published in the Idaho Administrative Bulletin, November 6, 1993, Volume 93-5, pages 641 through 703, was published correctly. This Section is being reprinted in this notice as originally promulgated in the Idaho Administrative Bulletin. The correction will be made in the 1997 Idaho Administrative Code.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this correction, contact Dennis Stevenson at (208) 334-3558.

DATED this 8th day of July, 1997.

Dennis Stevenson
Office of the Administrative Rules Coordinator
Department of Administrative
PO Box 83720, Boise, ID 83720-0011

TEXT OF DOCKET NO. 29-0101-9701

010. THESE RULES SUPERSEDE THE ATTORNEY GENERAL'S RULES OF PROCEDURE (Rule 10). Except as provided in Rule 401 addressing rulemaking, these rules are affirmatively promulgated to supersede the Attorney General's Rules of Procedure, IDAPA 04.11.01.000 et seq. The Attorney General's Rules of Procedure do not apply to proceedings before the Commission except as provided in rule 401. (11-27-93)

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION
31.11.01 - SAFETY AND ACCIDENT REPORTING RULES FOR UTILITIES REGULATED
BY THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-1101-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given of the Idaho Public Utilities Commission's proposed rulemaking. This action is authorized pursuant to Section 61-515, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be scheduled only if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 1997. The hearing site will be accessible to persons with disabilities. Request for accommodations must be made not later than five (5) days prior to the hearing, to the Commission's address set out below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rules:

The Commission's Safety and Accident Reporting Rules currently adopt by reference several national safety codes and the federal gas pipeline safety regulations. These national safety codes and regulations have recently been updated. The Commission is proposing to adopt the updated versions of the national safety codes and regulations.

Existing Rule 101 (31.11.01.101) adopts by reference the National Electric Safety Code (NESC) based upon the 1993 edition of the code. The Commission proposes to adopt the 1997 edition of the NESC. The most significant changes contained in the 1997 edition include: showing metric as well as inch-foot-pound numeric values; clarifying the methods for grounding fences; changes to the clearance rules applicable to emergency and temporary overhead lines; and adding requirements for continuance metallic shield for some communication cables. Existing Rule 201 (31.11.01.201) adopts various parts of Title 49 of the Code of Federal Regulations pertaining to gas and pipeline corporations. The Commission proposes to adopt the updated safety regulations promulgated by the United States Department of Transportation found at 49 C.F.R. Parts 191, 192, 193, 195, and 199 (effective October 1, 1996).

Existing Rule 202 (31.11.01.202) last adopted the National Fuel Gas Code's 1992 edition. The Commission proposes to adopt the 1996 edition of the National Fuel Gas Code. Significant changes included in the 1996 edition are: changing the point of delivery for propane piping systems to be the discharge of the final stage pressure regulator; adding sizing tables for polyethylene tubing and corrugated stainless steel tubing; and adding tables for sizing of masonry chimneys exposed to the outdoors below the roof line. Existing Rule 203 (31.11.01.203) adopts by reference portions of the 1991 edition of the Uniform Mechanical Code (UMC) referring to gas or gas-burning appliances. The Commission proposes to adopt the 1997 edition of the UMC. Finally, the Commission proposes to make several other non-substantive and format changes to its Safety Rules.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these proposed rules adopt updated national safety codes and regulations dealing with the provision of electricity, natural gas, telecommunications, and water services.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rules, contact Donald L. Howell II, Deputy Attorney General at (208) 334-0312 or David Schunke, Deputy Administrator at (208) 334-0355.

DEADLINE FOR WRITTEN COMMENTS: Anyone may submit written comments regarding these proposed rules. All written comments and data concerning the proposed rules must be delivered to the Commission Secretary at the address identified above or must be postmarked on or before August 27, 1997. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 11th day of June 1997.

Myrna J. Walters
Commission Secretary

Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
FAX: (208) 334-3762

Street Address for Express Mail:
472 West Washington Street
Boise, ID 83702-5983

TEXT OF DOCKET NO. 31-1101-9701

000. LEGAL AUTHORITY (Rule 0).

These rules adopting by reference national safety codes and requiring reporting of accidents are adopted under the general authority of the Public Utilities Law, chapters 1 through 7, Title 61, Idaho Code, and under the specific authority of ~~s~~Sections 61-515 and 61-517, Idaho Code. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS (Rule 3).

Any person requesting a waiver from any provision of these safety rules or accident reporting rules may petition the Idaho Public Utilities Commission for a waiver pursuant to the Commission's Rules of Procedure, IDAPA 31.01.01,000 et seq. (7-1-93)(____)

004. PUBLIC RECORDS ACT COMPLIANCE (Rule 4).

Notes of telephone reports required by Rule 301 and written reports required by Rule 302 are public records subject to inspection, examination and copying. Further investigative reports by the Commission or the Commission Staff are investigatory records exempt from disclosure. See ~~s~~Sections 9-337(4) and 9-340(2), Idaho Code. Reports required by these rules and the results of further investigations by the Commission are by statute prohibited from admission into evidence in any action for damages based on or arising out of the loss of life or injury to the person or property. See ~~s~~Section 61-517, Idaho Code. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

006. CITATION (Rule 6).

The official citation of these rules is IDAPA 31.11.01,000 et seq. For example, this rule is cited as IDAPA 31.11.01,006. In documents submitted to the Commission or issued by the Commission however, these rules may be cited by their short title Safety and Accident Reporting Rules (SARR) and the parenthetical rule number. For example, this rule may be cited as SARR 6. (7-1-93)(____)

007. EFFECTIVE DATE--HISTORY OF RULES (Rule 7).

The predecessors to these rules (in particular earlier adoptions by reference of previous versions of safety codes) have been adopted many times over the years. ~~They were most recently codified at IDAPA 31.I. They were readopted and reformatted by rulemaking decision in docket number 31-1101-9301 effective July 1, 1993.~~ The history of these ~~rulemaking proceedings~~ rules preceding the initiation of the publishing of the Idaho Administrative Bulletin and the Idaho Administrative Code is available from the Commission Secretary. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

101. NATIONAL ELECTRICAL SAFETY CODE (NESC) (Rule 101).

The Commission adopts by reference the ANSI C2-1993~~7~~ National Electrical Safety Code (NESC), 1993~~7~~ Edition and the errata dated September 3, 1996. The ANSI C2-1993 National Electric Safety Code, 1993~~7~~ Edition, is published by the Institute of Electrical and Electronics Engineers, Inc., and is available from the Institute of Electrical and Electronics Engineers, Inc., 345 E. 47th Street, New York, NY 10017 and may be ordered by calling 1-800-678-IEEE. All electrical and telephone corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of the NESC. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

201. FEDERAL REGULATIONS--49 C.F.R. PARTS 191, 192, 193 ~~AND~~, 195 ~~AND~~ 199 (Rule 201).

The Commission adopts by reference Parts 191, 192, 193, ~~and~~ 195, and 199, Title 49, the Code of Federal Regulations (October 1, 1996), except that federal accident reporting requirements contained in the rules adopted by reference in Rule 201 are replaced for state reporting purposes by orders of the Commission or rules of the Commission. These regulations are found in the Code of Federal Regulations, available from the ~~Publications Division~~, U.S. Government Printing Office, Superintendent of Documents, Mail Stop: SSOP, Washington, D-C-20402-9328. The version of Part 191 here adopted by reference was most recently amended in the Federal Register of December 5, 1991, 56 Fed.Reg. 63770, and is found in the annual volumes of the Code of Federal Regulations for 1991 and 1992. The version of Part 192 here adopted by reference was most recently amended in the Federal Register of December 5, 1991, 56 Fed.Reg. 63771, and is found the annual volumes of the Code of Federal Regulations for 1991 and 1992. The version of Part 193 here adopted by reference was most recently amended in the Federal Register of July 9, 1991, and is found in the annual volumes of the Code of Federal Regulations for 1991 and 1992. The version of Part 195 here adopted by reference was most recently amended in the Federal Register of December 5, 1991, 56 Fed.Reg. 63771, and is found in the annual volumes of the Code of Federal Regulations for 1991 and 1992. All gas and pipeline corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of these federal regulations adopted by reference. (7-1-93)()

202. NATIONAL FUEL GAS CODE (NFGA) (Rule 202).

01. Adoption By Reference. The Commission adopts by reference the NFPA 54 ANSI Z223.1 National Fuel Gas Code, 1992~~6~~ Edition. The 1992~~6~~ Edition of the National Fuel Gas Code is designated as ANSI Z.223.1-1992 by the American National Standards Institute, Inc. (ANSI), and as NFPA 54-1992~~6~~ by the National Fire Protection Association (NFPA). The National Fuel Gas Code is jointly published by the American Gas Association, 1515 Wilson Blvd., Arlington, Virginia 22209, and the National Fire Protection Association, 1 ~~Battery March~~ Batterymarch Park, PO Box 9101, Quincy, Massachusetts 02269-9101, and is available from them and may be ordered by calling 1-800-344-3555. All gas corporations subject to the jurisdiction of this Commission are required to abide by applicable provisions of the National Fuel Gas Code and to connect for service and light only those installations that: (7-1-93)()

~~01a. Inspected and Approved:~~ Have been inspected and approved by authorized agencies, or, (7-1-93)()

~~02b. National Fuel Gas Code:~~ When inspecting agencies do not exist, to require their customers to abide by applicable provisions of the National Fuel Gas Code as a condition of receiving service or continuing to receive service. (7-1-93)()

203. UNIFORM MECHANICAL CODE (UMC) (Rule 203).

01. Adoption By Reference. The Commission adopts by reference those portions of the Uniform Mechanical Code 1994~~7~~ Edition and the undated first errata explicitly referring to gas or gas-burning appliances; provided, however, that unvented room heaters not meeting the requirements of Section 807(c) of the Uniform Mechanical Code may be connected for service if they comply with Sections 6.24 and 7.2 of the National Fuel Gas

Code. The Uniform Mechanical Code 1994~~7~~ Edition is jointly published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601, and the International Association of Plumbing and Mechanical Officials, 20001 South Walnut Drive, Walnut, California 91789-2825. All gas corporations subject to the jurisdiction of this Commission are required to abide by applicable provisions of the Uniform Mechanical Code and to connect for service and light only those installations that: (7-1-93)()

~~01a. Inspected and Approved.~~ Have been inspected and approved by authorized agencies, or, (7-1-93)()

~~02b. Uniform Mechanical Code.~~ When inspecting agencies do not exist, to require their customers to abide by applicable provisions of the Uniform Mechanical Code; provided, however, that unvented room heaters not meeting the requirements of Section 807(c) of the Uniform Mechanical Code may be connected for service if they comply with Sections 6.24 and 7.2 of the National Fuel Gas Code as a condition of receiving service or continuing to receive service. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

301. IMMEDIATE REPORTING OF FATALITIES AND CERTAIN ACCIDENTS (Rule 301).

01. Reporting Required. Whenever any employee of an electrical corporation, gas corporation, pipeline corporation, telephone corporation, or water corporation or any member of the public dies or requires in-patient hospitalization as a result of contact with or proximity to utility operating property, the utility must notify the Commission by telephone of the fatality or hospitalization no later than the first business day following discovery of the fatality or reporting of the hospitalization, except as provided in ~~paragraph~~ Subsection 31.11.01.301.02. Reports should be made to the Commission Secretary at (208) 334-0338. (7-1-93)()

02. Operating Property--Automobile Accident Exception. As used in this rule, operating property means electric plant as defined in §Section 61-118, Idaho Code, gas plant as defined in §Section 61-116, Idaho Code, pipelines as defined in §Section 61-114, Idaho Code, telephone line as defined in §Section 61-120, Idaho Code, or water systems as defined in §Section 61-124, Idaho Code. This rule does not apply to fatalities arising out of automobile accidents, even if the automobile later comes into contact with utility plant. Office buildings or portions of office buildings not associated with the physical delivery of utility services or commodities are not considered operating property. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

303. USE OF REPORTS (Rule 303).

The Commission may find that reports required by Rules 301 and 302 constitute an adequate investigation of the accident reported, may direct the utility to provide further information to the Commission, or may direct its Staff or others to conduct further investigations. Reports required by Rules 301 and 302 and the results of further investigations by the Commission are by statute prohibited from admission into evidence in any action for damages based on or arising out of the loss of life or injury to the person or property. See §Section 61-517, Idaho Code. (7-1-93)()

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION
31.12.01 - SYSTEMS OF ACCOUNTS FOR PUBLIC UTILITIES REGULATED
BY THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-1201-9701

NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given of the Idaho Public Utilities Commission's proposed rulemaking. This action is authorized pursuant to Section 61-524, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be scheduled only if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 1997. The hearing site will be accessible to persons with disabilities. Request for accommodations must be made not later than five (5) days prior to the hearing, to the Commission's address set out below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rules:

The Commission's Systems of Accounts for Public Utilities Rules currently adopt by reference the NARUC uniform system of accounts regulations. The rules prescribe the manner in which utility accounting records are to be kept. The systems of accounts regulations for Class A and B water utilities have recently been updated. The Commission is proposing to adopt the 1996 updated version of the Uniform Systems of Accounts published by the National Association of Regulatory Utility Commissioners (NARUC).

Existing Rule 104 (31.12.01.104) adopts by reference the Uniform System of Accounts (USOA) for Class A and B Water Utilities based upon the 1984 version. The Commission proposes to adopt the 1996 version of the USOA published by the National Association of Regulatory Utility Commissioners, 1201 Constitution Avenue N.W., PO Box 684, Washington, DC 20044-0684.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these proposed rules offer no new or different standard but simply adopt the updated 1996 version of the Uniform Systems of Accounts for Class A and B Water Utilities published by the National Association of Regulatory Utility Commissioners.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rules, contact Scott D. Woodbury, Deputy Attorney General at (208) 334-0320.

DEADLINE FOR WRITTEN COMMENTS: Anyone may submit written comments regarding these proposed rules. All written comments and data concerning the proposed rules must be delivered to the Commission Secretary at the address identified above or must be postmarked on or before August 27, 1997. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 24th day of June 1997.

Myrna J. Walters
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
FAX: (208) 334-3762

Street Address for Express Mail:
472 West Washington Street
Boise, ID 83702-5983

TEXT OF DOCKET NO. 31-1201-9701

104. UNIFORM SYSTEM OF ACCOUNTS FOR WATER UTILITIES (Rule 104).

The Commission adopts by reference the Uniform System of Accounts for Class A and B Water Utilities, 1984~~96~~ version, published by the National Association of Regulatory Utility Commissioners (NARUC), available from NARUC at ~~1102 Interstate Commerce Commission Building~~ 1201 Constitution Avenue N.W., Suite 1102, P.O. Box 684, Washington, D.C. 20044-~~0684~~. The accounts adopted by reference are adopted for the convenience of establishing uniform systems of accounts only and do not bind the Commission in any manner to any particular ratemaking treatment of items in these accounts. All Class A and B water corporations subject to the regulatory authority of the Idaho Public Utilities Commission are required to maintain their regulatory books according to the system of accounts adopted by this rule. (7-1-93)()

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION
31.61.01 - MOTOR CARRIER RULES OF THE IDAHO PUBLIC UTILITIES COMMISSION
DOCKET NO. 31-6101-9701
NOTICE OF PROPOSED RULES

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given of the Idaho Public Utilities Commission's proposed rulemaking. This action is authorized pursuant to Section 61-807, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be scheduled only if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 1997. The hearing site will be accessible to persons with disabilities. Request for accommodations must be made not later than five (5) days prior to the hearing, to the Commission's address set out below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rules:

The Commission proposes to remove all rules and portions of rules pertaining to safety fitness ratings. The Commission recently suspended those rules in response to a Federal Court ruling citing that the Federal Highway Administration rating methodology was illegally promulgated. The Federal Highway Administration is in the process of promulgating a new safety fitness rating methodology. The Commission may, eventually, promulgate new rules regarding safety fitness ratings but does not propose to do so at this time.

The Commission proposes to consolidate Rule 17 with Rule 19 (pertaining to drug testing) to eliminate a redundancy. This will have no substantive effect on the Commission's drug testing policy. The rule pertaining to leases of equipment is simply a reproduction of the federal regulations and the Commission proposes to just reference those regulations. The Commission also proposes to eliminate Rule 25 pertaining to the interchange of equipment because this is an obsolete practice and the rule is no longer needed.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes being made are either non-controversial "housekeeping" modifications or involve areas where the Commission's authority has been preempted by federal law.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the proposed rules, contact Brad M. Purdy, Deputy Attorney General at (208) 334-0357 or Ron Law, Administrator, Regulated Carrier Division, at (208) 334-0330.

DEADLINE FOR WRITTEN COMMENTS: Anyone may submit written comments regarding these proposed rules. All written comments and data concerning the proposed rules must be delivered to the Commission Secretary at the address identified below or must be postmarked on or before August 27, 1997. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this day of June 1997.

Myrna J. Walters
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
FAX: (208) 334-3762

Street Address for Express Mail:
472 West Washington Street
Boise, ID 83702-5983

TEXT OF DOCKET NO. 31-6101-9701

001. TITLE AND SCOPE (Rule 1).

The title of these rules is the Motor Carrier Rules. These rules apply to intrastate motor carriers under the jurisdiction of the Idaho Public Utilities Commission (Commission) and, when provided in the rule, to interstate or foreign carriers providing transportation of persons or property over highways of the state of Idaho by motor vehicle. These rules should be construed in connection with the Idaho Motor Carrier Act, the Idaho Public Utilities Law and other applicable state laws, not preempted by federal laws, all of which ~~These laws~~ govern the interpretation of these rules. Procedural rules in these Motor Carrier Rules will be liberally interpreted to secure a just, speedy and economical determination of issues presented to the Commission. Unless prohibited by statute or rule of substantive law, the Commission may permit deviation from procedural rules in these Motor Carrier Rules when it finds compliance with them is impracticable, unnecessary or not in the public interest. (7-1-93)(____)

002. WRITTEN INTERPRETATIONS. AGENCY GUIDELINES (Rule 2).

The Administrator of the Regulated Carrier Division is authorized to make and give informal interpretations of the terms and definitions found in the Motor Carrier Act, this Commission's rules applicable to motor carriers, permits issued by the Commission, ~~tariffs on file with the Commission,~~ and other filings relating to motor carriers maintained by the Commission pursuant to law. In addition, ~~for rulemakings conducted before July 1, 1993~~, written interpretations to these rules in the form of explanatory comments accompanying the order of proposed rulemaking and review of comments submitted in the order adopting these rules are maintained in the files of the Secretary of the Idaho Public Utilities Commission and are available from the office of the Commission Secretary. The Commission Secretary may be contacted in writing at the Idaho Public Utilities Commission, P.O. Box 83720, Boise, Idaho 83720-0074, or may be reached by telephone at (208) 334-0300. For future rulemakings ~~conducted after July 1, 1993~~, written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking decision adopting these rules are published in the issues of the Idaho Administrative Bulletin proposing or adopting the rules. The Commission reserves to itself the authority to issue formal declaratory orders construing these items. (7-1-93)(____)

003. ADMINISTRATIVE APPEALS (Rule 3).

All administrative appeals under the Motor Carrier Rules ~~for motor carrier safety ratings under Rule 12 are conducted under the procedures of that rule. All other administrative procedures under these rules~~ are conducted under the Commission's rules of procedure, IDAPA 31.01.01.000 et seq. (7-1-93)(____)

004. PUBLIC RECORD ACT COMPLIANCE (Rule 4).

All materials in motor carrier files, except those that are investigatory records under ~~s~~Section 9-340(22), Idaho Code, are public records available for inspection, examination and copying. Investigatory records are not public records, but may be examined or disclosed by the object of the investigation pursuant to ~~s~~Section 9-335, Idaho Code. (7-1-93)(____)

005. DEFINITIONS (Rule 5).

Whenever any term used in these rules is defined or referred to in the Motor Carrier Act, that term takes its statutory definition in these rules. In particular, the following terms are defined in ~~s~~Sections 61-801 and 61-801A, Idaho Code: (7-1-93)(____)

01. Commission. "Commission" means the Idaho Public Utilities Commission. (7-1-93)

02. Common Carrier. "Common carrier" means any person that holds itself out to the general public to engage in the transportation by motor vehicle in commerce in the state of Idaho of passengers or property or any class or classes thereof for compensation, whether over regular or irregular routes, or by scheduled or unscheduled service. (7-1-93)

03. Contract Carrier. "Contract carrier" means any person that, under individual contracts or agreements, engages in the transportation, other than transportation referred to in Subsection 005.02 (i.e., common carriage), by motor vehicle of passengers or property in commerce in the state of Idaho for compensation.

(7-1-93)

04. Highway. "Highway" means the public roads, highways, streets, and ways of the State. (7-1-93)

05. Interstate Carrier. "Interstate carrier" means any person who or which owns or operates any motor vehicle in the state of Idaho or on the highways of the state of Idaho, in commerce between the States, or between the States and a foreign Nation, on either a general or limited basis, used or maintained for the transportation of persons or property or any class or classes thereof. (7-1-93)

06. Motor Carrier. "Motor carrier" means common carrier, contract carrier or private carrier (see Subsections ~~04705.02~~, ~~005.03~~, and ~~005.10~~). (~~7-1-93~~)(____)

07. Motor Vehicle. "Motor vehicle" means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highway in the transportation of passengers and/or property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. (7-1-93)

08. Permit. "Permit" means a permit issued under this chapter to any motor carrier. (7-1-93)

09. Person. "Person" means any individual, firm, copartnership, corporation, company, association, or joint stock association, and includes any trustee, receiver, assignee, or personal representative thereof. (7-1-93)

10. Private Carrier. "Private carrier" means any person not included in the terms "common carrier" or "contract carrier" (defined in Subsections 005.02 and 005.03) who or which transports in commerce in the state of Idaho by motor vehicle property of which such person is the owner, lessee, or bailee, when such property is for the purpose of sale, lease, rent or bailment, or in the furtherance of any commercial enterprise; provided, that a motor vehicle of a private carrier, not in excess of eight thousand (8,000) pounds gross vehicle weight, not engaged in the transport of a hazardous substance, shall be exempt from the provisions of the Motor Carrier Act and the Motor Carrier Rules. (7-1-93)

11. Transportation. "Transportation" includes all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or contact, express or implied, together with all services, facilities and property furnished, operated or controlled by any such carrier or carriers and used in the transportation of passengers and/or property in commerce in the state of Idaho. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

008. NAME AND PERMIT NUMBER OF CARRIER. CORRESPONDENCE--CHANGE OF ADDRESS (Rule 8).

01. Name and Permit Number of Carrier. Operations of a motor carrier must be conducted in the name in which the permit has been issued. The carrier must use that name on all reports, ~~tariffs~~, time schedules, ~~contracts~~, insurance filings, leases and all other official documents relating to its operations. A motor carrier must also use its permit name and number in all correspondence with the Commission. If the motor carrier does business under a name other than the name of its owner (sole proprietor, partnership or corporation), both that name and the assumed business name must appear on the permit, but the assumed business name alone may appear on advertising or other material distributed to the general public. (~~7-1-93~~)(____)

02. Service. Notices, Complaints, Orders and other official documents issued by the Commission may be served by mail to each motor carrier at the address currently shown on its permit or to its designated agent filed with this Commission. This service constitutes due and timely notice to the motor carrier. No further notice is necessary to bind the motor carrier to action taken pursuant to such notice. (7-1-93)

03. Correspondence. All correspondence with the Commission regarding a motor carrier should be addressed:

Commission Secretary
Idaho Public Utilities Commission
Statehouse
Boise, Idaho 83720-6000
ATTN: Regulated Carrier Division

(7-1-93)

04. Carrier's Change of Address. All carriers must immediately report any change in their principal business address to the Commission. Failure to keep the Commission apprised of the carrier's principal business address and failure to accept mail from the Commission at the most recently reported principal business address are violations of these rules subject to the sanctions of Idaho Code Section 61-808. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

010. CODE OF FEDERAL REGULATIONS. FEDERAL REGISTER (Rule 10).

The Code of Federal Regulations (CFR) is referred to in MCR 12, ~~47~~, 18, 19, 21, 24, ~~26~~, 36 and 51. Federal Regulations are adopted by reference in MCR ~~47~~, 18, 19, 21, 24, ~~26~~, 36, and 51. The annual volumes of the CFRs may be obtained from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402. Amendments to the annual volumes are published in the Federal Register, pending their incorporation in the next annual volumes. The CFRs are also available for inspection and copying at the office of the Idaho Public Utilities Commission and the Idaho State Law Library. Whenever a federal regulation is adopted by reference in these rules, subsequent recom compilations are also adopted by reference, but subsequent amendments are not. (~~7-1-93~~)()

(BREAK IN CONTINUITY OF SECTIONS)

012. MOTOR CARRIER SAFETY ~~RATING~~ FITNESS PROCEDURES (Rule 12).

01. Scope and Purpose of Rule. This Rule establishes procedures to determine the safety fitness of motor carriers, ~~to assign safety ratings, and to take remedial action when required. This Rule is modeled upon 49 CFR. Part 385. This Rule authorizes the Commission and the Idaho State Police (ISP) assigned to the Motor Carrier Safety Assistance Program (MCSAP) to determine safety ratings of motor carriers subject to the Commission's safety authority or to accept safety ratings made by federal authorities under 49 CFR. Part 385.~~ In addition, upon the request of and in cooperation with the Federal Highway Administration (FHWA), the Commission and ISP are authorized to conduct safety management audits pursuant to 49 CFR. Part 385. ~~The purpose of this Rule is to determine the safety fitness of a motor carrier and to require the carrier to acquire or upgrade a rating to a satisfactory rating and then to maintain a satisfactory rating.~~ This Rule applies to all intrastate motor carriers subject to the jurisdiction of the Idaho Public Utilities Commission as follows: (~~7-1-93~~)()

a. All ~~common and contract~~ motor carriers operating a vehicle with a gross weight exceeding ten thousand (10,000) pounds or transporting a placardable quantities of hazardous materials and all common/contract carriers of carrying passengers are automatically subject to this rule, the standards of Subsections 012.02 through 012.05 of this rule, and this rule's requirements ~~for a safety rating.~~ (~~7-1-94~~)()

b. ~~The Administrator of the Regulated Carrier Division may require all other common and contract passenger carriers to be subject to a safety rating under simplified reporting forms that the Administrator may prescribe.~~ (~~7-1-93~~)

eb. ~~The Administrator of the Regulated Carrier Division may require any other common, contract, or private carrier to be subject to a safety rating when the Administrator finds it to be in the public interest to rate the carrier, based upon the carrier's proposed operations, operating history, or other factors bearing on the public safety.~~ Safety management audits required by this Rule will be conducted at the time and date agreed to by the Commission, ISP, and the carrier, but no later than ten (10) days after the Commission's or ISP's initial request. (~~7-1-93~~)()

02. Definitions. The following definitions, which are modeled upon the definitions in 49 CFR. 385.3, apply in this rule: (7-1-93)(____)

a. "Applicable safety regulations or requirements" mean: (7-1-93)

(1)i. Safety regulations and statutes of the state of Idaho; (7-1-93)(____)

(2)ii. Federal regulations adopted by reference in MCR 18. Transportation of Hazardous Materials, Substances and Wastes; and (7-1-93)(____)

(3)iii. Federal regulations adopted by reference in MCR 19. Motor Carrier Safety Requirements. (7-1-93)(____)

b. "Compliance review" means an on-site investigation of motor carrier operations, such as drivers' hours of service, maintenance and inspection, drivers' qualifications, commercial drivers license requirements, financial responsibility, accidents, and other safety and business records to determine whether a motor carrier meets the safety fitness standards. A compliance review may be conducted to review a motor carrier's operation in response to a request to change a safety rating, to investigate a complaint, or to investigate the operations of unsatisfactory or conditionally rated motor carriers identified by a safety review, based upon reports of accidents, violations, and other indicators, or as part of a routine periodic inspection of a motor carrier that has been rated as satisfactory. The compliance review may result in the initiation of an enforcement action. (7-1-93)(____)

c. "Preventable accident on the part of a motor carrier" means an accident that: (7-1-93)

(1)i. Involved a commercial motor vehicle operated by the carrier; and (7-1-93)(____)

(2)ii. Could have been averted but for an act, or failure to act, by the motor carrier or the driver. (7-1-93)(____)

d. "Safety management controls" mean the systems, programs, practices, and procedures used by a motor carrier to ensure compliance with applicable safety and hazardous materials regulations, to ensure the safe movement of products and passengers through the transportation system, and to reduce the risk of highway accidents and hazardous materials incidents resulting in fatalities, injuries, or property damage. (7-1-93)

e. "Safety ratings" means one of the four following ratings: (7-1-93)

i. "Satisfactory safety rating" means a rating based on a finding that the motor carrier has in place and functioning adequate safety management controls prescribed in Subsection 012.02.d to meet the safety fitness standard. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier. (7-1-93)

ii. "Conditional safety rating" means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard, which could result in the inadequacies listed in violations 012.03.a. through .03.k. of this rule. (7-1-93)

iii. "Unsatisfactory safety rating" means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard, which has resulted in inadequacies listed in violations 03.a through 03.k of this rule. (7-1-93)

iv. "Unrated carrier" means that the motor carrier has not been assigned a safety rating by federal or state authorities. (7-1-93)

f. "Safety review" means an on-site assessment to determine if a motor carrier has adequate safety management controls in place and functioning to meet the safety fitness standard. The safety review includes a review of carrier records and operations. It is used to gather information for assigning ratings to unrated carriers and may also be used to change safety ratings. The safety review will not ordinarily result in the institution of an enforcement

~~action, but may if circumstances warrant.~~

~~(7-1-93)~~

03. Safety Fitness Standards. ~~This paragraph is modeled on 49 CFR- 385.5. The satisfactory safety rating is based on the degree of compliance with the safety fitness standard for motor carriers.~~ To meet the safety fitness standard, a motor carrier shall demonstrate that it has adequate safety management controls in place, which can function effectively to ensure acceptable compliance with applicable safety requirements to reduce the risk associated with:

~~(7-1-93)(____)~~

- a. Commercial drivers license standard violations (49 CFR- Part 383), ~~(7-1-93)(____)~~
- b. Inadequate levels of financial responsibility (49 CFR- Part 387), ~~(7-1-93)(____)~~
- c. The use of unqualified drivers (49 CFR- Part 391), ~~(7-1-93)(____)~~
- d. Improper use or driving of motor vehicles (49 CFR- Part 392), ~~(7-1-93)(____)~~
- e. Unsafe vehicles operating on the highways (49 CFR- Part 393), ~~(7-1-93)(____)~~
- f. ~~Nonreporting of accidents (49 CFR- Part 394),~~ ~~(7-1-93)~~
- g. The use of fatigued drivers (49 CFR- Part 395), ~~(7-1-93)(____)~~
- h. Inadequate inspection, repair, and maintenance of vehicles (49 CFR- Part 396), ~~(7-1-93)(____)~~
- i. Transportation of hazardous materials, driving and parking Rule violations (49 CFR- Part 397), ~~(7-1-93)(____)~~
- ji. Violation of hazardous materials regulations (49 CFR- Parts 170-178 and 180), and ~~(7-1-93)(____)~~
- kj. Motor vehicle accidents and hazardous materials incidents. ~~(7-1-93)~~

04. Factors to be Considered in Determining the Safety ~~Rating~~ Fitness. ~~This subsection is modeled on 49 CFR- 385.7. The factors to be considered in determining safety fitness and assigning a safety rating include information from safety reviews, compliance reviews and other relevant data. The factors may include all or some of the following:~~

~~(7-1-93)(____)~~

- a. Adequacy of safety management controls (the adequacy of controls may be questioned if their degree of formalization, automation, etc., is found to be substantially below the norm for similar carriers. Violations, accidents, or incidents substantially above the norm for similar carriers will be strong evidence that management controls are either inadequate or are not functioning properly); ~~(7-1-93)~~
- b. Frequency and severity of regulatory violations; ~~(7-1-93)~~
- c. Frequency and severity of driver/vehicle regulatory violations identified in roadside inspections; ~~(7-1-93)~~
- d. Number and frequency of out-of-service driver/vehicle violations; ~~(7-1-93)~~
- e. Increase or decrease in similar types of regulatory violations discovered during safety or compliance reviews; ~~(7-1-93)~~
- f. Frequency of accidents, hazardous materials incidents, reportable accident rate per million miles, reportable preventable accident rate per million miles; and other accident indicators, and whether these accident and incident indicators have improved or deteriorated over time; and ~~(7-1-93)~~
- g. The number and severity of violations of state safety rules, regulations, standards, and orders applicable to commercial motor vehicles and motor carrier safety that are compatible with federal rules, regulations,

standards and orders.

(7-1-93)

05. ~~Determination of a Safety Rating Fitness. This subsection is modeled on 49 CFR. 385.9. Following a safety or compliance review of a motor carrier operation, the Safety Management Review Coordinator, using the factors prescribed in Subsection 012.04 of this rule, shall determine whether the present operations of the motor carrier are consistent with the safety fitness standards set forth in Subsection 012.03 of this rule, and assign a safety rating accordingly.~~ (7-1-93)(____)

06. ~~Notification of a Safety Rating Fitness. This subsection is modeled on 49 CFR. 385.11. Following a safety or compliance review, the Safety Management Review Coordinator shall determine the safety fitness of a motor carrier and notify the motor carrier and the Commission in writing of the assigned safety rating. Notification of a "conditional" or "unsatisfactory" rating will include a list of those items for which immediate corrective actions must be taken.~~ (7-1-93)(____)

07. ~~Motor Carrier Certification. This subsection is modeled on 49 CFR. 385.13. Upon notification of a conditional or unsatisfactory rating, violations cited in the compliance review and recommendations made to correct violations~~ a motor carrier shall certify to the Safety Management Review Coordinator, within 30 days, whether all corrective actions identified by the safety review have been taken. Certification required by this subsection must be made to the Safety Management Review Coordinator. Failure to certify or falsely certifying under this Rule will be considered a reporting violation under ~~s~~Section 61-807, Idaho Code. (7-1-93)(____)

08. ~~Review of a Safety Rating. This subsection is modeled on 49 CFR. 385.15. Safety ratings may be reviewed as follow:~~ (7-1-93)

a. ~~A petition for review of a safety rating, where there are factual disputes, must list all factual issues disputed and be accompanied by any information or documents the motor carrier is relying upon as a basis for its petition for a change in its assigned safety rating.~~ (7-1-93)

b. ~~The petition must be submitted to the Administrator of the Regulated Carrier Division within twenty eight (28) calendar days of the date of notification of the assignment, or change of a safety rating.~~ (7-1-93)

e. ~~Following the review of the petition, the Administrator of the Regulated Carrier Division may request the motor carrier to submit additional data and attend a conference to discuss the safety rating. Failure to provide information in response to any reasonable or lawful request, or failure to attend the conference, may result in dismissal of the petition.~~ (7-1-93)

d. ~~The Administrator of the Regulated Carrier Division shall notify the motor carrier in writing of the decision on a petition for review of the safety rating.~~ (7-1-93)

09. ~~Request for a Change in a Safety Rating. This subsection is modeled on 49 CFR. 385.17. A request for a change in a safety rating, where there are no disputes, and when the basis of a change is evidence of corrective action that has been taken and that operations are currently being conducted pursuant to the safety fitness standards specified in Subsection 012.03 of this rule, shall be directed in writing to the Administrator of the Regulated Carrier Division, Idaho Public Utilities Commission, P.O. Box 83720, Boise, Idaho 83720-0074. Appropriate Commission personnel will contact the motor carrier to schedule a compliance review.~~ (7-1-94)

10. ~~Safety Fitness Information. This subsection is modeled on 49 CFR. 385.17. Safety ratings will be made available to federal, state and local law enforcement and regulatory agencies telephonically or in writing. Safety ratings will be made available to the public upon request. Written requests should be made to the Administrator, Regulated Carrier Division, Idaho Public Utilities Commission, P.O. Box 83720, Boise, Idaho 83720-0074. Telephone requests may be answered orally.~~ (7-1-94)

~~H08.~~ Safety Management Review Coordinator. The Safety Management Review Coordinator is designated by the Commission in cooperation with the Director of the Idaho Department of Law Enforcement. The name, telephone number and business address of the Safety Management Review Coordinator are available from the Regulated Carrier Division. (7-1-93)

09. Obedience and Compliance. The failure of any motor carrier to abide by the motor carrier fitness standards as required by this Rule may be deemed just and sufficient cause for imposition of the sanctions authorized by Section 61-808, Idaho Code, and other sanctions as set forth in MCR 54 (Obedience and Compliance with Rules and Regulations--Force of Law). ()

013. -- 0167. (RESERVED).

017. CONTROLLED SUBSTANCE TESTING (Rule 17).

01. ~~Adoption of Federal Regulations. 49 CFR Part 391 Subpart H. Controlled Substance Testing (49 CFR 391.81 through 391.125), and 49 CFR Part 40. Procedures for Transportation Workplace Drug Testing Programs, are hereby adopted by reference. All interstate and foreign carriers and all intrastate common, contract and private carriers subject to the safety authority of the Idaho Public Utilities Commission operating vehicles described in Subsection 017.02 of this Rule that transport passengers or property within Idaho must comply with 49 CFR Part 391, Subpart H. Whenever any of these federal regulations exempt intrastate carriers from any of their requirements, this Rule removes that exemption and subjects intrastate carriers to the same requirements. The Commission asserts its authority under this paragraph of this Rule to the maximum extent allowed by section 61-815, Idaho Code, Public Laws 89-679 and 89-170 (See 49 U.S.C. 502(e)(3)), 49 CFR Part 388, and the Commission's agreement with the Federal Highway Administration dated April 30, 1968.~~ (4-26-95)

02. ~~Operation of Vehicles Subject to This Rule. The requirements of this Rule apply to carriers described in Subsection 017.01 of this Rule for any driver operating any of the following vehicles (see 49 CFR 383.5 and 390.5):~~ (7-1-93)

a. ~~Vehicles with a gross combination weight rating of twenty-six thousand one (26,001) or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand (10,000) pounds;~~ (7-1-93)

b. ~~Vehicles with a gross vehicle weight rating of twenty-six thousand one (26,001) or more pounds;~~ (7-1-93)

e. ~~Passenger vehicles in interstate, foreign and intrastate commerce designed to transport sixteen (16) or more passengers including the driver; or~~ (1-1-94)

d. ~~Vehicles of any size used in the transportation of materials found to be hazardous for the purposes of the Hazardous Material Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).~~ (7-1-93)

03. ~~Obligation of Familiarity with Rules. All interstate and foreign carriers and all intrastate common, contract and private carriers operating within Idaho subject to this Rule under Subsections 017.01 and .02 must obtain copies of the federal regulations adopted by reference in Subsection 017.01 of this Rule and make them available to their drivers and other personnel affected by the regulations. Failure to be familiar with these federal regulations adopted by reference is a violation of this Rule for any carrier subject to those regulations.~~ (7-1-93)

04. ~~Version of Federal Regulations Adopted. The federal regulations adopted by reference in this MCR 17 are those contained in the compilation of 49 CFR Part 391, Subpart H (49 CFR 391.81 through 391.125) and 49 CFR Part 40 published in the Code of Federal Regulations volume dated October 1, 1993, and as subsequently recompiled and all amendments to these rules appearing in the Federal Registers through November 23, 1994; in particular, the amendment to 49 CFR section 391.87 appearing in the issue of December 23, 1993, 58 Fed. Reg. 68222-68230; and the amendments to 49 CFR Parts 40, 391, 392, 395 and the addition of Part 382 appearing in the issue of February 15, 1994, 59 Fed. Reg. 7505-7515, 7354-7371.~~ (4-26-95)

018. TRANSPORTATION OF HAZARDOUS MATERIALS, SUBSTANCES AND WASTES (Rule 18).

01. Adoption of Federal Regulations. 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 are hereby adopted by reference. All interstate and foreign carriers and all intrastate common, contract and private carriers subject to the safety authority of the Idaho Public Utilities Commission while operating in Idaho that transport

hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must comply with 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 applicable to motor carriers and their shippers, and the laws and rules of the state of Idaho. Whenever any of these federal regulations exempt intrastate carriers from any of their requirements, this Rule removes that exemption and subjects intrastate carriers to the same requirements. The Commission asserts its authority under this Rule to the maximum extent allowed by ~~s~~Section 61- 815, Idaho Code, Public Laws 89-670 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388, and the Commission's agreement with the Federal Highway Administration dated April 30, 1968. (7-1-93)()

02. Obligation of Familiarity with Rules. All interstate and foreign carriers and all intrastate common, contract and private carriers subject to this Rule that transport hazardous materials, substances or wastes listed in, defined by or regulated by 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 must obtain copies of these federal regulations and make them available to their drivers and other personnel handling hazardous materials, substances or wastes and must familiarize their drivers and other personnel handling hazardous materials, substances or wastes with any regulation pertaining to the particular material, substance or waste that is transported. Failure to be familiar with these federal regulations adopted by reference is a violation of this Rule for any carrier transporting such cargoes. The federal regulations adopted by reference in this MCR 18 have the following subject matter: (7-1-93)()

Subchapter C - Hazardous Materials Regulations

- a. Part 107. Hazardous Materials Program Procedures. ()
- ~~a~~b. Part 171. General Information, Regulations and Definitions. (7-1-93)
- ~~b~~c. Part 172. Hazardous Materials Tables and Hazardous Materials Communications Regulations. (7-1-93)
- ~~c~~d. Part 173. Shippers-General Requirements for Shipments and Packaging. (7-1-93)
- ~~d~~e. Parts 174-176. (Not adopted regulations for railroads, aircraft and vessels). (7-1-93)
- ~~e~~f. Part 177. Carriage by Public Highway. (7-1-93)
- ~~f~~g. Part 178. Shipping Container Specifications. (7-1-93)
- ~~g~~h. Part 179. (Not adopted regulations for rail tanker cars). (7-1-93)
- ~~h~~i. Part 180. Continuing Qualification and Maintenance of Packaging. (7-1-93)

03. Recognition of Federal Waivers. Whenever a carrier has applied to a federal agency and been granted a waiver of the packaging requirements of the federal regulations adopted in Subsection 018.01, the federal waiver will also be recognized under these rules. The Commission will not administer a program to duplicate consideration or approval of federal waivers on the state level. (7-1-93)

04. Hazardous Materials. As used in this rule, "Hazardous Material" means a substance or material, including a hazardous substance, listed by the U.S. Department of Transportation in the "Hazardous Materials Table" (49 CFR 172.101), which has been determined to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce. Hazardous materials listed include (but are not limited to) radioactive materials, explosives, poisons, flammable liquids, flammable solids or flammable gases, combustible liquids, compressed gases, blasting agents, oxidizers, corrosives, severely irritating materials or materials with combinations of these properties. (7-1-93)

05. Hazardous Substances. As used in this rule, "Hazardous Substance" means a material, its mixtures or solutions, that is listed in the Appendix to 49 CFR 172.101 and that is in a quantity in one package that equals or exceeds the reportable quantity (RQ) listed in the Appendix to 49 CFR 172.101. (7-1-93)

06. Hazardous Waste. As used in this rule, "Hazardous Waste" means any material that is subject to the Hazardous Waste Manifest requirements of the U.S. Environmental Protection Agency. See 40 CFR Part 262.

(7-1-93)

07. Version of Federal Regulations Adopted. The federal regulations adopted by reference in this MCR 18 are those contained in the compilations of 40 CFR Part 262 published in the Code of Federal Regulations volume dated July 1, 1993~~7~~, and as subsequently recompiled, and those contained in the compilations of 49 CFR Parts 107, 171, 172, 173, 177, 178 and 180 published in the Code of Federal Regulations volume dated October 1, 1993~~7~~, and as subsequently recompiled, and all amendments to these rules appearing in the Federal Registers ~~through November 23, 1994; in particular, the amendments to 49 CFR Section 173.33 appearing in the issue of January 12, 1994, 59 Fed. Reg. 1786; 49 CFR Parts 171, 172, 173, 178 and 179 appearing in the issue of June 2, 1994, 59 Fed. Reg. 28490-28494, and corrected in issue of 59 Fed. Reg. 35411 and 37537; 49 CFR Part 172 appearing in the issue of June 14, 1994, 59 Fed. Reg. 30530; 49 CFR Part 172 and Appendix A to section 172.101 appearing in the issue of June 20, 1994, Fed. Reg. 31823-31851; 49 CFR Parts 171, 172, 173, 178 and 180 appearing in the issue of July 26, 1994, 59 Fed. Reg. 38052-38080; 49 CFR Part 172 appearing in the issue of September 21, 1994, 59 Fed. Reg. 48549; 49 CFR Part 171 appearing in the issue of September 22, 1994, 59 Fed. Reg. 48763-48764; and the amendments to 49 CFR Parts 171, 172, 173, 177, 178, 179, and 180 appearing in the issue of September 26, 1994, 59 Fed. Reg. 49132-49135.~~ (4-26-95)()

019. CARRIER SAFETY REQUIREMENTS (Rule 19).

01. Adoption of Federal Regulations. 49 CFR- Parts 382, 383, 385, 388 and 390 through 399 ~~(except Part 391, Subpart H)~~ are hereby adopted by reference. All interstate and foreign carriers and all intrastate common, contract and private carriers subject to the safety authority of the Idaho Public Utilities Commission while operating in Idaho that transport passengers or property must comply with 49 CFR- Parts 382, 383, 385, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391, Subpart H for all carriers and section 391.11(b)(1) for intrastate carriers). In particular, Parts 390 through 399 these rules apply to interstate common/contract passenger carriers, regardless of the size of vehicle operated. ~~The subject matter of 49 CFR. Part 391, Subpart H (controlled substance testing) is addressed in Rule 17.~~ The subject matter of 49 CFR- 391.11(b)(1) is a twenty-one (21) year minimum age for drivers of commercial vehicles subject to federal safety regulation. Intrastate carriers subject to the safety authority of the Idaho Public Utilities Commission may hire drivers who are eighteen (18) years or older as set forth in sSection 49-303, Idaho Code. Whenever any one of these federal regulations (except sSection 391.11(b)(1)) exempts intrastate carriers from any of their requirements, this Rule removes that exemption and subjects the intrastate carrier to the same requirements. The Commission asserts its authority under this Rule to the maximum extent allowed by sSection 61-815, Idaho Code, Public Laws 89-679 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR- Part 388, and the Commission's agreement with the Federal Highway Administration dated April 30, 1968. (7-1-93)()

02. Obligation of Familiarity with Rules. All interstate and foreign carriers and all intrastate common, contract and private carriers subject to this Rule must obtain copies of the federal regulations adopted by reference in Subsection 019.01 of this Rule and make them available to their drivers and other personnel affected by the regulations. Failure to be familiar with these federal regulations adopted by reference is a violation of this Rule for any carrier subject to those regulations. The federal regulations adopted by reference in this Rule address the following subject matter: (7-1-93)

- a. Part 382. Controlled Substance and Alcohol Use and Testing ()
- ~~ab.~~ Part 383. Commercial Driver's License Standards; Requirements and Penalties (7-1-93)
- c. Part 385. Safety Fitness Standards ()
- ~~bd.~~ Part 388. Cooperative Agreements with States (7-1-93)
- ee. Part 390. Federal Motor Carrier Safety Regulations: General (7-1-93)
- ff. Part 391. Qualifications of Drivers (7-1-93)
- eg. Part 392. Driving of Motor Vehicles (7-1-93)

fh.	Part 393. Parts and Accessories Necessary for Safe Operation	(7-1-93)
g.	Part 394. Notification and Reporting of Accidents	(7-1-93)
hi.	Part 395. Hours of Service of Drivers	(7-1-93)
ij.	Part 396. Inspection, Repair and Maintenance	(7-1-93)
jk.	Part 397. Transportation of Hazardous Materials; Driving and Parking Rules	(7-1-93)
kl.	Part 398. Transportation of Migrant Workers	(7-1-93)
lm.	Part 399. Employee Safety and Health Standards	(7-1-93)

03. Recognition of Federal Waivers. Whenever a driver or carrier has applied to a federal agency and been granted a waiver from any of the requirements of the federal regulations adopted in Subsection 019.01, the federal waiver will also be recognized under these rules. ~~The Commission will not administer a program to duplicate consideration or approval of federal reserves the authority to implement a waiver program and grant waivers on the state level for intrastate commercial motor vehicle drivers.~~ (7-1-93)(____)

04. Version of Federal Regulations Adopted. The federal regulations adopted by reference in this MCR 19 are those contained in the compilation of 49 CFR: Parts ~~382, 383, 385, 388 and 390 through 399~~ published in the Code of Federal Regulations volumes dated October 1, 1993~~7~~, and as subsequently recompiled, and all amendments to these rules appearing in the Federal Registers ~~through November 23, 1994; in particular, the amendments to 49 CFR 390.5 and 391.43 appearing in the issue of November 8, 1993, 58 Fed. Reg. 59196; 49 CFR section 390.5 and 392.71 appearing in the issue of December 21, 1993, 58 Fed. Reg. 67375; 49 CFR Part 393 appearing in the issue of May 17, 1994, 59 Fed. Reg. 25572; and the amendments to 49 CFR Parts 392 and 393 appearing in the issue of July 6, 1994, 59 Fed. Reg. 34711-34712 and 34718-34720 and corrected in 59 Fed. Reg. 43898.~~ (4-26-95)(____)

(BREAK IN CONTINUITY OF SECTIONS)

021. INSURANCE REQUIREMENTS (Rule 21).

01. Insurance Required. No motor carrier subject to the jurisdiction of the Commission may transport property or passengers until the carrier has obtained and has in effect the minimum levels of insurance or a surety bond set forth in this rule. (7-1-93)

02. Passenger Carriers. The minimum levels of insurance or surety bond coverage (for injury, death, or property damage in any one accident) for common ~~and~~ contract passenger carriers are: (7-1-93)(____)

a. For any vehicle with a seating capacity of twenty five (25) passengers or more -- five million dollars (\$5,000,000); (7-1-94)

b. For any vehicle with a seating capacity of twenty four (24) passengers or less -- one million, five hundred thousand dollars (\$1,500,000). (4-26-95)

03. Property Carriers Certain Risky or Perilous Cargoes. 49 CFR 171.8, 172.101 (and its Appendix), and 173.403 are hereby adopted by reference. The minimum levels of insurance or surety bond coverage (for injury, death, environmental restoration, or property damage in any one accident) for common and contract property carriers are: (7-1-93)

a. Five million dollars (\$5,000,000) for carriers of: (7-1-93)

i. Any quantity of ~~Class A or B explosives~~ Division 1.1, 1.2 or 1.3; (7-1-93)(____)

ii. Any quantity of ~~poison gas (poison A)~~ Division 2.3, Hazardous Zone A, or Division 6.1, Packing Group 1, Hazardous Zone A; (7-1-93)()

iii. Highway route controlled quantity of ~~radioactive~~ Class 7 materials as defined in 49 CFR 173.403; (7-1-93)()

iv. Hazardous substances, as defined in 49 CFR 171.8, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of three thousand five hundred (3,500) water gallons; or (7-1-93)

v. ~~Liquefied compressed gas or compressed gas~~ Division 2.1 or 2.2 in bulk; (7-1-93)()

b. One million dollars (\$1,000,000) for carriers (1) of oil listed in 49 CFR 172.101; or (2) hazardous waste, hazardous materials or hazardous substances as defined in 49 CFR 171.8 and listed in 49 CFR 172.101 or its Appendix, but not mentioned in Subsection 021.03.a. (7-1-93)

04. Other Property Carriers. The minimum level of insurance or surety bond coverage (for injury, death or property damage in any one accident) for common and contract carriers of all other property (including drive away and tow away units transported by the carrier) is seven hundred fifty thousand dollars (\$750,000). (7-1-93)

05. Cargo Insurance. The minimum level of insurance or surety bond coverage for cargo damage to be carried by common and contract carriers (including drive away and tow away units transported by the carrier) is the equivalent of the fair market value of the cargo, except that a shipper and a contract carrier may agree in writing that the carrier may maintain different amounts of cargo insurance or no cargo insurance at all. (7-1-93)

06. Private Carriers. Private carriers must maintain the insurance required by Title 49, Idaho Code, except private carriers transporting certain risky or perilous cargoes described in Subsection 021.03 of this Rule must carry insurance as required by that subsection. (7-1-93)

07. Definitions. 49 CFR ~~172.101.8~~ and 387.5 are hereby adopted by reference. Definitions of terms used in this rule: (7-1-93)()

a. "Environmental Restoration" means restoration for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damages to human health, the natural environment, fish, shellfish, and wildlife ~~(including aquatic animals)~~. See 49 CFR 387.5. (7-1-93)()

b. "Hazardous Material" means a substance or material, that has been determined by the ~~U.S. Department of Transportation~~ Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated, ~~in the "Hazardous Materials Table"~~ The term includes hazardous substances, hazardous wastes, marine pollutants, and elevated temperature materials and materials designated as hazardous under the provisions of 49 CFR 172.101, and materials that meet the defining criteria for hazard classes and divisions in 49 CFR 173." See 49 CFR ~~172.101.8~~. (7-1-93)()

c. "Injury" means harm to the body, sickness, or disease resulting from a motor carrier accident, including death from an injury. (7-1-93)

d. "Property Damage" means damage to or loss of use of tangible property. (7-1-93)

08. Version of Federal Regulations Adopted. The federal regulations adopted by reference in this MCR 21 are those contained in the compilation of 49 CFR 171.8, 172.101 (and its Appendix), 173.403 and 387.5 published in the Code of Federal Regulations volume dated October 1, 1993~~7~~, and as subsequently recompiled and all amendments to these rules appearing in the Federal Registers ~~through November 23, 1994; in particular, the amendments to 49 CFR Part 172 appearing in the issue of June 2, 1994, 59 Fed. Reg. 28491-28493, and corrected in the issue of 59 Fed. Reg. 35411 and 37537; 49 CFR Part 172 and Appendix A to section 172.101 appearing in the issue of June 20, 1994, 59 Fed. Reg. 31823-31851; 49 CFR Parts 171 and 172 appearing in the issue of July 26, 1994,~~

~~59 Fed. Reg. 38052-38064; and the amendments to 49 CFR Parts 171, and 172 appearing in the issue of September 26, 1994, 59 Fed. Reg. 49132-49133-49135.~~ (4-26-95)(____)

022. CERTIFICATES OF INSURANCE (Rule 22).

01. Filing. Common ~~and~~/ contract carriers and interstate carriers who participate in the base state agreement by registering in Idaho as their base state must file with the Commission certificates that the insurance or bond described by the certificate of insurance and required by MCR 21 is in effect for the account of the motor carrier, except as provided in Subsection 022.04. (7-1-93)(____)

02. Forms. ~~The certificates for intrastate common/contract carriers must be either a Form E or Federal Form set forth in 49 CFR. 1043.7(a)(3) (either a Form BMC 91, Form BMC 91X, with BMC Form 90 endorsements as necessary, or Form BMC 91MX), Form E-1 (available from the Commission) or W.C. 3091 that is completed and signed by the insurance company's underwriting department or its authorized representative. For interstate carriers registered under the single state registration system the federal forms authorized by the U.S. Department of Transportation as set forth in Subpart C of 49 CFR Part 387. Surety bonds must be completed on a form provided by the Commission. The Administrator of the Regulated Carrier Division may prescribe additional forms as necessary.~~ (7-1-93)(____)

03. Coverage. Policies of insurance and surety bonds required and filed with the Commission under this Rule or MCR 21 remain in effect as described on the certificate filed with the Commission until terminated according to Subsection 022.05 of this rule. When certificates of insurance on file with the Commission show that insurance has lapsed, the Commission will suspend the carrier's permit effective upon five (5) days' notice. (7-1-93)

04. No Cargo Insurance Filing. Certificates of cargo coverage need not be filed, but upon request of the Commission or its employees the carrier must produce a duplicate of the insurance policy or surety bond. (7-1-93)

05. Notice of Termination or of Inadequate Insurance. Notice of termination of insurance or surety bond or of reduction in insurance below the requirements of MCR 21 must be filed with the Commission at least thirty (30) days before the change. (7-1-93)

023. VEHICLE AND CARRIER IDENTIFICATION (Rule 23).

01. Identification Number. Each common ~~and~~/ contract carrier (except limousines or other similar passenger vehicles seating fewer than seven passengers) must display in a conspicuous place on both sides of each self-powered vehicle that it operates in Idaho in letters at least two (2) inches high: (7-1-93)(____)

a. The name or trade name of the motor carrier under whose authority the vehicle is being operated; and (7-1-93)

b. Except for interstate carriers of passengers or property, the permit number assigned to the operating authority. The permit number ~~must~~ shall be in the following form: "IPUC_____". Drive-away vehicles must display a temporary identification. (7-1-93)(____)

02. Removal of Number. This identification number must be removed whenever the vehicle is no longer operated under the common ~~or~~/ contract permit. (7-1-93)(____)

024. LEASES OF EQUIPMENT (Rule 24).

01. Scope and Purpose of the Rule. This Rule sets standards for leases of equipment by common/~~contract and private carriers. This rule's Subsections 024.02 through .06 are modeled upon 49 CFR. Part 1057 and Subsection 024.08. is modeled upon the Interstate Commerce Commission's private carrier lease policy (MC-122 Sub2). All leases of equipment shall conform to the lease regulations of the Federal Highway Administration, specifically 49 CFR Sections 376.2, 376.11, 376.12, and 376.21(c) and (d), with the following modifications:~~ (7-1-93)(____)

a. In Section 376.2(a) the word "motor" is changed to "common/contract" and the language "49

U.S.C. 13901 and 13902" is changed to read "Idaho Code Sections 61-802, 61-802A, and 61-807." ()

b. In Section 376.2(j) the words "interstate or foreign" are changed to "intrastate." ()

c. In Section 376.2(k) the words "interstate or foreign" are changed to "intrastate." ()

d. The language in the introductory paragraph to Section 376.11 which reads "Other than through the interchange of equipment as set forth in Section 376.31 and under the exemptions set forth in Subpart C of these regulations," is deleted. ()

e. In Section 376.11(c)(1) the words "FHWA's requirements in 49 CFR Part 398 of this chapter" are changed to read "Commission's Motor Carrier Rule 23". ()

f. Section 376.12(c)(3) is deleted. ()

g. In Section 376.12(j)(1) the language "FHWA's regulations under 49 U.S.C. 13906" is changed to read "Commission's Motor Carrier Rule 21." ()

~~02- Definitions. The definitions in this subsection are modeled on those in 49 CFR. 1057.2. (7-1-93)~~

~~a- "Authorized Carrier" means a person or persons authorized to engage in the transportation of property as a common or contract carrier under the provisions of the Idaho Motor Carrier Act. (7-1-93)~~

~~b- "Addendum" means a supplement to an existing lease that is not effective until signed by the lessor and lessee. (7-1-93)~~

~~e- "Detention" means the holding by a consignor or consignee of a trailer, with or without power unit and driver, beyond the free time allocated for the shipment under circumstances not attributable to the performance of the carrier. (7-1-93)~~

~~d- "Equipment" means a motor vehicle, bus, straight truck, tractor, semitrailer, full trailer, any combination of these and any other type of equipment used by authorized carriers in transportation for hire. (7-1-93)~~

~~e- "Escrow Fund" means money deposited by the lessor with either a third party or the lessee to guarantee performance, to repay advances, to cover repair expenses, to handle claims, to handle license and state permit costs, and for any other purposes mutually agreed upon by the lessor and lessee. (7-1-93)~~

~~f- "Interchange" means the receipt of equipment by one motor common carrier of property from another such carrier, at a point where both carriers are authorized to serve, with which to continue a through movement. (7-1-93)~~

~~g- "Lease" means a contract or arrangement in which the owner grants the use of equipment, with or without driver, for a specified period to an authorized carrier for use in regulated transportation, in exchange for compensation. (7-1-93)~~

~~h- "Lessee" means the party acquiring the use of equipment, with or without driver, from another. (7-1-93)~~

~~i- "Lessor" means the party granting the use of equipment, with or without driver, to another. (7-1-93)~~

~~j- "Owner" means a person (1) to whom title to equipment has been issued, (2) who, without title, has the right to exclusive use of equipment, or (3) who has lawful possession of equipment, registered and licensed in any state in the name of that person. (7-1-93)~~

~~k- "Private Carrier" means a private carrier as defined by section 61-801, Idaho Code, paragraph h. (7-1-93)~~

~~l. "Sublease" means a written contract in which the lessee grants the use of leased equipment, with or without driver, to another. (7-1-93)~~

~~m. "Shipper" means a person who authorizes transportation in intrastate commerce. (7-1-93)~~

~~03. General Leasing Requirements. This subsection is modeled upon 49 CFR. 1057.11. Other than through the interchange of equipment as set forth in MCR 25 (Interchange of Vehicles), and under the exemptions set forth in Subsections 024.05 and .06 of this rule, the authorized carrier may perform authorized transportation in equipment it does not own only under the following conditions: (7-1-93)~~

~~a. Lease. There shall be a written lease granting the use of the equipment and meeting the requirements contained in Subsection 024.04 of this rule. (7-1-93)~~

~~b. Receipts for Equipment/Receipts, specifically identifying the equipment to be leased and stating the date and time of day possession is transferred, shall be given as follows: (7-1-93)~~

~~i. When possession of the equipment is taken by the authorized carrier, it shall give the owner of the equipment a receipt. The receipt identified in this section may be transmitted by mail, telegraph, or other similar means of communication. (7-1-93)~~

~~ii. When possession of the equipment by the authorized carrier ends, a receipt shall be given in accordance with the terms of the lease agreement if the lease agreement requires a receipt. (7-1-93)~~

~~iii. Authorized representatives of the carrier and the owner may take possession of leased equipment and give and receive the receipts required under c.ii of this rule. (7-1-93)~~

~~e. Identification of Equipment. The authorized carrier acquiring the use of equipment under this section shall identify the equipment as being in its service as follows: (7-1-93)~~

~~i. During the period of the lease, the carrier shall identify the equipment in accordance with the Commission's requirements in MCR 23 (Identification of Vehicles). (7-1-93)~~

~~ii. Unless a copy of the lease is carried on the equipment, the authorized carrier shall keep a statement with the equipment during the period of the lease certifying that the equipment is being operated by it. The statement shall also specify the name of the owner, the date and length of the lease, any restrictions in the lease relative to the commodities to be transported, and the address at which the original lease is kept by the authorized carrier. This statement shall be prepared by the authorized carrier or its authorized representative. (7-1-93)~~

~~d. Records of Equipment. The authorized carrier using equipment leased under this section shall keep records of the equipment as follows: The authorized carrier shall prepare and keep documents covering each trip for which the equipment is used in its service. These documents shall contain the name and address of the owner of the equipment, the point of origin, the time and date of departure, and the point of final destination. Also, the authorized carrier shall carry papers with the leased equipment during its operation containing this information and identifying the lading and clearly indicating that the transportation is under its responsibility. These papers shall be preserved by the authorized carrier as part of its transportation records. Leases that contain the information required by the provisions in this paragraph may be used and retained instead of such documents or papers. This provision is complied with by having a copy of a master lease in the unit of equipment in question if the balance of documentation called for by this subsection is included in the freight documents prepared for the specific movement. (7-1-93)~~

~~04. Written Lease Requirements. This Subsection is modeled on 49 CFR. 1057.12. Except as provided in the exemptions set forth in Subsections 024.05 and .06 of this rule, the written lease required under Subsection 024.03 of this Rule shall contain the following provisions. The required lease provisions shall be adhered to and performed by the authorized carrier. (7-1-93)~~

~~a. Parties. The lease shall be made between the authorized carrier and the owner of the equipment. The lease shall be signed by these parties or by their authorized representatives. (7-1-93)~~

b. ~~Duration to be Specific. The lease shall specify the time and date or the circumstances on which the lease begins and ends. These times or circumstances shall coincide with the times for the giving of receipts required by conditions of Subsection 024.03.b. of this rule. (7-1-93)~~

e. ~~Exclusive Possession and Responsibilities: (7-1-93)~~

i. ~~The lease shall provide that the authorized carrier lessee shall have exclusive possession, control, and use of the equipment for the duration of the lease. The lease shall further provide that the authorized carrier lessee shall assume complete responsibility for the operation of the equipment for the duration of the lease. (7-1-93)~~

ii. ~~provision may be made in the lease for considering the authorized carrier lessee as the owner of the equipment for the purpose of subleasing it under these rules to other authorized carriers during the lease. (7-1-93)~~

d. ~~Compensation to be Specified. The amount to be paid by the authorized carrier for equipment and driver's services shall be clearly stated on the face of the lease or in an addendum that is attached to the lease. The lease or addendum shall be delivered to the lessor prior to the commencement of any trip in the service of the authorized carrier. An authorized representative of the lessor may accept these documents. The amount to be paid may be expressed as a percentage of gross revenue, a flat rate per mile, a variable rate depending on the direction traveled or the type of commodity transported, or by any other method of compensation mutually agreed upon by the parties to the lease. The compensation stated on the lease or in the attached addendum may apply to equipment and driver's services either separately or as a combined amount. (7-1-93)~~

e. ~~Items Specified in Lease. The lease shall clearly specify which party is responsible for removing identification devices from the equipment upon the termination of the lease and when and how these devices, other than those painted directly on the equipment, will be returned to the carrier. The lease shall clearly specify the manner in which a receipt will be given to the authorized carrier by the equipment owner when the latter retakes possession of the equipment upon termination of the lease agreement, if a receipt is required at all by the lease. The lease shall clearly specify the responsibility of each party with respect to the cost of fuel, fuel taxes, empty mileage, permits of all types, tolls, ferries, detention and accessorial services, base plates and licenses, and any unused portions of such items. The lease shall clearly specify who is responsible for loading and unloading the property onto and from the motor vehicle, and the compensation, if any, to be paid for this service. Except when the violation results from the acts or omissions of the lessor, the authorized carrier lessee shall assume the risks and costs of fines for overweight and oversize trailers when the trailers are pre-loaded, sealed or the load is containerized, or when the trailer or lading is otherwise outside of the lessor's control, and for improperly permitted overdimension and overweight loads and shall reimburse the lessor for any fines paid by the lessor. If the authorized carrier is authorized to receive a refund or a credit for base plates purchased by the lessor from and issued in the name of the authorized carrier, or if the base plates are authorized to be sold by the authorized carrier to another lessor, the authorized carrier shall refund to the initial lessor on whose behalf the base plate was first obtained a prorated share of the amount received. (7-1-93)~~

f. ~~Payment Period. The lease shall specify that payment to the lessor shall be made within fifteen (15) days after submission of the necessary delivery documents and other paperwork concerning a trip in the service of the authorized carrier. The paperwork required before the lessor can receive payment is limited to the driver's record of duty status required by MCR 19 and those documents necessary for the authorized carrier to secure payment from the shipper. In addition, the lease may provide that, upon termination of the lease agreement, as a condition precedent to payment, the lessor shall remove all identification devices of the authorized carrier and, except in the case of identification painted directly on equipment, return them to the carrier. If the identification device has been lost or stolen, a letter certifying its removal will satisfy this requirement. Until this requirement is complied with, the carrier may withhold final payment. The authorized carrier may require the submission of additional documents by the lessor but not as a prerequisite to payment. Payment to the lessor shall not be made contingent upon submission of a bill of lading to which no exceptions have been taken. The authorized carrier shall not set time limits for the submission by the lessor of required delivery documents and other paperwork. (7-1-93)~~

g. ~~Copies of Freight Bill or Other Form of Freight Documentation. When a lessor's revenue is based on a percentage of the gross revenue for a shipment, the lease must specify that the authorized carrier will give the lessor, before or at the time of settlement, a copy of the rated freight bill or a computer-generated document containing the same information, or, in the case of contract carriers, any other form of documentation actually used~~

for a shipment containing the same information that would appear on a rated freight bill. When a computer-generated document is provided, the lease will permit lessor to view, during normal business hours, a copy of any actual document underlying the computer-generated document. Regardless of the method of compensation, the lease must permit lessor to examine copies of the carrier's tariff or, in the case of contract carriers, other documents from which rates and charges are computed, provided that where rates and charges are computed from a contract of a contract carrier, only those portions of the contract containing the same information that would appear on a rated freight bill need be disclosed. The authorized carrier may delete the names of shippers and consignees shown on the freight bill or other form of documentation. (7-1-93)

h. ~~Charge-Back Items.~~ The lease shall clearly specify all items that may be initially paid for by the authorized carrier, but ultimately deducted from the lessor's compensation at the time of payment or settlement, together with a recitation as to how the amount of each item is to be computed. The lessor shall be afforded copies of those documents that are necessary to determine the validity of the charge. (7-1-93)

i. ~~Products, Equipment, or Services from Authorized Carrier.~~ The lease shall specify that the lessor is not required to purchase or rent any products, equipment, or services from the authorized carrier as a condition of entering into the lease arrangement. The lease shall specify the terms of any agreement in which the lessor is a party to an equipment purchase or rental contract that gives the authorized carrier the right to make deductions from the lessor's compensation for purchase or rental payments. (7-1-93)

j. ~~Insurance.~~ (7-1-93)

i. The lease shall clearly specify the legal obligation of the authorized carrier to maintain insurance coverage for the protection of the public pursuant to Commission regulations under MCR 21. The lease shall further specify who is responsible for providing any other insurance coverage for the operation of the leased equipment, such as bobtail insurance. If the authorized carrier will make a charge back to the lessor for any of this insurance, the lease shall specify the amount which will be charged back to the lessor. (7-1-93)

ii. If the lessor purchases any insurance coverage for the operation of the leased equipment from or through the authorized carrier, the lease shall specify that the authorized carrier will provide the lessor with a copy of each policy upon the request of the lessor. Also, where the lessor purchases such insurance in this manner, the lease shall specify that the authorized carrier will provide the lessor with a certificate of insurance for each such policy. Each certificate of insurance shall include the name of the insurer, the policy number, the effective dates of the policy, the amounts and types of coverage, the cost to the lessor for each type of coverage, and the deductible amount for each type of coverage for which the lessor may be liable. (7-1-93)

iii. The lease shall clearly specify the conditions under which deductions for cargo or property damage may be made from the lessor's settlements. The lease shall further specify that the authorized carrier must provide the lessor with a written explanation and itemization of any deductions for cargo or property damage made from any compensation of money owed to the lessor. The written explanation and itemization must be delivered to the lessor before any deductions are made. (7-1-93)

k. ~~Eserow Funds.~~ If escrow funds are required, the lease shall specify: (7-1-93)

i. The amount of any escrow fund or performance bond required to be paid by the lessor to the authorized carrier or to a third party. (7-1-93)

ii. The specific items to which the escrow fund can be applied. (7-1-93)

iii. That while the escrow fund is under the control of the authorized carrier, the authorized carrier shall provide an accounting to the lessor of any transactions involving such fund. The carrier shall perform this accounting in one of the following ways: (1) By clearly indicating in individual settlement sheets the amount and description of any deduction or addition made to the escrow fund; or (2) By providing a separate accounting to the lessor of any transactions involving the escrow fund. This separate accounting shall be done on a monthly basis. (7-1-93)

iv. The right of the lessor to demand to have an accounting for transactions involving the escrow fund at any time. (7-1-93)

v. That while the escrow fund is under the control of the carrier, the carrier shall pay interest on the escrow fund on at least a quarterly basis. For purposes of calculating the balance of the escrow fund on which interest must be paid, the carrier may deduct a sum equal to the average advance made to the individual lessor during the period of time for which interest is paid. The interest rate shall be established on the date the interest period begins and shall be at least equal to the average yield or equivalent coupon issue yield on ninety-one (91) day, thirteen (13) week Treasury bills as established in the weekly auction by the Department of Treasury. (7-1-93)

vi. The conditions the lessor must fulfill in order to have the escrow fund returned. At the time of the return of the escrow fund, the authorized carrier may deduct monies for those obligations incurred by the lessor which have been previously specified in the lease, and shall provide a final accounting to the lessor of all such final deductions made to the escrow fund. The lease shall further specify that in no event shall the escrow fund be returned later than forty-five (45) days from the date of termination. (7-1-93)

i. Copies of the Lease. An original and two (2) copies of each lease shall be signed by the parties. The authorized carrier shall keep the original and shall place a copy of the lease on the equipment during the period of the lease unless a statement as provided for in requirement Subsection 024.03.c.ii of this Rule is carried on the equipment instead. The owner of the equipment shall keep the other copy of the lease. (7-1-93)

m. The requirement of Subsection 024.04.l. of this Rule applies to owners who are not agents, but whose equipment is used by an agent of an authorized carrier in providing transportation on behalf of that authorized carrier. In this situation, the authorized carrier is obligated to ensure that these owners receive all the rights and benefits due an owner under the leasing regulations, especially those set forth in Subsection 024.04.d. through .04.k. of this rule. This is true regardless of whether the lease for the equipment is directly between the authorized carrier and its agent rather than directly between the authorized carrier and each of these owners. The lease between an authorized carrier and its agent shall specify this obligation. (7-1-93)

05. General Exemptions. This subsection is modeled on 49 CFR. 1057.21. Except for Subsection 024.03.c. of this Rule that requires the identification of equipment, the leasing rules in this part shall not apply to: (7-1-93)

a. Equipment leased without drivers from a person who is principally engaged in such a business. (7-1-93)

b. Any type of trailer not drawn by a power unit leased from the same lessor. (7-1-93)

06. Exemption for Leasing Between Authorized Carriers. This paragraph is modeled on 49 CFR. 1057.21. Regardless of the leasing requirements set forth in this rule, an authorized carrier may lease equipment to or from another authorized carrier under the following conditions: (7-1-93)

a. The identification of equipment requirements in Subsection 024.03.c. of this Rule must be complied with; (7-1-93)

b. The lessor must own the equipment or hold it under a lease; (7-1-93)

e. There must be a written agreement between the authorized carriers concerning the equipment as follows: (7-1-93)

i. It must be signed by the parties or their authorized representatives. (7-1-93)

ii. It must provide that control and responsibility for the operation of the equipment shall be that of the lessee from the time possession is taken by the lessee and the receipt required under Subsection 024.03.b.i. of this Rule is given to the lessor until: (A) possession of the equipment is returned to the lessor and the receipt required under Subsection 024.03.b.ii. of this Rule is received by the authorized carrier; or (B) possession of the equipment is given to another authorized carrier in an interchange of equipment. (7-1-93)

d. A copy of the agreement must be carried in the equipment while it is in the possession of the lessee.

~~(7-1-93)~~

~~e. Nothing in this Rule shall prohibit the use by authorized carriers of a master lease if a copy of that master lease is carried in the equipment while it is in the possession of the lessee, and if the master lease complies with the provisions of this section and receipts are exchanged in accordance with Subsection 024.03.b. of this rule, and if records of the equipment are prepared and maintained in accordance with Subsection 024.03.d. of this rule.~~

~~(7-1-93)~~

~~072. Leasing Authority Prohibited. Any arrangement in which any person is permitted to operate as an independent carrier by reason of a permit of another is specifically prohibited.~~ (7-1-93)

~~083. Leasing of Vehicles and Supplying Drivers. The leasing of vehicles, with drivers, to shippers and private carriers raises a rebuttable presumption of private carriage when the terms of a lease and operations conducted under it meet the following criteria:~~ (7-1-93)

~~a. The equipment subject to the lease is exclusively committed to the lessee's use for the term of the lease.~~ (7-1-93)

~~b. During the term of the lease, the lessee accepts, possesses, and exercises exclusive dominion and control over the leased equipment and further assumes complete responsibility for the operation of the equipment.~~ (7-1-93)

~~c. The lessee maintains public liability insurance, or surety bonds, in amounts required by law.~~ (7-1-93)

~~d. The lessee displays appropriate identification on all equipment leased by it, showing operation by the lessee during the performance of such transportation.~~ (7-1-93)

~~e. The lessee accepts responsibility for, and bears the cost of, compliance with safety and all other requirements imposed during transportation by various federal, state or local regulatory bodies; and~~ (7-1-93)

~~f. The lessee maintains in effect adequate cargo insurance for the loss or damage to the property being transported throughout the period of the lease, or otherwise remains liable for cargo damage and/or loss.~~ (7-1-93)

~~094. Filing Leases. A copy of each common or contract carrier lease agreement must be filed with or mailed to the Regulated Carrier Division within one (1) business day of its execution. Operations conducted otherwise are prohibited. Operations of vehicles under leases submitted to the Commission must cease immediately upon notification of the disapproval of the lease.~~ (7-1-93)

~~05. Version of Federal Regulations Adopted. The federal regulations adopted by reference in this MCR 24 are those contained in the compilation of 49 CFR Part 1057 published in the Code of Federal Regulations volume dated October 1, 1996, and as subsequently recompiled. Part 1057 was redesignated as 49 CFR 376 in the issue of October 21, 1996, Fed. Reg. 54705, and as amended in the issue of April 1, 1997, Fed. Reg. 15417.~~ ()

025. INTERCHANGE OF EQUIPMENT (Rule 25).

~~01. Interchange Allowed. Common and contract carriers may interchange equipment according to the terms of a written contract, lease or other agreement. The written agreement must specifically describe:~~ (7-1-93)

~~a. The equipment to be interchanged;~~ (7-1-93)

~~b. How the equipment is to be used, and~~ (7-1-93)

~~e. The compensation for its use. The interchange agreement must be signed by both parties or by their authorized representative.~~ (7-1-93)

~~02. Identification of Equipment. Power equipment used in interchange must be identified in accordance~~

~~with MCR 23. (7-1-93)~~

~~03. Rates and Revenues. The rates charged and the revenues collected must be accounted for in the same manner as if there had been no interchange. (7-1-93)~~

~~04. Documentation Carried in Vehicle. Unless a copy of the interchange agreement is carried on the equipment, the carrier must keep a statement with each vehicle used during interchange service certifying that it is operating the equipment and the use to be made of the equipment. This statement must be signed by both parties to the interchange agreement or their authorized representative. If the parties to the interchange both hold authority for the commodity transported in the territory in which the equipment is being operated under the interchange agreement, the agreement or statement must also: (7-1-93)~~

~~a. Identify the equipment by the company or state registration number, (7-1-93)~~

~~b. Show the specific point of interchange, and (7-1-93)~~

~~e. Show the date and time it assumes responsibility for the equipment. The requirements of this subsection do not apply where the equipment to be operated in interchange service consists only of trailers or semitrailers. (7-1-93)~~

~~05. Filing with Commission. A copy of an interchange agreement must be filed with and approved by the Commission before any operation is conducted under the agreement. (7-1-93)~~

026. ~~TARIFFS (Rule 26).~~

~~01. Adoption of Federal Regulations. 49 CFR. 1312.1 through 1312.40 are hereby adopted by reference. On and after July 1, 1994, tariffs must substantially comply with 49 CFR. 1312.1 through 1312.40, applicable to the type of carrier affected, except as these requirements conflict with existing laws of the State of Idaho, or as provided below. On and after October 1, 1994, the filed rates must be fixed, specific rates with no zones of rate variations. (7-1-93)~~

~~02. Newly Permitted Carriers. Tariffs of new motor carriers are effective with the issuance of their permit. (7-1-93)~~

~~03. Filing New or Revised Tariffs. New tariffs or proposed changes to existing tariffs, including rate increases or decreases, or changes to the practices or services of Idaho common carriers, must be submitted to the Commission in writing with a letter of transmittal. The transmittal must itemize each page or supplement change and be signed by the person issuing the tariff or by the carrier's authorized representative. The transmittal must certify that carriers participating in that tariff and any other person who has requested a copy of that tariff also have been sent the appropriate copies. If a receipt is desired, the carrier must mark the transmittal letter "Receipt Requested" and send an extra copy of the letter with a self-addressed return envelope to which the postage is affixed. A letter of transmittal worded as follows complies with this rule: Enclosed is a copy of "(Tariff being sent)", "Supplement No. to (Tariff)", or "Revised Page No.(s) to (Tariff)". I certify that all subscribers to this publication have also been sent copies, and in case of rejection, such subscribers shall be so notified. (Return Receipt Requested - Optional). (7-1-93)~~

~~04. Effectiveness of Change. New tariffs or changes in existing tariffs naming rates, fares, charges, classifications, rules and regulations governing practices and/or services are permitted to become effective as follows: (7-1-93)~~

~~a. When a change entails any form of rate increase or reduction of service, it may become effective seven (7) days after receipt by the Commission. (7-1-93)~~

~~b. When a change does not entail a rate increase nor a decrease in service, it may become effective one (1) day after receipt by the Commission. (7-1-93)~~

~~05. Return of Tariffs. New tariffs or amendments to existing tariffs are reviewed by the Commission. If a tariff filing is not in substantial compliance with this rule, it will be rejected and returned with instructions to correct~~

~~any described deficiency. Any filing may be noticed for hearing upon the Commission's own motion. (7-1-93)~~

~~06. Protests. Any person may protest a filing or rejected filing and may request a hearing. Any request for a hearing for a rejected filing must be filed within fourteen (14) days after the date of the letter of rejection. All protests must contain a detailed statement of reasons supporting the protest, and protestants must state whether or not they will appear at a hearing if one is scheduled. The notice setting the hearing will name the carrier or agent filing the tariff or the change. The notice of hearing will be mailed to all interested parties not less than twenty-one (21) days prior to the date assigned for hearing. (7-1-93)~~

~~07. Hearing. All tariff matters that are the subject of a hearing must be supported by appropriate financial data, pro forma exhibits, verified statements or other documentation sufficient to justify those provisions. Matters pertaining to collective rate tariffs must be supported with supplementary evidence from carriers who transport a significant volume of the goods carried by those desiring to participate in the provisions. Failure to comply with this requirement is ground for denial or revocation of the proposed tariff changes. (7-1-93)~~

~~08. Version of Federal Regulations Adopted. The federal regulations adopted by reference in this MCR 26 are those contained in the compilation of 49 CFR. 1312.1 through 1312.40 published in the Code of Federal Regulations volume dated October 1, 1992, and as subsequently recompiled. (7-1-93)~~

027. CONTRACTS (Rule 27).

~~01. Filing. Complete contracts of contract carriers must be filed with the Commission for review, revision, approval and modification as required under Idaho Code Section 61-806. Contracts and pertinent addenda must contain the authorized signature of both contracting parties. (7-1-93)~~

~~02. Termination of Contracts. Contracts between contract carriers and shippers are terminable within the period for which they are written only in the manner provided by the contracts and upon not less than seven (7) days' notice to the Commission and each contracting party. (7-1-93)~~

~~03. Contents. Every contract must provide: (7-1-93)~~

~~a. For mutually binding both shipper and carrier; (7-1-93)~~

~~b. The length of time or term of performance by both parties; and (7-1-93)~~

~~c. The rates and charges applicable. (7-1-93)~~

~~04. Extension. Contracts may be extended past their expiration date by the affirmative action of the contracting parties and upon notification to the Commission, but no contract will be recognized or authorized as being in effect more than three (3) years after filing (or its most recently filed amendment or reauthorization). (7-1-93)~~

0285. -- 030. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

032. SHIPPING RECEIPTS, BILLS OF LADING, FREIGHT BILLS, STATEMENTS, PASSENGER TICKETS, INSPECTIONS AND RETENTION OF RECORDS (Rule 32).

01. Shipping Records. All common carriers of property (including those drive away or tow away vehicles or trailers), except carriers of items of unusual value who keep daily trip records showing all information necessary for the determination of legal charges, must issue shipping receipts or bills of lading or combinations of the two and freight bills covering all shipments transported, which must show: (7-1-94)

a. An itemized list of articles that the shipment contains; (7-1-93)

- b. Names of consignors and consignees; (7-1-93)
 - c. Points of origin and destination and mileage between those points where freight charges are determined by use of actual or designated miles; (7-1-93)
 - d. Date of shipment; (7-1-93)
 - e. Weights and numbers of articles; (7-1-93)
 - f. All accessorial charges applying to shipment; (7-1-93)
 - g. Rates and charges applicable to the shipment; and (7-1-93)
 - h. Any other necessary information that may relate to assessment of rates. (7-1-93)
02. Passenger Service. Carriers of passengers transported on an individual fare basis must issue a ticket to each passenger. (7-1-93)
03. Charter Passenger Service. Common carriers of charter passengers must issue a statement for services showing on its face the following information: (7-1-93)
- a. Serial number, which consists of one of a series of consecutive numbers assigned in advance and printed on the statement; (7-1-93)
 - b. Name of carrier; (7-1-93)
 - c. Name of person paying the charges, together with name of the organization, if any, for which transportation is provided; (7-1-93)
 - d. Date or dates upon which transportation is provided; (7-1-93)
 - e. Origin, destination and general routing of trip; (7-1-93)
 - f. Number of vehicles used, identification and seating capacity of each; (7-1-93)
 - g. Number of persons transported; (7-1-93)
 - h. Mileage upon which charges are based, including any deadhead mileage, which must be separately stated; (7-1-93)
 - i. Applicable rate per mile, hour, day, or other unit; (7-1-93)
 - j. Charges for transportation; (7-1-93)
 - k. Itemized charges for special services, if any, performed by carrier; (7-1-93)
 - l. Itemized charges for other expenses, such as toll charges, parking fees, layover time, etc.; and (7-1-93)
 - m. Total charges assessed and collected. During charter carriage, a statement showing the information in Subsections 032.03.b. through .03.g. must be carried in at least one vehicle with the charter group. Regular or irregular route passengers may not be carried on the same bus with a charter group. (7-1-93)
04. Secondary Mobile Home Transportation. Common carriers of mobile homes transported in secondary movements must comply with ~~all terms~~ Items 230, 295 and 300(f) of Mobile Home Tariff 104 (and successive reissues or replacements) issued by this Commission, ~~including making~~ which requires pre-trip inspection

reports to be completed and prescribed information to be given to customers before the transportation is performed. (7-1-93)()

05. Retention of Records. The carrier must retain all shipping receipts, bills of lading, freight bills, statements and inspection reports referred to in this Rule for a period of three (3) years. If any numbered document is spoiled, voided or unused for any reason, a copy or a written record of its disposition must be retained for three (3) years. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

036. CLAIMS (Rule 36).

01. Adoption of Federal Regulations. ()

a. ~~49 CFR- 1005.2370.3 through and including 1005.6 and 1008.3 through and including 1008.9 370.11, except for 370.9(b), are hereby adopted by reference as the procedure for handling claims against carriers is governed by 49 CFR. 1005.2 through and including 1005.6, and 1008.3 through and including 1008.9, except when those requirements conflict with existing laws of the state of Idaho for loss and damage.~~ (7-1-93)()

b. 49 CFR 378.3 through and including Section 378.9 are hereby adopted by reference as the procedures for handling claims against carriers for overcharge, duplicate payment, or over collection. ()

02. Version of Federal Regulations Adopted. The federal regulations adopted by reference in this MCR 36 are those contained in the compilations of 49 CFR- 1005.2 through 1005.6, except for 1005.5(b), and 1008.3 through 1008.9 published in the Code of Federal Regulations volume dated October 1, 1992, and as subsequently recompiled. Part 1008 of 49 CFR Chapter X was transferred to 49 CFR Chapter III and redesignated as Part 378 of 49 CFR Chapter III in the issue of October 21, 1996, 61 Fed. Reg. 54705, then amended with technical changes only in the issue of April 1, 1997, 62 Fed. Reg. 15417. Part 1005 of 49 CFR Chapter X was adopted and incorporated into Part 370 of 49 CFR Chapter III, with technical amendments, in the issue of June 12, 1997, 62 Fed. Reg. 32040. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

~~**038. PAYMENT OF RATES AND CHARGES/CREDIT ARRANGEMENTS (Rule 38).**~~

~~01. Payment Due. Except as otherwise provided, all transportation and other lawful charges in connection with the transportation are payable before the carrier's surrender of the property to the consignee. (7-1-93)~~

~~02. Credit. Where proper and satisfactory credit arrangements have been made to assure payment of the tariff charges within a specified period, common carriers may relinquish possession of freight in advance of the payment of the tariff charges and may extend credit in the amount of the charges. (7-1-93)~~

~~**039. -- 040. (RESERVED).**~~

Subchapter E - Applications and Permits
Rules 41 through 50

041. QUALIFICATIONS FOR COMMON AND/ CONTRACT CARRIER PERMITS/PERMANENT AUTHORITY (Rule 41).

01. Permit Issued to Qualified Applicants. Pursuant to sSection 61-802, Idaho Code, and MCR 46, a permit for permanent authority may be issued to any qualified applicant for a common or contract carrier permit

~~authorizing the whole or any part of its requested operations if the applicant meets its burden of introduction of evidence and of persuasion to show that and the Commission finds that the applicant has met the requirements of the following paragraphs. (7-1-93)(____)~~

02. ~~Fitness, Willingness, and Ability to Serve. The applicant must show that it is fit, willing and able to perform properly the proposed service: while complying with the motor carrier safety regulations and financial responsibility requirements. Upon request of the Commission Staff, the applicant must be willing to submit to an equipment inspection and/or compliance review before its application for authority is acted upon. (7-1-93)(____)~~

~~a. To demonstrate financial fitness and ability the application shall show the applicant has and maintains ten percent (10%) equity capital invested in the proposed operation or otherwise demonstrate financial fitness. The applicant must show this by submitting a Form 1002. Form 1002 shall reflect the personal and business operations of the sole proprietorship or partnership and the entire business operation for a corporation. (4-26-95)~~

~~b. To demonstrate equipment fitness and ability the application shall include an equipment list that shows that the applicant owns or leases or has the ability to own or lease the equipment necessary to provide the service for the authority granted. (7-1-93)~~

~~03. Present or Future Public Convenience and Necessity. The applicant must show that the proposed service will be of present or future public convenience and necessity. (7-1-93)~~

~~04.3. Compliance With Motor Carrier Act and These Rules. The applicant must show that it will conform to the provisions of the Motor Carrier Act and other requirements promulgated by the Commission pursuant to these MCRs. To demonstrate regulatory compliance, the application shall state that the applicant does not have any unfulfilled consent agreements with the Commission and certify that the applicant will conform to the provisions of the Motor Carrier Act and other requirements promulgated by the Commission pursuant to these MCRs. (7-1-93)(____)~~

~~a. To demonstrate safety fitness and ability the application shall show that the applicant has received and has maintained a "satisfactory" safety rating or has a "conditional" rating, which will be upgraded to "satisfactory" within one (1) year, as defined in MCR 12. (7-1-93)~~

~~b. To demonstrate regulatory compliance the application shall state that the applicant does not have any unfulfilled consent agreements with the Commission or the Commission Staff. (7-1-93)~~

042. QUALIFICATIONS FOR COMMON AND/ CONTRACT CARRIER PERMITS/TEMPORARY AUTHORITY (Rule 42).

01. ~~Permit Issued to Qualified Applicants. Pursuant to 61-802A, Idaho Code, and MCR 46 a permit for temporary authority may be issued to any qualified applicant for a common or contract carrier permit authorizing the whole or any part of its requested operations if the applicant meets its burden of introduction of evidence and of persuasion to show that and the Commission finds that the applicant has met the requirements of the following paragraphs. (7-1-93)(____)~~

02. ~~Fitness, Willingness, and Ability to Serve. The applicant must show that it is fit, willing and able to perform properly the proposed service: while complying with the motor carrier safety regulations and financial responsibility requirements. Upon request of the Commission Staff, the applicant must be willing to submit to an equipment inspection and/or compliance review before its application for authority is acted upon. (7-1-93)(____)~~

~~a. To demonstrate financial fitness and ability the application shall show the applicant has and maintains ten percent (10%) equity capital invested in the proposed operation or otherwise demonstrate financial fitness. The applicant must show this by submitting a Form 1002. Form 1002 shall reflect the personal and business operations of the sole proprietorship or partnership and the entire business operation for a corporation. (4-26-95)~~

~~b. To demonstrate equipment fitness and ability the application shall include an equipment list that shows that the applicant owns or leases or has the ability to own or lease the equipment necessary to provide the service for the authority granted. Upon request of the Commission Staff, the applicant must be willing to submit to an~~

~~equipment inspection before its application for authority is acted upon.~~ (7-1-93)

03. Immediate and Urgent Need for Service. The applicant must show that there is an immediate and urgent need for the service: as determined by the Commission. (7-1-93)()

a. ~~To demonstrate the immediate and urgent need for the service for common carrier authority the application shall include one or more shipper support statement(s) (Form 1020) that show a need for the applicant to provide the service for the authority requested. Form 1020 shall include a description of the commodities to be transported, the points or areas to, from or between that the commodities or passengers are to be transported, the volume of traffic and frequency of movement that the shipper will provide the carrier, how soon the service must be provided and the reasons for the time limit, the adverse consequences to the shipper(s) or to the public if the service is not made available, the name and addresses of existing carriers who have either failed or refused to provide the service or cannot handle the volume of service requested, and a statement whether the shipper(s) is (are) willing to appear and offer testimony if a hearing is held.~~ (7-1-93)

b. ~~To demonstrate the present or future public convenience and necessity for contract carrier authority the applicant shall submit a contract or contract(s) that comply with MCR 27 in lieu of Form 1020.~~ (7-1-93)

04. Compliance With Motor Carrier Act and These Rules. ~~The applicant must show that it will conform to the provisions of the Motor Carrier Act and other requirements promulgated by the Commission pursuant to these MCRs: To demonstrate regulatory compliance, the application shall state that the applicant does not have any unfulfilled consent agreements with the Commission and certify that the applicant will conform to the provisions of the Motor Carrier Act and other requirements promulgated by the Commission pursuant to these MCRs.~~ (7-1-93)()

a. ~~To demonstrate safety fitness and ability the application shall show that the applicant has received and has maintained a "satisfactory" safety rating or a "conditional" safety rating or has no safety rating under MCR 12. A carrier with an "unsatisfactory" rating is disqualified from receiving temporary authority. Upon request of the Commission Staff, the applicant must be willing to submit to an equipment inspection before its application for authority is acted upon.~~ (4-26-95)

b. ~~To demonstrate regulatory compliance the application shall state that the applicant does not have any unfulfilled consent agreements with the Commission or the Commission Staff.~~ (7-1-93)

05. Additional Requirements for Application. The application for temporary authority is incomplete if it does not include a ~~financial statement (Form 1002), equipment list (Form 1019), shipper support statements or contracts, a record of a satisfactory safety rating, and a statement concerning consent agreements~~ certificate of insurance as required by MCR 22. The administrator of the regulated carrier division may notify the applicant by letter if the application is incomplete, in which case the applicant will have ~~twenty-eight~~ one hundred eighty (28180) days after the mailing of the administrator's letter to complete the application or the application may be dismissed for failure to comply with this rule. Following such a letter from the administrator, the Commission will ordinarily take no action on the incomplete application for temporary authority, except to dismiss it if it is not completed within ~~twenty-eight~~ one hundred eighty (28180) days after the administrator's letter is mailed. However, the Commission may find that the public interest requires that an applicant for temporary authority may be relieved of some or all of the requirements of this rule because of an emergency. In such cases, the Commission may act upon and grant applications for temporary authority even though the applications are incomplete. (4-26-95)()

043. APPLICATIONS FOR PERMITS AND FOR TRANSFERS, AMENDMENTS, SUSPENSIONS, REINSTATEMENTS, CANCELLATIONS, OR OTHER CHANGES IN COMMON ~~AND~~ CONTRACT CARRIER PERMITS (Rule 43).

01. In General. Applications for new permits, transfers, amendments, suspensions, reinstatements, voluntary cancellation, or other changes in existing common ~~or~~ contract carrier permits must be made in ink or typewritten on forms specified or otherwise approved by the Commission. The forms must be accompanied by documents, fees, and other information required by statute, order, Rule or the Administrator of the Regulated Carrier Division. (7-1-93)()

02. New Authority. Applications for new common ~~or~~ contract carrier permits must include: (7-1-93)(____)
- a. Application (Form 1001) ~~and passenger carrier addendum (Form 1010-C) if the applicant will carry passengers;~~ (7-1-93)(____)
 - b. ~~Financial statement (Form 1002);~~ (7-1-93)
 - e. ~~Equipment list (Form 1019);~~ (7-1-93)
 - d. ~~If the applicant is a corporation, certificate of good standing from the Secretary of State's Office;~~ (7-1-93)
 - e. ~~Certificate of assumed business name (if applicable);~~ (7-1-93)
 - f. ~~Proposed time schedule (if the application is for transporting passengers over regular routes);~~ (7-1-93)
 - g. ~~Filing fee; and~~ (7-1-93)(____)
 - h. ~~Shipper support statement (Form 1020) or contract, if required by rule.~~ (7-1-93)
 - c. Proof of payment of regulatory fees; and (____)
 - d. Certificate of insurance as required by MCR 22. (____)
03. Transfer of Authority. Applications for transfer of common ~~or~~ contract carrier permits must include: (7-1-93)(____)
- a. Application (Form 1010A); (7-1-93)
 - b. ~~Financial statement of transferee (Form 1002);~~ (7-1-93)
 - e. ~~Surrender of old permit or affidavit of loss;~~ (7-1-93)
 - d. ~~Bill of sale;~~ (7-1-93)
 - e. ~~If the applicant is a corporation, certificate of good standing from the Secretary of State's Office;~~ (7-1-93)
 - f. ~~Certificate of assumed business name (if applicable);~~ (7-1-93)
 - g. ~~Complete list of vehicles to be operated by transferee;~~ (7-1-93)
 - h. ~~Filing fee; and~~ (7-1-93)(____)
 - i. ~~Shipper support statement (Form 1020) or contract, if required by rule.~~ (7-1-93)
 - e. Proof of payment of regulatory fees; and (____)
 - f. Certificate of insurance as required by MCR 22. (____)
04. Amended Authority. Applications for amendment of common ~~or~~ contract carrier permits must include: (7-1-93)(____)
- a. Application (Form 1001); (7-1-93)

- b. ~~Financial statement (Form 1002);~~ (7-1-93)
 - e. ~~Equipment list (Form 1019);~~ (7-1-93)
 - ~~db.~~ Filing fee; ~~and~~ (7-1-93)()
 - e. ~~Shipper support statement (Form 1020) or contract, if required by rule.~~ (7-1-93)
 - c. Proof of payment of regulatory fees; and ()
 - d. Certificate of insurance as required by MCR 22. ()
05. ~~Change of Name. Applications Request for a change of name of a common ~~or~~ contract carrier permittee must be in writing and include a certificate of insurance as required by MCR 22 that reflects the name change.~~ (7-1-93)()
- a. ~~Application; and~~ (7-1-94)
 - b. ~~Copies of necessary filings with other government entities showing a change of name (e.g., copies of filing with Secretary of State showing a changed corporate name or with local authorities showing a changed business name); and~~ (7-1-93)
06. ~~Temporary Authority. Applications for temporary common ~~or~~ contract carrier permits must include:~~ (7-1-94)()
- a. Application (Form 1014); (7-1-93)
 - b. ~~The other requirements provided under paragraph 02 of this Rule and MCR 44.03;~~ (7-1-93)
 - ~~eb.~~ Filing fee; ~~and~~ (7-1-93)()
 - d. ~~Shipper support statement (Form 1020) or contract, if required by rule.~~ (7-1-93)
 - c. Proof of payment of regulatory fees; and ()
 - d. Certificate of insurance as required by MCR 22. ()
07. ~~Voluntary Suspension. Applications for voluntary suspension of common ~~or~~ contract carrier permits must include:~~ (7-1-93)()
- a. Application (Form 1021); and (7-1-93)
 - b. Filing fee. (7-1-93)
08. ~~Cancellation. Applications for cancellation of common ~~or~~ contract carrier permits must include:~~ (7-1-93)()
- a. Application (Form 1009), or (7-1-93)
 - b. Other correspondence requesting cancellation of the permit. (7-1-93)
09. ~~Reinstatement. Application for reinstatement of common ~~or~~ contract carrier permits must include:~~ (7-1-93)()
- a. Application (Form 1043); (7-1-93)

- b. ~~Financial statement;~~ (7-1-93)
- e. ~~Equipment list;~~ (7-1-93)
- ~~db. Filing fee; and~~ (7-1-93)()
- e. ~~Shipper support statement (Form 1020) or contract, if required by rule.~~ (7-1-93)
- c. Proof of payment of regulatory fees; and ()
- d. Certificate of insurance as required by MCR 22. ()

044. ACTION ON APPLICATIONS (Rule 44).

01. Application Fees. Application fees ordinarily will not be returned to the applicant for common ~~or~~/ contract authority, notwithstanding that an application may be granted, denied or dismissed. The Commission may upon its own motion return application fees upon a finding that it has no regulatory authority over the applicant's requested operations. (7-1-93)()

02. Permanent Authority. Applicants for permanent authority have ~~forty-two~~ thirty (4230) days from the date of the Commission Order granting the application to submit to the Commission ~~necessary contracts or tariffs,~~ certificates of insurance and other documents required to be filed with the Commission by statute, ~~R~~ule or ~~O~~order. No permit will be issued until all these documents are on file with the Commission. Failure to file these documents within ~~forty-two~~ thirty (4230) days is grounds for the Commission Secretary to issue notice that the authority never became effective because of failure to comply with this rule. (7-1-93)()

03. Temporary Authority. Applicants for temporary authority must submit to the Commission ~~necessary contracts or tariffs,~~ certificates of insurance and other documents required to be filed with the Commission by statute, ~~R~~ule or ~~O~~order before any permit will be issued. The Commission may decline to consider an application for temporary authority until these documents have been filed or the administrator of the regulated carrier division may notify the applicant by letter that the application has been dismissed for failure to abide by the conditions set forth in this rule. (7-1-93)()

045. PROCEDURES FOR CONSIDERING APPLICATIONS (Rule 45).

01. In General. The Commission considers applications for new common ~~and~~/ contract carrier permits and for transfers, amendments, or any other changes in existing common ~~and~~/ contract carrier permits under IDAPA 31.01.01.000 et seq., the Commission's Rules of Procedure (RP). Applications may be considered by hearing or by modified procedure, i.e., by written comments rather than by hearing. (7-1-93)()

02. Modified Procedure. Notices of Modified Procedure may be issued upon the Commission's preliminary finding that the Public interest may not require a hearing. The Notice of Modified Procedure allows at least a twenty-one (21) day period for any interested person to file written comments to an application. All protests or interventions must contain a detailed statement of reasons supporting the protest or intervention and must include an explicit request for a hearing if one is desired. Further, protestants and intervenors must state whether or not they will appear at a hearing if one is scheduled. (7-1-93)

03. Hearing. Hearings are conducted in accordance with Rules of Procedure. If an applicant fails to appear at the hearing, the Commission may dismiss the application. (7-1-93)

~~046. DESIGNATIONS IN COMMON AND CONTRACT CARRIER PERMITS AND AUTHORITY (Rule 46).~~

~~01. Routes. Common and contract carrier permits are required to designate whether the carrier will operate over regular and/or irregular routes. (7-1-93)~~

~~02. Geographical Authority. Permits are required to specify the geographical authority of the carrier.~~

The geographical authority of a carrier is one or more of the following regions unless the carrier or applicant requests and justifies a more limited geographical authority. When requesting or designating a region, carriage may be listed as originating within the region (with no restriction on termination) or may be listed as originating carriage within the region with authority to carry a backhaul terminating within the region. The regions are: (7-1-93)

a. North: Adams, Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties; (7-1-93)

b. West: Ada, Adams, Blaine, Boise, Butte, Camas, Canyon, Custer, Elmore, Gem, Gooding, Idaho, Jerome, Lemhi, Lincoln, Owyhee, Payette, Twin Falls, Valley and Washington Counties; (7-1-93)

c. East: Bannock, Bear Lake, Bingham, Blaine, Bonneville, Butte, Camas, Caribou, Cassia, Clark, Custer, Franklin, Fremont, Gooding, Jefferson, Jerome, Lemhi, Lincoln, Madison, Minidoka, Oneida, Power, Teton and Twin Falls Counties; and/or (7-1-93)

d. Entire state of Idaho. (7-1-93)

03. Designation of Commodities or Passenger Service Required. Permits are required to specify the commodities or passenger group(s) that the carrier is authorized to transport. Carriers applying for authority must specify which of the following commodity or passenger group(s) will be transported. (7-1-93)

04. Freight Commodities: (7-1-93)

a. General commodities (carriage of commodities other than the categories listed below): (7-1-93)

b. Commodities of unusual value transported in armored vehicles. (7-1-93)

c. Express parcel transportation. (7-1-94)

d. Hazardous materials, substances, or wastes requiring one million dollars (\$1,000,000) in insurance coverage. (7-1-94)

e. Hazardous materials, substances or wastes requiring five million dollars (\$5,000,000) in insurance coverage. (7-1-94)

f. Houses, buildings, and structures exceeding fourteen (14) feet wide. (7-1-94)

g. Mobile homes. (7-1-94)

h. Wood residuals. (7-1-94)

05. Classes of Passenger Carriage. (7-1-93)

a. Passengers in charter service. (7-1-93)

b. Passengers in charter service by limousine. (7-1-94)

c. Passengers, irregular route. (7-1-93)

d. Passengers, regular route. Carriers may request a listing of other authorities in their applications and the Commission may specify other authorities in a permit. (7-1-93)

046. (RESERVED).

047. RESTRICTIONS ON COMMON ~~AND~~ CONTRACT CARRIER PERMITS AND AUTHORITY/ MISCELLANEOUS PROVISIONS (Rule 47).

01. Original and Copy of Permit. The original common ~~or~~ contract carrier permit is retained by the Commission and a duplicate issued to the carrier. The carrier must keep the duplicate on file at its principal office or place of business, available for inspection at reasonable business hours. Additional copies of the permit may be obtained from the Commission. (7-1-93)()

02. Permit Numbers. The Commission assigns permit numbers for each authorized carrier. (7-1-93)

03. Minors. Permits are not issued to minors. (7-1-93)

04. Leasing Permits Prohibited. The leasing, lending or renting of a permit or its operating rights or the conducting of any operation under a permit by a person other than the permittee is prohibited. No lease, device or arrangement constituting the leasing or renting of a permit is authorized or approved by the Commission. (7-1-93)

048. PRIVATE CARRIER PERMITS (Rule 48).

A private carrier's vehicle registration as a private carrier constitutes the carrier's permit under the Motor Carrier Act. No separate application or showing for a private carrier permit or authority is necessary. Private carriers are prohibited from common ~~or~~ contract carriage without securing a common or contract carrier permit. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

051. INTERSTATE AND FOREIGN COMMERCE (Rule 51).

01. Applicability of Rules. The following rules apply to motor carriers when engaged in interstate or foreign commerce in Idaho: (7-1-93)

a. ~~MCR 17. Controlled substance testing;~~ (7-1-93)

b~~a~~. MCR 18. Transportation of hazardous materials, substances, and wastes; (7-1-93)

e~~b~~. MCR 19. Motor vehicle safety requirements; and (7-1-93)

d~~c~~. MCR 37. Smoking prohibited in certain passenger vehicles. (7-1-93)

02. Annual Interstate Registration. It is unlawful for any interstate or foreign carrier with ICC authority or registration from the U.S. Department of Transportation to operate upon the highways of Idaho without first registering with the Commission or with the regulatory authority of another State its operating authority granted by the Interstate Commerce Commission or registration from the U.S. Department of Transportation. It is unlawful for any exempt or private interstate or foreign carrier to operate on the highways of Idaho without first certifying to the Commission that it is exempt from an ICC regulation authority or registration with the U.S. Department of Transportation. For calendar year 1995, registration will be granted by payment of a fee of two dollars (\$2) per vehicle, and for calendar year 1996 and beyond by registration will be granted upon payment of a fee of one dollar (\$1) per vehicle, paid to this Commission or to the regulatory authority of another State for remittance to this Commission. This registration of a carrier with ICC authority or registration from the U.S. Department of Transportation will be revoked by the Commission upon revocation of the operating authority or registration by the Interstate Commerce Commission U.S. Department of Transportation. (7-1-93)()

03. Adoption of Federal Regulations. 49 C.F.R. Part ~~402367~~ is hereby adopted by reference. For registration after calendar year 1994 and beyond, interstate and foreign carriers may register with Idaho or another State as provided under section 4005 of Public Law 102-204, 49 U.S.C. ~~445063301~~, and 49 C.F.R. Part ~~102314504~~. (7-1-94)()

04. Version of Federal Regulations Adopted. The federal regulations adopted by reference in the MCR 51 are those contained in the compilation of 49 CFR Part 1023, published in the Code of Federal Regulations volume dated October 1, 1996 and redesignated as 49 CFR Part 367 in the issue of October 21, 1996, Fed. Reg. 54705, and as amended in the issue of April 1, 1997, Fed. Reg. 15417. ()

052. ~~SYSTEM OF ACCOUNTS (Rule 52).~~

~~Common and contract carriers are required to maintain a system of accounts in accordance with the provisions of the appendix to these rules. (7-1-93)~~

053. ~~COMMON CARRIER COLLECTIVE RATEMAKING AGREEMENTS (Rule 53).~~

~~A common carrier that participates in collective ratemaking must do so pursuant to tariff bureau agreements and through tariff bureaus complying with these rules. Tariff bureaus and their agreements must conform to the following requirements: (7-1-93)~~

~~01. Each member must have a right to independent action. No tariff bureau may interfere with or discourage independent action of a member. (7-1-93)~~

~~02. Minutes containing the voting record of those in attendance must be kept of all rate committee proceedings. (7-1-93)~~

~~03. A list of all officers and committee members of the tariff bureau must be furnished to the Commission. (7-1-93)~~

~~04. Upon demand, all records of the tariff bureau will be opened for an audit by representatives of the Commission. (7-1-93)~~

~~05. Any interested person (carrier, shipper, bureau, etc.) may initiate a rate proposal before the tariff bureau. (7-1-93)~~

~~06. All collective proposals for new or changed rates and related matters must be docketed and adequate notice given. Any interested person must be given the opportunity to express his or her views for or against a proposal either orally or in writing. All interested persons should be given an opportunity to reply. (7-1-93)~~

~~07. All tariff bureau meetings, including committee meetings, are open to the public. (7-1-93)~~

~~08. A copy of all proposals received by the tariff bureau pursuant to Subsection 053.05.e. of this Rule must be served on the Commission by the tariff bureau. (7-1-93)~~

052. -- 053. (RESERVED).

054. OBEDIENCE AND COMPLIANCE WITH RULES AND REGULATIONS. FORCE OF LAW (Rule 54).

01. Proof of Compliance Required. Whenever requested by any peace officer, employee of this Commission or of the Idaho Transportation Department whose duties include enforcement of any of these rules and regulations, all motor carriers and their agents or employees are required to demonstrate proof of compliance with these rules. (7-1-93)

02. Sanctions. The failure of any motor carrier to obey and comply with these rules and regulations is just and sufficient cause for imposition of the sanctions authorized by Idaho Code, Title 61, Chapters 7 and 8. (7-1-93)

03. Force of Law. These rules have the force and effect of law and violations of them may be subject to punishment as a misdemeanor, as provided by sSection 61-814 of the Idaho Code, and civil penalties or sanctions as provided by the Motor Carrier Law and/or the Public Utilities Law in Chapter 7, Title 61, Idaho Code. (7-1-93)()

055. BASE STATE REGISTRATIONS (Rule 55).

Pursuant to §Section 61-815A, Idaho Code, and Public Laws 89-170 (for registrations through calendar year 1993) or 102-240 (for registrations for calendar year 1994 and beyond), 49 U.S.C. Section 11506, interstate carriers may register their interstate operations in Idaho with the Commission, with Idaho as their base state for reciprocal registrations with other States participating in the base state agreement. The Commission may enter into reciprocal agreements with the regulatory agencies of other States to provide that interstate registrations for the participating States may be accomplished by registration in one base state. Carriers electing to register in Idaho as a base state are subject to the jurisdiction and authority of the Commission to the same extent as they would be if they did not participate in the base state registration, except, in lieu of the filing fees or regulatory fees that would otherwise be collected under the Motor Carrier Act, the fees authorized by Public Laws 89-170 or 102-240, or subsequent acts of Congress, or such lesser fees as the participating States may agree to, may be collected. This Commission further requires filings of certificates of insurance or surety bonds to show the carrier's eligibility to operate. (~~7-1-93~~)()

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - RULES GOVERNING PROPERTY TAXATION
DOCKET NO. 35-0103-9704
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 held as follows:

Pursuant to Section 67-5222(2), Idaho Code, public hearings will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 20, 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 250: The rule relates to ratio studies by the State Tax Commission for school equalization purposes. The current rule results in situations in which, due to limited data in some categories used in the study, many districts are not analyzed as required by law. The proposed change to Rule 250 will compress the amount of categories for school equalization into three categories: residential, commercial, and manufactured housing.

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

Not Applicable.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted because the proposed rule originated with the parties affected by the rule.

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 August 27, 1997.

DATED this 25th day of June, 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. 35-0103-9704

250. RATIO STUDIES.

01. Procedures for School District Ratio Studies. ~~Use of "Ratio Study Manual." Procedures to be used~~

~~in the ratio study and computation of adjusted market value shall be described in the Tax Commission's "Ratio Study Manual." The ratio study conducted by the State Tax Commission to comply with the requirements of Section 63-315, Idaho Code, shall be conducted in accordance with the "Standard on Ratio Studies" published in 1990 by the International Association of Assessing Officers. For school district ratio studies completed after January 1, 1998, the following specific procedures will be used.~~ (3-23-94)()

a. Information on property sales, which meet the requirements of arm's length and market value sales, will be obtained and assembled into samples representing various categories of property and designations defined in Subsection 250.02 of this rule in each school district. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within each school district between October 1 of the year preceding the year for which adjusted market value is to be computed and September 30 of the year for which adjusted market value is to be computed. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which adjusted market value is to be computed, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. The State Tax Commission may delete sales when necessary to improve representativeness. ()

b. A ratio will be determined for each sale by dividing the market value for assessment purposes of the property by the adjusted sale price or appraised value. ()

c. A statistical analysis is to be conducted for the sales and any appraisals in each property designation defined in Subsection 250.02 of this rule in each school district and appropriate measures of central tendency, uniformity, reliability, and normality computed. ()

d. With the exception of any property designations with extended time frames or added appraisals, if fewer than five (5) sales and appraisals are available, no adjustment to the taxable value of the designation will be made. ()

e. If there are five (5) or more sales and appraisals and it is determined with reasonable statistical certainty that the property designation is not already at market value for assessment purposes, an adjusted market value will be computed for the school district by dividing the taxable value for the year for which adjusted market value is to be determined by the appropriate ratio derived from the ratio study. The appropriate ratio to be used is one of the following: ()

i. The weighted mean ratio, provided that the distribution of ratios is normal and the Price Related Differential (PRD) is between 0.98 and 1.03; ()

ii. The unweighted mean ratio, provided that the distribution of ratios is normal and the PRD is less than 0.98 or greater than 1.03; or ()

iii. The median ratio, if the distribution of ratios is not normal. ()

f. Within each school district, adjusted market value or taxable value for each category of real, personal and operating property will be summed to produce the total adjusted market value for the school district. The school district taxable value will then be divided by this adjusted market value to produce the overall ratio of assessment in each school district. Statewide totals are to be calculated by compiling county totals. ()

g. Urban renewal increment values will not be included in the taxable value or the adjusted market value for any school district. ()

h. "Reasonable statistical certainty," that the property designation in question is not at market value for assessment purposes, is required. Such certainty is tested using ninety percent (90%) confidence intervals about the weighted mean, mean or median ratios. If the appropriate confidence interval includes one hundred percent (100%), there is not "reasonable statistical certainty" that the property designation is not at market value for assessment purposes. ()

i. Categories of property subject to adjustment following the procedure outlined in this rule and ratio study designations from which measures of central tendency used for adjustments will be derived are:

<u>Category</u>	<u>Property Category</u>	<u>Ratio Study Designation</u>
<u>41</u>	<u>Urban Residential Improvements</u>	<u>Residential</u>
<u>20</u>	<u>Urban Residential Land</u>	<u>Residential</u>
<u>37</u>	<u>Rural Residential Subdivision Improvements</u>	<u>Residential</u>
<u>15</u>	<u>Rural Residential Subdivision Land</u>	<u>Residential</u>
<u>34 & 40</u>	<u>Rural Residential Tract and Other Rural Improvements</u>	<u>Residential</u>
<u>12 & 18</u>	<u>Rural Residential Tracts and Other Lands</u>	<u>Residential</u>
<u>42</u>	<u>Urban Commercial Improvements</u>	<u>Commercial</u>
<u>21</u>	<u>Urban Commercial Land</u>	<u>Commercial</u>
<u>35</u>	<u>Rural Commercial Tract Improvements</u>	<u>Commercial</u>
<u>13 & 16</u>	<u>Rural Commercial Tracts and Subdivisions</u>	<u>Commercial</u>
<u>46, 47, 65</u>	<u>Manufactured Homes and Attachments</u>	<u>Manufactured Homes and Attachments</u>
<u>48</u>	<u>Manufactured Homes Declared to be Real Property</u>	<u>Residential</u>
<u>26</u>	<u>Residential Condominiums</u>	<u>Residential</u>
<u>27</u>	<u>Commercial Condominiums</u>	<u>Commercial</u>

()

j. For all other property categories not contained in the list in Subsection 250.01.i. of this rule, adjusted market value will equal taxable value. ()

k. “Appraisal” or “appraised value” refers to any State Tax Commission provided independently conducted property appraisal. ()

02. Use of Property Designations. In computing the ratio for each school district, the State Tax Commission will designate property as residential, commercial, or manufactured housing and shall assign appropriate property categories defined in Section 328 of this chapter to these designations. For each school district, adjusted market value shall be computed by dividing the appropriate ratio ascertained for each of these designations into the sum of the taxable values for each category of property assigned to a designation. For the taxable value in any category to be included in said sum, at least one observation (sale or appraisal) from that category must be present in the ratio study. If the ratio for any given designation in a school district indicates that the market value for assessment purposes cannot be determined with reasonable statistical certainty to differ from statutorily required market value, the taxable value shown on the school district abstract(s) required pursuant to Subsection 250.04 of this rule for each of the categories included in that designation shall be the adjusted market value for said designation for said school district. ()

023. Assessor to Identify School Districts. Each county assessor will provide to the State Tax Commission the school district in which each sale submitted for the ratio study is located. (7-1-97)()

034. Abstracts of Value by School District. Each county auditor shall provide to the State Tax Commission abstracts of the taxable value of all property within the portion of each school district in each county. These abstracts shall be submitted in the same manner and at the same time as provided for county abstracts of value. (7-1-97)()

045. Urban Renewal Increment and Exemption to Be Subtracted. The taxable value of each category of property within each school district shall not include the value that exceeds the value on the base assessment roll in any urban renewal district pursuant to Chapter 29, Title 50, and shall not include the value of any exemption pursuant to Sections 63-602P, 63-602AA, 63-602K, 63-602G, 63-602X, 63-602CC, and 63-602BB, Idaho Code. (7-1-97)

IDAPA 45 - IDAHO HUMAN RIGHTS COMMISSION
45.01.01- RULES GOVERNING PRACTICE BEFORE THE HUMAN RIGHTS COMMISSION

DOCKET NO. 45-0101-9701
NOTICE OF PENDING RULES

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 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 67-5906(12), Idaho Code.

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

The pending rule was adopted to resolve a number of "housekeeping" matters including the clarification of definitions. There were no changes between the text of the proposed rule and the text of the pending rule.

The original text of the proposed rules was published in the Idaho Administrative Bulletin, Volume 97-6, pages 175 through 181.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Daniel L. Steckel at (208) 334-2873.

DATED this 26th day of June, 1997

DANIEL L. STECKEL
Deputy Attorney General
Idaho Human Rights Commission
P.O. Box 83720
Boise, Idaho 83720-0040
(208) 334-2873 phone; (208) 334-2664 fax

IDAPA 45
TITLE 01
Chapter 01

RULES GOVERNING PRACTICE BEFORE THE HUMAN RIGHTS COMMISSION

**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 175 through 181.**

**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 48 - DEPARTMENT OF COMMERCE

48.01.03 - RULES GOVERNING IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 48-0103-9701

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 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 agency has adopted a pending rule. The action is authorized pursuant to Section 67-4703 (7), 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.

- Non-Profit Submittal: Eligible applicants must include: (a) State of Idaho Certificate of Incorporation and Articles of Incorporation from the Secretary of State or a letter of determination from the Internal Revenue Service and (b) the Notice of Employer Identification Number assigned by the IRS.
- Site Visits/FAM Tours: Allow smaller properties/communities to afford hosting tours they would otherwise be unable to host. Allow lodging to be reimbursed at 50% of the state rate.
- Multi-Regional Promotion Non-Profit Submittal was modified to coincide with Eligible Applicant requirements. The Proof of Non-Profit Status form was deleted as a requirement and amended to require (a) State of Idaho Certificate of Incorporation and Article of Incorporation from the Secretary of State or a Letter of determination from the Internal Revenue Service and (b) the Notice of Employer Identification Number assigned by the IRS.
- Credit Statement (Other printed materials) will include: web sites shall include credit statement.
- Bid Process: Annual renewal of the subcontract clause will include: "Subcontract renewal is authorized for up to three (3) years beyond the initial contract year."
- To change the threshold of the audit (from \$20,000 to \$100,000) per recommendation of the Legislative Auditor and comply with the needs of the industry. Inclusion that an audit may be required at the department's request even if the grant is less than \$100,000.
- Any other changes are grammatical in nature.

The pending rules are being adopted as proposed. The original text of the proposed rule was published in the May 7, 1997, Idaho Administrative Bulletin, Volume 97-5, pages 156 through 165.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact ReNea Nelson, (208) 334-2470.

DATED this June 9, 1997.

ReNea Nelson, Grant Analyst
Department of Commerce/Tourism Development
700 West State Street
PO Box 83720
Boise ID 83720-0093
(208) 334-2470
FAX (208) 334-2631

IDAPA 48
TITLE 01
Chapter 03

RULES GOVERNING IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

**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 156 through 165.**

**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 53 - IDAHO BARLEY COMMISSION
53.01.01 - RULES OF THE IDAHO BARLEY COMMISSION
DOCKET NO. 53-0101-9701
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 rule-making procedures have been initiated. The action is authorized pursuant to Section 22-4009, 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 August 20, 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:

Extend the Idaho barley tax assessment to barley grown, delivered into, or stored within the state of Idaho and sold or contracted in the state. Exempt barley originating from jurisdictions outside of the state of Idaho that have a comparable barley tax assessment from the Idaho assessment. Eliminate the barley tax refund provision.

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

Implement HB 287, passed by the 1997 Idaho Legislature, with an effective date of the first July following the completion of a referendum vote on the barley assessment refund provision. This referendum was successfully completed on May 3, 1997.

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

The Idaho barley assessment of two cents (\$.02) per hundredweight product sold, delivered into, or stored within the state of Idaho.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rule-making was not conducted; however a barley producer referendum was conducted on April 14 through May 3, 1997, with 82% of the producers voting in favor of the temporary and proposed rule changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kelly Olson, Administrator, (208) 334-2090.

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 August 27, 1997.

DATED this May 27, 1997.

Kelly Olson
Administrator
Idaho Barley Commission
1199 Main Street, Suite G
Boise, ID 83702
208-334-2090; FAX: 208-334-2335

TEXT OF DOCKET NO. 53-0101-9701

010. DEFINITIONS.

01. APA. The Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. (7-1-93)
02. Commission. The Idaho Barley Commission. (7-1-93)
03. First Purchaser. Any person, group, association or partnership that buys barley ~~from the grower~~ in the first instance, or any lien holder, public or private, including the Commodity Credit Corporation, who may possess barley from the grower under any lien. ~~(7-1-93)(7-1-97)T~~
04. Grower. Any landowner personally engaged in growing barley, a tenant of the landowner personally engaged in growing barley, or both the owner and the tenant jointly, and includes a person, partnership, association, corporation, cooperative, trust, sharecropper or any and all other business units, devices and arrangements. And for the purposes of payment of the barley assessment pursuant to Section 22-4015, Idaho Code, a person who delivers into, stores within, or makes the first sale of barley in the state of Idaho. ~~(7-1-93)(7-1-97)T~~
05. Regulation. A federal rule promulgated in accordance with the federal Administrative Procedures Act. (7-1-93)
06. Rule. The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Title 67, Chapter 52, Idaho Code. A rule implements, interprets, or prescribes law, legislative policy, the procedure requirements, or practice requirements of an agency. A rule does not include: (7-1-93)
- a. Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; (7-1-93)
- b. Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; (7-1-93)
- c. Intra-agency memoranda; or (7-1-93)
- d. Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule. (7-1-93)
07. Seller. Any person or entity, including growers, who sells barley in the first instance in the state of Idaho. ~~(7-1-97)T~~

011. -- ~~0499.~~ (RESERVED).

~~020-100.~~FIRST PURCHASER RULES.

In accordance with Section 22-4015 (1), Idaho Code, the commission shall designate the quarters (three (3) month periods) for the purpose of collecting the tax imposed (two cents (\$.02) per hundredweight) on all barley grown, delivered into, or stored within ~~in~~ the state of Idaho and sold or contracted through commercial channels in the state. ~~(7-1-93)(7-1-97)T~~

01. Designated Quarters. The quarters designated by the commission for payment of tax, as required in Section 22-4015 (1), Idaho Code are: (7-1-93)
- a. The commission's first quarter will begin on the first day of July and end the thirtieth day of September. The first quarter barley tax shall be due on or before the fifteenth day of October. (7-1-93)
- b. The commission's second quarter will begin on the first day of October and end the thirty-first day of December. The second quarter barley tax shall be due on or before the fifteenth day of January. (7-1-93)

c. The commission's third quarter will begin on the first day of January and end the thirty-first day of March. The third quarter barley tax shall be due on or before the fifteenth day of April. (7-1-93)

d. The Commission's fourth quarter will begin on the first day of April and end the thirtieth day of June. The fourth quarter barley tax shall be due on or before the fifteenth day of July. (7-1-93)

02. Barley Tax Return (Form Number 1). The first purchaser of barley shall be required to complete and send the Barley Tax Return (Form Number 1) to the commission office each and every quarter on or before the dates specified in IDAPA 53.01.01.020.01. The Barley Tax Return (Form Number 1) shall be provided to the first purchaser by the commission. The Barley Tax Return (Form Number 1) shall, at a minimum, require the following legible information: (7-1-93)

- a. The tax reporting period. (7-1-93)
- b. The name and address of the barley purchaser. (7-1-93)
- c. The net weight of the barley purchased (if any) in pounds or hundredweights. (7-1-93)
- d. The total amount of tax deducted (if any) from ~~Idaho barley producers~~ sellers by the purchaser. (7-1-93)(7-1-97)T
- e. The tax withheld by Commodity Credit Corporation loans. (7-1-93)
- f. The total amount of tax due the commission (if any). (7-1-93)

03. Delivery of Documents to Commission (Form Number 2). The first purchaser of barley shall complete and return the Report Of Tax On Barley (Form Number 2), or equivalent, to the commission office each and every quarter on or before the dates specified in IDAPA 53.01.01.020.01. The commission shall provide blank copies of Form Number 2 to the first purchaser. Form Number 2, or equivalent, shall, at a minimum, require the following legible information: (7-1-93)

- a. The name and address of the purchaser. (7-1-93)
- b. The quarter the barley was purchased. (7-1-93)
- c. The name or names and address or addresses of the grower and seller. (7-1-93)
- d. The number of pounds of barley purchased. (7-1-93)
- e. The total barley tax withheld from each purchase. (7-1-93)

04. Deduction of Tax on NET Weight of Barley. The first purchaser shall deduct the barley tax on the NET weight of the barley after deduction of dockage. (7-1-93)

05. Late Payment Penalty (As specified in Section 22-4018 (2), Idaho Code). Any person or firm who makes payment to the commission at a date later than prescribed in Section 22-4015, Idaho Code, shall be subject to a late payment penalty of fifteen percent (15%) per annum on the amount due. (7-1-93)

~~021. 499.101. -- 199.~~ (RESERVED).

500. REFUND APPLICATIONS.

~~In accordance with Section 22-4015(4), Idaho Code, any person may request from the commission in writing, within thirty (30) days after payment thereof, a refund of all or any portion of an assessment levied on barley and paid by him. Individuals requesting a barley assessment refund, as specified in Section 22-4015(4), Idaho Code, shall be required to complete and return a refund application form to the commission office no later than thirty (30) days after payment of the assessment. Refund application forms will be available through the Idaho Barley Commission office~~

~~in Boise and in each County Cooperative Extension Service office. Written requests for refund application forms must be sent to the Idaho Barley Commission office. The refund application forms at each County Cooperative Extension Service office must be requested in person.~~ (7-1-93)

01. Refund Application Forms. The refund application form shall, at a minimum, require the following information from the applicant: (7-1-93)

a. The applicant's name and address. (7-1-93)

b. The applicant's federal tax identification number. (7-1-93)

e. The first purchaser or lender who deducted the assessment from the applicant's settlement. (7-1-93)

d. The applicant's date of settlement. (7-1-93)

e. The hundredweight of barley sold by the applicant. (7-1-93)

f. The dollar amount of barley assessment deducted from the applicant's settlement. (7-1-93)

g. ~~The applicant shall enclose evidence with the application proving the barley assessment was deducted by providing a copy of either an invoice, check stub, loan paper, or other legal tender showing the assessment deduction.~~ (7-1-93)

200. EXEMPTIONS.

In accordance with Section 22-4015, Idaho Code, the barley assessment shall be imposed on all barley grown, delivered into or stored within, and sold or contracted in Idaho. If a barley assessment that serves a comparable purpose to the Idaho assessment was previously paid in a jurisdiction outside Idaho, the seller of the barley is exempt from payment of the Idaho barley assessment. The commission shall determine jurisdictions outside of Idaho that collect an assessment that serves a comparable purpose, which shall include, as a minimum, funding for research and market development programs. In order to qualify for the exemption, the seller must demonstrate to the first purchaser in the state of Idaho that an assessment has been previously paid to such a jurisdiction. (7-1-97)T

~~501. -- 999.~~ **201. -- 999.(RESERVED).**

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